Transformations of administration and administrative law in the national and European space after 1989

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Abstract

Symbolically, the year 1989 - named on the official website of the European Parliament as the Year of Miracles - brought the liberation of the nations of Eastern Europe under the communist regime. The release revealed a picture painted in dark colors of reality, which highlighted the contrast between the two parts of the continent. From the beginning, the states released in 1989 have taken a single path, namely that of real democratization, effective governance, in which citizens become partners and beneficiaries of the political-administrative institutions. This path, which the citizens of central and eastern Europe wanted to go from the beginning, led to accession to the European Union - all the states that regained their freedom in 1989 being today members of the European political and administrative space. But this path meant the complete transformation of the constitutional, legal, administrative, economic, social and moral framework, which led to the adoption of adequate public policies and new constitutions, new laws of public administration and in the field of property, business environment. and so on All these public policies and new normative acts created another reality, closer to the models of articulated societies in the west of the continent. However, citizens feel the need for a deeper transformation of the states and communities in which they live, which forces the political and administrative decision makers to a higher quality conduct, in relation to the highest European standards. In any country, science is obliged to understand the realities in which people act, to find the best models for

society and solutions to problems that daily life cannot solve. To achieve these goals, researchers and academics, along with practitioners, must meet constantly, have a deep, open dialogue, following which they formulate new ideas and proposals for improving the political, administrative, economic, social and social framework. moral of their countries, starting from a clear and complete analysis of reality.

Keywords: *legal order, soft law, European Union, integration, sovereignty.*

1. Introduction

We started our scientific research endeavor, trying to configure the context of those times. Symbolically, the year 1989 - named on the site of the European Parliament as the Year of Miracles - brought the liberation of the nations of Eastern Europe under the communist regime. The release revealed a picture painted in dark colors of reality, which highlighted the contrast between the two parts of the continent. From the beginning, the states released in 1989 have taken a single path, namely that of real democratization, effective governance, in which citizens become partners and beneficiaries of the political-administrative institutions. This path, which the citizens of central and eastern Europe wanted to go from the beginning, led to accession to the European Union - all the states that regained their freedom in 1989 being today members of the European political and administrative space. But this path meant the complete transformation of the constitutional, legal, administrative, economic, social and moral framework, which led to the adoption of adequate public policies and new constitutions, new laws of public administration and in the field of property, business environment. and so on All these public policies and new normative acts created another reality, closer to the models of articulated societies in the west of the continent. However, citizens feel the need for a deeper transformation of the states and communities in which they live, which forces the political and administrative decision makers to a higher quality conduct, in relation to the highest European standards. In any country, science is obliged to understand the realities in which people act, to find the best models for society and solutions to problems that daily life cannot solve. To achieve these goals, researchers and academics, along with practitioners, must constantly meet, have a deep, open dialogue, following which to formulate new ideas and proposals for improving the political, administrative, economic, social and social framework. moral of their countries, starting from a clear and complete analysis of reality.[1]

The Smart Cities International Conference, the seventh edition, 2019, which aims to bring together scientists from academia, researchers, academics, doctoral students, students and, last but not least, law practitioners, to exchange and to share their experiences and research results on the various aspects related to reforming the legislation in the spirit of the new national, European and international trends, to discuss current issues affecting the legal community, to highlight new interpretations, but also to highlight proposes solutions, it was a good opportunity for the author of these lines to say what he thinks, perhaps other than others, more

concerned about their condition than the community they belong to. And this is because we live in a world where legal systems are increasingly interfering, and the legal tradition requires perpetual upgrading to respond to diversity. Our study is based on the idea that the law does not develop abstractly, but is shaped by society, by the economic-social reality, by intellectual, cultural and linguistic environments, but especially by immediate needs, by the printing of appropriate solutions.

After December 1989, Romania needed a change in the development paradigm to meet the challenges of the 21st century as it was forced to evolve in a period marked by the process of globalization, increasing inequalities and aggravating the problems of humanity. National administrative law could have been one of the solutions, proposing interstate administrative cooperation based on the principles of respecting national sovereignty and identity within a prosperous and invigorated European Union. The national sovereignty represents, in the Romanian context, the desire to achieve a balance, a synthesis between the aspirations of the free-born citizen, the society on which it depends and by which it is defined and the context that allows the self-realization. This balance starts from the human being, the central actor who seeks an individual balance and favorable conditions to be achieved. The favorable conditions are influenced by the society that must support and motivate it and by the environment in which it is found and can find its balance. The role of the state in the context of globalization and implicitly of Europeanization is to help achieve this balance, not only for the current citizens, but also for future generations. This is why my daughter wants to have the opportunity to build a secure future in Romania; to study, to get involved in his country and to establish a family. And for this, I think that we citizens, we have to take control over what is happening in our Romania. I want a safe Romania where administrative law - material and procedural - is part of everyday life. The protection of citizens must be the first priority. The administration must be strengthened and the judicial system improved. We are one of the last states of the European Union that does not have a code of administrative procedure under the conditions of an accentuated Europeanization of administrative law. But let’s not forget that in the US the administrative procedure code was elaborated by teachers and then submitted to the Government for approval.

About the US, recently, on 24.09.2019, at the UN, Donald Trump surprised with a nationalist discourse in which he stated that "The future belongs to the patriots. The future belongs to the sovereign and independent nations, who protect their citizens, respect their neighbors and honor the differences that make each country special and unique. "In connection with the nationalism / patriotism vs. globalism dispute, the American president said" If you want democracy, keep yourselves. sovereignty! If you want freedom, be proud of your country! If you want democracy, keep your sovereignty! If you want peace, love your nation! The future does not belong to the globalists! The future belongs to the patriots. The future belongs to the sovereign and independent nations, which protect their citizens, respect their neighbors and honor the differences that make each country special and unique. When you open your heart for patriotism there is no room for prejudice. The future does not belong to the globalists. The Bible says, "how good and pleasing

it is when God's people live together in unity": they mistake politicians who support globalism to the detriment of national sovereignty; national structures must be protected, not replaced by some superstates! That's why we, in the United States, have embarked on an exciting program of national renewal. In everything we do, we focus on mobilizing the dreams and aspirations of our citizens. Globalism has exercised a religious attraction to the leaders of the past, then making them ignore their own national interests. But as far as America is concerned, those days are history."

Under the conditions in which, the European Union tends towards federalization - the step towards globalization, and the US towards an accentuated nationalism, Romania where? After 1989, the year that marked the end of the Cold War, people seem to have made the right decisions by which the conflict between superpowers was peacefully resolved. Now the world has become more and more complex, and people are not aware of how little they know about what's going on. And for this reason, the aim of this study is to arouse a debate involving specialists in the field of law and administrative sciences and is intended to be a forum for the analysis of new research directions regarding the adoption of the Code of administrative procedure in our homeland. where this need for proceduralization from several directions is felt acute: public administration, administrative litigation judges and administrative law practitioners. „There is a remedy that, in a few years, would make Europe free and happy. It involves the recreation of the European family, at least as far as possible, and its endowment with a structure that can allow them to live in peace, security and freedom. We have to build something like the United States of Europe, "said Winston Churchill in one of his famous speeches, namely the University of Zurich, in 1946. This" remedy "that the Prime Minister of the United Kingdom was talking about, materialized. In 1951, when the French Minister of Foreign Affairs, Robert Schuman, proposed the creation of a supranational authority to control the coal and steel production of Germany and France. The obvious purpose of this initiative was to avoid a new global conflagration by stabilizing relations between the two states, "reducing France's fears about possible military threats from Germany and linking them with a limited framework of peaceful cooperation"[2].

Regarding Romania, we believe that the main objectives that led to the decision to become a member of the EU and which continue to govern the policy regarding our relationship with the Union were, are and will be to increase the standard of living, standards economic, social and political and the development of the state under the influence of Europe. Romania, as mentioned above, belongs to the category of countries that adapt, without opposing. At the Quo Vadis question? we are trying for an answer, which, although short, is far from simple. The United Kingdom returns to the spirit that propelled its orientation in 1957, and Romania develops its potential for action and influence, following the steps imposed. Romania's accession to the European Union on January 1, 2007 was the turning point for another society, another economy and another life for Romanian citizens who became Europeans. Beyond the mirage of a life in well-being, peace, tranquility and harmony with all European citizens, the concrete life and the evolutions at

European and global level showed that Romania did not benefit from the same treatment as the rest of the European states. The "two-speed" Europe was at first only an image that was vehemently fought in some European chancellery, because as the years went by the reality of the differentiated treatment allocated to Romania became more and more outlined.

In this regard, the political opinions expressed both in the European forums, but especially in the color of the European institutions, show that, from now on, Europe must rethink many of its policies regarding especially the economic activity. The "two-speed" Europe has also worked with regard to the participation of the Member States in the Euro Zone. The area was created in 1999 by eleven countries, joined by Greece in 2001, Slovenia in 2007, Cyprus and Malta in 2008, Slovakia in 2009, Estonia in 2011, Latvia in 2014 and Lithuania in 2015.[4] Mark Twain recommended „Stay away from people who diminish your ambition. „Romania has made every effort in its European way to perform under theoretically equal conditions, practically completely inequitable. And current US President Donald Trump said, "Be careful who you step on when you go up, that you will meet the same people down." they are part of: they meet the conditions, but they do not want in the euro area; they want, but do not meet the conditions; neither will they, nor can they; and the last category can, but will not! Why would the state, or the European Union as a whole, need it? I think that by a soft law that would allow them to adapt their legal order more quickly to the social realities at the request, the elites from Brussels or Bucharest were somewhat separated.

2. About soft law in the legal and institutional order of the European Union

2.1. Specific issues

Our attempt to address the need for interdisciplinary public administration research that we are tempted to pursue, given the fact that we are all interested in being best managed, is hampered by the inability of policy makers. So we will go directly to say that this concept - soft law - has been used in the specialized doctrine, but also in the political institutions, through a wide range of techniques and meanings, starting from very different bases even for the supporters of the idea. according to which there are few affinities of the soft law with the law, where the fictional character of the notion of representation has acquired other connotations completely foreign to the legal doctrine of traditional law. More clearly, the fictional character of the idea of representation did not attract attention as long as the struggle of democracy against autocracy lasted. But as soon as the parliamentary principle was fully imposed, it became practically impossible not to highlight the fiction that represented the thesis of representation, namely that Parliament is in itself nothing but an organ representing the people and whose actions it must reflect. strictly only the will of the people. What we need to understand is that the people do not exhaust their power with the election of representatives and it is not just a creative organ. The elections establish a legal relationship between constitutional representatives and the people, which involves mutual rights and

obligations and which also includes a political dependency link through which the representatives are under the effective and permanent control of the voters. The term democracy is frequently used outside the strictly legal area. Therefore, it acquires an essentially teleological or ideological function. Thus, the more or less democratic character of the EU is politically invoked to support or criticize the European structure, without a genuine reflection on the role that this concept can play from the perspective of the foundations of the Union legal order or its functioning. At present, it is important to reach a consensus on the legal definition of the concept of democracy before comparing it with the use given to the term in other areas.

Before moving on to a more theoretical analysis, we believe that it is necessary to start from the function of representation on which democracy is founded, as it is recognized and formulated in constitutional texts, namely representative democracy. The concept of „representation" is extremely comprehensive in the legal field. Even without discussing its applications in private law, this concept could be used, within political institutions, through a wide range of techniques and meanings, starting from very different bases. The origins of representation are old: long before the US revolution and the French revolution, the old European monarchies and urban republics had created the theoretical and functional basis of representative regimes that were not born of the democratic principle. The French monarchy in the so-called Old Regime knew a system of organic representation in which the king's person incarnated the State, as it results from the famous expression of King Louis XIV. However, Carl Schmitt warned us that we should not confuse this transcendent notion of "representation" (Repräsentation) applicable to the monarchies of the Old Regime with its functional concept (Stellvertretung) valid in modern democracy and which has a technical and materialistic connotation.[5] Only that these assertions were made some time ago. Now things, the general context, international and European, are somehow changed! How? We'll try to draw it.

2.2. About the democratic character of the institutions of the European Union

As it is accepted, it is claimed that democracy is currently acquainted with new forms, one example being participatory democracy. In fact, the reference to this notion now tends to encompass the issue of fundamental rights protection, although these two notions are not necessarily of the same type. One of the questions that arise is, however, related to the extent to which these so-called new forms of democracy, participatory democracy, qualified to be substantial, are indeed values-based and do not, in fact, constitute competing systems of representative democracy, whose legitimacy and legitimate function will be reduced in the future as in the case of the European Parliament. Carl Shmitt's antagonism between the transcendent and the functional concept does not exhaust the legal-political concept of representation. They would rather be two extremes between which we could identify old and modern forms of representation that have their own logic and their own foundations. This applies to the old "states" or "orders" that we find in quite similar forms in most European countries, which have long been perpetuated in the

19th century. One of the common features of this form of representation was the exercise of the imperative mandate that bound the representatives to their constituents and deprived them consequently of the reality of a true deliberative power.

In general, this manifestation of the independence of the assemblies from the electoral body is what marks the beginning of the modern representative institutions in the sense that they allow their differentiation from the old forms dressed by the state assemblies. The modern notion of representation has as its corollary and foundation at the same time a theory of the sovereignty of the Parliament that had been imposed in England with the revolution of 1688 - or a theory of national sovereignty - that sustained by the French Revolution and especially by the Constituent - whose consequences , despite the diversity of events and institutions, they are similar: they establish "a democracy without a people"[6]. This consequence is not inevitable per se. In the United Kingdom, the "mandate" theory has reappeared in relation to a democratic conception of the right to dissolve, and the extension of the vote and finally the birth of the universal vote, in a context of bipartisanship, tend gradually to give the people the right to elect their governors. Could this be a landmark or reason for Brexit? We leave our readers and distinguished readers to develop the idea. In France, the 1958 Constitution was totally detached from the dogmas of the sovereignty and intangibility of the assemblies that characterized the "republic of deputies". It remains true, however, that this conception, typical of classical liberal democracy, of the "filter type" representation, this elitist or at least oligarchic notion of representation, as in the case of the European Union, is not a simple product of history. Even the very structure of the representation carries with it the oligarchy, even when the aristocratic connotations have disappeared under the pressure of modern bill government conditioned by the mass media. Hence the question: is this tendency contrary to the nature of the democratic principle? The most famous criticism of the concept of representation belongs to J.J. Rousseau: „The will cannot be represented; the will is the will or it is something else. There is no middle ground "[7].

The same idea is repeated by Kelsen: „As few affinities have the idea of representation with the democratic principle, this is why we realize that autocracy uses the same fiction." This notion of "fiction" is frequently found since it denounces not only the contradictions between democracy and representation, but also the utopian character of democracy itself. Kelsen noted that „The theory of representation has the role of legitimizing the Parliament from the perspective of the sovereignty of the people. But this "obvious fiction", meant to conceal the real and considerable prejudice brought to the idea of freedom caused by parliamentarism, has not been able to fulfill its function in time; instead, it provided the opponents of democracy with the argument that democracy is based on an assertion of blatant falsehood. The fictional character of the idea of representation did not attract attention as long as the struggle of democracy against autocracy lasted. But as soon as the parliamentary principle was fully imposed, it became practically impossible not to highlight the fiction that the thesis of representation implies, namely that Parliament is in itself nothing but an organ representing the people and whose

actions must strictly reflect only the will of the people. It is not surprising, therefore, that among the arguments nowadays against parliamentarism, a first argument is the revelation that the will of the state released by the parliament does not absolutely represent the will of the people and that the parliament cannot express the will of the people for the simple reason that, so as the constitutions of the parliamentary states stipulate, the people cannot even express their will - apart from the one regarding the election of the parliament".

The democratic critique of the representative regime, assimilated by Kelsen to the parliamentary regime, was developed in France by Carré de Marlberg, who in turn makes the distinction between the representative regime and the parliamentary regime. He opposes the representative regime, characterized by the absolute power and immunity of the elected assembly, the parliamentary regime which implies, especially through the dissolution game, the need for a union and a permanent agreement between the elected and the voters and admits a combination with the direct democracy procedures. In addition to this positive critique that tends towards institutional reformism, we must mention the radical criticisms that are frequently raised on the issue of „fiction", namely those that insist on the utopian character of the power exercised by the so-called "sovereign" people in the system of political representation: its basic mechanism, the universal vote, would thus be oriented "against democracy".[9] It is understandable that direct democracy, with the exception of small communities, cannot be adapted to the size and diversity of the powers of the modern state, as in the special case of the EU which cannot be claimed to be a state in the traditional sense of the notion. For this reason, representation appears as an objective necessity. Sieyès, who made the most interesting and profound observations on representation theory, argued for the necessity and usefulness of representation through a compelling comparison when he stated that denying the system of representative government is as if you would like to convince citizens who wish to send a letter somewhere, that their absolute freedom would have been better protected if they had taken their letters to their destination alone. But this obviously real finding cannot eliminate the aforementioned criticisms: representation is inevitable, but not democratic, it is also fiction and utopia at the same time. However, this thesis of representation that can be socially based is not legally justified. In this sense we can see that J.J. Rousseau's thesis is based on a reasoning that departs from the legal one, confusing the legal point of view with the psychological one. His ideas on representation contain a contradiction because they are incompatible with his theory of the general will, which does not constitute a cumulation of individual wills, which means that each deputy does not represent the will of those who chose him, but that of the whole people.

In direct democracy, the people constitute the supreme collegiate political body of the state, and the identity between the governors and the governed is total. It follows from the above that the right to choose, so the right of voters would be reduced to participate in the process of setting up another body that is mandated with powers that previously came to the community of citizens directly. The assembly thus becomes the organ of the will of the people. In direct democracy, as in representative democracy, the people is the organ of the state, but in the first case

the will of this body belongs to the people as such, and in the second case the will belongs to an organ created by the people. Therefore each deputy represents the people as a whole in the sense that he competes in forming the will of the people and the representative bodies thus become, according to the terminology used by the German jurist Jellinek, secondary organs, ie organs of a primary organ of the state that is the people; strictly legal, that real part of the people whose constitution guarantees the right to vote. It is true that starting from this basis, the principle of representativeness may lack the democratic foundation from the moment we admit that representation entails, the transfer of the rights of the people to representatives. What we need to understand, however, is that the people do not exhaust their power with the election of the representatives and it is not just a creative body and the elections establish a legal relationship between constitutional representatives and the people, which implies mutual rights and obligations and which implies including a link of political dependency through which the representatives are under the effective and permanent control of the voters. From the moment the electoral body is recognized the power to elect its representatives, and especially since this election is only valid for a certain time and is periodically questioned again, means that we necessarily confer on this electoral body a decision-making power that goes beyond the strict framework of people's choice. This power can be reinforced in Carré de Marlberg's view by purely political factors, but also by legal institutions designed to guarantee a democratic character of the representative regime: the dissolution of certain procedures of direct democracy, such as the abrogative referendum that allows the compliance between the will to be verified.[10] Kelsen envisioned the rehabilitation of the imperative mandate in a modern form through measures that are mainly related to the constitutional myth such as the abolition of parliamentary immunity or the radical control of the parties over the deputies. These measures aimed at reforming the representative regime, but they aimed less at democratization and more at limiting the power of parties whose functioning was considered by Kelsen to be undemocratic. Equally true is that if contemporary democracies are merely representative, they are representative without respecting the true theory of representation.

The old aristocratic concept, which banned the imperative mandate, survives through some of its legal attributes that still exist, which means that in fact, a new conception has not been imposed. „What has been, will be, and what has happened will happen again, because there is nothing new under the sun, as the Ecclesiastes reminds us every time! It could be argued at most that the notion of representation tends to disappear in favor of the one of representativeness - a notion of a non-legal nature but beneficial from the perspective of the direct democracy criteria far from the principles of natural law reflected in the new Union legal order constituted following a normative process of The union that has evolved a great deal, from the regulations of a predominantly economic nature, to the new European legal regulations with specific features, which enrich their meanings and meanings. An institutional law of the Union has been created, with all that this implies: sources of law, defining principles and regulations that outline a specific legal order. Union law regulates the legal relations within the European Union, but also between the Union and the Member States, underlines the status of the institutions of the Union, while defining

its powers and competences. Various legislative instruments and the creative jurisprudence of the Court of Justice of the European Union have gradually created:

- *Institutional Union law* that includes all the legal norms governing the structure and functioning of the bodies of the European Union;
- *As a material union law* that includes all the legal norms that set the objectives of the Union and the measures by which they are fulfilled;
- *Union procedural law* that includes all the legal norms governing the procedures of European Union law.

Thus, the institutional, material and procedural law of the European Union has outlined a specific legal order in which the rules of institutional law mainly regulate aspects such as: the scope of the treaties, their revision and accession of new states, the legal personality of the EU, the organization of institutions European functions, their functions and attributions, as well as their relations. The rules of material law mainly refer to the exercise of the powers of the national and administrative policy-making bodies through the European institutions for the purpose of applying Union law, either by action or inaction. They also concern the establishment of rules of conduct for persons falling within the sphere of influence of Union law. The diversity of legal relationships covered by Union law also leads to the diversity of the nature of the litigation or actions with which the CJEU can be brought. Thus, we can distinguish several types of procedures, which gradually outline a procedural right of the European Union, and which send us with a thought to a procedural right in the field of administrative law concerning the procedure of direct actions before the Court of Justice; of preliminary actions before the Court of Justice; the special procedures before the Court of Justice; in appeals before the Court of Justice; of the Tribunal; and the Civil Service Tribunal. And all this under the conditions of an unsuccessful transplant of natural law in the Union legal order, as we will see, below.

2.3. About an unfortunate transplant of natural law in the Union legal order

As is well known, in modern times, the term natural law has multiple occurrences, often being an accessible and useful substitute for the concept of human rights. Just like the category of natural law, human rights are inalienable, becoming central concepts of the modern world. In the modern paradigm, the natural rights of the subjects are neither conditioned by the social context, nor by the belonging of the individuals to a constituted society. By modernizing the legal subject with autonomy, modernity establishes the human subject as a central point of law, understood both as a system and as a prerogative of the person. Bjarne Melkevik offers a description of the legal meaning of modernity: „legal modernity refers exclusively to the possibility of a subject of law to recognize itself, in relation to other subjects of law, as an instance of explanation and fulfillment of the law. In other words, the subjects of law must be able, totally autonomously, to recognize each other both as authors and as recipients of their laws, their norms and their political and judicial institutions”[11].

The contemporary philosophy of law refers to two fundamental conceptions of natural law: a premodern conception and a modern one. In the social and political

sense, the pre-modern conception of the legal system establishes the law by reproducing the natural order, while the modern one establishes the laws to guarantee natural rights not only as obligations, but also as freedoms.[12] Completion of previous conceptions of natural law comes along with the contemporary proclamation of human rights. The conception that by virtue of the fact that individuals are human beings, they naturally hold certain rights considered as fundamental, underlies the idea of human rights. So, regardless of the idea of citizenship, belonging to a state or the contingent laws or regulations of various societies, human rights have as a basis the obligation to respect the dignity of any individual by virtue of being born as a human being. What characterizes the idea of human rights lies in the interweaving of several different elements of the classical and modern paradigm of natural law. In other words, the idea of human rights takes from the ancient legal paradigm the notion that any law must essentially embody a natural law. From the modern legal paradigm, the idea of human rights takes on the logic of the civil establishment of laws, always starting from the principle of rationality. Therefore, the fact that all individuals are born as human beings is, in itself, a virtue by which equality between people can be instituted, just as positive rights are instituted, somewhat artificially, as natural[13].

The difficulty of using the model of natural rights to explain the fundamentals of human rights, and the purpose or manner in which they can become a guide to concrete human actions, generates multiple debates that animate the field of philosophy of law today. The origin of human rights in the two variants of natural law, respectively in the classical and modern ones, has been criticized or even challenged, making a distinction between human rights and natural rights. Even with the task of verifying whether there are, however, common characteristics between the two, despite the apparent differences. Certainly, the fact that the universal application and respect of human rights is still deficient may be an indication of the fragility of their foundations. That is why the issue of human rights founding in the EU legal order is still incompletely elucidated. Therefore, the text below explains the essential springs of the mechanism that sets in motion one of the most important legal activities: the law transplant in general, and the union law transplant in particular. The dispute over the transplantation of EU law in Romania has divided the legal world in two: on the one hand, those who support the development of a domestic transplant program - the steps have been started since the beginning of the pre-accession of our homeland to the European Union, the Ministry of Justice working hard in this regard, but financially blocked by the specific situation of Romania, and on the other side, those who claim that Romania is not yet ready for the transplant of the law, campaigning for the referral to the ancestral origins of Romanian law. Beyond the obvious usefulness of such an approach, which would eliminate the reliance on Western multinationals, while preserving the precious legal odors for Romanian citizens, but also beyond the well-meaning warning of the undersigned, who is convinced that the transplantation of the Union law has caught us unprepared.

Everything I say now is based on my experiences, lived for years, near the Romanians in the country and abroad, on the dialogues with many specialists in our

faulty judicial system. The world must know that Romanian law goes through a great deal of suffering, caused by an unhappy law transplant made for a certain political elite, broken by reality. They, the decision makers know the steps, the hibiscus and how the gaps can be filled and they have woven a net of facts, difficult to challenge, because everything they do seems necessary. I think the clean leaders were not elected, they also wove through the law, a spider who devoured and will devour any intruder. And I also think that something is missing from the Romanian legal system to become closer to the German one: the organization and administration as in Germany. There are solutions to problems also in Romania, without the claim that in the end a perfect system will be obtained, only a functional one, that will respond to the needs of most citizens. Some of the conditions would be that at the decision level to act on the basis of correct principles, unanimously accepted, to promote a real competition in the Romanian system, the performance must be rewarded and the errors sanctioned.

Last but not least, each person must be made aware that this is not the way to go. The lack of money in the system is a problem that all states face. Financial resources are important, but they cannot be unlimited and in any case they cannot replace managerial performance deficits. For the current state of the system, you should not just accuse politicians or decision makers. Change can only be made if all the partners really want it. And there is something very important: to consult people with experience in the profession, people who have done something tangible and whose results speak for themselves, who have proven that they are clean, true leaders who can break the spider from Romania! The difference between refusing to cultivate your own thinking and infesting with the aberration microbe the thinking of others is exactly like the difference between our Romanian law and EU law, especially from the perspective of that soft law of the European Union.

2.4. The meaning, objectives and functions of soft law in European Union law

Jurgen Schwarze published in the Romanian Journal of European Law no. 1 of March 31, 2014, the article entitled Soft Law in European Union law. Starting from a simple analysis, the antithesis inherent to the notion of soft law is evident, which seems to contradict the imperative character of the law itself. However, soft law is very common internationally, and the EU is no exception. However, in order to analyze the weight of such rules in the Union space, a preliminary examination of the concept is required. Thus, from the perspective of F. Snyder, soft law designates rules of conduct which, in principle, have no binding power, but which can have practical effects. They were positioned by other authors in a gray area, at the border between law and politics. Although these provisions are indicative, from the point of view of the issuers, they must be given legal relevance. With regard to the EU, a distinction must be made between soft law of an administrative nature and soft law with institutional or constitutional impact, relevant in the relations between the bodies of the Union and the Member States. This differentiation is relevant from the perspective of the purpose of soft law acts. In this respect, those of an administrative nature seek to provide legal certainty to legal subjects, and the second category is

intended for areas where the Union has no regulatory competence. Also, depending on the intentions of the issuing bodies, soft law acts may have either a concrete or an explanatory function, or a preparatory or intermediate function.

The most common manifestations of the soft law type in the Union are recommendations and guidelines. The non-binding nature of the recommendations is enshrined in the law by the TFEU (art. 288), while the guidelines give rise to an effect which, although not imperative, allows derogations only on grounds compatible with the principle of equal treatment. Moreover, once it issues an orientation, the Commission undertakes to respect the conduct it imposes, which is why any derogation from this may constitute a punishable violation of the general principles of law. The guidelines of the Commission are met mainly with regard to the application of sanctions for non-compliance with the rules of competition law. In the field of soft law with institutional impact, the open method of coordination is relevant, which essentially implies the manifestation of a Council position by virtue of common objectives, in areas reserved to the competence of the Member States. On another occasion, the European Commission has guaranteed, in the light of the existing doubts as to the validity of such actions, that the Commission will consult the European Parliament in advance, when they are of a preparatory nature for future legislative acts. Soft law rules replacing authentic rules are not tolerated by the legal order, as the Union legislative bodies cannot assign such powers to an executive body.

Soft law appears in the EU institutions in various forms and in an increasing proportion and the rules established by the Lisbon Treaty do not exclude the use of these instruments of action as before. This does not mean, however, that soft law has evolved at Union level into a unitary legal category, sufficiently defined, with admissibility criteria and legal effects. The legal evaluation must start from its various forms of manifestation, in which soft law appears today in the gray area, located between law and politics. In a hierarchy, given the admissibility of their use and the effects they produce, the following forms of soft law can be distinguished: We consider here soft law in the form of recommendations and opinions, whose non-mandatory character is expressly provided in the TFEU (art. 288) and through which the EU bodies can communicate their position and intentions. Soft law of an explanatory or concrete nature of the formal norms can be considered in principle admissible, as long as it does not go beyond the semantic framework of the "authentic" legal norms. Law having a preparatory character for mandatory legal acts It is worth noting the intention of the institutions of the Union to inform those to whom the norm will be addressed regarding its essential elements. Such a soft law is acceptable, but only under the conditions of no intervention. of automaticity regarding the subsequent regulations, which he prepares, and to him no other form of irreversible constraint is characteristic of him, in any case, the margin of legislative appreciation must be ensured when the subsequent legal norms are issued. Since soft law of a preparatory nature is immanent to a certain modeling force regarding the subsequent rules, the rights of hearing and participation are of particular importance in this type of legislation. Consequently, the information rights of the national parliaments and on this form of expression of the will of the

organs of the Union have been extended to the Member States. Soft law that replaces or substitutes for authentic legal rules cannot be tolerated. The legislator is called to regulate himself the essential elements of a legislative act. Unless the delegation is expressly provided for, it may not assign these powers to an executive body that is not empowered to legislate, nor can it accept the issuance of such rules in a form that, as in the case of soft law, does not have the force mandatory of an authentic legal norm. Such an approach would flagrantly contravene the provision of primary law according to which the essential elements of a legislative act must be established by the legislator (Article 290 paragraph (1) TFEU). For the considerations set out here, soft law will have an indispensable character in the future, at Union level. However, it will have to be within the limits imposed by treaties and other legislative acts. This is because, according to its purpose, the law does not give expression to "soft" rules of conduct, but imposes imperative normative provisions. Soft law differs obviously in this sense. By the adjective "soft" are not only limited the normative content and / or the effects of these norms , but the force of their validity and their obligation is fully relativized. Thus, the limited scope of the scope does not characterize soft law, but its validity entirely reduced. It is not surprising, under these circumstances, that the status of legal category of soft law, which has its roots in international law, is still strongly contested. For the law of the European Union the problem of internal contradiction, inherent in soft law, between law (law) and validated attenuated, flexible (soft) has a special significance, being used here, in the most varied forms, to a great extent by norms under the threshold of imperative normative validity.

2.5. Common features of the existence of soft law in EU law

Starting from the various forms of existence, certain features can be extracted that define soft law at EU level. The prevailing situation, in this context, is a soft law issued by the European Commission or the Council, alone or in cooperation with the European Parliament. In any case, as a rule, an EU body will act. The regulations issued by these bodies do not in themselves directly produce legal effects, yet they are not completely legally irrelevant. In the specialty literature, this is why "soft forms of guidance" are also spoken. They cannot be directly imposed, as they do not contain any provision that can be implemented. Further, another feature common to the different EU soft law variants can be found, that is, they not only describe certain circumstances or a status quo, but more than that, they contain rules of conduct, in certain cases obligations of conduct or expectations of conduct, respectively guidelines of orientation. They are characterized by a certain relation to the respective law by a certain approximation to the law, which have been defined, in different formulations, but overlapping with regard to the fundamental elements of the fund: In this soft law there would be "rules of conduct, which in principle do not they have binding power, but they can have practical effects. "Similarly, D. Thurer understands by soft law" rules of conduct that are r a gray area, located between the law and politics, used by state authorities and international organizations to express

commitments that represent more than political statements, but less than the law in its strict sense".[14]

In the same sense go C. Borchardt and K. Wellens: "Soft union law concerns the rules of conduct which are on a non-binding legal level, but which, from the point of view of their issuers, must be given legal relevance. The above corresponds also to the opinion of L. Senden, according to which soft law refers to the rules "which are provided by instruments to which the obligatory legal force has not been assigned, which can nevertheless produce indirect legal effects and which seek to reach of practical effects, being able to produce such effects ". It does not matter if this concept is really "consciously held inaccurate" or if it has thus developed as a consequence of the lack of an accurate description possibility. Moreover, it can be used with difficulty and as an antonym of it „hard law". Because antonym of "hard law" can only be considered "no law". If it were to be localized, the concept of soft law should be assigned an intermediate position between the two extremes, "hard law" and "no law".[15]

The objectives pursued by soft law in EU law vary depending on the issuer and their content. Thus, the administrative law soft law is complementary in nature and often seeks to enhance the legal certainty of legal matters. In many situations, it is about preparing the future authentic legal norms and preparing the circles of persons to whom these norms are addressed. Finally, EU bodies rarely make use of soft law in EU law because, in the absence of regulatory competence or due to lack of political consensus, it is not possible to adopt genuine law."[16] There are multiple functions performed by soft law. In this context, it depends on which actors emanate soft law. It is conceivable that soft law with executive motivations, as well as soft law of an institutional or constitutional character, emanating from legislative bodies. valid as a primary or secondary law, it can have a concrete or explanatory function. In this way, what is the intention of the EU bodies in the medium or long term, in the framework of interinstitutional cooperation At EU level, soft law can finally lead to better communication between institutions. In order to increase legal clarity and security, soft law has been subject to new rules in the Lisbon Treaty. In this context, the question arises whether by this clarification of the obligatory legal acts it was desired to limit or place in a plan as far as possible the soft law instruments. The Treaty of Lisbon sought to define more precisely the existing legal acts, and not a general renunciation of unregulated legal acts. Starting from the subsistence of these legal acts, art. 296 the third paragraph of the TFEU provides for a limitation on atypical legal acts - which differs from authentic legal rules - only insofar as the European Parliament and the Council are already examining a draft legislative act with an appropriate content. In this situation, they refrain from adopting acts that were not provided for by the legislative procedure applicable to the respective field. In light of these provisions of the Lisbon Treaty, the right of the European Parliament to be consulted in the field of soft law, as well as the right to inform national parliaments in the process of adopting European norms, from the perspective of the ethical and religious dilemma of EU law, is upheld. [17]

3. Conclusions

The dream of a perfectly synchronized society, similar to a clockwork mechanism, has tormented many of the "modernizers" who influenced the industrial age. Thus, what Taylorism meant for the factories was Leninism for the Soviet Union. The objective was to create a state and a society that would work with the efficiency of a machine. Each bureaucracy should act as a single man, each individual moving in unison with the others. In reality, human beings and human societies are open, disordered and imperfect systems. In our lives and societies, the regions of chaos and chance alternate with the regions of temporary stability and give rise to the latter. We need both. Stability and synchronization provide the degree of predictability we need to function as individuals in social groups and especially in the economy. Without a certain stability and temporal coordination, life is reduced to submission to anarchy and chance. But what happens when I take power instability and desynchronization? In a world where the rules of the game are changing and the importance of resources is changing, Romania wants to be the diligent student of the EU. But accelerating social and technological changes increases the difficulty of individuals and organizations to cope. We must not adapt, in one way or another, only to change, but also to the actual acceleration. Even the pace of change itself has effects quite distinct from its direction and content. The future has arrived prematurely, the industrial society of the world is going through a general crisis in which the anachronistic character of the contemporary social institutions is noted.

It is necessary to revolutionize the way we think, to make politics and to organize our economic and family life, as well as the trajectories of social development that create the high probability of such revolutions. Without placing us neither to the right nor to the left of the contemporary political spectrum, and to grant us the accession of any existing political party or movement, as the left / right political axis is increasingly obsolete in high-tech nations and the main schisms that fracture society are produced by - along completely different faults, we appreciate that the current system of political parties and government institutions is outdated and requires huge economic transformations. Are contemporary political movements anachronistic? Are the traditional racial, religious, sexual, class and age conflicts in our society somehow subordinated to another system of conflicts, with deeper roots and a much greater causal impact? Or, on the contrary, are the waves of change themselves subordinate, unfolding in the context of more familiar political relationships and contradictions? To what extent can his innovative analyzes help us to humanize the future? The answer to all these questions starts from the premise that our existing social institutions are dangerously inadequate to the needs of the time and to the citizens of today, even if the law is the way in which the decision maker disposes of the norms imposed on people, and e-governance (concept also known behind Englishism) e-gov) is one of the most - if not the most - interesting challenge of Public Administration in the world.[18] The EU is no exception! It must be transformed if we are to survive the turbulent times that await us. But what kind of changes are necessary, or possible? Can our society survive on the basis of inequality and exploitation? Or can survival itself entail a new level of equity,

participation and social diversity that will enrich all our lives? Again, the answers to all these questions may show what are the main determinants of contemporary change and ultimately aim at them or how we, as citizens, can understand and then intervene in these social processes. Regarding the EU and its legal order, in this material I did not want to give a rattling speech through the dramatism of ideas, about the danger of dissolving our cultural identity in a Europe preoccupied until the despair of dissolving its lifestyle as a result of the apparent occupation peace of European space by millions of emigrants. Satanization of the notion of nation, nationality, nationalism by proletarian internationalism or political correctness even if it has different purposes, manifests itself with the same violence and has the same victims: tradition, pride of inheritance from old people and solidarity with those of your nation, the nation meaning in at the same time people, but also family. Metaphorically,

I would compare the situation with the following picture: We are in a small flotilla - we as humanity -, in which also our Romanian boat, which from the point of view of the human condition, enters a period of great storm, of viscous big. And when I say that, I'm not just thinking of alternative puritanism, depravity, to say, because many people think about it immediately, but, on a very broad plane, the forecasts for the immediate future of humanity are very pessimistic. In this «meteorological - spiritual» perspective, so in the face of these storms, we, the lawyers, are some kind of meteorologists, and not any meteorologists, from those who stand in offices or on television, but among those in Omu Peak. That is, we have the opportunity, along with others, to observe, to intuit, to understand, to predict this entry into the valleys and the intensity of the storm. Why? Because being at the interface with the judicial phenomenon, which is an important sensor of social behavior, we as professionals feel, if we are people of reflection, the evolutions as thinkers, but at the same time, we can commensurate them daily by what happens in the phenomenon judicial.

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