Hitomi Takemura (ed.)

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Public Law at the Crossroads of Technology, Jurisprudence and Governance in Contemporary Europe

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Public Law at the Crossroads of Technology, Jurisprudence and Governance in Contemporary Europe

Editors:

Hitomi TAKEMURA

Activity

Hitomi Takemura is a professor of international law, Hitotsubashi University, Japan. Her research focuses on the effectiveness, efficiency, and legitimacy of international criminal justice, as well as the obligations and responsibilities of states and individuals for core crimes. She has gained a wealth of experience researching and teaching international law at Japanese universities. She is member of Japanese Society of International Law, American Society of International Law, Criminal Law Society of Japan, International Human Rights Law Association, the Japanese Association of Sociology of Law and Kyushu International Law Association. She earned an LL.M. in international law from Hitotsubashi University, an LL.M. in public international law and international criminal law from Leiden University, and a PhD in law from the Irish Centre for Human Rights at the National University of Ireland. She also worked as an intern at the Appeal Chamber of the International Criminal Tribunal for Rwanda in 2003 and for the International Criminal Court in 2005. She was a Fulbright researcher at the Fletcher of Law and Diplomacy in 2024. She has also obtained several grants, including: 2025 Grant-in-Aid for Scientific Research (B) of Japan Society for the Promotion of Science (JSPS) for the research topic of Multidimensional Study on Ensuring Implementation of International Humanitarian Law and International Criminal Law by Third States in Armed Conflicts; 2024 Fulbright Scholarship, Research Program Grantee; 2023 Grant-in-Aid for Fund for the Promotion of Joint International Research (Fostering Joint International Research) of Japan Society for the Promotion of Science (JSPS) for the research topic of the Scope of the Due Diligence Obligation of States, Individuals, and International Organizations with respect to the Prevention of Crimes under International Law.

Publications

Professor Hitomi Takemura is the author of numerous articles and book chapters, including: Book Chapter: 'Investigation and The Role of the Prosecutor', in Kuniko Ozaki and Keiko Ko (eds.), *International Criminal Court*, 3rd. ed. (Toshindo, 2024) pp. 217-244; Book Chapter: 'Chapter 9 International Law and Individuals' and 'Chapter 16 the Law of Armed Conflict, in Nobuyuki Kato, Hiroyuki Banzai and Takuhei Yamada (eds.), *International Law* (Yuhikaku, 2024) pp. 227-253, pp. 417-447; 'Russia-Ukraine Crisis and International Law', in Kumiko Haba, Sokou Tanaka and Yumiko Nakanishi (eds.), *Encyclopedia of European Union* (Maruzen, 2024) pp. 564-565; Co-edited Book: Shuichi Furuya, Hitomi Takemura, Kuniko Ozaki (eds.),

Global Impact of the Ukraine Conflict: Perspectives from International Law (Springer, 2023); 'The Asian Region and the International Criminal Court', in Yumiko Nakanishi (ed.), *Contemporary Issues in Human Rights Law: Europe and Asia*, Springer, 2017, pp. 107-125; 'Reconsidering the Meaning and Actuality of the Legitimacy of the International Criminal Court' *Amsterdam Law Forum*, vol. 4, no. 2 (May 2012) pp. 3-15.

Steve O. MICHAEL

Activity

Adding to his vast international experience, Dr. Steve O. Michael has been appointed Rector and CEO of Danubius University (DU), Romania where he has been the Vice President of the University's Board of Trustees since 2015. Prior to this appointment, Dr. Michael was the Executive Vice President of Academic Affairs and Provost at Charles R. Drew University of Medicine and Science (CDU), a California-based private, non-profit university in partnership with the University of California, Los Angeles (UCLA). During his 7-year tenure under the Carlisle Administration, Dr. Michael was instrumental in leading Charles R. Drew University through visionary strategic planning that resulted in an unprecedented campus growth, academic program expansion, full program and institutional accreditation, financial stability, curricular transformation, effective shared governance, restoration of Graduate Medical Education (GME), foundational plans for an additional medical education program, and astounding national rankings and recognition, to mention but a few. Dr. Michael was the Provost and Vice President for Academic Affairs at Arcadia University, where he served for 5 years. Under the Greiner's Administration at Arcadia, Dr. Michael led the University through two strategic planning initiatives that resulted in the expansion of international programming, enrollment growth, academic program expansion, and establishment of College of Arts and Science, The College of Health Sciences, The School of Global Business, The School of Education, and The School of Continuing Studies. At Kent State University where he spent most of his career, Dr. Michael rose through the ranks to full professor and Vice Provost in charge of the University Diversity Program, Undergraduate Studies, International Affairs, and Faculty Professional Development. Dr. Michael directed over 20 doctoral dissertations and theses on topics that ranged from TQM in higher education to financing higher education, and from internationalization of higher education to evaluation of college president's effectiveness. His leadership advanced Kent State's diversity agenda at the national level, enhanced diversity education in undergraduate curriculum, established Kent State's China Office, revamped Kent State's Geneva Program, expanded professional development programming for faculty, among other accomplishments. Professor Michael was one of the principal founders of the National Association of Diversity Officers in Higher Education (NADOHE) and its first Vice President and Interim President. He was also one of the principal founders of the Association of Chief Academic Officers (ACAO) — the national association of provosts and chief academic officers in the United States. Dr. Michael was a co-founder of the Global Advancement of Private Universities and Colleges (GAPUC), which later morphed into the Association for the Global Advancement of Universities and Colleges (AGAUC) — an association dedicated to internationalization of higher education. Dr. Michael is a professor

of higher education management with research interest that includes the application of business strategies to institutional management, entrepreneurial higher education, and globalization of higher education. He has published widely in most of the leading international and national refereed journals in the field of higher education on topics such as diversity in higher education, cost reduction analysis and financial constraints in higher education, presidency and trusteeship, academic program reviews and discontinuation, and marketing of higher education. He is an active presenter at international conferences and a consultant on higher education issues. Dr. Michael was a British/Canadian Commonwealth Scholar and the first recipient of the Sheffield Award for the best article published in the Canadian Journal of Higher Education (1992). His awards include Outstanding Dissertation Award from the Canadian Society for the Study of Higher Education, Outstanding Faculty Award from Phi Beta Delta, Dean's Awards for professional achievements, and a letter of recognition from the Governor of Alaska. He was a guest professor at the European Peace University in Austria, Jiangxi University of Finance and Economics (JUFE), Nanchang and Beijing Wuzi University in China. For several years, he served as the Liaison Officer for the Educational Management Association of South Africa. On the invitation of the former Minister of Education of Moldova, he was the first keynote speaker at the country's premier international conference on Higher Education. Dr. Michael served on the Editorial Board of the International Journal of Educational Management – the leading international refereed journal on education management; the American Psychology Association's Journal of Diversity; and once the associate editor of the Journal of Research in Education. He served as a reviewer of USAID/ALO International development grants and sat on the Board of Project GRAD of Akron, Ohio. His latest book is entitled Financing Higher Education in a Global Market. Dr. Michael earned his doctorate from the University of Alberta, Canada. He is a graduate of Harvard Institutes for Higher Education and a trained accreditation consultant-evaluator by the Higher Learning Commission of the North Central Association of Colleges and Schools. Professor Michael was an American Council on Education (ACE) Fellow at Carnegie Mellon University with extended training at the University of Bath and City University of London, United Kingdom. In recognition of his works around the Black Sea region, Dr. Michael was awarded an Honorary Doctorate Degree from Danubius University, Galati, Romania. His wide-ranging international background extends from the Sub-Saharan Africa to the Sub-Arctic Alaska. Professor Michael is a retired volunteer soccer coach and a golf enthusiast.

Publications

Professor Steve O. Michael is the author of numerous articles and book chapters, including: "Managing Student Engagement in a Virtual Learning Environment: A Case Study of Clustered Versus Dispersed Synchronous Virtual Learning". *Didactica Danubiensis*, *4*(1), 2025, 7–28; "Philosophy of Education: Reflection on American Context", *Didactica Danubiensis*, *1*(1), 2021, 9–16; "Internationalization of Higher Education: An Imperative for the 21st Century Global Society." *Acta Universitatis Danubius. Relationes Internationales* 7.1 (2014); "Multiculturalism in the Context of Africa", Chapter 9 in Kenneth Cushner (ed.), *International Perspectives*

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Preface

Editors
*Professor **Hitomi Takemura**, Hitotsubashi Universi-ty, Japan*
*Professor **Steve O. Michael**, Danubius University, Romania*

This volume contains the scientific papers presented at the 8th International Conference "Contemporary Challenges in Administrative Law from an Interdisciplinary Perspective" that was held on 16 May 2025 online on Zoom. The conference was organized by the Society of Juridical and Administrative Sciences. More information about the conference can be found on the official website: https://alpaconference.ro.

The scientific studies included in this volume are grouped into three chapters:

- *The Rule of Law Under Strain: Legislative Failure, Constitutional Control and Administrative Legitimacy*. The papers in this chapter refer to: legislation between bad faith, improvisation and disregard for the rule of law; when the constitutional court steps in: rethinking constitutionalism through judicial activism (case study of the Republic of North Macedonia); considerations on the exercise of legality control by the prefect under the Romanian Administrative Code; theoretical and jurisprudential aspects regarding the procedural standing of certain subjects before Romanian Administrative Courts.
- *Public Law and Europeanisation: Jurisdictional Alignment and Procurement Reform*. This chapter includes papers on: the influence of the jurisprudence of the Court of Justice of the European Union on Romanian administrative litigation; participation of temporary associations in public procurement procedures under European and Romanian law: implications of the CJEU Judgment of 13.03.2025 pronounced in Case C-266/22; between national application and European harmonisation: a comparative legal analysis of the margin scheme for second-hand vehicles in Romanian and EU law; administrative decision – administrative act and/or voluntary process?: a perspective on the acts issued by the National Energy Regulatory Authority in the process of imposing sanctions on turnover.
- *Administrative Innovation in a Digital and Global Era: Technology, Inclusion and Interconnected Governance.* The papers in this chapter refer to: the interdependent relationship between administrative law and other legal fields: challenges and legal solutions in electronic invoicing; AI and decision support systems in public administration: interdisciplinary insights from Romania; the impact of new technologies on the administrative act; digital transformation of public administration: challenges and

perspectives from Romania and Denmark; the integration of large-scale technical systems in cross-border police cooperation: challenges and solutions for public administration; at what cost?: offshoring implications for labour and migration in Morocco and Tunisia, 2010–2024.

The articles included in this volume have been revised using the "double blind" peer review system, respecting international scientific standards.

This volume is aimed at practitioners, researchers, students and PhD candidates in juridical and administrative sciences, who are interested in recent developments and prospects for development in the field of public law and public administration at international and national level.

We extend our gratitude to all contributors and partners, and are confident that this volume will meet the increasing demand for documentation and information among readers in the context of globalisation, and the rise of dynamic elements in contemporary public law and public administration.

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THE RULE OF LAW UNDER STRAIN: LEGISLATIVE FAILURE, CONSTITUTIONAL CONTROL AND ADMINISTRATIVE LEGITIMACY

Legislation Between Bad Faith, Improvisation and Disrespect for the Rule of Law

Professor **Verginia VEDINAȘ**[1]
Lecturer **Ioan Laurențiu VEDINAȘ**[2]

Abstract

This study aims to analyse the current law-making process. We focus on its shortcomings, which violate not only procedural rules but also substantive rules and the constitutional regime of fundamental institutions of the rule of law. We refer to the emergency ordinance, which has been transformed from an exceptional procedure into the rule in lawmaking, or the engagement of the Government's responsibility, which has broadened its scope to include codes and packages of laws, thus emptying the role of Parliament as the sole legislative authority of the country of its content. Added to this are serious procedural shortcomings, such as the classification and adoption as ordinary laws of normative acts regulating matters falling within the scope of organic law and regulation by derogation, so that the rules laid down in the normative act from which the derogation is made are emptied of content.

Keywords: *lawmaking, law, rule of law, executive power, legislative power, rules, exceptions and derogations.*

JEL Classification: K10, K23

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1. Conceptual clarifications

The term *'legislation'* must be explained, starting from the term *'law'*, which has two meanings. *Strictly* speaking, it refers to the act of Parliament bearing this name. Article 61 of the Romanian Constitution[3] defines Parliament as *the*

[1] Verginia Vedinaș - Faculty of Law, University of Bucharest; Full member of the Romanian Academy of Sciences; President of the Institute of Administrative Sciences 'Paul Negulescu', Romania, prof.verginia.vedinas@gmail.com.
[2] Ioan Laurențiu Vedinaș - "Vasile Goldiș" Western University of Arad, Romania, ioanvedinas@yahoo.com.
[3] The Constitution was published in the Official Gazette no. 233 of 21 November 1991. It was

sole legislative authority of the country, from which it follows that a distinction is made '*between the activity of law-making, which belongs solely to Parliament, and the rest of the normative activity of the state, which falls within the competence of the executive power or the representative bodies of local public administration authorities'.*[4]

Lato sensu (in the broad sense), the term refers to any legal act that is binding on a subject of law.

Based on these two meanings, we will now determine two meanings for lawmaking.

In the first sense, we understand *lawmaking* to mean the specific procedure of Parliament, through which it adopts laws, the rules of which are enshrined in the Constitution and developed in the regulations of the two Chambers and in joint sessions.

These are the Rules of Procedure of the Senate[5], the Rules of Procedure of the Chamber of Deputies[6] and the Rules of Procedure for the joint activities of the Chamber of Deputies and the Senate.[7]

In a second meaning, centred on the broad sense of the term 'law', lawmaking refers to **the procedure for adopting a legally** binding **act** on a subject of law, regardless of who issues/adopts that act and its name[8].

This includes acts emanating from the executive branch, namely Government Decisions, orders, instructions, rules, clarifications, decisions and methodological rules, which emanate from the central specialised subordinate or autonomous administration.

All these acts must comply with certain rules of form, procedure and content and are currently enshrined in Law No. 24/2000 on the rules of legislative technique for the drafting of normative acts[9] and in the Regulation on procedures at the government level for the drafting, approval and presentation of draught

revised by Law no. 429/2003, published in the Official Gazette no. 758 of 29 October 2003, and republished in the Official Gazette no. 767 of 31 October 2003.

[4] Ioan Muraru, Elena-Simina Tănăsescu (coord.) (2022) *Constitution of Romania, Commentary on Articles,* 3rd edition, Ed. C. H. Beck, Bucharest, p. 527.

[5] Approved by Decision No. 28/2005, republished in the Official Gazette No. 22 of 11 January 2024, with subsequent amendments and additions.

[6] Approved by Decision of the Chamber of Deputies No. 8/1994, published in the Official Gazette of Romania, Part I, No. 50 of 25 February 1994, republished in the Official Gazette of Romania, Part I, No. 1181 of 27 November 2024, with subsequent amendments and additions.

[7] Approved by Decision of the Romanian Parliament No. 4/1992, published in the Official Gazette No. 34 of 4 March 1992, republished in the Official Gazette No. 623 of 7 July 2023, with subsequent amendments and additions.

[8] András Sajó (2004), "Militant Rule of Law and Not-so-Bad Law," *Hague Journal on the Rule of Law,* vol. 16: 525–549, https://doi.org/10.1007/s40803-024-00221-8.

[9] Republished in the Official Gazette of Romania, Part I, No. 260/2010, with subsequent amendments.

public policy documents, draught normative acts and other documents for adoption/approval, approved by Government Decision No. 561/2009.[10] *De lege ferenda*, these rules are to be laid down in the future Code of Administrative Procedure, which, unfortunately, has not been adopted, although it is eagerly awaited by theorists and practitioners,[11] but has been adopted in draught form and is awaiting approval by Parliament.

As a generally applicable procedural rule, we can invoke here the **transparency** phase, which is mandatory for all categories of normative acts, in which the draught is published and remains so for a number of days, consultation with associative structures takes place, and as a **substantive requirement,** we can invoke **regulatory unity,** which is provided for in Article 14 of Law No. 24/2000, which requires that a normative act contain rules from the same field, avoiding the accumulation of rules from different areas, as well as avoiding **parallelism in regulation,** as provided for in Article 16 of the same normative act.

2. Forms of Violation of the Rules Applicable to Lawmaking in Both Senses

Addressing such a topic requires, in accordance with the theme of the conference, an interdisciplinary approach requiring the use of knowledge of constitutional law, administrative law or general theory of law[12].

2.1. Legislation by Parliament

As already mentioned, this is the typical form of lawmaking, and the analysis of how Parliament performs this function/mission must start from the constitutional role of this public authority, enshrined in Article 61 of the Constitution, as **the sole law-making authority of the country,** the second in the list, the first being **the supreme representative body of the Romanian people.**

Specialist doctrine recognises that Parliament exercises several functions. Thus, there is talk of a legislative function; the function of establishing the main directions of socio-economic, cultural, state and legal activity; the function of electing, appointing, approving the appointment, forming or dismissing state authorities; parliamentary control; and leadership in foreign policy.[13]

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[10] Published in the Official Gazette of Romania, Part I, No. 319/2009.

[11] Cătălin-Silviu Săraru (2023), *Administrative Law, University Course,* vol. I, Ed. Universul Juridiuc, Bucharest, p. 46.

[12] See for a comparative view Antoine Buyse, Katharine Fortin, Brianne McGonigle Leyh, Julie Fraser (2021), "The Rule of Law from Below – A Concept Under Development," *Utrecht Law Review,* vol. 17, issue 2: 1–7, https://doi.org/10.36633/ulr.771.

[13] Ioan Muraru, Elena-Simina Tănăsescu (2017), *Constitutional Law,* 15th edition, vol. II, Ed. C. H. Beck, Bucharest, p. 174.

Of these, two were established by the Constitution, namely that of the supreme representative body and the sole legislative authority of the country.

Although the second is primarily relevant to the issue at hand, we believe that **they cannot be understood separately, as their meanings are intertwined.**

The status of **sole legislative authority** gives Parliament **supremacy in lawmaking,** similar to its **supremacy** in representation. If we use our imagination a little, Parliament cannot, in our constitutional architecture, be *supreme* in representation *without this characteristic*, which is derived from its uniqueness, in lawmaking.

That is why the attacks currently being levelled at Parliament, with the executive encroaching on its role as the sole legislative body, also affect its supreme representative character.

The ways in which the role of Parliament as the sole legislative body is being undermined, to the point of being ridiculed, are the subject of ongoing critical doctrinal analysis.

We will provide a summary of these below:

A) Legislation by ordinance, as a rule, by emergency ordinance and, more rarely, by simple ordinance. This is the most dangerous procedure because it distorts not only the role of Parliament and the Government, but also affects the balance and separation of powers within the state, the principle of loyal cooperation between the powers and even the requirements imposed by European law and the legal systems of the Member States. While, in the first years after the adoption of the Constitution, the number of emergency ordinances was reasonable, we subsequently witnessed a veritable 'inflation' of such ordinances,[14] despite the fact that the Constitutional Court established a case law sanctioning such abuse. Quite often, the agenda of the Chambers includes draught laws amending emergency ordinances that transposed directives and other European legislative acts into national law. This is caused by the way in which the transposition took place, through emergency ordinances that were not debated in Parliament in a timely manner and had to be corrected, which does not show us in a very good light as a Member State.

B) The excessive use of ordinances transforms the executive into the legislature and exceptions into rules, with serious consequences for the proper functioning of the state.

C) The tendency to violate any rules in lawmaking is the dominant

[14] Mircea Ursuța, Ioan Lazăr (2025), *Administrative Law, University Course,* Ed. Universul Juridic, Bucharest, p. 58. For a broader view see John Coldham, Hannah Barnett, Ailsa Carter (2025), "UK Supreme Court Rules on Bad Faith, Infringement and Interpretation of Brexit Legislation in *SkyKick v. Sky* Trademark Battle," *Gowling WLG Insights*, accessed at 15.06. 2025, https://gowlingwlg.com/en/insights-resources/articles/2025/uk-supreme-court-rules-on-bad-faith-infringement-and-interpretation-of-brexit-legislation.

feature of the Contemporary Parliament. Any reaction, drawing attention and critical approach to these issues is countered, ignored, sometimes blamed, 'accompanied' by the recommendation that those who disagree should refer the matter to the Constitutional Court.

D) In this spirit, genuine parliamentary customs have been created**,** which are **unconstitutional**, whereby laws approving ordinances are 'amended' with new provisions that were not the subject of the ordinance, creating a genuine 'transgender' between the procedure for approving an ordinance and the legislative initiative of parliamentarians or the Government.

E) Legislation by derogation, which has become a practice in recent years, justified by the economic and financial crisis into which is not Parliament but the Government has led the country. Obviously, with the help of Parliament, which has legitimised, through its approval, all the measures taken by the Government through emergency ordinances.

Such 'anomalies' in lawmaking continue to occur, even though the Constitutional Court has established a consistent case law on declaring a regulation wholly or partly unconstitutional on the grounds that **it violates the requirements of the quality of law,** as derived from Article 1(5) of the Constitution and developed by the provisions of Law No. 24/2000.[15] For example, in Decision No. 78/2024[16], the Court ruled that *'the legislator has the obligation, on the one hand, to regulate a text of law with normative content that ensures its effectiveness, proportionality and dissuasive character, in accordance with the provisions of Article 53(2) of the Constitution (...)'. (2) of the Constitution (...)'.*

All of these, individually and collectively, could be the subject of a doctoral thesis, and we hope that this will happen. The fact that we are discussing them is not necessarily motivated by a desire to criticise certain realities; we do not want sterile criticism. What we want is for them to be known and recognised because only then can they be corrected.

2.2. Forms of 'legislation' exercised by other public authorities

We refer, first of all, to the normative power derived by the Government, based on the legislative delegation regulated by Article 115 of the Constitution, which takes the form of simple or emergency ordinances.

We have already referred to emergency ordinances in the previous section and highlighted their shortcomings.

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[15] For an analysis, see Ramona Delia Popescu (2025), „Annual Chronicle of the Case Law of the Constitutional Court of Romania for 2024"*, Public Law Review* no. 1/2025, pp. 82–93.

[16] Decision of the Constitutional Court no. 78/2024 on the exception of unconstitutionality of the provisions of Article 14(1)(d), Article 44(1)(a) and (3), Article 57(4)(b) and Article 70(1)(c) of Law No. 295/2004 on the regime of weapons and ammunition, published in the Official Gazette No. 229 of 19 March 2024.

As regards simple ordinances, these generally fall within constitutional parameters, given that it is Parliament that sets the limits of their intervention through enabling legislation. '*The fundamental element left to the discretion of parliamentarians concerns the obligation to submit them to Parliament for approval, in accordance with the legislative procedure.'*[17] However, we note that the subsequent adoption of simple ordinances by Parliament is practised, even if it is not mandatory, as Parliament is cautious and imposes it as a rule through the enabling law.

However, both types of ordinances have some shortcomings, and we refer to those concerning **the disregard of the principle of transparency** by allowing insufficient time for public consultation.

Another aspect concerns the formal and insufficient consultation with associations in the areas covered by the regulations.

Another shortcoming stems from **the failure to comply with the rules laid down in Law No. 24/2000,** which should **be a veritable constitution in the field of regulatory technique**, but which has been ignored just as much as the Constitution itself.

Principles such as regulatory unity, avoidance of parallelism, unclear wording, ambiguity or contradictions are frequently violated, despite the consistent case law of the Constitutional Court on the clarity and predictability of the law.

3. Conclusions

There is no doubt that the Romanian state is currently undergoing a process of reorganisation, but unfortunately not always in a positive sense, of its regulatory technique.

We could characterise the current period, somewhat maliciously, as one in which the only rule is **that rules are not really respected**. When a goal or interest is pursued, all rules of lawmaking, regulation and exercise of powers are disregarded. We hope that the adoption of the Code of Administrative Procedure will temper these excesses. Otherwise, the Romanian legal system will become fragile and incapable of defending the authentic values of democracy and the rule of law.

[17] Dana Apostol Tofan (2023), *Administrative Code. Commentary on articles, Vol. I (Parts I-II/Articles 1–74),* Ed. C. H. Beck, Bucharest, p. 204.

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When Constitutional Court Steps In: Rethinking Constitutionalism Through Judicial Activism. Case Study of the Republic of North Macedonia

Professor **Jelena TRAJKOVSKA-HRISTOVSKA**[1]

Abstract

Constitutional activism has played a significant role in advancing the interpretation and evolution of law. However, when judges begin to believe they can address all societal issues by stepping into legislative and executive roles- often due to a perception that these branches have fallen short in their duties- numerous challenges inevitably emerge. The paper will examine the dynamic interplay between constitutional (judicial) activism of constitutional courts and constitutionalism, analyzing how constitutional courts navigate their role within modern constitutional democracies. The paper will focus on mechanisms and instruments that fuel judicial activism, within the legal framework of Republic of North Macedonia. The paper explores whether certain elements embedded in the legal framework of the Constitutional Court might, over time, create conditions that disturb the balance between the branches of power. It considers the possibility that the Court — despite being traditionally seen as the weakest link in the separation of powers — could gradually take on a more dominant role in the constitutional structure. The analysis also reflects on whether the system has sufficient mechanisms in place to respond to such developments. The research relies on comparative and doctrinal methods, combining an interpretation of constitutional provisions with a contextual analysis of court practice and legal scholarship. This approach is commonly used in constitutional law to assess the evolution of institutional roles and to draw parallels across jurisdictions. The analysis of instruments that foster judicial activism, will provide insights into the evolving role of the Constitutional court of Republic of North Macedonia in reinforcing or challenging the foundational structures of governance.

Keywords: *Constitutional court, constitutionalism, separation of powers, instruments for judicial activism, normative framework.*

JEL Classification: K10, K38

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[1] Jelena Trajkovska-Hristovska - Department of Constitutional Law and Political System, Faculty of Law „Iustinianus Primus", „Ss. Cyril and Methodius University", Skopje, Republic of North Macedonia, ORCID: 0000-0001-7229-6590, j.trajkovskahristovska@pf.ukim.edu.mk.

1. Introduction. Contextualizing Constitutional Activism in Modern Democracies

Contemporary constitutional democracies are marked by a significant transformation in the traditional understanding of the separation of powers. In this new constitutional reality, the judiciary — particularly constitutional courts — is no longer confined to its classical role of interpreting and applying the law. Instead, courts are increasingly perceived and even expected to act as institutional correctives, stepping into the political arena when the legislative and executive branches are seen as inactive, ineffective, or failing to uphold constitutional values. This shift has given rise to what constitutional theory terms *constitutional activism* — a phenomenon that reflects institutional rebalancing the role of the judiciary in a functioning democratic state.

The phenomenon of constitutional activism can be seen as both a legal necessity and a pragmatic response to the challenges of modern governance. In situations of legislative deadlock, institutional dysfunction, or urgent social transformation, courts have stepped in to articulate legal standards and even influence policy direction. Such interventions, however, raise important constitutional questions. The expanded role of the judiciary has generated concern regarding its compatibility with the principle of the separation of powers and has triggered extensive academic discussion on the limits and legitimacy of this form of judicial engagement.

Constitutional activism, therefore, presents a complex picture. On the one hand, it may serve as a safeguard against institutional failure; on the other, it raises concerns about judicial overreach. The tension lies in whether this type of judicial behavior should be regarded as a necessary adaptation to political shortcomings or as a potential challenge to the principle of democratic legitimacy. In this context, questions arise about whether activism strengthens the rule of law or disrupts the foundational balance among the branches of government.

These questions are not merely theoretical — they lie at the core of current constitutional debates in both established and emerging democracies. As the role of courts expands, so too does the concern about whether such a role is democratically legitimate. The increasing involvement of courts in areas traditionally reserved for representative bodies raises the following critical issues: *Is judicial supremacy — understood as the power of courts to act as final arbiters of constitutional meaning — compatible with the principle of separation of powers? Can a constitutional system remain democratically grounded if unelected judges possess the authority to invalidate decisions made by democratically elected legislators (A. Bickel`s counter-majoritarian difficulty)? Is judicial review the most appropriate mechanism for safeguarding the Constitution, or should it be supplemented by other institutional or civic checks? And, more fundamentally, is it ac-*

ceptable that the public has minimal direct influence over processes that determine the validity of laws, enacted in their name?

The consolidation of judicial supremacy into a stable, widely recognized practice within constitutional legal theory has not resolved the core concern: judicial supremacy places significant power in the hands of judges who are not elected by, nor directly accountable to, the citizenry. What modern constitutional theory no longer disputes is not merely the emergence, but the institutionalization and even normalization of practices whereby constitutional courts extend their reach into the domain of the legislature, act in effect as a "third chamber" of parliament, and assume a proactive role in directing the normative and political trajectory of state institutions.

This phenomenon is reflected in the academic use of a range of terms — *judicial supremacy*, *judicial activism*, *judicial paramountcy*, *even judicial imperialism* — which, despite their nuances, all denote the same underlying concern: a departure from the classical understanding of the separation of powers and from the mutual constraints among state organs, that traditionally underpin constitutional democracies. Courts, in this new model, no longer merely interpret the law — they shape it and redefine its boundaries. In certain cases, they even create their own rules, which grant them powers beyond those ordinarily provided, enabling them to actively employ the instruments of judicial activism.

Justifications for this expansive judicial role typically rest on three principal assumptions. *First*, that the court is the ultimate guardian of the constitution, uniquely positioned to prevent the erosion of constitutional values. *Second*, that judicial independence from political actors ensures impartiality and protects minority rights from the potential tyranny of the majority. *Third*, that courts act as defenders of fundamental rights and freedoms, particularly when legislative compromises or executive actions threaten to violate them. These assumptions have become central to the legitimization of constitutional activism, especially in systems where other branches of power are perceived as weak, partisan, or inefficient.

Nonetheless, the reliance on judicial intervention as a substitute for political resolution poses its own risks. The question arises whether a constitutional democracy can sustain long-term legitimacy if its foundational decisions are increasingly driven by institutions that lack direct democratic accountability. Critics argue that this shift undermines the notion of self-government and elevates a technocratic elite over the will of the people.

In any case, the rise of constitutional activism requires a careful and critical examination of the legal and institutional frameworks. The issue is not whether courts should play a role in defending constitutional values — few would dispute that they must — but rather how far that role can and should extend. The balance between judicial intervention and democratic governance remains one of the most challenging questions facing modern constitutional theory. It demands a

nuanced approach that neither idealizes the judiciary nor dismisses its role as an essential safeguard within the constitutional system. Instead, it calls for a rethinking of the principles of constitutionalism in light of the realities of judicial power and its implications for democratic legitimacy[2].

Finally, to frame the discussion within a clear analytical structure, the analysis in this paper is guided by the central research question: To what extent does the normative framework of the Constitutional Court of the Republic of North Macedonia enable or constrain the development of judicial activism, and what are the broader implications for constitutionalism and democratic legitimacy? The hypothesis proposed is that the existing institutional and legal design, marked by procedural flexibility, lack of external oversight, and broad interpretative discretion, facilitates a judicial practice that increasingly resembles constitutional activism. The objective of the paper is to critically examine how the institutional and procedural design of the Constitutional Court of the Republic of North Macedonia facilitates forms of judicial activism, and to assess its impact on the separation of powers and democratic accountability. The analysis of this paper relies on a doctrinal and comparative legal method, combining legal interpretation with comparative references to constitutional courts in similar jurisdictions. This methodology allows for a contextualized assessment of the Macedonian case within broader constitutional trends.

2. Judicial Activism and the Constitutional Court of the Republic of North Macedonia

2.1. The Legal Framework of the Constitutional Court

The system of constitutional review in the Republic of North Macedonia traces its origins back nearly five decades. The inaugural Constitutional Court of the Socialist Republic of Macedonia was established in 1963, at a time when the prevailing model of governance was based on the unity of powers. Despite operating within such a framework, legal scholarship acknowledges that the creation of a Constitutional Court during this period marked a significant constitutional innovation and institutional advancement. Unlike states that adopted models in which the legislature exercised self-review over constitutionality, Socialist Macedonia took a different path: with the 1963 Constitution, it introduced its first institutional "guardian of constitutionality and legality".

The 1991 Constitution of the Republic of Macedonia, by introducing the

[2] Renata Deskoska, Jelena Trajkovska-Hristovska (2024). „The Interplay of Sustainability, Constitutionalism and Legitimacy: Examining the "Political Ecotopia" as a manifestation of Social Sustainability and a Pillar of Constitutionalism", *Juridical Tribune – Review of Comparative and International Law* 14, no. 4: 670-673, DOI: 10.62768/TBJ/2024/14/4/09.

principle of separation of powers, created the necessary preconditions for constituting the Constitutional Court. The Constitutional Court is *materia constitutionis*, but not *materia legis*. The provisions relating to the Court are found in Part IV of the Constitution. From these provisions, it is evident that the Constitutional Court of the Republic of North Macedonia is an institution separate from the judicial system, tasked with "protecting constitutionality and legality.[3]" The constitutional provisions concerning the Court (Articles 108–113) are modest and general. Although the initial impression is that the "founding fathers" of the Macedonian Constitution were inspired by the idea of creating an institution that would serve as the guardian of constitutionality, the constitutional framework gives the impression that the "founding fathers" remained somewhat unexpressed. The constitutional provisions on the status, composition, jurisdiction, and types and effects of the Court's decisions are few and overly general.

Furthermore, Article 113 of the Constitution, which states that "the manner of work and the procedure before the Court shall be regulated by an act of the Court,"[4] gives the impression that the constituent power deliberately excluded the possibility of regulating matters related to the Constitutional Court through a Law on the Constitutional Court. It can be assumed that the guiding idea behind this unfortunate constitutional solution was to secure greater independence and autonomy of this institution within the system of governance. Deskoska's observation — that the ability of constitutional judges to decide on important matters concerning their own status is unacceptable and may lead to a violation of the principle of "checks and balances"[5] — illustrates an application of Bickel's theory of the counter-majoritarian difficulty to the case study of North Macedonia.

The absence of a law regulating the Constitutional Court raises questions not only regarding the legal basis of constitutional review but, more importantly, concerning the source of the Court's legitimacy. There is no system of constitutional review in which the court is entrusted with such a function, without its status, organization, and jurisdiction being regulated by law. In addition to the constitution, legislation is the second source that should more precisely regulate these issues. The fact that this matter is regulated by law, adopted by the legislature, is not perceived in contemporary constitutional literature as a threat to the independence and autonomy of the Court in a system based on the principle of

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[3] Constitution of Republic of Macedonia adopted 1991, Art. 108.

[4] Constitution of Republic of Macedonia adopted 1991, Art. 113.

[5] Kenneth D. Ward, Cecilia R. Castillo (eds.) (2005) *The Judiciary and American Democracy: Alexander Bickel, the Countermajoritarian Difficulty, and Contemporary Constitutional Theory*. State University of New York Press, http://www.jstor.org/stable/jj.18254474; Renata Treneska - Deskoska (2006). *Constitutionalism and Human rights,* Skopje, p. 273; Ádám Auer, Gábor Németh, Endre Orbán, Péter Pollner (2024), „Constitutional Court Decisions as a Network of Precedents? A Network Theory-Based Analysis of the Jurisprudence of the Constitutional Court of Hungary". *Juridical Tribune - Review of Comparative and International Law,* Volume 14, Issue 4: 652-669, DOI: 10.62768/TBJ/2024/14/4/08.

separation of powers.

By excluding the possibility of regulating the Constitutional Court through law, the Macedonian constitution maker, seems to have made a radical extension of the demand to isolate the Court from legislative influence. In doing so, the Constitution created a legal gap, left to be filled by an act that is hierarchically below the law, thereby indirectly placing the Constitutional Court in the role of a norm-maker.

The position of the Constitutional Court in the system of governance in the Republic of North Macedonia is determined through the following:

- *The independent status of Constitutional Court judges*. The 1991 Constitution of the Republic of Macedonia provides that the mandate of Constitutional Court judges is nine years, without the possibility of reappointment. According to Article 111, paragraph 4, the judge's term may be terminated before its expiry only if: 1) the judge resigns; 2) is convicted of a criminal offense and sentenced to an unconditional prison term of at least six months; or 3) permanently loses the ability to perform the function, as determined by the Court itself. This constitutional provision, allowing removal only under strictly defined conditions, serves as a powerful guarantee of the independence of constitutional judges[6]. "Beyond these specified reasons, there is no possibility for the early removal of a constitutional judge," and these conditions are determined exclusively by the Constitutional Court[7]. The conditions for early termination of the judicial function are determined by the Constitutional Court itself, and not by any other state body. This constitutional provision serves as a particularly strong guarantee of the status of constitutional judges within the system of governance.

- *Incompatibility provisions*. A Constitutional Court judge may not hold any other public office, engage in any other profession, or be a member of a political party[8]. It can be assumed that the main motivation for this provision was to ensure impartial and professional performance, as well as full dedication to the role of judge. In contrast to this absolute incompatibility, the Court's position from September 1997 emphasizes that serving as a university lecturer does not violate the incompatibility rule[9]. This serves as an example of judicial interpretive maneuvering, indicating the Court's potential and readiness to use available legal tools in practicing judicial activism.

- *Judicial immunity*. Article 111, paragraph 2 of the 1991 Constitution establishes that Constitutional Court judges enjoy immunity, with the Court itself deciding on its application. Interestingly, it is not the Constitution but the Court's internal Rules of Procedure that define the scope of immunity. Article 94 of the

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[6] Savo Klimovski, Renata Deskoska, Jovanovska Tanja Tanja (2012), *Constitutional Law.* Prosvetno delo. Skopje 2012. p. 506.

[7] Skaric Svetomir, Siljanovska-Davkova Gordana. *Constitutional Law.* Skopje 2007, p. 746.

[8] Constitution of Republic of Macedonia adopted in 1991 Art. 111/1.

[9] Svetomir Skaric, Gordana Siljanovska-Davkova, *op. cit.,* p. 770.

Court's Act stipulates that judges enjoy immunity identical to that of Members of Parliament. According to this provision, a judge cannot be held criminally liable or detained for opinions expressed or votes cast in the Court. Furthermore, a judge cannot be detained without the Court's consent, except when caught committing a crime punishable by at least five years in prison. The Court may also apply immunity even when a judge does not invoke it, if necessary for performing their function. Equating judicial immunity with parliamentary immunity reflects a legacy of the previous system. This procedural solution represents a clear overstepping of the judges' powers, as immunity is a matter of constitutional and statutory regulation, and the Constitution does not authorize its regulation through internal rules.

- *Qualifications required*. Article 109, paragraph 4 of the Constitution provides that Constitutional Court judges shall be selected from among distinguished legal professionals. Given North Macedonia's experience with this provision, the question arises whether it is overly general and vague. In this context, Siljanovska emphasizes that "the question of *who* is appointed as a constitutional judge may be more important than *how* they are appointed.[10]" Deskoska also stresses that the Constitutional Court must be an independent and autonomous institution — not a mere "decoration" within the constitutional system, but a genuine guardian of the "spirit" of the Constitution and of individual rights[11]. This can only be achieved if the Court defends its integrity through reasoned, elaborate, and convincing decisions[12]. Ultimately, the qualifications of the judges directly impact this capacity.

2.2. Instruments Enabling Judicial Activism in Practice

Judicial activism often arises through the broad and creative interpretation of constitutional and legal provisions, which, although formally grounded in the constitutional framework, can be employed in ways that extend judicial authority beyond its traditionally conceived limits. These provisions — particularly those that are vague, abstract, or open-ended — offer courts interpretive space to justify involvement in politically sensitive or structurally complex matters.

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[10] Gordana Siljanovska-Davkova (2010). *The Constitutional Court of Republic of Macedonia from my Perspective. FORUM EUROPAENUM – Constitutional Court of Republic of Macedonia- Status, Dilemmas, and Perspectives*/*Уставниот суд на Република Македонија - од мој агол*. Силјановска-Давкова Гордана. FORUM EUROPAEUM - Уставниот суд на Република Македонија-статус дилеми и перспективи. Skopje, p. 17.

[11] Renata Deskoska (2010), *The Constitutional Court of Republic of Macedonia-Dilemmas and Perspectives*. FORUM EUROPAEUM -– Constitutional Court of Republic of Macedonia- Status, Dilemmas, and Perspectives / *Уставниот суд на Република Македонија-дилеми и перспективи.* Дескоска Рената. FORUM EUROPAEUM - Уставниот суд на Република Македонија-статус дилеми и перспективи. Skopje, p. 34

[12] Ibid, p. 34.

Through such interpretive flexibility, courts may reinterpret their constitutional role, positioning themselves not only as arbiters of legality but as active guardians of democratic integrity and constitutional values. In doing so, they may intervene in policy areas or institutional questions that would typically fall under the competence of the legislature or executive. This occurs especially in contexts where other branches are perceived as inactive, ineffective, or in violation of constitutional principles — thus providing judicial bodies with a justification to "fill the gap."

However, this practice raises important concerns. When courts invoke broad constitutional principles to issue far-reaching rulings without clear textual mandates, they may be seen as appropriating a quasi-legislative function. This blurs the lines of separation of powers, as courts begin to shape public policy or institutional arrangements in ways that may not be democratically accountable. Critics argue that such activism, while often motivated by a commitment to justice or human rights, can undermine constitutionalism if it results in the concentration of power in unelected judicial bodies at the expense of representative institutions. The challenge, therefore, lies in balancing the need for constitutional oversight with respect for democratic legitimacy and institutional boundaries.

While judicial activism is commonly perceived as a phenomenon characterized by broad and creative interpretation of legal norms, often bordering on exceeding the limits of the normative framework in order to "breathe life" into the law, such an understanding captures only part of its complexity.

In reality, many legal systems and normative frameworks already contain embedded instruments and mechanisms that enable courts to engage in active interpretation and application of the law without necessarily departing from the formal boundaries of legality. Courts often skillfully invoke and utilize these tools, thereby influencing legal and constitutional development in a manner that remains institutionally grounded yet substantively transformative. This paper seeks to examine and delineate the ways in which the established constitutional framework and the structured legal system of the Republic of North Macedonia contribute to fostering judicial activism.

2.2.1. No Law, More Power? Judicial Activism in the Absence of a Law on Constitutional Court

In a more detailed analysis of the normative framework regulating the Constitutional Court, one cannot overlook the absence of a dedicated Law on the Constitutional Court. Specifically, the constitutional provision in Article 113 defines the legal regulation concerning the Court exclusively as *materia constitutionis*, excluding the possibility for this matter to be regulated by law. Unfortunately, the constitutional norm stipulating that “the manner of work and the procedure of the Court are regulated by the Constitution and an act of the Court”

strictly limits the legislator from further elaborating this crucial constitutional matter through statute, contrary to how it is handled in all modern democratic systems. Can we conclude that this was a case of deliberate constitutional minimalism introduced by the founding fathers, or merely an oversight, a failure to anticipate the far-reaching consequences of this unfortunate constitutional choice?

Thirty-three years after the adoption of the 1991 Constitution, and despite numerous criticisms of this provision, it remains unchanged. The motives behind its inclusion in the Constitution can only be speculated. It is likely that the constitutional drafters, drawing from previous experience regarding the position of the Constitutional Court within the former federal state of the SFRY, aimed to strengthen the constitutional standing of this institution and insulate it from legislative dominance. It seems this initial premise was developed to its extreme, whereby the attempt to constitutionally regulate the matter resulted in the complete exclusion of Parliament from the process. It may also be presumed that one of the underlying motives for this highly unusual constitutional solution was the intention to grant the constitutional judges full autonomy in regulating matters concerning the Court itself, thus allowing them to define the institutional setup and role of the Court within the system.

The legal consequences of this constitutional solution became apparent with the adoption of the first Rules of Procedure of the Constitutional Court in 1992, and the various provisions that document offered for regulating what is, in essence, a highly important matter of constitutional and legal relevance. With a duration of 32 years, this first set of Rules of Procedure remains one of the longest-standing documents in the Macedonian legal system, having undergone only minor, primarily technical, amendments. In June 2024, the Constitutional Court of the Republic of North Macedonia adopted a new Rules of Procedure. This new legal document contains even more unconventional provisions, which directly shape the picture of an emerging judicial activism within the system —using the unfortunate constitutional arrangement as a legal foundation, whereby the regulation of the Constitutional Court is grounded in the Constitution and the Court's own internal act.

Among the various legal solutions offered in this document — which, I would argue, represent its *differentia specifica* — the first striking feature is the choice of the document's name. The composition of the Constitutional Court that adopted this document opted for the title *"Act of the Constitutional Court of the Republic of North Macedonia."* The selection of this title, which apparently raised no concern among the judges, introduces additional confusion and terminological inconsistency. Namely, in both the Macedonian language and legal terminology, the term *"act"* is a generic term referring to all kinds of legal documents. Thus, using *Act* as a specific title is misleading. Legal theory does not permit the use of the term *act* to denote a concrete type of document such as a

law, rulebook, decision, or court ruling. All of these documents fall under the broader category of *acts*, but each has its distinct designation: *Law* (in English: law, act), *Rules of Procedure*, *Decision*, *Ruling*, *Rulebook*, *Regulation*. All are legal acts, but none is titled simply *Act*.

This terminological inconsistency likely stems from a literal reading of the constitutional provision: "the manner of work and the procedure of the Court shall be regulated by the Constitution and an ACT of the Court." The problem becomes especially apparent when one tries to classify the types of acts (decisions and rulings) adopted by the Constitutional Court. The same term is used for all, necessitating further clarification regarding the exact nature of the document — whether it refers to the Court's Rules of Procedure or a decision adopted in the exercise of its constitutional powers.

The use of the term functions as a clear affirmation of the argument, because when one refers to the *Act of the Constitutional Court* in the context of the Macedonian legal system, any legal interlocutor would understandably assume that it refers to an organic or systemic act of the Court (i.e., a law-like document) — not, as is actually the case, its Rules of Procedure, which in other democratic systems are adopted independently by the Court. This assumption is misleading, particularly since there is no Law on the Constitutional Court in our system.

The remaining provisions in the new Rules of Procedure that further expand the Court's capacity for judicial activism will be analyzed in greater detail in the subsequent sections of this paper. Perhaps it is worth briefly noting the unusual statement made by the newly elected President of the Court. Namely, on the day of his election — following a tense and drawn-out session with multiple rounds of voting — he publicly declared that during his mandate, the Constitutional Court would become an active player in the system and would pursue judicial activism[13]. In the context of a broadly defined constitutional framework regulating the Court's position within the legal system, and in the absence of a specific law on the Constitutional Court, this statement raises the important question: *How should such a declaration be interpreted?*

2.2.2. Institutional Overreach through Internal Rulemaking: A Subtle Form of Judicial Activism

While rules of procedure are generally intended to regulate the internal functioning and procedural aspects of a constitutional court, there are instances where such internal acts venture into the domain of substantive law.

In principle, matters like rights, duties, and status of the judges of the

[13] https://ustavensud.mk/%D0%BC%D0%BA/%D0%BF%D1%80%D0%B5%D1%81-%D0%BA%D0%BE%D0%BD%D1%84%D0%B5%D1%80%D0%B5%D0%BD%D1%86%D0%B8%D0%B8, accessed on 15.05.2025.

Constitutional Court, procedures performed by the Court, are *materia constitutionis issues*, and as such should be regulated either directly by the Constitution or by Law/Act for Constitutional Court, enacted by the Parliament. If a constitutional court attempts to regulate such matters through its internal procedural rules — without explicit constitutional or statutory authorization — this may be viewed as an overextension of its regulatory authority.

Such actions reflect a more nuanced form of judicial activism, which may be termed *institutional* or *regulatory activism*. In these cases, the court does not engage in activism solely through its interpretative judgments, but rather by filling normative gaps through instruments that were not originally intended for substantive regulation. This practice enables the court to shape legal reality without undergoing the standard legislative or constitutional amendment process, thereby expanding its institutional influence beyond adjudication.

In the case of the Constitutional Court of the Republic of North Macedonia, the Constitution provides only a limited and principled framework for the functioning of the Court, outlining merely the basic structure and competences. What the constitutional drafters failed to foresee were the legal consequences of such a sparse regulation. In the absence of a legal basis for regulating certain substantive matters by act for Constitutional court, the Constitutional Court has found itself as the only institution capable of addressing and resolving these gaps — often through its own procedural act, the so-called "Rules of Procedure" (now the "Act of the Constitutional Court").

By necessity, this internal procedural act has gradually assumed a constitutive function, regulating matters such as judicial immunity, the legal effect and enforcement of decisions, the conditions under which citizens may seek constitutional protection, and even the rights, duties, status of the judges, and financial autonomy of the Court. These are clearly not procedural questions, but rather institutional and *materia constitutionis* issues, that are ordinarily regulated by constitutional or statutory provisions. The Court, therefore, has been involuntarily but unmistakably thrust into the role of a secondary norm-giver, creating binding norms for fundamental legal issues with no more than a handful of constitutional provisions serving as limits.

What emerges is a situation in which the Constitutional Court — through its internal rulemaking — effectively becomes a quasi-legislative authority, exercising broad normative power under the guise of procedural regulation. The lingering constitutional ambiguity, namely that "The mode of work and the procedure of the Constitutional Court are regulated by an enactment of the Court,[14]" has been expansively interpreted by the Court itself, allowing it to extend its regulatory scope to issues far beyond mere procedural organization.

Ultimately, a problematic implication remains from the realization that

[14] Constitution of Republic of Macedonia adopted in 1991, art 113.

the problem of counter-majoritarian difficulty — or what some authors refer to as a "constitutional deviation" — was not even anticipated at the time the constitutional provisions regarding the Constitutional Court were being drafted.

An additional dilemma arises from the question of whether the few constitutional provisions concerning the Constitutional Court in the Constitution, are sufficient to ensure what Bickel termed the "passive virtue."

2.2.3. Broad Locus Standi

The issue of legal standing is extremely important and goes beyond the boundaries of a purely technical matter. This can be argued through two points:

- The question of active legal standing directly determines how much, de facto, control of the constitutionality of laws and other acts subject to such control will be exercised; and
- The question of active legal standing indirectly affects the efficiency of constitutional courts.

In the procedure for reviewing the constitutionality of legal acts before constitutional courts, it is of particular importance whether the initiators of the procedure are clearly defined entities with active standing stemming from the constitution and constitutional or organic law, or whether they are initiators whose initiative leads the court to decide on the constitutionality of legal acts. Namely, in the context of the aforementioned idea that the initiators of the procedure directly determine the extent to which the constitutional court will act as a "true guardian of the Constitution," the following argument arises: when the court decides upon an initiative, it holds discretionary power to determine whether or not to initiate the procedure for constitutional review. In contrast, if the holders of the right to initiate the procedure are precisely defined, the court is obliged to act upon the specific proposal for constitutional review of the disputed act.

The bodies that may initiate the procedure for constitutional review before constitutional courts are usually defined in the constitution or in (constitutional or organic) laws governing constitutional courts. In the Republic of North Macedonia, this element of the procedure is neither a constitutional nor a statutory matter. Article 23(1) of the Rules of Procedure of the Constitutional Court of the Republic of Macedonia stipulates that "Anyone may submit an initiative for assessing the compliance of laws with the Constitution, the compliance of other regulations and collective agreements with the Constitution and the laws, and the compliance of programs and statutes of political parties and citizens' associations with the Constitution.[15]" Submitting an initiative for the assessment

[15] Act for the Constitutional Court 2024. Art 23(1).

of the constitutionality and legality of legal acts is not connected with the existence of a legal interest of the applicant, nor is it limited by time constraints.

In their decisions related to active standing before the Court, constitutional judges nullify the possibility of precisely identifying the authorized proposers and retain only the provision that "anyone may submit an initiative to initiate proceedings." What does this actually mean?

Judges independently decide on a matter that is *materia constitutionis* and *materia legis*. This justifies the concern that normative solutions leave space for the so-called "judicial paramountcy."

By accepting this solution, no distinction is made between a proposal and an initiative. Constitutional-legal literature and constitutional court practice in constitutional review indicate that the effect of submitting a proposal by an authorized proposer and an initiative by any citizen is not the same. In particular, it is emphasized that direct access to constitutional courts by citizens can be realized either through *actio popularis* or through a *constitutional complaint*. In both cases, it is the constitutional court that decides whether to initiate the procedure. On the other hand, when a proposal is submitted by an entity specifically defined as authorized under the Constitution or law, the constitutional court is obliged to act on it. In such a case, there is no possibility for the court to exercise discretion regarding the initiation of the procedure for constitutional review.

In an attempt to provide broader access and allow more subjects to initiate proceedings, a solution is adopted that reflects a completely different and undesirable extreme. Namely, the radical extension of this requirement leads to a situation where everyone can submit an initiative, but no one can initiate a procedure, because ultimately that decision lies with the Constitutional Court. These provisions of the Rules of Procedure of the Constitutional Court leave room for the manifestation of constitutional judicial *judicracy* and the exercise of instruments related to activist action by the Court. Namely, this enables courts to hear more politically or socially relevant cases.

The aforementioned normative solutions require particular caution in their application. The explanation should be sought in the often-criticized symbiosis of this mechanism with certiorari mechanisms.

Namely, broad Locus Standi, closely resembles the model of *Discretionary Case Selection (Certiorari or Filter Mechanisms),* as seen in systems that apply *certiorari* or filtering mechanisms. In these systems, the court is not bound to examine every case submitted, but instead filters cases based on their constitutional significance, societal impact, or legal complexity. This model may enhance institutional efficiency and judicial focus on fundamental questions, but it also consolidates substantial power in the hands of the court itself. When combined with open-ended standing provisions and *actio popularis* — such as allowing any individual to initiate a procedure — this discretion creates an asymmetrical system in which the volume of possible cases is broad, yet the actual

decision to act is exclusively left to the internal priorities and activist tendencies of the court. This synthesis of broad accessibility and strict filtering underscores a paradox in modern constitutional justice: the more open the door to the court appears, the more selective and strategic the court's own gatekeeping must become.

2.2.4. Suo Motu Jurisdiction - Initiation of Constitutional Review Proceedings by the Constitutional Court Ex Officio

The initiation of proceedings for constitutional review by the Constitutional Court on its own initiative (*ex officio*) can occur in several variations:

1. initiating proceedings for constitutional review whenever the Court deems it necessary;

2. initiating proceedings *ex officio* when the Court extends the scope of constitutional review beyond the submitted proposal; and

3. initiating *ex officio* proceedings when, in the course of reviewing the constitutionality of another legal act, the Court applies a certain law and assesses that there is reasonable ground to question its constitutionality.

The Macedonian model of constitutional review provides for the possibility that the Court may initiate proceedings for constitutional review independently. Specifically, Article 23(4) of the Rules of Procedure of the Constitutional Court stipulates that: "*The Constitutional Court may, on its own initiative, decide to open a case for reviewing the constitutionality of a law, the constitutionality and legality of a regulation or other general act, or the constitutionality of the program and statute of political parties and citizens' associations.*[16]"

This provision ultimately indicates that the Constitutional Court may initiate proceedings for constitutional review whenever it deems necessary.

In addition, the procedural rule provided by the judges is supplemented with the possibility for the Court to extend the review of the constitutionality of the disputed act beyond the submitted initiative. Namely, Article 26 explicitly states that: "*In reviewing the initiative from Article 23 of this Act, the Constitutional Court is not limited by the claims or provisions challenged in the same.*[17]"

This procedural provision implies that whenever the Court, during a review of constitutionality, finds that beyond the mentioned provisions there are other contentious provisions whose constitutionality should also be reviewed, it may act beyond the submitted initiative. Hence, *ultra petitum* action is yet another small segment in the system available to the Constitutional Court in exercising its competencies.

The two provisions concerning the Court's ability to initiate *ex officio*

[16] Act for the Constitutional Court 2024. Art 23(4).
[17] Act for the Constitutional Court 2024. Art 26.

constitutional review proceedings are formulated too broadly, giving the normative framework the appearance that the Constitutional Court is the most powerful institution in the system. The following arguments are commonly cited in discussions about how (un)desirable this solution is:

- the fact that initiating proceedings *ex officio* disturbs the balance of the principle of separation of powers;

- it opens the door to judicial activism, which "raises the question of the Court's legitimacy to 'lead policy'"[18]; and

- this competence undermines the position of the Constitutional Court as a neutral body.

It is often noted that by initiating proceedings *ex officio*, the Court may prejudice its own decisions, since it indirectly takes a stance on the disputed provisions.

The procedural solution that allows the Court to initiate *ex officio* proceedings leads to the conclusion that there are no additional conditions that would limit the Court's actions in such cases, and that the Constitutional Court may do so whenever it deems necessary. This provision grants very broad powers to the Constitutional Court, which, as Deskoska puts it, seems to make this institution "one of the most powerful of its kind in the world.[19]"

In light of the above, the dilemma remains open as to whether this overly broad authority of the Court — without any limitations on its exercise — could lead to juricentrism. In practice, the Constitutional Court has rarely made use of this power, which is no guarantee that it will exercise self-restraint in the future. Consideration should be given to the possibility of allowing the Court to initiate constitutional review proceedings only when, in applying a particular law in a case already before it, the Court determines that the law is contrary to the Constitution. Such a solution would not deprive the Court of a powerful tool, but would restrict its use to specific situations.

2.2.5. The Legal Effect of Decisions of the Constitutional Court

The legal effect of the decisions of the Constitutional Court is determined by the Constitution of the Republic of Macedonia and by the Rules of Procedure

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[18] Justus Rink Hans (1974). *Initiative for initiating a procedure for assessing constitutionality and legality.* Second Conference of European Constitutional Courts. Baden-Baden. / *Иницијатива за покретање поступка оцене уставности и законитости*. Јустус Ринк Ханс. Друга конференција европских уставних судова. Баден-Баден. 1974. Volume 1, p. 33.

[19] Renata Deskoska (2004). *The Constitutional Court in the Republic of Macedonia: Proposals for Reform.* Collected Papers from the International Symposium *Contemporary Law, Legal Science and Justinian's Codification* / *Уставниот суд во Република Македонија: предлози за реформа.* Дескоска Рената. Зборник на трудови од меѓународен симпозиум „Современо право, правната наука и Јустинијановата кодификација'' Volume 2, Skopje, p. 381.

of the Constitutional Court (the act of the Constitutional Court). The legal effect of the decisions of the Constitutional Court of the Republic of Macedonia is *materia constitutionis* and is regulated by the constitutional provisions of Article 112. Thus, the Constitution stipulates that: "The Constitutional Court shall repeal or annul a law if it determines that it is not in accordance with the Constitution. The Constitutional Court shall repeal or annul another regulation or general act, collective agreement, statute, or program of a political party or association if it determines that they are not in accordance with the Constitution or the law."The decisions of the Constitutional Court are final and enforceable."

According to the Rules of Procedure of the Constitutional Court of the Republic of Macedonia, "A decision of the Constitutional Court by which a law, regulation, or other general legal act is repealed or annulled shall take effect from the day of its publication in the Official Gazette of the Republic of Macedonia." The decisions of the Constitutional Court have general binding effect. These are decisions whose effects extend to everyone (*erga omnes tangit*), not only to the parties involved in the dispute. The decisions of the Constitutional Court are binding for all natural and legal persons, in the same way that general legal norms are binding, for which a cassation decision has been made.

From the perspective of the temporal element of cassation, the decisions of the Constitutional Court have either repealing or annulling effect. A repealing decision causes the challenged legal act to cease to be valid from the moment the decision is published in the Official Gazette of the Republic of Macedonia. This decision has *ex nunc* effect, meaning the repeal operates for the future. An annulling decision, however, invalidates the act and all the consequences it has produced. This decision has retroactive effect *(ex tunc).* In situations where the consequences of the annulled act are not removed by the rendered decision, the Court may decide to restore the previous state or to award compensation for damages caused by the application of the annulled act.

Statistical data from the work of the Constitutional Court of the Republic of Macedonia show a tendency of the Court to avoid rendering decisions that annul the challenged acts.

From the perspective of the scope of cassation, the decisions of the Constitutional Court may repeal or annul the entire challenged legal act (*total cassation*), or only certain provisions or parts of the acts subject to constitutional review (*partial cassation*). The possibility to repeal or annul an entire law is yet another mechanism available to the Court, the future use of which will depend on the application of mechanisms under the self-restraint doctrine.

Finally, in terms of legal effect, the decisions of the Constitutional Court are final and enforceable. No legal remedies are allowed against them, and there are no legal obstacles for their execution once they are published in the Official Gazette.

When a decision is rendered that annuls or repeals a challenged article or

part of the act under constitutional review, the resulting legal gap is filled with a new norm adopted by the body whose act was repealed or annulled.

2.2.6. Time-Bound Dialogue and Outdated Enforcement Mechanisms: The Macedonian Equivalent of the Italian "Warning Judgments"

The Rules of Procedure of the Constitutional Court of North Macedonia, enacted in 2024, reintroduce several legal mechanisms originally derived from the Act on the Constitutional Court of the Socialist Federal Republic of Yugoslavia (1963). These provisions reflect the legal and political philosophy of the socialist constitutional model, particularly concerning the legal effect and enforcement of Constitutional Court decisions.

Among the most notable is the rule that obliges the legislature (the Assembly) to harmonize a law with the Constitution within six months following a finding of unconstitutionality by the Court. If the Assembly fails to act within this period, the unconstitutional provision automatically ceases to have legal effect. This mechanism, which allows the norm to remain valid for a transitional period despite its unconstitutionality, is a typical feature of the "open" Yugoslav model of constitutional justice. It was based on a corrective rather than repressive judicial approach, giving priority to political self-correction and accountability, while delaying immediate legal invalidation.

However, within the framework of a modern, pluralist, and democratic constitutional system, these mechanisms increasingly appear inadequate and outdated, for several key reasons:

- There is no effective sanction for the Assembly in case of non-compliance, aside from the automatic termination of the provision — which in practice can be ignored or politically relativized.
- The Constitutional Court has no formal role in supervising compliance, unless it actively re-engages the issue or seeks to exert public or institutional pressure.
- The assumption that the legislature will act responsibly and within the set timeframe is often unrealistic, particularly in periods of political instability or legislative paralysis.
- The framework lacks concrete accountability mechanisms, which reduces the Court's position to that of a symbolic corrector rather than a binding constitutional authority.

As a result, the Court has been effectively deprived of robust tools to exercise its most fundamental function—the protection of constitutionality. While its decisions are formally binding, they remain conditionally effective and limited in their substantive impact.

This institutional fragility is further underscored by the model's resemblance to diffuse systems of constitutional review, where unconstitutional norms

may be declared inapplicable but not formally annulled. This is in contrast with the European centralized model, in which the decision of the Constitutional Court has immediate and direct legal effect.

Despite these structural limitations, the 2024 Rules of Procedure introduce a noteworthy procedural innovation: in certain cases, the Court may grant a deadline of up to six months for the issuing authority to amend or supplement a contested act in line with the interpretive views expressed by the Court. If the body fails to act within this timeframe, the procedure continues, paving the way for a more assertive judicial response.

This approach closely parallels the Italian Constitutional Court's "warning decisions" (*sentenze monito* or *doppie pronunce*), especially when addressing politically sensitive or complex legal questions. In such cases, the Italian Court may signal the unconstitutionality of a provision, while delaying formal annulment, thereby inviting the legislator to remedy the defect voluntarily.

In the Macedonian context, this mechanism introduces an element of structured constitutional dialogue, wherein the judiciary acknowledges the legislature's normative primacy while retaining supervisory authority. Far from being a sign of judicial restraint, this form of conditional compliance represents a refined model of institutional judicial activism. It enables the Court to shape constitutional outcomes indirectly, while preserving systemic stability and avoiding unnecessary legal vacuum.

If the legislature fails to act, the continuation of the procedure—which may lead to annulment — mirrors the second phase of the Italian model, where the Court ultimately issues a *sentenza di accoglimento* (annulment decision) upon disregard of its earlier warning. Thus, the Macedonian provision should be understood as a hybrid enforcement mechanism — combining dialogue with conditional finality, offering the political branches an opportunity to align with constitutional principles under the latent threat of judicial invalidation.

A provision of this nature may contribute to a persistent imbalance within the constitutional architecture of the Republic of North Macedonia, especially if it affects the distribution of competences among the branches of government or allows one institution to dominate the constitutional space. Although it may not amount to a constitutional crisis in the strict sense, its normative and institutional implications require careful examination, particularly in light of the fragility of democratic consolidation and the evolving role of the Constitutional Court.

A provision that allows an unconstitutional law to remain temporarily valid — while waiting for legislative correction — can indeed trigger or deepen a constitutional crisis, especially when placed within a democratic system where parliament represents the will of the people and embodies popular sovereignty.

This tension arises from a conflict between two fundamental constitutional principles:

- Supremacy of the Constitution;

- Democratic Legitimacy of the Parliament, as the democratically elected body, expresses the sovereign will of the people. Interference with its legislative authority must be limited and well justified.

When a court issues a ruling that finds unconstitutionality, but the law continues to apply for up to six months, this provisional tolerance of unconstitutionality creates a paradox:

- The law remains in force, despite violating the Constitution.
- The Court, although recognizing the conflict, defers to the legislature, potentially weakening its own authority.
- Citizens remain subject to unconstitutional norms, violating the principle of legal certainty and rights protection.

If the parliament fails or refuses to act, and the unconstitutional norm remains in effect — or if its termination is ignored — this can escalate into a constitutional crisis, particularly if:

- The Court does not enforce its own ruling (due to weak mechanisms, e.g. no coercion or sanctions).
- The legislature claims democratic legitimacy to refuse compliance.
- Other institutions (e.g., administration, judiciary, police) are divided on which norm to follow — the unconstitutional law or the court's ruling.

This situation can generate legal fragmentation, institutional paralysis, and erosion of public trust in the constitutional system.

2.2.7. Soft Enforcement and Constitutional Dialogue: Reinterpreting Articles 90 and 91 as Activist Judicial Tools

Regarding the enforcement of decisions of the Constitutional Court, the Rules of Procedure of the Constitutional Court provide that the decisions of the Constitutional Court shall be enforced by the subject that adopted the law, regulation, or general act that has been annulled or repealed by the decision of the Court. To ensure enforcement, the Constitutional Court may, when necessary, request public authorities to secure the implementation of its decision[20].

In cases of non-enforcement, and based on previously obtained information and reports, the Constitutional Court may adopt a special resolution establishing that its decision has not been enforced, and shall notify the competent public prosecutor as well as the authority that appointed or elected the head of the body or institution that failed to enforce the Court's decision[21].

While Articles 90 and 91 of the Rules of Procedure empower the Constitutional Court of North Macedonia to request enforcement and identify non-com-

[20] Act of the Constitutional Court, art. 90.
[21] Act of the Constitutional Court, art. 91.

pliance with its decisions, these provisions do not include direct coercive or punitive measures. Although not a coercive provision, Article 90 grants the Court the discretion to act proactively in safeguarding the implementation of its rulings, particularly in the face of resistance or inaction by other branches of government. This reflects a form of institutional self-defense, characteristic of courts with activist tendencies. Nevertheless, the importance of both provisions lies in the symbolic authority and procedural influence they confer upon the Court, enabling it to function as a soft enforcement tool in the broader constitutional system.

Through Article 90, the Court may formally request action by public authorities to secure compliance with its rulings, while Article 91 allows the Court to publicly acknowledge non-compliance and notify relevant institutions, such as the public prosecutor or appointing authority. These actions do not compel enforcement through sanctions, but rather operate by exerting institutional and political pressure, thereby reinforcing the Court's authority through symbolic legitimacy and public accountability.

This mechanism exemplifies a more dynamic and engaged form of constitutional review, where the Court assumes a role not only as adjudicator but also as monitor and promoter of constitutional compliance. In this framework, judicial activism is not expressed through direct intervention or usurpation of legislative functions, but through dialogical engagement with other branches of government and institutional signaling that promotes adherence to constitutional norms.

Such an approach is fully consistent with modern understandings of dialogical and institutional judicial activism, in which courts assert their constitutional authority not solely through legal finality, but through ongoing communication, moral suasion, and public reasoning. Articles 90 and 91, though procedural in nature, thus become instruments of influence, allowing the Court to maintain its role as an active guardian of constitutionalism even in the absence of traditional enforcement powers.

3. Conclusion

Judicial activism, particularly when facilitated through the flexible or even strategic use of constitutional provisions, must be critically assessed through the lens of constitutionalism — the foundational principle that government powers must be limited, defined, and exercised in accordance with the Constitution. While constitutionalism affirms the role of courts as guardians of the constitutional order, it simultaneously emphasizes the principle of separation of powers, institutional balance, and respect for democratic legitimacy. When courts interpret vague or broadly worded constitutional norms — such as human dignity, social justice, or the rule of law — they may be tempted to expand their interpretive reach, engaging in judicial activism under the guise of constitutional fidelity.

In this context, judicial activism may present itself as a mechanism for

protecting the constitutional order — especially in situations where legislative or executive bodies fail to uphold fundamental rights or act contrary to constitutional values. Courts often justify such interventions as necessary correctives to political dysfunction or institutional inertia. However, from the standpoint of constitutionalism, this raises a tension: can judicial self-empowerment be reconciled with the Constitution's commitment to limited government and democratic accountability?

If courts begin to regularly stretch or reinterpret constitutional provisions to enter domains traditionally reserved for the political branches, they risk transforming from constitutional arbiters into political actors, thereby disrupting the equilibrium envisioned by constitutionalism. In doing so, the judiciary may inadvertently concentrate power within an unelected institution, undermining the constitutional principle that legitimacy arises from the people through their elected representatives.

This risk becomes particularly pronounced when judicial activism is not an isolated reaction to institutional failure but is instead structurally enabled and sustained by the normative framework itself. As demonstrated in the case of the Republic of North Macedonia, mechanisms such as the absence of a Law on the Constitutional Court, the Court's authority to regulate fundamental procedural and institutional matters through internal acts, broad locus standi, the power to initiate proceedings ex officio, and ambiguous enforcement mechanisms all contribute to a normative environment that implicitly supports or even encourages activist judicial behavior. These mechanisms not only expand the interpretive and institutional discretion of the Court but blur the boundaries between judicial review and normative governance.

Taken together, these features raise an urgent dilemma: what should we expect *pro futuro* in a constitutional system where judicial authority is increasingly unconstrained? Can a constitutional framework that leaves so much to the autonomous interpretation of the Court maintain equilibrium between the branches of government, or does it sow the seeds of a deeper systemic imbalance? The lack of clear legal boundaries and accountability mechanisms opens the door to possible institutional friction or even constitutional conflict between the Constitutional Court and the Assembly, particularly in politically sensitive or high-stakes cases. In this light, the normative framework itself may become a latent source of constitutional and political crisis — not merely as a matter of interpretive overreach, but as a structural failure to ensure a coherent balance between judicial power and democratic legitimacy. The Macedonian case thus underscores the need for constitutional reform that does not weaken the Court's independence but fortifies its legitimacy through clearer delineation of roles, responsibilities, and limits. Without such recalibration, the long-term stability of the system may rest on nothing more than the self-restraint of judges and the goodwill of politicians — an inherently fragile equilibrium.

In light of these findings, this paper proposes several concrete reforms. Most importantly, it is necessary to adopt a dedicated Law on the Constitutional Court. However, under the current normative framework and the constitutional provisions of the 1991 Constitution, such a law cannot be adopted without first initiating a constitutional amendment/constitutinal revision. This fundamental reform should aim at clearly distinguishing between constitutional and statutory matters — those that are to be regulated by the Constitution and by law, respectively — and the internal matters that may be governed through the Rules of Procedure of the Court as an act of institutional autonomy.

This structural clarification is essential in order to regulate, in a more detailed manner, both the substantive elements relating to the Constitutional Court and the procedures conducted before it. Matters such as the initiation of proceedings, the role and standing of participants, the legal effect of the Court's decisions, and — most importantly — the relationship of the Court with other constitutional bodies, must be subject to precise and comprehensive legal regulation. This is not only necessary for improving procedural clarity, but also for ensuring institutional stability and maintaining the overall equilibrium of the constitutional system.

Moreover, this reform must not overlook the introduction of a constitutional complaint as a specific legal instrument for the protection of human rights and fundamental freedoms. The current absence of this mechanism represents a significant normative gap, one that weakens individual access to constitutional justice and hinders the full realization of constitutional guarantees. Addressing this issue would strengthen the constitutional positioning of the Court and align the Macedonian system with established comparative standards in constitutional adjudication.

While the focus of this analysis is the Republic of North Macedonia, the identified structural challenges and reform proposals bear direct relevance for other states with similar constitutional arrangements — particularly those in post-socialist jurisdictions[22]. In many of these systems, constitutional courts were introduced as guardians of constitutionalism in fragile democracies. The Macedonian case thus serves as a useful reference point for understanding how the absence of a dedicated constitutional court law, combined with broad access to justice and self-regulatory discretion, may encourage forms of constitutional activism that strain the separation of powers. Lessons drawn from this context can inform ongoing debates in other transitioning democracies, where similar courts

[22] See Bernard Chavance (2008), „Formal and Informal Institutional Change: The Experience of Postsocialist Transformation". *The European Journal of Comparative Economics*, Vol. 5, no. 1: 57-71; Sadurski Wojciech (2002). *Constitutional Justice East and West, Democratic Legitimacy and Constitutional Courts in Post – Communist Europe in a Comparative Perspective*. Kluwer Law International, The Hague, p. 50 et seq.

face comparable tensions between their independence, legitimacy, and constitutional restraint.

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Consideration Regarding the Exercise of Legality Control by the Prefect According to the Romanian Administrative Code

Associate professor **Eugenia IOVĂNAȘ**[1]

Abstract

According to Article 122 (4) of the Constitution, 'The prefect may challenge, before the administrative litigation court, an act of the county council, the local council, or the mayor, if he considers the act illegal.' The administrative control also strengthens the principle of decentralisation in the domain of public administration by the authority it gives the prefect to use the legal means specifically to control notification and order-and to establish which of the issued acts are illegal. From the content of the legal provisions listed above, it clearly results that the local public authority decides, in exercising its powers, only through decisions, in all fields attributed by law. Article 129 (6)(b) of the Administrative Code regulates the law of local councils to 'give in free use, for a limited time, movable assets and real estate, public or private, local or county property, as the case may be, to companies with no lucrative purpose, which develop charitable or public utility or public service activities'. The court of law has the duty to delimit the categories of these decisions, according to their legal nature of administrative acts, acts of civil law, commercial law, etc., with the consequence of delimiting the material competence of the administrative legal department in relation to other courts. In order for the decisions adopted to constitute adopted acts/issued as public power, even if censored under the conditions of the administrative legal department, they must aim at the public or public property. However, the prefect's prerogatives are limited, on the one hand, by the term by which he/she can operate upon certain illegal acts, and on the other hand by the fact that only the current management acts are not subject to control. In the interpretation of the provisions of Article 3 of the Administrative Disputes Law no. 554/2004, with subsequent amendments and completions, correlated with the provisions of Article 19 paragraph (1) letters a) and e) of Law no. 340/2004 regarding the prefect and the institution of the prefect, republished, with subsequent amendments and completions, and Article 123 paragraph (5) of the Constitution, the prefect is recognised the right to challenge before the administrative disputes court the administrative acts issued by local public administration authorities, within the meaning of the provisions of Article 2 paragraph (1) letter c) of the Administrative Disputes Law no. 554/2004, with subsequent amendments and additions.

Keywords: *prefect; administrative acts; legality control; public property.*

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[1] Eugenia Iovănaș - Faculty of Humanities and Social Sciences, „Aurel Vlaicu" University, Romania, ORCID: https://orcid.org/0009-0008-0360-1617, iovanaseugenia@yahoo.com.

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1. Introduction

This paper aims to address the legal issue regulated by the provisions of Article 3 of the Administrative Litigation Law No. 554/2004, with subsequent amendments and additions, in conjunction with the provisions of Article 19 paragraph (1) letters a) and e) of Law No. 340/2004 on the prefect and the prefect's institution, republished, with subsequent amendments and additions. (1) letters a) and e) of Law No. 340/2004 on the prefect and the prefect's institution, republished, with subsequent amendments and additions, in relation to Article 123(5) of the Constitution, according to which the prefect is recognised as having the right to challenge before the administrative court administrative acts issued by local public administration authorities, if these legal provisions allow the prefect to challenge before the administrative court not only administrative acts issued by the county council, by the local council or the mayor, but also other categories of legal acts issued by these local public authorities[2].

According to Article 123(5) of the Constitution, 'the prefect may challenge before the administrative court an act of the county council, local council or mayor if he considers that the act is unlawful.'

Article 3 of Law 554/2004 refers to the administrative control exercised by the prefect as follows: (1). *The prefect may challenge, in whole or in part, before the administrative court, the decisions adopted by the local council or the county council, as well as the provisions issued by the mayor or the president of the county council, if he considers these acts or provisions thereof to be illegal. The act or its provisions that have been challenged are suspended by operation of law. (2) The prefect is liable, under the law, administratively, civilly or criminally, as the case may be, at the request of the local or county public administration authorities whose acts have been challenged, if the administrative court decides that the administrative act has been* challenged *abusively.*[3] *The prefect may*

[2] For an analysis of the topic in other sectors see Jean-Christophe Le Coze (2024). "The Unfolding Regulator–Regulatee Relationship." In Jean-Christophe Le Coze and Benoît Journé (eds.) *The Regulator–Regulatee Relationship in High-Hazard Industry Sectors*, SpringerBriefs in Applied Sciences and Technology. Cham: Springer, https://doi.org/10.1007/978-3-031-49570-0_1.

[3] On 02-08-2007, Alin. (1) of Article 3 was amended by point 4 of Article I of Law No. 262 of 19 July 2007, published in the Official Gazette No. 510 of 30 July 2007.

directly challenge before the administrative court the acts issued by the local public administration authorities if he considers them illegal; the action shall be brought within the time limit provided in Article 11(1), which shall start to run from the moment the act is communicated to the prefect and under the conditions provided in this law. The action brought by the prefect is exempt from stamp duty.

With regard to the legal issue under discussion, we also draw attention to Article 129 (6)(b) of the Administrative Code, which regulates the right of local councils to 'give free use, for a limited period, of movable and immovable public or private property owned by the commune, town or municipality, as the case may be, to non-profit companies carrying out activities of public utilities and public services of local interest under the conditions laid down by law'. The question naturally arises as to whether; in exercising his right of administrative supervision, the prefect has the possibility of challenging before the administrative court all acts of local public administration authorities, regardless of their legal nature.

Firstly, it should be noted that it is clear from the content of the legal provisions listed above that the local public authority decides, in the exercise of its powers, only by administrative acts – decisions, in all areas assigned by law.

In order for the decisions adopted to constitute acts of authority adopted/issued under public power, even if they are subject to legality control under administrative litigation, they must concern public property, and public authorities must adopt administrative acts within the meaning of Article 2 of the Administrative Litigation Law[4].

Given that, according to Article 196 of the Administrative Code,[5] The mayor issues orders (2). The mayor's orders must be communicated to the prefect of the county within five working days of their signing. (7) The mayor's orders, local council decisions and county council decisions are subject to the legality control of the prefect under the conditions of the law governing his activity.

The prefect, pursuant to Art. 19 para. (1) let. a) and let. e) of Law No. 340/2004: (1) As a representative of the Government, the prefect shall perform the following main duties: a) ensures, at the county level or, where applicable, at the level of the municipality of Bucharest, the application of and compliance with the Constitution, laws, ordinances and decisions of the Government, other normative acts and public order; e) verifies the legality of the administrative acts of the county council, the local council or the mayor'.

According to Article 255 of the Administrative Code, the prefect exercises powers relating to the verification of the legality of Article 2(1)(c) and Article 3 of Law No. 554/2004 on administrative litigation define the administrative

[4] Cătălin Silviu Săraru (2019) *Contenciosul administrativ român*. C.H. Beck, Bucharest, p. 70 et seq.; Verginia Vedinaș (2024), *Drept administrativ*. XV[th] edition, revised and added, Universul Juridic, Bucharest, p. 349 et seq.; Dana Apostol Tofan (2020), *Drept administrativ.* Volume II. C.H. Beck, Bucharest, p. 127 et seq.

[5] Art. 196 let. b) The mayor and the president of the County Council issue orders.

act. For the purposes of this law, the terms and expressions below have the following meanings: c) administrative act – a unilateral act of an individual or normative nature issued by a public authority, in the exercise of public power, with a view to organising the enforcement of the law or the concrete execution of the law, which gives rise to, modifies or extinguishes legal relationships; contracts concluded by public authorities for the purpose of exploiting public property, performing works of public interest, providing public services, and public procurement are also considered administrative acts within the meaning of this law; special laws may also provide for other categories of administrative contracts subject to the jurisdiction of administrative courts.

Firstly, the fact that the institution of administrative supervision concerns only administrative acts is clear from the terminology of the law, since Article 19(1)(e) of Law No. 340/2004 expressly provides that 'the prefect […] shall verify the legality of the administrative acts of the county council, the local council or the mayor'.

However, the prefect's prerogatives are limited, on the one hand, by the time limit within which he or she may act on certain illegal acts and, on the other hand, by the fact that if the act is one of civil law, commercial law or labour law, it cannot be reviewed by the administrative courts, but only by the courts with jurisdiction in those matters.

It is true that Article 123 (5) of the Constitution does not expressly condition or limit the right of administrative protection exercised by the prefect, as it refers to 'an act of the county council, the local council or the mayor'.

However, the same text must be read in conjunction with the special law, namely Article 3 of the Administrative Litigation Law mentioned above, which expressly states that the prefect may challenge such an act before the administrative court[6].

2. The Exercise of Legality Control by the Prefect

In interpreting the provisions of Article 3 of the Administrative Litigation Law No. 554/2004, as amended and supplemented, in conjunction with the provisions of Article 19(1)(a) and (e) of Law No. 340/2004 on the prefect and the prefect's institution, as republished, with subsequent amendments and additions and of Article 123 (5) of the Constitution, the prefect is recognised as having the right to challenge before the administrative court the administrative acts issued

[6] For the new or historical specifics of other countries see, John F. Sly (1931), "County Government and Administration. By John A. Fairlie and Charles M. Kneier. (New York: The Century Co.1930. Pp. Xiii, 585.)", *American Political Science Review* 25, no. 1: 184–87. https://doi.org/10.2307/1946583; or Gene Clark (2025), *County Government: The Mechanics, Politics and Outcomes*, Kindle ed., ASIN B0F5PC5TFP, 93 p.

by the local public administration authorities, within the meaning of the provisions of Article 2(1)(c) of the Administrative Litigation Law No. 554/2004, as amended and supplemented. The action shall be brought within the time limit provided in Article 11(1), which shall start to run from the moment the act is communicated to the prefect and under the conditions provided in this law. The action brought by the prefect shall be exempt from stamp duty.

However, the provisions of Law No. 554/2004 limit the control exercised by the administrative courts to the administrative act, defined by Article 2(1) letter c) of the law, as being 'a unilateral act of an individual or normative nature issued by a public authority, in the exercise of public power, with a view to organising the enforcement of the law or the concrete execution of the law, which gives rise to, modifies or extinguishes legal relationships; contracts concluded by public authorities for the purpose of exploiting public property, performing works of public interest, providing public services, and public procurement are also considered administrative acts within the meaning of this law; special laws may also provide for other categories of administrative contracts subject to the jurisdiction of administrative courts.'

From the combined interpretation of the constitutional text and the provisions of Law No. 554/2004, it follows that the prefect exercises the right of administrative supervision only in respect of administrative acts issued by local public administration authorities, since only these acts are issued 'in the exercise of public power, in order to satisfy a legitimate public interest', within the meaning of Article 2(1)(b) of Law No. 554/2004.

With regard to the legal regime of administrative acts, it is unanimously accepted that only administrative acts 'are issued in the exercise of public power, and the prefect is, as provided for in. Article 1(3) of Law No. 340/2004, the guarantor of compliance with the law and public order at the local level*.' The text of* Article 123 (5) of the Constitution must also be read in conjunction with the provisions of Article 126 (6)*, which provide that the courts of law, by* way of contentious proceedings, are the guarantor of the constitutionality of the law and of the legality of administrative acts.[7]

The text of Article 123 (5) of the Constitution must also be read in conjunction with the provisions of Article 126 (6), which provide that the courts, through administrative litigation, exercise judicial review of administrative acts of public authorities, and administrative litigation, as regulated by Law No. 554/2004, concern only administrative acts.

Also, with reference to the amended Administrative Litigation Law No. 554/2004, pursuant to Article 10, the administrative court has the obligation to review, by way of substantive jurisdiction, depending on the legal nature of the

[7] Zsuzsanna Árva (2020), „Experience with the Legal Supervision of Hungarian Local Governments" *Curentul Juridic*, Year XXIII, No. 1 (80): 34–46.

administrative acts of authority, civil law acts, commercial law acts, etc., with the consequence of delimiting the material jurisdiction of the administrative court in relation to other courts of general jurisdiction.

As such, where an act of a public authority is an administrative act – as defined in Article 2(1)(c) of Law No 554/2004 – it may be challenged before the administrative court by the prefect if he considers the act to be unlawful; otherwise, if the act is one of civil law, commercial law or labour law, it cannot be censured in court through administrative litigation, but only before the courts with jurisdiction in the matter.

In this regard, the provisions of Law No. 340/2004 are relevant, which is a special law on the institution of the prefect and, as such, the legal provisions governing it are to be interpreted and applied strictly and cannot be extended to other acts not envisaged by the legislator, and the interpretation of the provisions establishing administrative protection can only be restrictive. Otherwise, to the extent that administrative protection would be extended beyond the limits set by the legislator, this would open the way for abuse of power by accepting the prefect's interference in private law acts, which is inadmissible.

Therefore, we consider that it is for the administrative court said to examine whether the scope of administrative supervision also covers e acts other than administrative acts issued by local public authorities, such as, for example, acts issued by public authorities concerning the private sphere or provisions of the mayor concerning civil, contractual or employment legal relationships, since such control of legality is a matter of interpretation and application of the law falling within the exclusive jurisdiction of the administrative court.

3. Relevant Case Law

By Civil Judgment No. 827 of 19 April 2016[8], the administrative action brought by the claimant, the Prefect of County A, against the defendant, Local Council F, seeking the annulment of the local council decision, was examined.

By the action registered with this court on 29 December 2015, the claimant, the Prefect of County A, requested, in opposition to the defendant, the Local Council of F, the annulment of Decision No. 53/27.05.2015 adopted by the defendant, stating in the grounds that Article 1 of Decision No. 53/27.05.2015 approved the sale by public auction of the land owned by the Romanian State, registered in Land Registry No. XX TN, old land registry no. XY TN with topographical no. xxx, with an area of 1440 square metres, land intended for construction yards, the decision was based on the provisions of Article 13 of Law no. 50/1991 on the authorisation of construction works, the provisions of Article 121

[8] Civil judgment no. 827 of 19 April 2016, published in the Official Gazette, Part I no. 555 of 5 July 2019.

(1) and (2) of the Romanian Constitution and the provisions of Article 36(2)(c) and (5) of Law No. 215/2001 on local public administration, republished; however, although local public administrations are granted certain rights, the decision adopted is unlawful on the grounds that it appears from the operative part that, for its adoption, the provisions of Article 13 of Law No. 50/1991, Article 121 (1) and (2) of the Romanian Constitution and the provisions of Article 36(2)(c) and (5) of Law No. 215/2001 on local public administration, republished, which cannot legally substantiate the decision in question.

According to Article 13(1) of Law No. 50/1991, the claimant argues that land belonging to the private domain of the state or administrative-territorial units may only be disposed of by their owner, and that administrative-territorial units may not dispose of land that is the private property of the state.

The claimant also stated that local public administration authorities are given the possibility to assess the conditions and circumstances of the adoption or issuance of administrative acts, as they have the power to assess the appropriateness of administrative acts, and the discretion granted to public administration bodies must be exercised within the limits of the law, so that, in order to meet the requirements of validity, the administrative act had to be adopted only within the sphere of competence conferred by law and the powers expressly provided for therein.

The court found that, by decision no. 53 of 27 May 2015, the defendant approved the sale, by public auction, of the land owned by the Romanian State, registered in the Land Registry under no. XX TN, old CF no. XY TN with topographical no. xxx, with an area of 1440 sqm, land intended for construction yards; the valuation report prepared by the authorised valuer was approved.

The claimant's action was dismissed on the grounds that, according to Article 3(1) of Law No. 554/2004 on administrative protection, the prefect may directly challenge before the administrative court acts issued by local public administration authorities if he considers them unlawful; the action must be brought within the time limit provided in Article 11(1), which starts to run from the moment the act is communicated to the prefect and under the conditions provided in this law.

The court also upheld the provisions of Article 19(1)(a) and (e) of Law No. 340/2004 on the prefect and the prefect's institution, as republished, with subsequent amendments and additions, and of Article 123(5) of the Constitution, the prefect is recognised as having the right to challenge before the administrative court administrative acts issued by local public administration authorities, within the meaning of the provisions of Article 2(1)(c) of the Administrative Litigation Law No. 554/2004, as amended and supplemented, mandatory, according with the provisions of Article 521(3) of the Code of Civil Procedure. It was concluded in the grounds that, according to the constitutional provisions, the right of admin-

istrative protection belonging to the prefect is implicitly circumscribed to administrative litigation, which is currently regulated by Law No. 554/2004; legal provisions limiting the control exercised by administrative courts to administrative acts, the prefect is recognised as having the right to challenge before the administrative court only administrative acts issued by local public administration authorities, within the meaning of the provisions of Article 2(1)(c) of Law No. 554/2004.

4. Conclusions

With reference to the point of view expressed in this paper, we support the opinion that even if Article 123 (5) of the Romanian Constitution does not distinguish between acts that can be challenged in court, the right of administrative protection belonging to the prefect is implicitly circumscribed to administrative litigation, which is regulated, by Law No. 554/2004 on administrative litigation.

In this regard, see also the provisions of Article 19(1)(e) of Law No. 340/2004, which are fully in line with the provisions of Article 3 of the Administrative Litigation Law, which is why it can be legally argued that limiting this review of legality exclusively to administrative acts limits the prefect's right to challenge in court only administrative acts, which also allows the prefect to challenge before the administrative court only administrative acts issued by the county council, the local council or the mayor, but not other categories of legal acts issued by these local public authorities, civil law, commercial law or labour law acts, legal acts subject to review by courts with jurisdiction in the respective matters.

Moreover, the fact that the administrative review institution only covers administrative acts is clear from the wording of the law, since Article 19(1)(e) of Law No. 340/2004 clearly says that 'the prefect […] checks the legality of the administrative acts of the county council, the local council or the mayor'. (1) (e) of Law No 340/2004 expressly states that 'the prefect […] shall verify the legality of the administrative acts of the county council, the local council or the mayor'.
To give a reason contrary to the provisions of public policy relating to the jurisdiction of the courts, in which case the administrative court would have to rule on legal relationships falling within the jurisdiction of the ordinary courts or the labour courts, as highlighted in the case law review action *seeking the annulment of the decision adopted by the local council acting on behalf of the Romanian State, in order to exercise the latter's prerogatives as owner of the land sold as private property and, since there is no question of public property, the only reasonable conclusion that can be drawn is that the defendant did not act in this case as a public authority, and the relationship between it and the applicant indicated in the action falls within the scope of private law and not public law, so that the*

provisions of Article 2(1)(c) of Law No, 554/2004 on administrative litigation, are applicable.

Therefore, in accordance with the constitutional provisions, the right of administrative protection belonging to the prefect is implicitly limited to administrative litigation, which is currently regulated by Law No. 554/2004.[9]

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[9] Civil judgment no. 827 of 19 April 2016, published in the Official Gazette, Part I no. 555 of 5 July 2019.

Some Theoretical and Jurisprudential Aspects Regarding the Procedural Quality of Some Subjects of the Right to Apply to Administrative Dispute Courts in Romania

Assistant professor PhD. **George-Bogdan IONIȚĂ**[1]

Abstract

This study aims to analyze theoretical and jurisprudential aspects regarding the procedural capacity of some subjects entitled to refer to administrative courts in Romania. In this regard, we first analyzed some general issues regarding procedural capacity from the perspective of the current Civil Procedure Code. Then, we observed the conditions provided by the Law no. 554/2004 on administrative litigation regarding the possibility of referring to the administrative court and finally, we analyzed the subjects of law that have the possibility of referring to the administrative courts. In preparing this study, we used the updated incident legislation in force as well as the works from the specialized doctrine and relevant case law on the matter.

Keywords: *procedural capacity, conditions for referring to an administrative court, subjects of law, specialized doctrine, relevant case law.*

JEL Classification: K23, K41

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1. Procedural capacity – general aspects

One of the necessary conditions for exercising an action before the court is the existence of procedural capacity[2]. Therefore, according to art. 36 of the Code of Civil Procedure, "*procedural capacity results from the identity between the parties and the subjects of the litigious legal relationship, as it is brought to*

[1] George-Bogdan Ioniță - Faculty of Law, Romanian-American University, Romania, ionita.bogdan.george@gmail.com.

[2] According to art. 32 paragraph (1) of the Civil Procedure Code, it establishes that any claim may be formulated and supported only if its author: has procedural capacity, under the law; has procedural capacity; formulates a claim; justifies an interest.

trial. The existence or non-existence of the rights and obligations asserted constitutes a matter of substance[3] *".* In other words, procedural capacity is determined by the transposition into a procedural plan of the subjects of the concrete legal relationship brought to trial.

However, art. 37 of the Code of Civil Procedure establishes that *"in the cases and conditions provided exclusively by law, applications may be filed or defenses may be formulated by persons, organizations, institutions or authorities who, without justifying a personal interest, act to defend the rights or legitimate interests of persons in special situations or, as the case may be, for the purpose of protecting a group or general interest*[4] *".* Procedural capacity can be transmitted legally or conventionally, because of the transmission, under the terms of the law, of the rights or legal situations inferred to the court[5]. Regarding the sanction of a request made by a person without procedural capacity, art. 40 paragraph (1) final sentence of the Code of Civil Procedure establishes that *"in the event of lack of procedural capacity or interest, the court shall reject the request or defense formulated as being made by a person or against a person without capacity or as lacking interest as the case may be*[6] *".*

2. Conditions for exercising the action in administrative litigation

In the case of administrative disputes, the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates[7], establishes in art. 1 that *"any person who considers himself injured in a right or in a legitimate inter-*

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[3] Gabriel Boroi, Mirela Stancu (2023), *Civil procedural law. 6th edition, revised and added*, Hamangiu Publishing House, Bucharest, pp. 60-61; Ioan Leș, Daniel Ghiță (2020), *Treatise on civil procedural law,* Universul Juridic Publishing House, Bucharest, pp. 161-162; Madalina Dinu (2020), *Civil procedural law*, Hamangiu Publishing House, Bucharest, p. 59; Evelina Oprina (2019), *Civil procedural law. Volume I. General theory*, Universul Juridic Publishing House, Bucharest, pp. 90-91; Mihaela Tăbârcă (2017), *Civil procedural law. Volume I – General theory. 2nd edition,* Solomon Publishing House, Bucharest, pp. 205-206.

[4] Gabriel Boroi (Coord.), (2016) *The New Civil Procedure Code. Commentary on Articles. Volume I. art. 1-455. 2nd revised and added edition,* Hamangiu Publishing House, Bucharest, pp. 118-121; Viorel Mihai Ciobanu, Maria Nicolae (Coord.), (2016), *The New Civil Procedure Code commented and annotated. Volume I – art. 1-526.* 2nd revised and added edition, Universul Juridic Publishing House, Bucharest, pp. 185-186.

[5] Art. 38 Civil Procedure Code. See Florin Popa (2023), „Procedural Consequences of the Transfer of the Litigation Right", *Romanian Journal of Private Law,* no. 1. The article can be consulted in its entirety at https://sintact.ro/#/publication/151028809?cm=URELATIONS.

[6] Ioan Leș (2022), *Civil Procedure Code. Commentary on Articles.* 3rd edition, C.H. Beck Publishing House, Bucharest, pp. 96-97; Ion Deleanu (2013), *The New Civil Procedure Code. Commentary on Articles. Volume I. Articles 1-621*, Universul Juridic Publishing House, Bucharest, pp. 89-91; Viorel Mihai Ciobanu, Claudiu Constantin Dinu, Traian Cornel Briciu (2023), *Civil Procedural Law. Revised and Added Edition,* Universul Juridic Publishing House, Bucharest, pp. 159-160.

[7] Published in the Official Gazette, no. 1154 of 07.12.2004.

est, by a public authority, through an administrative act or by the failure to resolve a request within the legal term, may address the competent administrative litigation court, for the annulment of the act, the recognition of the claimed right or legitimate interest and the repair of the damage that was caused to him. The legitimate interest can be both private and public[8]". By *"injured person"* (within the meaning of the legal provisions) is considered to be any person holding a right or a legitimate interest, injured by a public authority through an administrative act or by the failure to resolve a request within the legal term. For the purposes of this law, the injured party is also the group of individuals, without legal personality, holder of subjective rights or legitimate private interests, as well as social bodies that invoke the harm caused by the contested administrative act either to a legitimate public interest or to the legitimate rights and interests of certain individuals[9]. Therefore, any individual or legal entity under private or public law may have an active procedural capacity[10]. To promote an administrative litigation action, it is necessary to cumulatively fulfill several conditions. First, the existence of the subject's capacity to notify the administrative litigation court. Regarding the other subjects that may notify the administrative litigation court, we will return to their analysis in the next chapter.

Another condition necessary for the formulation of an administrative litigation action refers to the fact that the plaintiff has been harmed by one of his rights or in legitimate interest. According to art. 2 paragraph 1, letter o) of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates, by *"infringed right"* is understood any right provided for by the Constitution, by law or by another normative act, which is affected by an administrative act. In the same sense, the legitimate interest injured can be private or public, thus, art. 2 paragraph 1, letter p) of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates, by *"legitimate private interest"* is understood the possibility of demanding a certain conduct, in consideration of the realization of a future and foreseeable, prefigured subjective right, and letter r) of the same article establishes that *"legitimate public interest"* is understood as that interest that aims at the rule of law and constitutional democracy, the guarantee of the fundamental rights, freedoms and duties of citizens, the satisfaction of community needs, the realization of the competence of public authorities[11].

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[8] Emilia-Lucia Cătană (2021), *Administrative Law.* 2nd edition, C.H. Beck Publishing House, Bucharest, pp. 371-372.

[9] Art. 2 paragraph (1), letter a), of Law 554/2004 on administrative litigation, with subsequent amendments and updates.

[10] Regarding the civil capacity of legal entities under public law, see Razvan Scafeș (2024), „Aspects regarding the capacity and civil liability of subjects under public law", *Romanian Journal of Private Law* no. 1. The article can be consulted in its entirety at https://sintact.ro/#/search-unit-related/ 16856600/art(1)/ARTICLE.

[11] Cătălin-Silviu Săraru (2019), *Romanian Administrative Litigation*, C.H. Beck Publishing House, Bucharest, pp. 197-198.

The following condition refers to the fact that the contested act must be an administrative act or an assimilated administrative act. According to the provisions of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates, the notion of *"administrative act"* is understood as a unilateral act of an individual or normative nature issued by a public authority, in the regime of public power, to organize the execution of the law or the concrete execution of the law, which gives rise to, modifies or extinguishes legal relations[12]. As regards assimilated administrative acts, for the purposes of this law, contracts concluded by public authorities whose object is the valorization of public property, the execution of works of public interest, the provision of public services, public procurements are also assimilated[13]. At the same time, this category will also include the *"unjustified refusal"* to resolve a request relating to a right or a legitimate interest or the fact of not responding to the applicant within the legal deadline[14]. In the case of acts not subject to control, administrative acts of public authorities concerning their relations with Parliament as well as military command acts may not be challenged through administrative litigation. In the same sense, administrative acts for the modification or abolition of which another judicial procedure is provided for by organic law may not be challenged through administrative litigation[15].

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[12] Art. 2 paragraph (1), letter c), of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates. See also Loredana Manuela Muscalu, Dragos Brezeanu (2025), *Administrative Law I and II. Lecture notes*, Hamangiu Publishing House, Bucharest, p. 393.

[13] Art. 2 paragraph (1), letter c1), of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates; See also Anton Trăilescu (2020), *Administrative Law. Special Part.* edition 2, C.H. Beck Publishing House, Bucharest, pp. 194-196.

[14] Art. 2 paragraph (2) of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates. Regarding the notion of "unjustified refusal", we recommend also consulting Andreea Tabacu (2017), „Admissibility of the action in administrative litigation. Unjustified refusal", *Romanian Journal of Jurisprudence* no. 3. The article can be consulted in its entirety at: https://sintact. ro/#/publication/151011917?cm=URELATIONS.

[15] Art. 5 paragraphs (1) and (2) of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates. In judicial practice, it was held *that "Decision of the Local Council of Sector 4 no. 262 of 02.11.2023 and Decision of the Local Council of Sector 4 no. 315 of 2023 are not administrative acts within the meaning of art. 2 paragraph 1 letter c of Law no. 554/2004, but technical-administrative operations that encompass the request for expropriation and, respectively, the approval of the technical-economic indicators, which constitute stages within the expropriation procedure according to art. 4 paragraph 1 and art. 5 paragraph 1 of Law no. 255/2010, operations that form the basis for the adoption of Decision of the Bucharest Municipality Council no. 115 of 8.04.2024, administrative act by which the initiation of the expropriation procedure was approved and the value of the compensation was established, administrative act subject to Law no. 255/2010, its legality and the operations from its basis being subject to the control of the common law courts, according to the special procedure in the matter of expropriation, being exempted from the challenge through administrative litigation according to art. 5 of Law no. 554/2004 updated. It follows from the above that the legislator understood to remove the administrative acts initiating the expropriation procedure and establishing the amount of compensation from the general scope of administrative litigation and to regulate a special contestation procedure"*. Bucharest Tribunal,

Another condition is that the contested act must be emanated from a public authority. By *"public authority"* is meant any state body or administrative-territorial unit that acts, under public power, to satisfy a legitimate public interest; private law legal entities that, according to the law, have obtained public utility status or are authorized to provide a public service, under public power, are assimilated to public authorities, within the meaning of this law[16].

Finally, to be able to appeal to the administrative court, the injured person must complete the preliminary administrative procedure[17]. Thus, before addressing the competent administrative court, the person who considers himself injured in a right or in a legitimate interest by an individual administrative act addressed to him must request the issuing public authority or the hierarchically superior authority, if it exists, within 30 days from the date of communication of the act, the revocation, in whole or in part, of it. For good reasons, the injured person, recipient of the act, may file a preliminary complaint, in the case of unilateral administrative acts, even after the previously provided deadline, but no later than 6 months from the date of issuance of the act. At the same time, the injured person is also entitled to file a preliminary complaint concerning one of his rights or in a legitimate interest, through an administrative act of an individual nature, addressed to another subject of law. The preliminary complaint, in the case of unilateral administrative acts, shall be filed within 30 days from the moment the injured person became aware, by any means, of the content of the act. For good reasons, the preliminary complaint may also be filed after the 30-day deadline, but no later than 6 months from the date on which he became aware, by any means, of its content. The 6-month period is a limitation period.

3. Legal entities that may file an administrative action with the court

Returning to the category of injured persons (having the capacity to file an administrative action), in order to exercise the control of legality over administrative acts at the request of associations, as concerned social organizations, the invocation of a legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the latter arising from the direct link between the

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sentence of 26.08.2024. The sentence can be consulted in full at: https://sintact.ro/#/jurisprudence/553956817/1/sentinta-nr-rj-39854-de-96-2024-din-26-aug-2024-tribunalul-bucuresti-anulare-act-administrativ...?cm=URELATIONS.

[16] Art. 2 paragraph (1), letter b), of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates; Verginia Vedinaș (2019), *Administrative Law. 11th edition, revised and updated*, Universul Juridic Publishing House, Bucharest, pp. 442-446.

[17] Art. 7 paragraphs (1) and (3), of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates. See also Mircea Ursuța (2017), „Lack of preliminary procedure. Conditions for invocation. Interest. Interpretation of the term "defendant" provided for in Article 193 paragraph. (2) Civil Procedure Code", *Romanian Journal of Jurisprudence* no. 2. The article can be consulted in its entirety at: https://sintact.ro/#/publication/151011588?cm=URELATIONS.

administrative act subject to the control of legality and the direct purpose and objectives of the association, according to the statute. By *"concerned social organizations"* we will understand those non-governmental structures, unions, associations, foundations and the like, whose object of activity is the protection of the rights of various categories of citizens or the proper functioning of public administrative services[18]. At the same time, any subject of public law may file administrative action. In the same sense, according to the legal provisions, a third party may also have the capacity of plaintiff, that is, the person who has been injured in a right or a legitimate interest by an administrative act of an individual nature addressed to another subject of law. In this case, both the authority that issued the act and the beneficiary of the harmful act will have passive procedural capacity[19].

Another subject of law that can notify the administrative court is the Ombudsman. Thus, following the control carried out, according to its organic law, if it considers that the illegality of the act or the refusal of the administrative authority to perform its legal duties can only be removed through justice, it can notify the competent administrative court at the petitioner's domicile. The petitioner acquires the status of plaintiff by law and will be summoned in this capacity. If the petitioner does not appropriate the action formulated by the Ombudsman at the first hearing, the administrative court cancels the request[20]. To summarize, in the

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[18] Art. 2 paragraph (1), letter s), of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates. In recent judicial practice, it has been held that *"by ministerial order, a plan with an impact on the environment was illegally authorized, a plan that is presumed by law to cause environmental damage through the proposed works, overlapping with a protected natural area, requiring the completion of a special procedure provided for by law (see Government Decision no. 1076/2004), then the legality of such an administrative act must be analyzed within the framework of the action filed within the legal term against it, even if the authorized project has ceased to be applicable in the meantime. The interest in finding the illegality of a normative administrative act that was likely to cause environmental damage is a determined, legitimate, personal interest (considering the quality of the plaintiff as an environmental NGO and interested social body), born and current, at the date of the filing of the lawsuit. The execution of forestry works based on an illegally adopted forestry arrangement will also produce consequences regarding the destruction of protected habitats found in the infringement procedure against Romania, creating the possibility of recovering the damage consisting of costs for the restoration of these habitats, at the expense of the responsible persons (the committee has recourse action against the person who acted unlawfully)"*. High Court of Cassation and Justice, decision no. 1961/2024. The decision can be consulted in full at: https://sintact.ro/#/jurisprudence/520881652/ 1/decizie-nr-1961-2024-din-04-apr-2024-inalta-curte-de-casatie-si-justitie-bucuresti?keyword=or ganisme%20sociale%20interesate&cm=URELATIONS.

[19] Gabriela Bogasiu (2022)*, Administrative Litigation Law. Commented and annotated. 5th edition, revised and added,* Universul Juridic Publishing House, Bucharest, pp. 13-15.

[20] Art. 1 paragraph (3) of Law 554/2004 on administrative litigation, with subsequent amendments and updates; See also Eugenia Marin (2020), *Law on Administrative Litigation no. 554/2004. Commentary on articles*, Hamangiu Publishing House, Bucharest, pp. 3-11. In judicial practice, it was held that *"in the case referred to by the plaintiff, it can only be retained for the institution of the Ombudsman in the constitutionality control of the laws subject to analysis as a legal obligation at*

case of the Ombudsman, it is necessary to have been notified by the injured individual, to assess that the notification is justified and that the illegality of the act or the refusal of the administrative authority can only be removed through justice, however, after the filing of the action by the Ombudsman, the petitioner acquires the status of plaintiff.

In the same sense, when the Public Ministry, following the exercise of the powers provided for by its organic law, considers that the violations of the rights, freedoms and legitimate interests of individuals are due to the existence of individual unilateral administrative acts of public authorities issued with excess of power, with their prior consent, it notifies the administrative court at the domicile of the natural person or at the headquarters of the injured legal entity. The petitioner acquires the status of plaintiff by right and will be summoned in this capacity[21]. Thus, to acquire active procedural capacity, the prior consent of the petitioner is necessary, and the harmful act must have been issued with excess of power (excess of power is defined as the exercise of the right of appreciation of public authorities by violating the limits of competence provided by law or by violating the rights and freedoms of citizens. After the submission of the action by the Public Ministry, the petitioner acquires the status of plaintiff[22]. It should be noted that, in the resolution of requests in administrative litigation, the representative of the Public Ministry may participate, at any stage of the process, whenever it considers it necessary to defend the rule of law, the rights and freedoms of citizens[23].

At the same time, the public authority issuing an illegal unilateral admin-

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this time, which has a double quality (both in objective litigation and in subjective litigation) and which aims to ensure the protection of the public interest while respecting the private interest of the individual whose rights, freedoms or legitimate interests have been violated, without violating art. 21 paragraph (1) of the Constitution of Romania". High Court of Cassation and Justice, decision no. 548/2023. The decision can be consulted in full at: https://sintact.ro/#/jurisprudence/520871062/1/decizie-nr-5485-2023-din-21-nov-2023-inalta-curte-de-casatie-si-justitie-bucuresti?keyword =avocatul%20poporului&unitId=passage_11622.

[21] Art. 1 paragraph (4) of Law 554/2004 on administrative litigation, with subsequent amendments and updates. To be analyzed, Dana Apostol Tofan (2024), *Administrative Law. Volume II. Administrative Act. Administrative Litigation,* C.H. Beck Publishing House, Bucharest, pp. 219-229.

[22] According to art. 1 paragraph (5) of Law 554/2004 on administrative litigation, with subsequent amendments and updates, when the Public Ministry considers that the issuance of a normative administrative act harms a legitimate public interest, it notifies the competent administrative litigation court at the headquarters of the issuing public authority. See, Anton Trăilescu, Alin Trăilescu (2018), *Administrative Litigation Law. Comments and explanations. 4th edition,* C.H. Beck Publishing House, Bucharest, pp. 4-8.

[23] According to art. 1 paragraph (9) of Law 554/2004 on administrative litigation, with subsequent amendments and updates, See also Iuliana Rîciu (2012), *Administrative litigation procedure. Theoretical aspects and jurisprudential references,* Hamangiu Publishing House, Bucharest, pp. 99-102.

istrative act may request the court to annul it, when the act can no longer be revoked because it has entered the civil circuit and produced legal effects. If the action is admitted, the court shall rule, if it was notified by the request for summons, also on the validity of the legal acts concluded based on the illegal administrative act, as well as on the legal effects produced by them. The action may be brought within one year from the date of the issuance of the act[24].

Finally, the *Prefect* and the *National Agency of Civil Servants* may also notify the administrative court, through administrative supervision[25]. According to art. 3 paragraph (1) of the Law no. 554/2004 on administrative litigation, with subsequent amendments and updates, the Prefect may directly challenge before the administrative court the acts issued by the local public administration authorities, if he considers them illegal; the action shall be formulated within the term provided for in art. 11 paragraph (1) of the Law no. 554/2004 on administrative litigation, which begins to run from the moment the act is communicated to the prefect and under the conditions of the law[26]. And paragraph 2 of the same article

[24] See also Robert Cristian Dima (2021)*, Action in administrative litigation. Comments, doctrine and jurisprudence,* Hamangiu Publishing House, Bucharest, pp. 29-31. By Decision no. 74/2023, the High Court of Cassation and Justice admits the notification and establishes that, in the interpretation and application of the provisions of art. 1 paragraph (6) of the Administrative Litigation Law no. 554/2004, with subsequent amendments and completions, the public authority issuing a unilateral administrative act of a normative nature cannot request the court to annul it. In judicial practice, it was held in a case that *"at the date of drawing up the minutes under analysis, the provisions of the Local Council Decision no. 149/2017 were no longer in force, these being repealed by art. 2 of the Local Council Decision no. 249/25.04.2024, which was published in the Local Official Gazette on 16.05.2024. In law, the incidence of the provisions of art. 1 paragraph 6 of Law no. 554/2004 is noted, according to which, "the public authority issuing an illegal unilateral administrative act may request the court to annul it, in the situation in which the act can no longer be revoked because it has entered the civil circuit and produced legal effects. In case of admission of the action, the court shall rule, if it was notified by the request for summons, also on the validity of the legal acts concluded based on the illegal administrative act, as well as on the legal effects produced by them. The action may be filed within one year from the date of issuance of the act". Regarding this aspect, it should be noted that the administrative act under analysis entered the civil circuit, from the moment of being acknowledged under signature by the person sanctioned for the contravention, a circumstance likely to exclude the possibility of revoking this act by the issuing authority"*. Brașov Court, sentence of 14.11.2025. The judgment can be accessed and consulted in full at: https://sintact.ro/#/jurisprudence/553977368/1/sentinta-nr-rj-3954-d-5-d-84-2025-din-14-apr-2025-tribunalul-brasov-anulare-act-administrativ...?keyword=autoritatea%20public%C4%83%20emitent%C4%83&cm=URELATIONS.

[25] For an in-depth analysis of the institution of administrative supervision, we also recommend consulting George-Bogdan Ioniță, *Particularities of the Administrative Oversight in the Context of the Commissioner Exercise of the Action for Annulment Based on the Provisions of the Law no. 554/2004 of the Administrative Contentious and the Administrative Code*, published in the volume Julien Cazala, Velimir Zivkovic (eds.), (2021) *Administrative Law and Public Administration in the Global Social System,* ADJURIS – International Academic Publisher, Bucharest, pp. 83-92, https://www.adjuris.ro/books/alpa/ALPA%202020.pdf.

[26] In judicial practice, it was held in a case that *"in accordance with the provisions of art. 3 para-*

establishes that the National Agency for Civil Servants may appeal before the administrative court the acts of central and local public authorities that violate the legislation on civil service[27].

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8. Deleanu, Ion (2013), *The New Civil Procedure Code. Commentary on Articles. Volume I. Articles 1-621*, Universul Juridic Publishing House, Bucharest.

graph (1) of Law 554/2004 on administrative litigation, the text of the law regulates the administrative guardianship control exercised by the prefect over the acts issued by local public authorities, based on his attribution as guarantor of compliance with the law, conferred by art. 123 paragraph (5) of the Constitution of Romania and by the provisions of art. 252 and 255 of Government Emergency Ordinance no. 57/2019 on the Administrative Code, in order to protect the general interest. Through the judicial action that is the subject of the case, the Prefect of Constanța County criticizes the contested administrative act, invoking the fact that the issuing authority does not have the competence to approve the establishment of a superficies right". Constanța Court, sentence of 09.01.2025. The sentence can be consulted in full at: https://sintact.ro/#/jurisprudence/553967458/1/sentinta-nr-rj-86-g-279978-2025-din-09-ian-2025-tribunalul-constanta-actiune-prefect-tutela...?keyword=prefectul&cm=URELATIONS.

[27] In another case, the court held that *"the fact that the Law No. 554/2004 confers on the National Agency of Civil Servants the status of administrative guardianship authority in matters of civil service does not exclude the prefect's competence within the framework of administrative guardianship control to request the administrative court to annul an act of the mayor that violates the legislation on civil service as long as his powers are limited only to administrative acts as defined in Art. 2 paragraph (1) letter c) of Law No. 554/2004 (typical administrative acts)"*. Bucharest Court, sentence of 04.04.2023. The judgment can be consulted in full at: https://sintact.ro/#/jurisprudence/553839604/1/sentinta-nr-rj-ee-3-e-73255-2023-din-04-apr-2023-tribunalul-bucuresti-anulare-act-administrativ...?keyword=agen%C8%9Bia%20na%C8%9Bional%C4%83%20a%20func%C8%9Bionarilor%20publici&unitId=passage_28257.

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PUBLIC LAW AND EUROPEANISATION: JURISDICTIONAL ALIGNMENT AND PROCUREMENT REFORM

The Influence of the Jurisprudence of the Court of Justice of the European Union on Romanian Administrative Litigation

Lecturer **Mihai ȘTEFĂNOAIA**[1]

Abstract

The influence of the jurisprudence of the Court of Justice of the European Union (CJEU) on Romanian administrative litigation has intensified following Romania's integration into the European Union and the assumption of the obligation to apply European law directly and with priority. National courts, including those specialized in administrative litigation, are now required to ensure that administrative acts comply with the rules and principles of EU law, including the interpretations provided by the CJEU. This phenomenon has led to a paradigm shift, in the sense that the legality of an administrative act is no longer assessed solely in relation to national legislation, but also through the lens of European regulations and case law. Landmark decisions of the CJEU — such as those concerning the principle of effective protection of rights conferred by EU law, the proportionality of administrative sanctions, or the guarantee of the right to an effective remedy — have been invoked and applied by Romanian courts. Additionally, the preliminary ruling mechanism has become an essential tool for clarifying the application of European norms in administrative litigation cases. In conclusion, the jurisprudence of the CJEU actively contributes to the harmonization of standards of legality and judicial protection in the relationship between citizens and public administration, strengthening the role of national courts as guardians of European law.

Keywords: *fundamental rights protection, paradigm shift in administrative law, rule of law, legal certainty, national law.*

JEL Classification: K23, K33, K41

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1. Introduction

Romania's accession to the European Union on January 1, 2007, represented not only a geopolitical milestone but also a constitutional transformation

[1] Mihai Ștefănoaia - Faculty of Law and Administrative Sciences, „Ștefan cel Mare" University Suceava, Romania, https://orcid.org/0000-0002-7163-4436, stefanoaiamihai@yahoo.com.

of the national legal order. This integration process entailed the assumption of direct obligations stemming from the *acquis communautaire*, including the binding force of primary and secondary EU law, as well as the jurisprudence of the Court of Justice of the European Union (CJEU)[2]. Among the most deeply impacted sectors of Romanian law was the domain of administrative litigation, which underwent a reconfiguration in both its procedural and substantive dimensions to accommodate the principles, norms, and interpretative approaches developed at the European level.

In accordance with the principles of *direct effect* and *primacy of EU law*, national courts have acquired the duty to apply European legal provisions in a manner that supersedes conflicting domestic norms[3]. This duty extends particularly to the interpretation and application of administrative legal frameworks, where courts must now assess the legality of acts issued by public authorities not solely in reference to Romanian legislation, but also through the lens of EU law and the interpretative authority of the CJEU.

The influence of the CJEU has been especially visible in cases concerning fundamental rights, public procurement, environmental governance, data protection, and the enforcement of competition rules—areas in which Romanian administrative courts increasingly rely on European jurisprudence to resolve legal uncertainty and uphold individuals' rights under EU law. Moreover, the use of the preliminary reference mechanism under Article 267 of the Treaty on the Functioning of the European Union (TFEU) has become a key procedural avenue through which Romanian courts seek clarification on the scope, validity, and interpretation of EU norms.

This paper explores the multifaceted impact of the CJEU's jurisprudence on Romanian administrative litigation. It focuses on several interrelated dimensions: the doctrinal and procedural adaptation of national courts to the principles of EU law[4]; the growing role of preliminary rulings in shaping domestic administrative adjudication; and the progressive internalization of European legal standards such as proportionality, effective judicial protection, and legal certainty. By doing so, the study aims to illuminate the evolving nature of judicial dialogue between national courts and the CJEU, and to assess the extent to which Romanian administrative litigation is being transformed into a vehicle for European

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[2] Douglas-Scott, S. (2006). „A tale of two courts: Luxembourg, Strasbourg and the growing European human rights acquis". *Common Market Law Review,* 43(3), 629–665.

[3] Paul Craig, Gráinne de Búrca (2020). *EU law: Text, cases, and materials* (7th ed.). Oxford University Press, p. 43; Sanja Bogojević (2013). „EU Climate Change Litigation, the Role of the European Courts, and the Importance of Legal Culture", *Law and Policy*, Volume 35, Issue 3, pp. 184-207, https://doi.org/10.1111/lapo.12005.

[4] Jose A. Gutiérrez-Fons, Koen Lenaerts (2010). „The constitutional allocation of powers and general principles of EU law". *Common Market Law Review,* 47(6), 1629–1669, DOI: 10.54648/COLA2010069; Takis Tridimas (2006). *The general principles of EU law* (2nd ed.). Oxford University Press, p. 231.

legal integration[5].

2. The Legal Framework: Direct Effect and Supremacy of EU Law

At the core of the European Union legal order lie the principles of direct effect and supremacy, both established through foundational CJEU case law. In *Van Gend en Loos* (Case 26/62), the Court established that certain provisions of EU law generate direct rights for individuals which national courts are obliged to protect. The *Costa v ENEL* judgment (Case 6/64) reaffirmed that EU law cannot be overridden by domestic legal provisions without undermining the Union's foundational legal framework. These principles have since become indispensable for ensuring the uniform and effective application of EU law across all Member States[6].

In the Romanian context, the application of these principles necessitated a recalibration of judicial practice, particularly in administrative litigation. Courts now face the imperative to interpret and apply domestic laws, including provisions of administrative procedure, in a manner consistent with the objectives and spirit of EU law. When a conflict arises between a provision of Romanian law and a norm of EU law with direct effect, the national court must set aside the national provision, even in the absence of a constitutional challenge or legislative amendment.

Moreover, the supremacy of EU law operates not merely in abstract but has practical implications in domains such as state aid, public procurement, environmental law, and fiscal regulation, where administrative authorities often act based on national frameworks that may contradict or insufficiently implement EU obligations. Romanian judges have progressively embraced their role as decentralized EU judges, tasked with ensuring that domestic administrative acts conform with binding Union law. This transformation has elevated the function of administrative litigation to a Europeanized judicial oversight mechanism capable of addressing inconsistencies between domestic administration and supranational legal mandates.

Nevertheless, challenges persist in ensuring the uniform application of these principles across all levels of jurisdiction. Differences in judicial training, experience with EU law, and access to jurisprudential resources may lead to dis-

[5] Monica Claes (2006). *The national courts' mandate in the European constitution*. Hart Publishing, p. 67.

[6] Marcus Klamert (2014). *The principle of loyalty in EU law*. Oxford University Press, p. 80; Madalina Moraru, Galina Cornelisse, and Philippe De Bruycker (Eds.). (2020). *Law and judicial dialogue on the return of irregular migrants from the European Union*. Hart Publishing, p. 47; Watler van Gerven, (2005). „Of rights, remedies and procedures". *Common Market Law Review,* 41(3), 501–536.

parities in how courts interpret and enforce the doctrines of direct effect and supremacy. Addressing these inconsistencies remains an essential step toward consolidating the rule of law within a multilevel constitutional framework that includes both national and European legal orders.

3. The Legal Framework: Direct Effect and Supremacy of EU Law

One of the key instruments fostering the uniform application and interpretation of European Union law across Member States is the preliminary ruling procedure provided under Article 267 TFEU This mechanism enables national courts to refer questions concerning the interpretation or validity of EU law to the CJEU, thereby promoting legal coherence and fostering judicial dialogue within the Union. In the Romanian context, the preliminary reference has become an increasingly utilized tool in administrative litigation, especially in cases involving complex interactions between national administrative measures and EU norms.

Since Romania's accession, administrative courts — particularly Courts of Appeal and the High Court of Cassation and Justice — have submitted numerous references to the CJEU, seeking clarification in areas such as public procurement (Case C-408/18, *Petrotel-Lukoil*), fiscal obligations (Case C-249/13, *Buda*), and social rights (Case C-258/14, *Florescu*). These references underscore the growing reliance on the CJEU to interpret EU law in ways that shape domestic administrative jurisprudence.

The increased use of Article 267 TFEU reflects not only a maturing legal culture of integration but also the challenges national courts face in aligning administrative norms and practices with evolving European standards. The preliminary ruling in *Florescu*, for instance, was pivotal in reaffirming the obligation of national authorities to respect the principles of proportionality and legal certainty when applying austerity measures that affected pension rights—demonstrating how CJEU guidance can directly influence the review of national administrative acts.

Moreover, preliminary references have helped to clarify the limits of national discretion in implementing EU law, particularly where administrative bodies possess broad regulatory powers. The case *C-81/16, VTB Bank*, originating from Romania, highlighted how administrative sanctions imposed by national financial authorities must comply with the EU principle of proportionality and be subject to effective judicial oversight.

However, the practical use of the preliminary ruling mechanism remains uneven. Some lower-level administrative courts exhibit reluctance to refer questions to the CJEU, either due to uncertainty regarding the admissibility criteria or

due to a lack of familiarity with EU procedural instruments[7]. Judicial training and increased institutional cooperation between Romanian courts and the European judiciary remain essential in enhancing the consistency and efficacy of the preliminary reference practice.

In conclusion, the preliminary ruling mechanism plays a vital role in Romanian administrative litigation, not only as a technical legal instrument but as a cornerstone of European legal integration. It fosters a dynamic and dialogical relationship between national and supranational judicial authorities, reinforcing the authority of EU law in domestic legal systems and enhancing the legitimacy of administrative decision-making.

4. The Principle of Proportionality in the Judicial Review of Administrative Acts

The principle of proportionality is a general principle of EU law that has become a crucial benchmark in reviewing the legality of administrative acts, both at the European and national levels. Originating in the jurisprudence of the CJEU, it requires that any measure adopted by a public authority must be suitable to achieve a legitimate objective, necessary in the sense that no less restrictive alternative exists, and proportionate stricto sensu, meaning that the disadvantages caused must not outweigh the benefits pursued (*Case C-331/88, R. v Minister of Agriculture, ex parte Fedesa*).

In the Romanian context, administrative courts have gradually integrated the proportionality test into their adjudication of cases involving public sanctions, restrictions of rights, or discretionary decisions by authorities. This shift represents a move away from a traditionally deferential stance toward administrative discretion, in favor of a more active, substantive control of legality inspired by European standards.

A landmark illustration of this influence can be found in decisions addressing the proportionality of fiscal and disciplinary sanctions. Following the guidance of the CJEU in *Case C-210/10, Urbán*, Romanian courts have begun to assess whether the severity of sanctions imposed by tax authorities or regulatory bodies corresponds to the gravity of the infringement and whether mitigating circumstances were considered. In public procurement cases, the Romanian courts have cited *Case C-568/08, Combinatie Spijker* to examine whether exclusions or penalties imposed on tenderers were excessive in relation to the objectives of fair competition and transparency[8].

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[7] Damian Chalmers, Gareth Davies, Giorgio Monti (2019). *European Union law: Text and materials* (4th ed.). Cambridge University Press, p. 60.

[8] Sacha Prechal, Madeleine de Leeuw (2007), „Dimensions of Transparency: The Building Blocks for a New LegalPrinciple?" *Review of European and Administrative Law*, Vol. 0, No. 1, pp. 51-61, 2007, Available at SSRN: https://ssrn.com/abstract=1555469.

Moreover, proportionality has emerged as a key criterion in judicial review concerning limitations on fundamental rights, such as the right to property, access to public services, and data protection. For instance, administrative measures involving eviction or revocation of permits must now pass the proportionality threshold as elaborated by the CJEU in *C-524/06, Huber*, which balances data collection with privacy rights under Article 8 of the Charter.

This transformation has also encouraged a shift in Romanian judicial reasoning, from purely formal legality checks to substantive analyses of the effects and justification of administrative acts. Courts are increasingly expected to provide detailed assessments of whether the public interest invoked by the administration truly outweighs the burden imposed on individuals or companies. This doctrinal development aligns Romanian administrative litigation with the broader European model of "intensive legality control"[9].

Nevertheless, challenges persist in ensuring a uniform application of proportionality standards across all jurisdictions. Lower-level courts sometimes apply the principle inconsistently, and a lack of comprehensive training in EU general principles contributes to divergent practices. Despite these obstacles, the incorporation of the proportionality principle into Romanian administrative jurisprudence is a major step toward consolidating the rule of law and reinforcing the accountability of public power.

5. Challenges and Opportunities in the Europeanization of Romanian Administrative Litigation

The gradual incorporation of the jurisprudence of the Court of Justice of the European Union into Romanian administrative litigation has brought both significant progress and structural challenges. While Romanian courts have increasingly engaged with EU law — particularly through the application of general principles, the use of preliminary references, and the review of administrative acts in light of proportionality and fundamental rights — this process of "Europeanization" remains uneven and incomplete.

One of the primary challenges is the heterogeneous level of EU law competence among judges, particularly at lower courts. Although EU law is formally part of the judicial training curriculum, its practical application still relies heavily on individual initiative and the interpretative openness of particular judges. Empirical studies and case law analysis have shown that some judges are reluctant to invoke CJEU jurisprudence unless explicitly required by the parties, thereby limiting the proactive role expected under the doctrine of *ex officio* application of EU law[10].

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[9] Sacha Prechal (2005). *Directives in EC law* (2nd ed.). Oxford University Press, p. 80.
[10] Damian Chalmers, Gareth Davies, Giorgio Monti, *op. cit.* (2019), p. 60.

Another persistent issue is the inconsistent use of the preliminary reference procedure. While Romanian courts have submitted a growing number of questions to the CJEU since 2007, the distribution of these references remains concentrated in a few appellate courts and specialized administrative sections. Some courts avoid making referrals due to perceived procedural delays or uncertainty regarding admissibility criteria. Moreover, when preliminary rulings are issued, their impact is not always effectively disseminated across the judiciary, leading to divergent interpretations and fragmentation of legal reasoning.

Additionally, institutional factors such as high caseloads, understaffing, and limited access to EU legal databases impede the full engagement of courts with European jurisprudence. Administrative judges often lack the resources or time necessary to conduct in-depth analyses of CJEU case law, which diminishes the transformative potential of EU legal integration.

Despite these challenges, important opportunities for systemic improvement exist. Judicial cooperation platforms, such as the European Judicial Training Network (EJTN) and the EU-funded TRIIAL or RE-Jus projects, provide valuable avenues for professional development and transnational dialogue. Romania has also benefited from structural reforms in the judiciary supported by EU funding, enabling digitalization, increased transparency, and better access to comparative jurisprudence.

Furthermore, the increasing involvement of civil society organizations and specialized legal practitioners in administrative litigation has expanded the normative pressure on courts to align their decisions with EU standards. The rise of strategic litigation in fields like environmental protection, anti-corruption, and anti-discrimination has brought EU principles and CJEU case law to the forefront of administrative adjudication.

In sum, while the Europeanization of Romanian administrative litigation is an ongoing and complex process, it holds substantial potential for enhancing legal certainty, judicial independence, and the effective protection of rights. The convergence with EU jurisprudence not only strengthens the legitimacy of national administrative courts but also reinforces their role as active guardians of the Union's legal order.

6. Conclusions and Discussion

The analysis of the influence of the jurisprudence of the Court of Justice of the European Union on Romanian administrative litigation reveals a gradual but substantial transformation in both the interpretative practices and institutional dynamics of national courts. Since Romania's accession to the EU, administrative litigation has undergone a notable shift from a predominantly national legal framework to a hybrid model increasingly shaped by supranational legal principles, interpretative doctrines, and procedural mechanisms established by the

CJEU.

This transformation is evident in several critical areas: the adoption of the principles of direct effect and primacy of EU law; the growing reliance on the preliminary reference procedure as a mechanism of judicial dialogue; the incorporation of general principles such as proportionality, legal certainty, and effective judicial protection; and the progressive reinterpretation of national procedural norms in light of European standards.

The findings suggest that Romanian administrative courts are no longer passive recipients of EU law but are gradually becoming active participants in its application and development. By invoking CJEU jurisprudence, they contribute to a broader process of legal convergence and integration, reinforcing the rule of law and the uniform protection of rights within the EU legal order. This shift enhances the legitimacy of administrative adjudication and redefines the role of the judiciary in the constitutional architecture of both the Member State and the Union.

Nevertheless, the discussion must also address the limitations of this integration process. The uneven application of EU principles across courts, the underuse of preliminary references in lower jurisdictions, and the limited dissemination of CJEU decisions remain significant obstacles. Moreover, structural issues such as judicial overload, insufficient specialization in EU law, and fragmented access to relevant legal resources continue to hinder the full operationalization of European standards in administrative litigation.

From a broader perspective, the Romanian experience illustrates both the potential and fragility of judicial Europeanization. It confirms that supranational legal integration is not solely a matter of institutional transposition but involves the continuous adaptation of judicial reasoning, interpretative culture, and procedural strategies. In this regard, the role of training, inter-court cooperation, and academic engagement becomes essential.

Looking forward, strengthening the capacity of national administrative courts to internalize and apply CJEU jurisprudence consistently is not only a matter of legal refinement but also a political and civic imperative. Enhancing the European dimension of administrative justice can contribute to consolidating trust in public institutions, safeguarding individual rights, and fostering a more coherent and resilient European legal space.

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Participation of Temporary Associations in Public Procurement Award Procedures in European and Romanian Law. Implications of the CJEU Judgment of 13.03.2025 Pronounced in Case C-266/22

Judge PhD. **Marlena BOANCĂ-IVAN**[1]

Abstract

From a theoretical and applied perspective, it is relevant not only to regulate the issue of the participation of temporary associations in the procedures for awarding public procurement contracts at the legislative level and the evolution of these regulations, but also to reflect and analyze the concept of economic operator, including temporary associations in the case law of the CJEU, as well as in Romanian administrative and judicial practice. We note, by referring to the case law of the CJEU, that the national legislator cannot adopt, in the absence of an authorisation in this regard from the EU, legislative acts by which it excludes temporary associations from participation in the procedures for the award of public procurement contracts carried out on the territory of the respective Member State in the event that one of the members of the association is based in a third country that has not concluded an agreement on free access to the public procurement market with the EU. However, contracting authorities, as they do not infringe the EU's exclusive competence in matters of common commercial policy, could provide for such an exclusion in the tender documentation.

Keywords: *public procurement, public contract, economic operator, temporary association.*

JEL Classification: K23, K33

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1. Introductory aspects

Directive 2014/24/EU of the European Parliament and of the Council is a minimum harmonisation directive, which allows the national legislator to pro-

[1] Marlena Boancă-Ivan - Târgu Mureș Court of Appeal; trainer at the National Institute of Magistracy, Romania, boanca.marlena@yahoo.com.

vide for additional standards in the transposition legislation, beyond those provided for in the body of the directive on classic public procurement. Considering this possibility, the Romanian legislator, defining in the content of Article 3 paragraph (1) letter jj) of the Romanian Law on Public Procurement no. 98/2016, as amended by GEO no. 25/2021 the concept of economic operator, which also includes temporary associations, added to the provisions of Art. 2 paragraph (1) point 10 of the Directive 2014/24/EU an additional territoriality condition. Thus, the economic operator must be located in an EU Member State or in a third country that has concluded an agreement on free access to the public procurement market with the EU. The compatibility of this additional condition provided for by Romanian law was the subject of the compatibility analysis with EU law, an aspect reflected in the CJEU Judgment of 13.03.2023, delivered in case C-266/22, ECLI:EU:C:2025:178.

This article represents an extensive research of the legal institution of temporary associations participating in public procurement contract award procedures in the context of the recent case law of the CJEU, of Romanian administrative and judicial practice, of the provisions of the 5th generation of the community acquis on public procurement, as well as of the Romanian transposition law, subject to analysis.

The issues addressed concern the concept of temporary association, the advantages of the joint offer, the situation of the association in the event that one of the association members is based in a third country that has not concluded an agreement on free access to the public procurement market with the EU, the condition of maintaining the material and legal identity of the association throughout the award procedure as well as during the execution of the public procurement contract, the sanction of exclusion from the procedure of associations formed with the aim of distorting competition, as well as the association's recourse to subcontractors or third party supporters.

2. The Concept of Temporary Association. Advantages of Joint Bidding

Small and medium-sized enterprises constitute the dominant form of participation in economic life in all EU Member States, their promotion through the provisions of the Directive 2014/24/EU is in line with sustainable measures that facilitate secondary objectives of EU law in the field of public procurement.[2] These secondary objectives emphasize sustainable public procurement, which in-

[2] See Martin Trybus, Marta Andrecka, „Favouring Small and Medium Sized Enterprises with Directive 2014/24/EU?", *European Procurement & Public Private Partnership Law Review,* 3/2017, p. 224.

volves the purchase of goods, works and services that encourage innovation, respect the environment and combat climate change, while improving employment, public health and social conditions.[3]

In order to facilitate access of small and medium-sized enterprises to public procurement procedures and to open up competition as widely as possible, participation in public procurement procedures is also open to temporary associations, without legal personality, usually formed by two or more small or medium-sized enterprises.

In this regard, the economic operator is defined by the provisions of art. 2 para. (1) point 10 of the Directive 2014/24/EU as any natural or legal person, governed by public or private law, or group or association of such persons, including any temporary association formed between two or more of these entities which lawfully offers on the market the execution of works and/or construction, the supply of products or the provision of services.

The concept of 'economic operator' in Article 1(8) of the Directive 2004/18 was taken over, without any substantial amendment, in Article 2(1)(10) of the Directive 2014/24, recital 14 of the latter directive now expressly indicating that that concept should be interpreted 'in a broad sense' to include any persons and/or entities active on the market, 'regardless of the legal form under which they have chosen to operate'.[4] The Community legislature did not intend to limit the concept of 'economic operator offering services on the market' solely to operators with an enterprise organisation, nor to introduce specific conditions likely to establish an upstream limit on access to contract notices based on the legal form and internal organisation of economic operators.[5]

Not only contracting authorities have the opportunity to carry out public procurement jointly,[6] but also several entities have the possibility to conclude an association agreement, without the temporary association thus established acquiring legal personality, with a view to submitting a joint tender in the framework of award procedures.

Although the requirement to adopt a specific legal form in order to submit

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[3] See Jörgen Hettne, „Sustainable Public Procurement and the Single Market – Is There a Conflict of Interest?", in *European Procurement & Public Private Partnership Law Review* 1/2013, p. 31; Marta Andhov, *Contracting authorities and strategic goals of puplic procurement – a relationship defined by discretion?*, in S. Bogojevic, X. Groussot, J. Hettne (eds.): Discretion in EU Procurement Law (Hart Publishing 2019), available online at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3794794.

[4] CJEU judgment of 11 June 2020, Parsec Fondazione Parco delle Scienze e della Cultura, C-219/19, ECLI:EU:C:2020:470, para. 22.

[5] CJEU judgment of 23 December 2009, Consorzio Nazionale Interuniversitario per le Scienze del Mare (CoNISMa), C-305/08, ECLI:EU:C:2009:807, para. 35.

[6] See Tünde Tátrai, „Joint public procurement", *ERA Forum*, Volume 16 (2015), pp. 7–24, https://doi.org/10.1007/s12027-015-0374-3.

a tender or a request to participate cannot be imposed on the temporary association,[7] such a condition may nevertheless be imposed in national legislation transposing the Directive 2014/24/EU on the association that submitted the winning tender, to the extent that such a requirement is justified by the particular circumstances of the public procurement contract in question.[8]

The temporary association is constituted by considering the advantage of fulfilling the qualification and selection criteria by the members of the association, by cumulation.[9]

In this regard, in the event of the submission of a joint bid by a temporary association, the fulfillment of the criteria regarding the technical and professional capacity, as well as that regarding the economic and financial situation, is demonstrated by taking into account the resources of all members of the respective temporary association, and the contracting authority requires that the members of the association be jointly and severally liable for the execution of the public procurement contract/framework agreement.[10]

According to Article 19(2) of the Directive 2014/24/EU, any conditions for the performance of a contract by such groups of economic operators, other than those imposed on individual participants, shall also be justified by objective reasons and shall comply with the principle of proportionality. When setting conditions which are not imposed on individual tenderers, contracting authorities must comply with the principle of proportionality and provide extensive reasons for the reasons which justified the restriction on associations.[11]

However, EU law precludes a clause in tender specifications which, where several tenderers submit a joint tender, requires that the contribution of each of them to meeting the applicable requirements in terms of professional capacity must correspond proportionately to the share of the works which it will actually perform if it is awarded the contract in question.[12]

Conditions imposed on temporary associations but not on individual participants, which must be justified by objective reasons and proportionate, could include, for example, the requirement to appoint joint representatives or a lead partner for the procurement procedure or to request information on their status.

Where the association agreement provides for the possibility for one of

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[7] See Sue Arrowsmith, *The law of public and utilities procurement. Regulation in the EU and UK*, vol. II, third edition, Thomson Reuters, London, 2018, p. 79.

[8] See Michael Steinicke, Peter Vesterdorf, *EU Public Procurement Law. Brussels Commentary*, Ed. C. H. BECK, Baden-Baden, Germany, 2018, p. 341.

[9] See Ecaterina-Milica Dobrota, Dumitru-Viorel Pârvu, *Achiziții publice. Idei noi, practici vechi*, Ed. Universitară, Bucharest, 2020, p. 59.

[10] See Marlena Boancă-Ivan, *Dreptul achizițiilor publice. Perspectivă unională și națională*, Ed. Universul Juridic, Bucharest, 2025, p. 220.

[11] See Roberto Caranta, Albert Sanchez-Graells, *European Public Procurement. Commentary on Directive 2014/24/EU*, Edward Elgar Publishing, UK, 2021, p. 213.

[12] See CJEU judgment of 5 April 2017, Borta UAB, C-298/15, ECLI:EU:C:2017:266, para. 96.

the members to be the leader of the association, this member shall have the right to represent all the other members in contractual relations with the contracting authority, with the stipulation that the responsibility for the manner in which the contractual obligations are fulfilled lies with all members of the association. As such, the association agreement shall entail the joint and several liability of all the members.[13]

3. The Situation of the Association in the Event That One of the Members of the Association Is Based in a Third Country That Has Not Concluded an Agreement on Free Access to the Public Procurement Market with the EU

Given that competition and public procurement are interconnected concepts,[14] and it is also in the interest of the contracting authority to ensure the widest possible participation in a procedure for the award of public procurement contracts,[15] the question arises whether it is compatible with EU law for the national legislator or contracting authorities to restrict the participation of temporary associations in award procedures carried out in an EU Member State in the event that one of the members of the association is based in a third country that does not have a free access agreement to the public procurement market with the EU.

The Directive 2014/24/EU of the European Parliament and of the Council being a minimum harmonisation directive, the Romanian legislator has established additional standards to those provided for in the Directive regarding the definition of economic operators.

Thus, if the initial form of the Romanian Law on Public Procurement no. 98/2016 takes over as such in the provisions of art. 3 paragraph (1) letter jj), the provisions of art. 2 paragraph (1) point 10 of the Directive 2014/24/EU, through the amendments made to the Law no. 98/2016 by GEO no. 25/2021 an additional territoriality condition is imposed on economic operators.

In this regard, Article 3 paragraph (1) letter jj) of the Romanian Law on Public Procurement No. 98/2016, as amended by GEO no. 25/2021, defines the notion of "economic operator" as "any natural or legal person, governed by public or private law, or group or association of such persons, including any temporary association formed between two or more of these entities, which lawfully offers on the market the execution of works, the supply of products or the provision of services, and which is/are established in:

(i) a Member State of the Union;

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[13] Case 1084 of June 10, 2020, ANAP Case Library, available at https://achizitiipublice.gov.ro/questions/view/162, accessed on 7.05.2025.

[14] See Willem Janssen, Erik Olsson, „On Competition, Free Movement and Procurement", in *European Procurement & Public Private Partnership Law Review* 1/2020, p. 2.

[15] See Dumitru Ilie, *Elemente de drept al achiţiilor publice*, Ed. ASE, Bucharest, 2019, p. 24.

(ii) a Member State of the European Economic Area (EEA);

(iii) third countries which have ratified the [APA], to the extent that the public procurement contract awarded falls under Annexes 1, 2, 4 and 5, 6 and 7 to the Union's Appendix I to that agreement;

(iv) third countries which are in the process of acceding to the Union;

(v) third countries which do not fall under point (iii) but which are signatories to other international agreements by which the Union is obliged to grant access free access to the market in the field of public procurement".

This territoriality condition concerning economic operators provided for in Article 3(1) (jj) final sentence of the Romanian Law on Public Procurement No. 98/2016, as amended by GEO No. 25/2021, was subject to an analysis of compatibility with European Union law in Case C 266/22.

In the main proceedings, a temporary association that submitted a tender in the context of an award procedure initiated by a Romanian contracting authority was excluded from the procedure, the reason for the exclusion being that the leader of the association, CRRC Qingdao Sifang, did not fall within the scope of the notion of 'economic operator' within the meaning of Article 3(1) (jj) of the Law on Public Procurement, as amended by GEO No. 25/2021, given the fact that its registered office is located in China.

By its judgment of 13 March 2025, delivered in case C 266/22, the CJEU ruled that Article 3(1)(e) TFEU, which confers exclusive competence on the Union in matters of common commercial policy, read in conjunction with Article 2(1) TFEU, must be interpreted as precluding, in the absence of an act of the Union requiring or prohibiting access to procedures for the award of public contracts by economic operators from a third country which has not concluded with the Union an international agreement referred to in Article 25 of the Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, a contracting authority in a Member State from excluding an economic operator from such a third country on the basis of a legislative act which that Member State has adopted without having been empowered to do so by the Union, the fact that this legislative act entered into force after the publication of the tender notice is irrelevant in this regard.[16]

In order to rule in this regard, the CJEU took into account that the Union is obliged to comply, with regard to certain third countries, with international agreements, in particular the GPA, which guarantee reciprocal and equal access for economic operators in the Union to the public procurement markets of those third countries and for economic operators from the said third countries to the

[16] CJEU judgment of 13 March 2025, *CRRC Qingdao Sifang Co. Ltd, Astra Vagoane Călători SA versus Autoritatea pentru Reformă Feroviară, Alstom Ferroviaria SpA,* C-266/22, ECLI:EU:C:2025:178, para. 67.

public procurement markets of the Union. Article 25 of the Directive 2014/24 reflects those international commitments of the Union by providing that, in so far as they fall within the scope of the GPA and other international agreements which impose obligations on the Union, contracting entities of the Member States must grant economic operators from third countries which are parties to such an agreement treatment no less favourable than that granted to economic operators from the Union (see, to that effect, judgment of 22 October 2024, *Kolin Inşaat Turizm Sanayi ve Ticaret*, C 652/22, EU:C:2024:910, paragraphs 41 and 42).[17]

To date, other third countries have not concluded such an international agreement with the Union. This includes the People's Republic of China.[18]

Only the Union is competent to adopt an act of general application concerning access, within its territory, to procedures for the award of public contracts for economic operators from a third country which has not concluded with the Union an international agreement guaranteeing equal and reciprocal access to public procurement markets, establishing either a system of guaranteed access to such procedures for those economic operators or a system which excludes them or which provides for an adjustment of the score resulting from the comparison of their tenders with those submitted by other economic operators.[19]

As regards economic operators from those third countries, it must be noted that, although EU law does not preclude those economic operators from being admitted, in the absence of exclusion measures adopted by the EU, to participate in a procedure for the award of a public contract governed by the Directive 2014/25, it does, however, preclude those economic operators from being able, when participating in such a procedure, to rely on that directive and thus to claim equal treatment for their tenders in relation to those submitted by tenderers from the Member States.[20]

We note, in relation to the case law of the CJEU, that the national legislator cannot adopt legislative acts to exclude associations from participation in procedures for the award of public procurement contracts carried out on the territory of the respective Member State in the event that one of the members of the association is established in a third country that has not concluded an agreement on free access to the public procurement market with the EU.

However, the contracting authority, since it does not infringe the exclusive competence in matters of common commercial policy, we consider that it could provide for a requirement in the specifications imposing the condition of the location of the members of the temporary association on EU territory or could provide when establishing the award criterion of the best price-quality ratio/best

[17] Ibid., para. 56.
[18] Ibid., para. 57.
[19] Ibid., para. 61.
[20] CJEU judgment of 22 October 2024, *Kolin Inşaat Turizm Sanayi ve Ticaret AŞ*, C-652/22, ECLI: EU:C:2024:910, para. 47.

cost-quality ratio a weighting related to the location on EU territory of all members of the temporary association.[21]

In Romanian case law, for example, with regard to territoriality requirements, the requirement that the potential economic operator interested in participating in the procedure must have a mobile workshop registered in Romania was considered restrictive, in breach of the principle of non-discrimination. Thus, the court considered that the territorial limitation of having a workshop registered in Romania implies that economic operators from another Member State would incur additional obligations and costs vis-à-vis economic operators from Romania, a circumstance that would discourage them from participating in the award procedure.[22]

4. The Condition of Maintaining the Material and Legal Identity of the Association Throughout the Award Procedure, as Well as During the Execution of the Public Procurement Contract

It is possible that in the case of temporary associations, a member of the association may withdraw from the jointly initiated procedure. In practice, the question has been raised of the consequences that these changes in the material and/or legal identity of the economic operators produce from the perspective of the possibility of continuing the award procedure or the possibility of continuing the execution of the public procurement contract, in relation to the need to respect the principle of equal treatment.[23]

In the case law of the CJEU, it has been ruled that, within a negotiated procedure, in the event of the dissolution of a pre-selected group as such, of which two economic operators were part, one of them may replace the respective group and continue the said procedure, without the principle of equal treatment being infringed, provided that it is established that this economic operator alone meets the requirements initially established by the contracting authority and that its continued participation in the said procedure does not entail a deterioration in the competitive situation of the other tenderers.[24]

By observing the two conditions expressly highlighted above, a member of the temporary association may substitute the temporary association in order to continue participating in the respective award procedure.

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[21] See CJEU judgment of 13 March 2025, *CRRC Qingdao Sifang Co. Ltd, Astra Vagoane Călători SA versus Autoritatea pentru Reformă Feroviară, Alstom Ferroviaria SpA, C-266/22*, precit., para. 63.

[22] Civil sentence no. 27/10.02.2025, pronounced by the Constanța Court of Appeal, administrative and fiscal litigation section in file no. 3715/2/2022.

[23] See Marlena Boancă-Ivan, *op. cit.,* p. 31.

[24] See, in this regard, Judgment of the CJEU of 24 May 2016, MT Højgaard and Züblin, C 396/14, EU:C:2016:347, paragraph 48 and the operative part.

And in the event that the temporary association is declared the winning bidder, a single member of the association may, by observing the same conditions, safely execute the public procurement contract.

In this regard, in Romanian administrative practice, it has been established that in the event that one/more members of the association request withdrawal from the association with which a public procurement contract was concluded, it is possible for the remaining member/members of the association to continue performing the contract in question, provided that the contracting authority verifies whether he/she has the capacity to perform the public procurement contract under the same conditions as the association designated as the winner and signatory of the public procurement contract, with the following that the aspects related to the joint liability arising from the association shall be regulated between the associates.[25]

In the same vein, the CJEU case law has highlighted that in the event that insolvency proceedings have been opened against one of the members of an association, the other member of the association may continue the procedure alone if, first, the economic operator who wishes to continue the procedure satisfies all the requirements of the contracting authority alone, and, secondly, the continuation of the procedure by that economic operator is not likely to cause distortion of competition.[26]

Even in the event that insolvency proceedings have been opened against one of the members of the association, it is possible for the initially constituted association to continue participating in the procedure if the capacity to perform the contract is not affected, Member States having the possibility in the national transposition legislation to provide for such an exception to the ground for exclusion provided for in art. 57 para. (4) letter b) of the Directive 2014/24/EU on the exclusion of economic operators undergoing insolvency proceedings.[27]

5. The Sanction of Exclusion from the Procedure of Associations Formed with the Aim of Distorting Competition

When temporary associations participate in the award procedure, contracting authorities usually analyze the risk that such an association will affect the rules on ensuring undistorted competition.[28]

In order to hold that temporary associations are established with a view to distorting competition, there must be no plausible alternative explanation for

[25] Case 1084 of June 10, 2020, ANAP Case Library, available at https://achizitiipublice.gov.ro/questions/view/162, accessed on 7.05.2025.
[26] Judgment of the CJEU of 24 May 2016, MT Højgaard A/S, C-396/14, ECLI:EU:C:2016:347, para. 46 and 48.
[27] See Roberto Caranta, Albert Sanchez-Graells, *op. cit.*, p. 611.
[28] See Michael Steinicke, Peter Vesterdorf, *op. cit.,* p. 337.

the conclusion of the association agreement, the exchange of sensitive information between the members of the association must be proven, as well as an abnormal bidding method.[29]

Associations formed between economic operators who are not competitors, as well as associations formed by economic operators who are competitors, are not likely to violate the competition rules, in the latter case only if the following conditions are cumulatively met: no economic operator can individually meet the conditions set out in the specifications or in the framework contract; a subgroup of the members of the respective association cannot meet the conditions set out in the specifications or in the framework contract; the members of the association exchange only information strictly necessary at the time of drawing up the tender and during the execution of the contract; the members of the association compete under normal conditions in other situations.[30]

If a member of the association meets all the qualification and selection criteria on his own, the question arises of the intention underlying his decision to participate in the award procedure within a temporary association and not as an individual tenderer. In this regard, judicial practice has ruled that the association agreement is anti-competitive to the extent that it was concluded with a view to territorial market sharing and not with a view to effective cooperation in the performance of a public procurement contract.[31]

In such a situation, where the association is established with a view to distorting competition, it becomes an incident of the ground for exclusion provided for in art. 57 par. (4) letter d) of the Directive 2014/24/EU, transposed by the provisions of art. 167 par. (1) letter d) of the Romanian Law on Public Procurement no. 98/2016.

6. Association's Use of Subcontractors or Third-Party Supporters

The temporary association, and not only the sole tenderer, may also resort to subcontracting, as it is not compatible with EU law to set a percentage up to which subcontracting is authorised either by the national legislator[32] or by the contracting authority.[33]

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[29] See Michele Giannino, „Competition Law Enforcement and Public Contracts Procurement in Italy: The School Cleaning Services Case", *European Procurement & Public Private Partnership Law Review* 1|2017, p. 40.

[30] See Competition Council, *Guide on compliance with competition rules in the event of participation in the form of an association*, p. 2, available online at https://www.consiliulconcurentei.ro/uploads/docs/items/bucket11/id11008/ghid20042016.pdf, accessed on 7.05.2025.

[31] See Roberto Caranta, Albert Sanchez-Graells, *op. cit.*, p. 212 et seq.

[32] Judgment of the CJEU of 26 September 2019, *Vitali SpA*, C-63/18, ECLI:EU:C:2019:787, para. 45.

[33] Judgment of the CJEU of 14 July 2016, *Wrocław – Miasto na prawach powiatu,* C-406/14, ECLI:EU:C:2016:562, para. 51.

The temporary association shall also have the right to rely on the support of a third party(ies) in meeting the criteria relating to economic and financial standing and/or technical and professional capacity, regardless of the nature of the legal relationship between the economic operator and the respective third party(ies).

Both the subcontractor and the supporting third party are required to complete the DUAE, and in the event of the occurrence of the grounds for exclusion in their case, the temporary association will have the possibility of replacing them at a certain date. Subsequently, in the event of the occurrence of a ground for exclusion and in the event of the newly designated subcontractor/supporting third party, the association may be excluded from the procedure.[34]

Thus, in the case law of the CJEU, it has been held that EU law does not preclude national legislation under which the contracting authority has the possibility or even the obligation to exclude the economic operator that submitted the tender from participating in the public procurement procedure if the ground for exclusion provided for in this provision is found in respect of one of the subcontractors mentioned in the tender of that operator. On the other hand, EU law precludes national legislation which provides for the automatic nature of such exclusion.[35]

The CJEU also highlighted in its case law that EU law precludes national legislation under which the contracting authority must automatically exclude a tenderer from a public procurement procedure when an auxiliary undertaking whose capacities it intends to use has provided an untrue declaration regarding the existence of criminal convictions which have acquired the force of res judicata, without being able to impose, or, at least, without being able to allow, in such a case, this tenderer to replace the entity in question.[36]

7. Conclusions

We conclude, by referring to the case law of the CJEU, that the national legislator cannot adopt legislative acts by which to exclude from the procedures for the award of public procurement contracts carried out on the territory of the respective Member State associations in the event that one of the members of the association is established in a third country that has not concluded an agreement on free access to the public procurement market with the EU.

Considering the incidence of the principle of priority of European Union law, regulated in art. 148 paragraph (2) in conjunction with art. 20 paragraph (2)

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[34] See Marlena Boancă-Ivan, *op. cit.,* p. 214 et seq.

[35] Judgment of the CJEU of 30 January 2020, *Tim SpA – Direzione e coordinamento Vivendi SA,* C 395/18, ECLI:EU:C:2020:58, para. 55.

[36] Judgment of the CJEU of 3 June 2021, *Rad Service Srl Unipersonale*, C 210/20, ECLI:EU:C:2021:445, para. 45.

of the Constitution of Romania, republished, the solutions adopted in Romanian administrative and judicial practice will not be able to reflect the exclusion from the award procedure, pursuant to art. 3 paragraph (1) letter jj) of the Romanian Law on Public Procurement no. 98/2016, as amended by GEO no. 25/2021, of temporary associations in the event that one of the members of the association is based in a third country that has not concluded an agreement on free access to the public procurement market with the EU.

However, since the contracting authorities do not infringe the exclusive competence in matters of common commercial policy, we consider that they could provide for a requirement in the specifications imposing the condition of the location of the members of the temporary association in the EU territory or in a third country that has concluded an agreement on free access to the public procurement market with the EU. In the same vein, we consider that the contracting authorities could provide when establishing the award criterion of the best price-quality ratio/best cost-quality ratio a lower weighting related to the location in the EU territory of all members of the temporary association.

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Between National Application and European Harmonization: A Comparative Legal Analysis of the Margin Scheme for Second-Hand Vehicles in Romanian and European Union Law

Lecturer **Alina-Emilia CIORTEA**[1]

Abstract

This comparative study examines the application of the margin scheme in second-hand car transactions, juxtaposing Romanian national implementation against the broader European Union legal framework. Beginning with common factual scenarios involving cross-border vehicle transactions by natural persons, the research systematically analyzes both Romanian legislation and European directives, identifying areas of convergence and divergence. By contrasting interpretations adopted by Romanian fiscal authorities with European Court of Justice jurisprudence, the study reveals significant differences in implementation approaches. The research demonstrates that while European law establishes that the margin scheme application requires only conditions inherently linked to this VAT regime, Romanian administrative practice has sometimes imposed additional requirements not supported by EU precedent. Through logical and comparative methodological approaches, this analysis contributes to understanding how differential interpretations between Romanian and EU frameworks can lead to competitive distortions and potential double taxation in the second-hand vehicle market. The findings highlight the ongoing challenge of harmonizing national fiscal practices with overarching European legal principles in specialized VAT regimes.

Keywords: *margin scheme, second-hand cars, European Union, tax, jurisprudence, Directive 2006/112/EC.*

JEL Classification: K34

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[1] Alina-Emilia Ciortea - Faculty of Economic Sciences and Business Administration, "Babeș-Bolyai" University; Ph.D in law at "Babeș-Bolyai" University, Faculty of Law in Cluj-Napoca, Romania; LL.M. in Comparative Law at Louisiana State University, Louisiana, United States of America; lawyer at the Cluj Bar Association. ORCID: https://orcid.org/0000-0002-6044-4231, alina.emilia.ciortea@gmail.com.

1. Introduction

The concept of value added tax (VAT) was created and perfected in the 20th century[2]. The origin of this tax is still currently debated between two possible sources[3]. Thus, the invention of the value added tax is due either to the work done by the American economist Thomas S. Adams[4], or to the vision outlined by the German businessman Wilhelm Von Siemens[5].

In Europe, value added tax was first introduced in France in 1954, covering a limited range of activities[6]. The year 1967 brought the adoption of the value-added tax by five of the six Member States[7]. After the seventies, a series of successive legislative were implemented[8] with the desire to achieve harmonization of the value-added tax by all Member States[9]. Currently, more than 170 countries in the world (including all European countries) apply value added tax to goods and services, which is why the author agrees with Sijbren Cnossen, who states "*The nearly universal introduction of the value added tax should be considered the most important event in the evolution of tax structure in the last half of the twentieth century.*[10]"

The study does not aim to present a global picture of the concept of value added tax, fully understanding that such research would exceed the inherent limits of a specialized article. The analysis the author proposes will be limited to outlining the taxation regime of the margin scheme, with the indication of the Romanian and European legislative framework, respectively with the detailing of the jurisprudence, in the issue of trade in second-hand cars carried out within the

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[2] Kathryn James (2011), "Exploring the Origins and Global Rise of VAT," *The VAT Reader (Tax Analysts)* 1: 15, http://dx.doi.org/10.2139/ssrn.2291281.

[3] William H. Oakland (1967), "The Theory of the Value-Added Tax: I A Comparison of Tax Bases," *National Tax Journal* 20, no. 2: 119.

[4] For details, see Thomas S. Adams (1921), "Fundamental Problems of Federal Income Taxation", *Qarterly Journal of Economics* 35, no. 4: 528-553.

[5] Details on the initial concept developed by Wilhelm Von Siemens, see C. F. von Siemens (1921), *Veredelte Umsatzsteuer* (translated as 'improving the sales tax'), Siemensstadt, 14-18.

[6] *„The latest innovation is the value-added tax. Its emergence in France illustrates the process by which a sort of continuing ferment of improvisation now and then gives rise to an invention of the first order"* (Carl S. Shoup (1955), "Taxation in France", *National Tax Journal* 8, no. 4: 328, http://www.jstor.org/stable/41790191).

[7] Michel Aujean (2012), "Harmonization of VAT in the EU: Back to the future", *EC Tax Review* 21, no. 3: 134, https://doi.org/10.54648/ecta2012014.

[8] Among which we mention: Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes, Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State, Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

[9] James, "Exploring the Origins", 16.

[10] Sijbren Cnossen (1998), "Global Trends and Issues in Value Added Taxation," *International Tax and Public Finance* 5, no. 3: 399.

European Union.

The article will also take into account the practical challenges that the application of the margin scheme generates in the national administrative practice, without omitting the explanation of concrete situations of application and erroneous understanding of the legal provisions incident to this matter by the control bodies. Last but not least, the analysis will present the considerations of court rulings issued in annulment actions filed against some administrative-fiscal acts through which the control bodies defectively established the main fiscal obligations regarding the value added tax.

The importance of this article lies in the unique way of approaching and combining in a single study several elements that have as a starting point concrete facts, frequently encountered in Romania - trade of second-hand cars by individuals. To this, the author added the process of identifying the relevant national and European legislation and jurisprudence. The aim is to expose the way the positive law is understood and applied by the fiscal bodies, respectively the interpretation given by the national courts of this type of cases.

An in-depth knowledge, detailing and interpretation of the legal elements requires an appropriate research methodology to materialize a full understanding of the legal mechanism and its links with the society. Thus, in order to achieve the objectives pursued, the author proposes to use the logical and comparative method. Using the logical method, the author aims to identify the structure and dynamics of the relationships between different components of the legal system, operating with specific tools like deduction, induction, analysis, definition, etc. To add complexity to the research, the author will also turn her attention to European legislation and jurisprudence.

The article will be structured in several sections which are desired to combine the factual element with the legal one. To begin with, the legal issue that triggered a whole odyssey at the level of administrative practice in Romania will be exposed, highlighting the way of carrying out fiscal control (Section 2). In Section 3, the author will analyze the conditions for applying the margin scheme, and Section 4 will include the considerations of the national courts, with an indication of the practice of the Supreme Court. Section 5 will be dedicated to some brief conclusions.

2. From Trading Second-Hand Cars Within the European Union to Tax Control

In recent years, the control bodies have reported on the activities carried out on the territory of Romania by certain natural persons, which consist in the purchase of second-hand cars from a member state of the European Union, followed shortly by their sale in Romania. The persons in question were not owners of enterprises (within the meaning of the provisions of art. 3 paragraph (3) of the

Romanian Civil Code[11] and not being authorized by the state to carry out an economic or professional activity. All transactions were concluded in the name of the seller as a natural person and were declared at the administrative-territorial unit where the seller was domiciled, but there was no fiscal registration of the respective transactions. Finally, the tax authorities self-reported and started several tax controls.

The series of fiscal controls started from the suspicion of the administrative bodies related to the existence of a tax fraud regarding the value added tax, through the non-declaration of the incomes. Thus, several tax controls were carried out, which essentially had an almost identical path: after the receipt of the tax inspection notice, the taxpayer was invited to hand over to the control bodies all the documents attesting to the car transactions. Most of the time, the taxpayer was not in possession of these documents, which is why the tax inspection was suspended. During the suspension period, the control bodies requested the documents related to the purchases and sales of second-hand cars from the administrative-territorial unit where the seller had his domicile. Following the analysis carried out by the tax inspection bodies, they assessed that the person in question is a taxable person due to the fact that he made intra-Community purchases of second-hand cars from natural persons, goods that he later resold to other natural persons, thus carrying out, in their opinion, an economic activity for the purpose of obtaining income with a continuity character. The tax inspection team also found that the exemption cap for the sale of second-hand cars had been exceeded, as it was necessary for the person in question to become a VAT payer. Thus, taxation decisions were issued in which the control bodies established value added tax payment obligations by applying the standard VAT rate on the tax base, related to car sales operations. Since the administrative appeal filed by the taxpayer against the taxation decisions was rejected, the only way to rectify the situation remained to file an action to annul the administrative-fiscal acts issued following the fiscal control.

3. The Illegality of the Standard VAT Taxation Regime Applied by the Control Bodies. The Margin Scheme Requirements in Romanian and EU Law

The tax inspection bodies have assessed that the trading of a number of second-hand cars (most of which were considered taxable operations from the point of view of VAT) represents a taxable operation from the point of view of

[11] Art. 3 para. (3) of the Romanian Civil Code provides: "The exploitation of an enterprise is the systematic exercise, by one or more persons, of an organized activity that consists in the production, administration or alienation of goods or in the provision of services, regardless of whether or not it is for profit."

VAT. Therefore, starting from the date on which it was considered that the taxpayer had to become a VAT payer, they proceeded to establish the VAT tax obligations for the transfer of ownership of second-hand cars.

After determining the tax base, the control body proceeded to apply the standard VAT rate of 24%, 20% and 19% respectively on the tax base[12].

The tax authorities claimed that the margin scheme taxation regime is not applicable in this case, since the condition provided for in art. 152^2 of Law no. 571/2003 regarding the Tax Code[13], respectively art. 312 of Law no. 227/2015[14] - the reseller is a taxable person - is not met. In the justification, it is stated that the tax regime of the margin scheme is not incidental, because the tax payer did not fulfill the obligations imposed by art. 153^1 of Law no. 571/2003 regarding the Tax Code (special registration for VAT purposes)[15], respectively art. 153 para.

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[12] The VAT rate of 24% was applied in Romania between 01.07.2010-31.12.2015, according to the provisions of Emergency Government Ordinance no. 58/2010. Then, between 01.01.2016-31.12. 2016, the VAT rate was reduced to 20%, according to art. 291 of the Tax Code (Law no. 227/2015). Starting from 01.01.2017, the VAT rate in Romania is 19%.

[13] Art. 152^2 of the Tax Code (Law no. 571/2003), entitled: "Special regimes for second-hand goods, works of art, collectibles and antiques", provides in the content of para. (2): "The reseller taxable person will apply the special regime for deliveries of second-hand goods, works of art, collectibles and antiques, other than works of art delivered by their authors or legal successors, for which there is an obligation to collect tax, goods that he purchased from within the Community, from one of the following suppliers: a) a non-taxable person; b) a taxable person, to the extent that the delivery made by said taxable person is exempt from tax, according to art. 141 para. (2) g); c) a small enterprise, to the extent that the respective acquisition refers to capital goods; d) a reseller taxable person, to the extent that the delivery by him was subject to tax under a special regime."

[14] The text of art. 312 of Law no. 227/2015 is almost identical to art. 152^2 of Law no. 571/2003 regarding the Tax Code. Para. (2) of art. 312 provides: "The reseller taxable person will apply the special regime for deliveries of second-hand goods, works of art, collectibles and antiques, other than works of art delivered by their authors or legal successors, for which there is an obligation to collect tax, goods purchased from within the European Union, from one of the following suppliers: a) a non-taxable person; b) a taxable person, to the extent that the delivery made by said taxable person is exempt from tax, according to art. 292 para. (2) g); c) a small enterprise, to the extent that the respective acquisition refers to capital goods; d) a taxable person reseller, to the extent that the delivery by him was subject to tax under a special regime."

[15] According to paragraph (1) of art. 153^1 of Law no. 571/2003 regarding the Tax Code: "It has the obligation to request registration for VAT purposes, according to this article: a) the taxable person whose economic activity is based in Romania and the non-taxable legal person established in Romania, unregistered and who does not have the obligation to register according to art. 153 and which is not already registered according to letter b) or c) or para. (2), who makes a taxable intra-community purchase in Romania, before making the intra-community purchase, if the value of the respective intra-community purchase exceeds the cap for intra-community purchases in the calendar year in which the intra-community purchase takes place; b) the taxable person whose economic activity is based in Romania, unregistered and who does not have the obligation to register according to art. 153 and which is not already registered according to letter a) or c) or para. (2), if he provides services that take place in another member state, for which the beneficiary of the service is the person obliged to pay the tax according to the equivalent of art. 150 para. (2) in the legislation of another member state, before the provision of the service; c) the taxable person who has established his seat

(1) lit. b)[16] from the same normative act (registration for VAT purposes, when exceeding the cap of 65,000 euros).

The author considers that it is clearly illegal to apply the standard VAT rate on the taxable base, since the taxpayer had the status of a taxable reseller to whom the special regime for supplies of second-hand goods (the margin scheme taxation regime) should be applied.

3.1. The Reason for Implementing the Margin Scheme in European and National Law

The margin scheme was established by Directive 94/5/EC and integrated into art. 311-343 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter Directive 2006/112/EC). Moreover, the aim of the margin scheme was to harmonize the regimes applicable to new goods purchased and subject to VAT, later resold as a second-hand object, and to avoid double taxation[17], as well as distortion of competition between taxable persons in the field of second-hand goods[18]. These aspects emerge from recital (51) of Directive 2006/112/EC[19], as well as from the Judgment of March 3,

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of economic activity in Romania, who is not registered and does not have the obligation to register according to art. 153 and which is not already registered according to letter a) or b) or para. (2), if he receives from a provider, a taxable person established in another member state, services for which he is obliged to pay tax in Romania according to art. 150 para. (2), before receiving the respective services."

[16] Art. 153 para. (1) sect. b) from Law no. 571/2003 regarding the Tax Code states: "The taxable person who has the seat of economic activity in Romania and carries out or intends to carry out an economic activity that involves taxable operations, exempt from value added tax with the right to deduct and/or operations resulting from economic activities for which the place of delivery/service is considered to be abroad, if the tax would be deductible, if these operations were carried out in Romania according to art. 145 para. (2) sect. b) and d), must request registration for VAT purposes with the competent fiscal body, as follows: b) if during a calendar year it reaches or exceeds the exemption cap provided for in art. 152 para. (1), within 10 days from the end of the month in which it reached or exceeded this cap."

[17] Madeleine Merkx (2021), "A New (Circular) Economy: A New Special Arrangement for Second-Hand Goods!", *EC Tax Review* 30, no. 2: 65, https://doi.org/10.54648/ecta2021008.

[18] For a doctrinal approach regarding the extension of the applicability of the margin scheme to other categories of transactions, see Sijbren Cnossen (2021), "The C-inefficiency of the EU-VAT and what can be done about it", *International Tax and Public Finance* 29, no. 1: 215–236, https://link.springer.com/article/10.1007/s10797-021-09683-0.

[19] "*It is appropriate to adopt a Community taxation system to be applied to second-hand goods, works of art, antiques and collectors' items, with a view to preventing double taxation and the distortion of competition as between taxable persons."* Full text available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32006L0112 (last accessed November 20, 2022).

2011, Auto Nikolovi C-203/10, para. 47[20], Judgment of April 1, 2004, Förvaltnings AB Stenholmen, C-320/ 02, para. 25[21], Judgment of 8 December 2005, Jyske Finans, C-280/04, EU:C:2005:753, para. 37[22]. The Court of Justice of the European Union noted that the establishment of derogatory rules for second-hand goods are even more important in the second-hand car trade, due to the frequency of these types of transactions in day to day business[23].

The provisions established at the European level regarding the margin scheme were also implemented in the Romanian legislation, in the content of art. 152^2 of Law no. 571/2003 regarding the Tax Code, respectively of art. 312 of Law no. 227/2015 regarding the Tax Code.

3.2. Meeting the Conditions Related to the Application of the Margin Scheme

According to art. 152^2 paragraph (2) of Law no. 571/2003 regarding the Tax Code, respectively of art. 312 para. (2) from Law no. 227/2015 regarding the Tax Code "*The reseller taxable person will apply the special regime for the supply of second-hand goods, (...), for which there is an obligation to collect the tax, goods that he purchased from within the Community, from one of the following suppliers: a) a non-taxable person; (...)".*

In the auhor's opinion, from these legal provisions it can be deduced that the application of the margin scheme is conditional on the cumulative achievement of the following conditions: the quality of a taxable reseller person (i), making deliveries of goods second-hand (ii), goods that were purchased from within the European Union (iii) and, last but not least, the supplier of the goods is one of the persons provided for in letters a)-d) (iv).

(i) By "taxable reseller" is meant "the taxable person who, in the course of the economic activity, acquires or imports second-hand goods and/or works of art, collectibles or antiques for the purpose of resale, regardless of whether the said taxable person acts in his own name or on behalf of another person in the context of a purchase or sale commission contract." (art. 152^2 par. (1) sect. e) of Law no. 571/2003 regarding the Tax Code, respectively of art. 312 para. (1) lit. e) from Law no. 227/2015 on the Tax Code).

In European law according to art. 311 para. (1) point 5 of Directive 2006/112/EC this notion has the equivalent of "taxable dealer", that is defined as

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[20] CJEU 3 March 2011, C-203/10 (Direktsia 'Obzhalvane i upravlenie na izpalnenieto' – Varna v. Auto Nikolovi OOD), ECLI:EU:C:2011:118.
[21] CJEU, 1 April 2004, C-320/02 (Förvaltnings AB Stenholmen v. Riksskatteverket), ECLI:EU:C:2004:213.
[22] CJEU, 8 December 2005, C-280/04 (Jyske Finans A/S v Skatteministeriet), ECLI:EU:C:2005:753.
[23] CJEU 10 July 1985, 17/84 (Commission v. Ireland), ECLI:EU:C:1985:310, para. 14.

"any taxable person who, in the course of his economic activity and with a view to resale, purchases, or applies for the purposes of his business, or imports, second-hand goods, works of art, collectors' items or antiques, whether that taxable person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale".

Taking into account the definitions established by the European and national legislators, the author considers that the status of reseller taxable person, respectively taxable dealer is applicable in the facts previously presented. Thus, as part of the economic activity carried out, the persons subject to tax control purchase second-hand cars from within the European Union, with the aim of reselling them on the territory of Romania.

(ii) The notion of "second-hand goods" includes "movable tangible goods that can be reused in the condition in which they are or after carrying out repairs, other than works of art, collectibles or antiques, precious stones and other goods provided in the rules" (art. 152^2 par. (1) sect. d) of Law no. 571/2003 regarding the Tax Code, respectively of art. 312 para. (1) sect. d) from Law no. 227/2015 on the Tax Code).

However, both from the conclusions drawn by the tax inspection bodies and from the documents made available by the local administrative authority, it emerged that second-hand cars were purchased from the European Union, which were later resold on Romanian territory.

(iii) Regarding the purchases of second-hand goods within the European Union, there is no controversy, as the fiscal inspection bodies found that all cars were purchased from suppliers located in the European Union.

(iv) All cars traded during the period subject to fiscal control were purchased within the European Union from suppliers, non-taxable persons (natural persons). All sales contracts were concluded with natural person suppliers, a fact also established by the fiscal inspection bodies in the content of the fiscal inspection report. Therefore, the author considers that this necessary condition for the application of the special regime is also met.

3.3. Tax base[24]

According to art. 152^2 para. (1) sect. g) from Law no. 571/2003 regarding the Tax Code, respectively of art. 312 para. (1) sect. g) from Law no. 227/2015 regarding the Tax Code, "the profit margin is the difference between the selling price applied by the reseller taxable person and the purchase price, in which:

1. the sales price is the amount obtained by the reseller taxable person from the buyer or from a third party, including subsidies directly related to this

[24] For a definition of the tax base, see Emilian Duca (2018), *Codul fiscal comentat și adnotat*, Bucharest: Universul Juridic, p. 430.

transaction, taxes, payment obligations, fees and other expenses, such as those of commission, packaging, transport and insurance, charged by the taxable person reseller to the buyer, except for price reductions;

2. the purchase price represents everything that constitutes the amount obtained, according to the definition of the selling price, by the supplier, from the reseller taxable person"

In this case, the tax base is the actual profit margin, a base that is lower than that determined by the tax inspection team by applying the standard tax regime.

Example: *Let's imagine that a natural person buys a car from Germany and pays the price of 1000 euros. Shortly after, he sells it in Romania for 1,500 euros. The VAT due is 19%.*

	VAT due	**Method of calculation**
Tax control – standard VAT regime tax	VAT (19%) = 240 EUR	VAT was determined by reference to the sales price (1.500 EUR), considering that it includes VAT, based on the following formula: VAT = (1.500x19) / 119
Margin scheme	VAT (19%) = 80 EUR	VAT has been calculated on the margin between the selling price (1.500 EUR) and the purchase price (1.000 EUR) = 500 EUR, based on the following formula: VAT = (500x19) / 119

The explanation lies in the fact that the VAT is included in the purchase price, being paid by the final consumer at the time he bought the good. VAT cannot be refunded because it is included in the price of the good, and the seller cannot include this tax in the invoice. The margin scheme allows the taxation of VAT for the difference between the selling price and the purchase price.

3.4. The Application Rules of the Margin Scheme

The appeal resolution bodies reasoned that the special charging regime provided for by art. 152^2 of Law no. 571/2003 regarding the Tax Code, respectively art. 312 of Law no. 227/2015 would not be applicable, since "the petitioner did not fulfil the condition that the reseller is a taxable person, respectively he did not comply with the provisions of art. 153 para. (1) sect. b) to request registration for VAT purposes upon exceeding the cap of 65,000 euros and to become a VAT payer." At the same time, the bodies that proceeded to resolve the appeal assessed

that another imperative condition for the application of the special taxation regime would be the authorization of the taxpayer according to the provisions of art. 6 of Emergency Government Ordinance no. 44/2008 regarding the conduct of economic activities by authorized natural persons, individual businesses and family businesses[25].

The author cannot accede to the conclusions of the fiscal body, as both national and European law do not condition the application of the margin scheme on the fulfilment of formal conditions.

First of all, according to art. 152, point 62 para. (2) sect. a) from Government Decision no. 44/2004 for the approval of the Methodological Norms for the application of Law no. 571/2003 regarding the Tax Code, in the situation where the taxable person does not register with the tax authorities for VAT purposes according to art. 153 of the Fiscal Code, the control bodies will "request the payment of the tax that the taxable person should have collected if he had been registered normally for tax purposes according to art. 153 Tax Code". Therefore, the tax inspection bodies establish tax obligations regarding VAT that the taxable person would have had to pay if he had been properly registered in the administration's records.

Secondly, according to the provisions of art. 310 point 84 paragraph (2) sect. c) from Decision no. 1/2016 regarding the approval of the Methodological Norms for the application of Law no. 227/2015 regarding the Tax Code, "if non-compliance with the legal provisions is identified by the tax inspection bodies before the registration of the taxable person for VAT purposes according to art. 316 of the Fiscal Code, the competent fiscal body ex officio registers these persons for tax purposes".

The author notes that, in this case, the secondary legislation does not distinguish between the regimes applicable to the calculation of VAT (the standard regime and the regime of the margin scheme). It only decides on the legal prerogative of the tax inspection bodies to proceed with the registration in the administrative record of a person who carried out economic activities and met all the legal conditions to become a taxable person, from the perspective of the provisions of the Tax Code. Another interpretation of the cited legal provisions would be in contradiction with the general principles in the matter of VAT, but also with European jurisprudence.

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[25] Art. 6 of Emergency Government Ordinance no. 44/2008 provides: "(1) Any economic activity carried out permanently, occasionally or temporarily in Romania by authorized natural persons, individual businesses and family businesses must be registered and authorized, under the conditions of this emergency ordinance. (2) The authorization of operation, under the conditions of this emergency ordinance, does not exempt authorized natural persons, individual businesses and family businesses from the obligation to obtain, before the start of the activity, the authorizations, notices, licenses and the like, provided for in special laws, for carrying out certain economic activities."

Registration for VAT purposes by the tax inspection bodies, on the occasion of the identification of a person who did not comply with the legal provisions regarding this registration, cannot have the meaning of a forfeiture of the taxpayer's right to have a tax regime applied to him to which he is entitled, in this case that of the margin scheme.

Thirdly, the fiscal bodies that proceeded to resolve the appeal considered, in an unjustified way, that due to the fact that the authorization procedure at the Trade Registry provided for by art. 6 of Emergency Government Ordinance no. 44/2006 regarding the conduct of economic activities by authorized natural persons, individual businesses and family businesses, there is no possibility of applying the special margin scheme. However, in the normative act indicated by the administrative bodies (Emergency Government Ordinance no. 44/2008) there is no provision indicating the application of such a sanction.

Moreover, according to art. 2 para. (1) from Law no. 12/1990 on the protection of the population against illegal production, trade or service provision activities, the performance of production, trade or service provision activities, as the case may be, not complying with the conditions established by law constitutes a contravention, if they were not carried out in such conditions to be considered, according to the criminal law, crimes.

Therefore, the author could not identify a legal provision that explicitly establishes that, in the absence of an authorization of the activity, the fiscal body will proceed to forfeit the taxpayer's right to apply the special margin scheme. Application of legal provisions by analogy is clearly illegal.

It is also necessary to point out the fact that in the content of art. 152^2 paragraph (2) of Law no. 571/2003 regarding the Tax Code, of art. 312 para. (2) from Law no. 227/2015 regarding the Tax Code, respectively of art. 313 para. (1) of Directive 2006/112/CE the indicative ("shall apply") is used. Thus, it is illustrating that both the Member States and the administrative bodies have no margin of appreciation in the matter regarding the application of this special regime. The same opinion is expressed by Advocate General Yves Bot, in paragraph 43 of his conclusions presented in Case Sjelle Autogenbrug I/S v. Skatteministeriet, C-471/15[26]. The General Advocate also adds "I recall that Article 313(1) of that directive provides that 'in respect of the supply of second-hand goods … carried out by taxable dealers, Member States *shall apply* a special scheme for taxing the profit margin made by the taxable. The use of the verb 'shall' in that paragraph does not, in my opinion, allow the Member State any discretion as regards the application of the special scheme.".

At the same time, in the Judgment of March 3, 2011, Auto Nikolovi (C-203/10, EU:C:2011:118), the Court of Justice of the European Union claimed that

[26] CJEU 16 September 2016, C-471/15 (Sjelle Autogenbrug I/S v. Skatteministeriet), ECLI:EU:C:2016:724, para. 43.

"In Article 314 of Directive 2006/112, the definition of the cases covered by the application of the margin scheme is in unequivocal terms and does not require the intervention of any other measures, either of the European Union institutions or of the Member States."[27]

Also, the persons subject to tax control did not express their option for the normal taxation regime in terms of VAT, as provided by the provisions of art. 152^2 para. (7) from Law no. 571/2003 regarding the Tax Code, respectively of art. 312 para. (7) from Law no. 227/2015 regarding the TaxCode, which is why the only regime that can be legally applied is the special one[28].

From the way the legislator regulated the provisions of art. 152^2 para. (2), para. (7) from Law no. 571/2003 regarding the Tax Code, respectively of art. 312 para. (2), para. (7) from Law no. 227/2015 regarding the Tax Code, it follows that, in reality, in the case of second-hand goods, the margin regime is common law, the normal regime being applied as an exception, in the event of the existence of a manifestation of will in this regard. However, in the absence of an option on the part of the taxpayer, the administrative body cannot substitute itself in its rights.

In considering the arguments invoked, it follows, therefore, that the tax inspection bodies do not have the option to choose, discretionarily and unilaterally, the regime applicable in the case, but it is absolutely necessary that, once the quality of a taxable person has been established and the conditions of the special regime have been met[29], to automatically apply these provisions. A contrary interpretation would conflict with the purpose for which the margin scheme was established.

With regard to the principle of VAT neutrality, the margin scheme aims to avoid double taxation and distortion of competition between taxable persons, among others in the field of second-hand goods. The Court of Justice of the European Union recalled the dual objective of this regime in paragraphs 47 and 48 of the Judgment of March 3, 2011, Auto Nikolovi (C-203/10, EU:C:2011: 118)[30].

In the Judgment of 10 November 2011, The Rank Group (C-259/10 and C-260/10[31]), the Court of Justice of the European Union decided that the principle of fiscal neutrality must be interpreted as meaning that a difference in treatment

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[27] CJEU 3 March 2011, C-203/10 (Direktsia 'Obzhalvane i upravlenie na izpalnenieto' – Varna v. Auto Nikolovi OOD), ECLI:EU:C:2011:118, para. 62.

[28] The taxpayer has the right to opt for not applying the margin scheme. Merkx, "A New (Circular) Economy", 65.

[29] It is true that, according to the jurisprudence of the CJEU, the conditions for the application of the special taxation regime should be construed narrowly. CJEU 29 November 2018, C-264/17 (Harry Mensing), ECLI:EU:C:2018968, para. 22.

[30] See CJEU 3 March 2011, C-203/10 (Direktsia 'Obzhalvane i upravlenie na izpalnenieto' – Varna v. Auto Nikolovi OOD), ECLI:EU:C:2011:118, para. 47-8.

[31] CJEU, 10 November 2011, C-259/10 (Commissioners for Her Majesty's Revenue and Customs v. The Rank Group plc.), ECLI:EU:C:2011:719.

with regard to value added tax between two supplies of services that are identical or similar from the point of view of the consumer and that meet the same needs of the consumer is sufficient to establish a violation of this principle. It indicated, in addition, that that principle opposes the provision of similar services, which are therefore in competition with each other, to be treated differently from the point of view of VAT (Judgment of 19 July 2012, A (C-33/11, EU:C:2012:482, paragraph 32 and case-law cited[32]) and Judgment of 15 November 2012, Zimmermann (C-174/11, EU:C:2012:716, paragraph 48[33]). CJEU added that the principle of fiscal neutrality includes the elimination of distortion of competition resulting from differential treatment from the point of view of VAT[34]. Distortion is therefore demonstrated as soon as the provision of services is found to be in competition and treated unequally from VAT point of view.

Thus, by taxing not the selling price of the good, but only the profit margin, the regime avoids, on one hand, that this resold good is affected by double taxation and, on the other hand, that the trader, a taxable person, is obliged to pay the member state a VAT rate from which he could not have deducted the amount he paid upstream, which would have the effect of creating a distortion of competition. Therefore, since the good is reintegrated into the commercial circuit, the taxable trader is obliged to pay VAT when he proceeds to sell the good. However, given that he did not pay VAT when buying the second-hand good from the non-taxable individual, he cannot deduct it from the amount that must be paid to the state, an amount constituted exclusively in this case from the VAT collected at the sale of this good. This results in a breach of the VAT neutrality principle and a double taxation for the respective good[35].

With regard to the objective of avoiding distortion of competition between taxable persons, it must be pointed out that recital (7) of Directive 2006/112/CE provides that the common VAT system is necessary to lead, even if the quotas and exemptions are not on fully harmonized, to a neutrality in the field of competition, so that, on the territory of each Member State, similar goods and services bear the same tax burden, regardless of the length of the production and distribution chain.

However, the refusal to apply the margin scheme regarding an activity

[32] CJEU, 19 July 2012, C-33/11 (A Oy), ECLI:EU:C:2012:482.
[33] CJEU, 15 November 2012, C-174/11 (Finanzamt Steglitz v Ines Zimmermann), ECLI:EU:C:2012:716.
[34] We must not lose sight of the fact that VAT fraud also disturbs competition, but this situation involves, most of the time, a criminal activity on the part of taxpayers, an aspect that differs from the factual situation analyzed in this study. For more details on European VAT imperfections, see Madeleine Merkx, John Gruson, Naomie Verbaan & Bart van der Doef (2018), "Definitive VAT Regime: Stairway to Heaven or Highway to Hell?", *EC Tax Review* 27, no. 2: 75.
[35] For the example prosed by the author, see section 3.3 above.

such as the one in question would have the effect of leading precisely to a distortion of competition on the second-hand car sales market between taxable traders who sell said cars and taxable traders who bought the second-hand cars as such.

4. The Echo of Arguments in National Jurisprudence. The Intervention of the High Court of Cassation and Justice of Romania

Courts in Romania have been invested with a series of cases aimed at annulling the administrative-fiscal acts concluded by the control bodies. The plaintiffs' request was based on the argument of the wrong application of the standard VAT tax regime, ignoring the incidence of the margin scheme.

On April 14, 2021, the Cluj Court of Appeal, in resolving the appeal, ordered in Decision no. 449/14.04.2021: "*The special tax regime is in line with the principle of VAT neutrality, as the court of first instance held. However, as found by the trial court, for the part of the price of the cars that did not represent the plaintiff's profit margin, respectively for their residual value compared to the factory price, VAT was collected twice, once in the member state where they were first sold, and the second time in Romania, at the time of their resale, thus violating the principle of VAT neutrality. If VAT had been calculated in Romania only with regard to the plaintiff's profit margin, the principle of neutrality would not have been violated, because this margin is a new element, which only appeared when the plaintiff carried out commercial operations and for which, therefore, no VAT was previously paid*."

In the same sense, the Cluj Court of Appeal ruled in Decision no. 944/22.09.2021 in the following manner: "*However, applying the relevant CJEU jurisprudence, the Court held that the plaintiff can benefit from the special tax regime provided by art. 152[2], respectively art. 312 of the Tax Code, failing to fulfill the obligation to register for VAT purposes cannot be considered as a valid argument. Neither the Tax Code nor the application rules refer to obtaining the authorization to carry out economic activities, provided by Emergency Government Ordinance no. 44/2008, and the CJEU held in case C-324/11 Gabor Toth that "the notion of "taxable person" is broadly defined, based on factual circumstances. On the other hand, from the mentioned Article 9 paragraph (1) it does not appear that the quality of taxable person depends on any authorization or any license granted by the administration in order to exercise an economic activity. Of course, the first subparagraph of Article 213(1) of Directive 2006/112 states that any taxable person declares when he starts, changes or ceases his activity as a taxable person. However, despite the importance for the proper functioning of the VAT system of such a declaration, it could not constitute an additional necessary condition for the recognition of the quality of taxable person within the meaning of Article 9(1) of the same directive, given that this article 213 appears under title XI thereof, chapter 2, entitled "Identification"*."

On December 13, 2021, the High Court of Cassation and Justice was called to rule on the application of the rules of law regarding the intra-Community trade of second-hand cars. By Decision no. 84/2021, from file no. 2482/1/2021, the Panel for resolving some legal issues of the Supreme Court ordered: "*1. The special tax regime regulated by art. 152² para. (4) from Law no. 571/2003 regarding the Tax Code, with subsequent amendments and additions for second-hand operations, also applies to natural persons who have not fulfilled the obligation provided by art. 6 para. (1) from Government Emergency Ordinance no. 44/2008 regarding the carrying out of economic activities by authorized natural persons, individual businesses and family businesses and who carried out the economic activity of reselling second-hand cars, when registration as a VAT payer was carried out ex officio by the fiscal body, if it is proven that the taxable person met the basic conditions provided by art. 152² para. (2) from Law no. 571/2003 regarding the Tax Code, with subsequent amendments and additions. 2. Application of the special regime provided by art. 152² para. (4) from Law no. 571/2003 regarding the Tax Code, with subsequent amendments and additions, by the fiscal body that ordered the ex officio registration of the person as a VAT payer is not conditioned by the fulfillment of the formal conditions established by art. 152² para. (13) from Law no. 571/2003 regarding the Tax Code, with subsequent amendments and additions, and point 64 para. (7) from the methodological norms for the application of Law no. 571/2003 regarding the Tax Code, approved by Government Decision no. 44/2004, with subsequent amendments and additions, if it is proven that the taxable person fulfills the substantive conditions provided for by art. 152² para. (4) from Law no. 571/2003 on the Tax Code, with subsequent amendments and additions.*"

From our perspective, the intervention of the High Court of Cassation and Justice was not necessary considering that the application of the margin scheme regarding intra-Community trade in second-hand cars was already clarified by European and national legislation. The idea can be supported all the more since the CJEU applied and explained the incidental provisions in the matter of the margin scheme in a constant jurisprudence, which the author detailed in the previous paragraphs. Of course, the decision of the High Court of Cassation and Justice strengthens the author's arguments, but, as it was shown, the practice of the lower courts was beginning to crystallize even before the High Court of Cassation and Justice issued the Decision no. 84/2021.

5. Conclusions

In this article, the author addressed the special provisions for second-hand goods in the internal market. Thus, as long as all the conditions provided by European and national legislation are met, the margin scheme must apply to transactions regarding second-hand goods, without the tax authorities being able to

impose additional formalities (such as registration as a payer of VAT or business authorization). However, it remains to be seen how the margin scheme will face the new challenges of the 21st century, in the context of the circular economy that has become Europe's target for 2050[36].

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Administrative Decision - Administrative Act and/or Voluntary Process. A View of the Acts Issued by the National Energy Regulatory Authority in the Process of Applying Sanctions to the Operator's Turnover

Assistant professor **Ionela Alina ZORZOANĂ**[1]
Associate professor **Mihaela Victorița CĂRĂUȘAN**[2]

Abstract

The idea of this study arose from an issue that has provoked discussions in the recent practice of the administrative litigation court, but also among practitioners in the field of administrative law. Starting from the definition(s) provided by the Administrative Litigation Law no. 544/2004, but also the current benchmarks contained in the Administrative Code, we will make a comparative analysis of the administrative decision, as an administrative act that emanates from a single-person body (prime minister, head of a specialized body[3]) or as a volitional act resulting from the decision-making process of public administration authorities/ structures. This general analysis will represent the starting point for the case study we have proposed regarding the acts[4] issued/adopted by ANRE[5]. In such a context, starting from the provisions of the Energy and Natural Gas Law no. 123/2012[6] which introduced the procedure for sanctioning contraventions based on the offender's turnover, the issue of the legal nature of the act by which the amount of the fine is individualized (following the conduct of control or investigation actions) was raised. Obviously, this issue arose mainly due to the use of the (unfortunate) name of decision at the level of secondary legislation. And yet, what is the decision? Is it an administrative act, issued by a single-person body or a decision-making process of a collegial, multi-person body? Our analysis will take into account specific legislation, court case law, as well as cases of other authorities to which the legislator has granted the

[1] Ionela Alina Zorzoană - Faculty of Public Administration, National School of Political and Administrative Studies, Romania, alinazorzoana@gmail.com.
[2] Mihaela Victorița Cărăușan - Faculty of Public Administration, National School of Political and Administrative Studies, Romania, ORCID: https://orcid.org/0009-0008-2684-6633, mihaela.carausan@administratiepublica.eu.
[3] We will identify from the specific legislation such administrative acts.
[4] We will not call them administrative or preliminary operations at this time, saving these aspects for the study's conclusions.
[5] According to art. 1 of Government Emergency Ordinance no. 33/2007, regarding the organization and functioning of the National Energy Regulatory Authority, with subsequent amendments and additions, *ANRE is an autonomous administrative authority, with legal personality, under parliamentary control, fully financed from its own revenues, independent in decision-making, organizationally and functionally, having as its object of activity the development, approval and monitoring of the application of the set of mandatory regulations at national level necessary for the functioning of the electricity, thermal energy and natural gas sector and market in conditions of efficiency, competition, transparency and consumer protection.*
[6] Art. 95 paragraph (2): *In the case of contraventions for which sanctions are provided in relation to turnover, the establishment and individualization of sanctions will be carried out by the Regulatory Committee based on a procedure approved by the president of ANRE, within 60 days from the date of entry into force of this normative act.*

possibility of applying contravention sanctions as a percentage of an operator's turnover. In order to give this study a note of comparative law, we will try to identify similar aspects or notable differences in the legislation of other European states in which the same sanctioning regime (percentage of the sanctioned operator's turnover) is provided. The study will conclude with a series of conclusions and even possible proposals de lege ferenda.

Keywords: *act decizional, consens, unipersonal, pluripersonal, energie, contravenție*

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1. General aspects

Public administration is represented by the set of state structures that apply laws and manage the general interests of society. Unlike the legislature, which develops general norms, and the judiciary, which interprets the law in specific cases, the administration executes. But the execution of the law does not mean only automatic application. It almost always involves a decision, that is, a choice between several possible solutions, depending on the context, legality and opportunity, or even more, an analysis and an entire volitional process. The activity of public authorities is reflected in the decisions they make, which take the form of administrative acts, which establish rights and obligations for the recipients, individuals or legal entities, in compliance with the principles set out in the Administrative Code[7]. Thus, the administrative decision is legally concretized in the form of an administrative act, the instrument through which the volitional process produces legal effects. This act is, in essence, a unilateral manifestation of the will of the public authority, issued on the basis of the law, but applicable to an

[7] Art. 6 Principle of legality; art. 7 Principle of equality; art. 8 Principle of transparency; art. 9. Principle of proportionality; art. 10. Principle of meeting the public interest, art. 11 Principle of impartiality; art. 12. Principle of continuity; art. 13 Principle of adaptability. Also see OECD (2023). *OECD Review of the Corporate Governance of State-Owned Enterprises in Romania*. *Corporate Governance* Report. Paris: OECD Publishing, https://doi.org/10.1787/fabf20a8-en.

individual situation. In many cases, however, the issuance of an administrative act is not limited to the mechanical application of the norm, but involves a volitional process: a substantive analysis of the context, the public interest and the possible consequences. In this area of assessment, the administration exercises its discretionary power, guided not only by legality, but also by opportunity, fairness and efficiency. Thus, the administrative decision becomes the result of a synthesis between the legal norm and the professional judgment of the authority – between law and will, between rule and adaptation.

In the table of contents ReNEUAL[8], in section B. Rules, Chapter 1, art. III-2 Definitions, we find the decision mentioned as being "*administrative action addressed to one or more individualized public or private persons, which has been adopted unilaterally by an EU authority or by an authority of a Member State, when Article III-1 (2) applies, adopted in order to settle one or more specific cases, with legally binding effect*". Also, in section C., Explanations, Chapter 1, art. III-2 Definitions, paragraph (5) the 4 main features of the decision are identified: it is adopted in the framework of an administrative action that excludes legislative and judicial acts; it is addressed to one or more persons, public or private; it is adopted unilaterally; the decision settles one or more specific cases, with legally binding legal effects[9]. So here we are talking about a decision in general, but in order to take the form of an administrative act, a series of conditions must be met.

The administrative act entails the production of legal effects, causing rights and obligations to arise, change or extinguish[10]. A series of definitions have been offered by the doctrine, thus the administrative act „*is a unilateral manifestation of legal will, based on and in the execution of the law, of an administrative authority, through which a new legal situation is formed, or a legal claim relating to a right recognized by law is refused, legal will subject to the administrative legal regime*"[11]; „*the main legal form of activity of public administration, which consists of a manifestation of express will, unilateral and subject to a regime of public power, as well as the legality control of the courts, which emanates from administrative authorities or from private persons authorized by them, through which correlative rights and obligations are born, modified or extinguished*"[12]; „*the administrative act is the main form of activity of public administration*" and „*it is imposed on legal subjects who are equally obliged to respect or execute*

[8] Herwig C.N. Hofmann, Jens-Peter Schneider, Jacquel Ziller, Dacian C. Dragoș (coord.), (2016), *The RenEUAL Code of Administrative Procedure of the EU*, Universul Juridic, Bucharest, p. 41.
[9] Idem, pp. 77-78.
[10] Alexandru Negoiță (1996), *Administrative Law,* Sylvi Publishing House Bucharest 1996, p. 133.
[11] Idem p.137.
[12] Verginia Vedinaș (coord.), (2022), *The commented administrative code. Explanations, jurisprudence, doctrine. Volume I – Art. 1-364*, Universul Juridic, Bucharest, p. 360.

it"[13], „*The administrative act represents a manifestation of will made for the purpose of creating, modifying or extinguishing legal relations, the realization of which is guaranteed by the coercive force of the state or ascertained by the coercive force of the state or ascertains legal situations regulated by law. The administrative act represents the main legal form of the activity of public administration structures*"[14]. Last but not least, we retain perhaps the most comprehensive definition of the administrative act as being „*in a broad sense, a unilateral manifestation of will, respectively an agreement of will, belonging, mainly, to a public administration authority, express or implicit, either to give rise to, modify or extinguish rights and obligations, or to satisfy a general interest, to provide a public service, to carry out a public work or to enhance a public good, in the exercise of public power, or to refuse or approve expressly or tacitly the requests of individuals relating to a right or a legitimate interest, under the legality control of the courts*"[15].

As noted in french literature, „*by its sole will, the competent administrative authority can in fact produce, for the benefit and especially to the detriment of those administered, a legal effect, modifying their situation without the need for their consent. Moreover, the decision thus taken is presumed legal, which authorizes the administration to proceed with its execution, even - at least in certain circumstances that the judge has specified - using coercion. This category includes, on the one hand, regulatory acts, that is, all measures of a general nature that emanate from an authority included in the executive power, on the other hand, individual acts, which specifically target a specific person. Administrative law establishes the rules relating to the creation of these acts (competence, forms, procedure), their validity and effect*"[16]. Beyond all these definitions offered by the doctrine, the administrative act represents the form of expression of the administration's decision, of an act of will and, last but not least, the effect of an entire adoption process.

Although we might have expected the legislator of the Administrative Code to provide a definition of the administrative act, as a form of expression of the administration's decision, however, we are still left with the references from the Administrative Litigation Law no. 554/2004, according to which the administrative act, susceptible to be annulled following the formulation of an adminis-

[13] Verginia Vedinaș (2009), *Administrative Law,* 5th revised and added edition, Universul Juridic, Bucharest p. 101.
[14] Gabriela Bogasiu (2022), *Administrative Litigation Law. Commented and Annotated*, 5th edn., revised and added, Universul Juridic Bucharest, p. 56.
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trative litigation action, is defined as „*the unilateral act of an individual or normative nature issued by a public authority, in the regime of public power, in order to organize the execution of the law or the concrete execution of the law, which gives rise to, modifies or extinguishes legal relations*"[17]. This definition has been rightly criticized in the specialized literature[18], the author appreciating that the administrative act should be defined as „*a unilateral manifestation of will, issued with the aim of producing legal effects, under public power, through which the application of the law is organized or, as the case may be, carried out in concrete terms*"[19].

Despite all the criticisms brought to the definition in the Administrative Litigation Law, the draft Administrative Procedure Code[20] has taken them over identically in art. 3 paragraph (1): „*For the purposes of this code, the terms and expressions below have the following meanings:*

a) administrative act – unilateral legal act that represents the manifestation of will of one or more public authorities, issued under the regime of public power, in order to organize the execution or the concrete execution of the law, for the purpose of creating, modifying or extinguishing legal relationships; manifestations of will originating from other public or private entities that carry out administrative activities as defined in letter h) of this paragraph are assimilated to administrative acts"[21].

Although it mainly retains the same elements from the definition provided by the Administrative Litigation Law, it nevertheless brings two new elements: the mention that it is a legal act (although what other type of act could have had the same characteristics) and the fact that it represents the manifestation of will of one or more public authorities, such as a joint order issued by two ministries.

Although the legislator of the Administrative Code does not provide a definition of the administrative act, he nevertheless uses the notion of decision in several contexts. Thus, it is spoken about *the right to decide*[22]*, administrative*

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[17] Art. 2 paragraph (1) letter c) of Law no. 554/2004.

[18] Ovidiu Podaru (2022), *Administrative Law, vol. I, the administrative act. New landmarks for a different theory. Volume I. Notion*, 2nd revised and added ed., Ed. Hamangiu, Bucharest, pp. 2-3.

[19] Idem, p.1.

[20] https://www.mdlpa.ro/pages/proiectlegecodadministrati8v21112023, accessed on 4.05.2025.

[21] h) public authority – any state body or administrative-territorial unit, with or without legal personality, which acts under public power to satisfy a legitimate public interest.

[22] Art. 5: ş) exclusive competence - the powers expressly and restrictively established by law for the local public administration authorities, for the performance of which they have the right to decide and have the necessary resources and means; t) shared competence - the powers exercised according to the law by local public administration authorities, together with other public administration authorities, expressly and restrictively established, with the establishment of financial resources and the limits of the right to decide for each public authority.

decision-making process[23]*, making a decision*[24] all of this leading rather to the idea of decision-making, the process of deciding. The only express references to the decision as an administrative act are those referring to the fact that the Prime Minister issues decisions, which are administrative acts[25].

In conclusion, although we would be tempted to believe that the administrative decision is confused with the administrative act, as a manifestation of a unilateral will of the administration, however, there are differences not only in nuance, but also in legal effects between the administrative decision as a unilateral act, therefore an administrative act, and the decision as the result of the volitional process that is the prerogative of a pluripersonal body.

Thus, the administrative decision is not (always) limited to the mechanical application of a rule(s), but involves: an evaluation, an appreciation of the authority, therefore a discretion in choosing the solution (obviously, within the limits of the law). This is the dimension of the volitional process, in which a pluripersonal body participates, the decision reflecting an administrative will in forming the solution, adapted to the concrete circumstances.

In the next section we will analyze an atypical situation, in which, due to a misunderstanding of the concept of decision, the bizarre and illegal situation can arise in which two courts of different levels judge the same thing, at least one of them violating the exclusive jurisdiction of the other. What is the triggering element of this hypothesis? Confusing the administrative decision as a volitional process with the decision as an administrative act, which can be the subject of the legality analysis of the administrative court.

As emphasized in the specialized doctrine, „*administrative litigation is based on two fundamental institutions of administrative law*"[26] one of these being „*the administrative act which represents the starting point in the legality analysis carried out by the court*"[27], so that in the absence of the administrative act there can be no action in administrative litigation[28].

2. Applicable Legal Framework. Theoretical Aspects

The challenge regarding ANRE's decision to apply sanctions for contraventions in the energy sector is directed towards the combined approach of legal

[23] Art. 8 The principle of transparency.
[24] Art. 47^11 Single Registry of Transparency of Interests.
[25] Art. 29 Prime Minister's decisions.
[26] Cătălin-Silviu Săraru (2022), *Administrative litigation treaty*, Universul Juridic, Bucharest, p. 6.
[27] Ibid.
[28] For a comparative and international view see Yael R. Lifshitz (2024), "The (Shifting) Audience of Energy Law." *King's Law Journal* vol. 35 issue 2: 312–36. doi: 10.1080/09615768.2024.2380339; and Juan Du, and Xufeng Zhu (2023). "Regulatory Transparency and Citizen Support for Government Decisions: Evidence from Nuclear Power Acceptance in China." *Journal of Environmental Policy & Planning* vol. 25, issue 6: 766–80. doi:10.1080/1523908X.2023.2269381.

norms and discretionary assessment of aggravating or mitigating circumstances.

What triggered all this legal *dispute*? The emergence of the Emergency Government Ordinanceno. 143/2021 for the amendment and completion of the Electricity and Natural Gas Law no. 123/2012, as well as for the amendment of some normative acts[29], which were introduced into Law no. 123/2012 on electricity and natural gas[30], the provisions of art. 95 para. (2) and (3). According to them, in the case of contraventions in the electricity sector for which the sanction provided is related to the operator's turnover, its establishment and individualization will be carried out by the Regulatory Committee[31] of ANRE, based on a procedure approved by the president of ANRE[32]. Also, criteria were introduced according to which the individualization of this type of sanction will be carried out[33]. The situation is identical for contraventions in the natural gas sector, when the sanction is related to turnover[34].

Thus, by introducing paragraph (2) of art. 95, the Regulatory Committee was assigned two new powers by the primary legislator, namely the decision on the establishment and individualization of sanctions, and not the adoption of decisions as administrative acts.

It should be emphasized that when the primary legislator referred to *the decision* as an administrative act, he added the verb *to order* to the word *decision*. In this sense, art. 84 of the aforementioned normative act states that „*The President of the competent authority orders, by decision, the carrying out of investigations, (...) only in the areas in which ANRE has the power to investigate according to the law*".

Pursuant to art. 95 paragraph (2), the President of ANRE issued Order

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[29] Published in the Official Gazette no. 1259 of December 31, 2021.

[30] Published in the Official Gazette no. 485 of July 16, 2012.

[31] According to art. 4 para. (1) of Government Emergency Ordinance no. 33/2007, „*For the approval of regulations in the electricity, thermal energy and natural gas sectors, a regulatory committee shall be established consisting of 7 persons - 4 non-executive members and the ANRE management, consisting of the president and the 2 vice-presidents provided for in art. 3 para. (1). The appointment and dismissal of the members of the Regulatory Committee, as well as the president and the 2 vice-presidents, shall be made by the Parliament in a joint session of the two Chambers*".

[32] Paragraph (2): *In the case of contraventions for which sanctions are provided in relation to turnover, the establishment and individualization of sanctions will be carried out by the Regulatory Committee based on a procedure approved by the President of ANRE, within 60 days from the date of entry into force of this normative act.*

[33] Paragraph (3): *The individualization of sanctions for the contraventions provided for in paragraph (2) will be done depending on the gravity and duration of the act, the impact on the electricity market and the final customer, depending on the case, in compliance with the principles of effectiveness, proportionality and the deterrent effect of the sanction applied.*

[34] Art. 198 paragraph (2): *In the case of contraventions for which sanctions related to turnover are provided, the establishment and individualization of sanctions will be carried out by the ANRE Regulatory Committee, based on a procedure approved by order of the ANRE president, within 60 days from the entry into force of this emergency ordinance.*

no. 12/2022 for the approval of the Procedure regarding the establishment and individualization of contravention sanctions related to the turnover resulting from the control activity[35] and Order no. 13/2022 for the approval of the Procedure regarding the establishment and individualization of contravention sanctions related to turnover, by the Regulatory Committee of the National Energy Regulatory Authority, as a result of investigative actions[36].

Chapter II of the Procedure approved by Order no. 12/2022 is called *the Process of adopting the decision to establish and individualize the sanction*, so the very title of the chapter shows that the issuer of the administrative act[37] aimed to regulate the procedural rules to be considered by the ANRE Regulatory Committee[38] in the process of adopting the decision on the individualization of sanctions that will be applied to economic operators and natural persons who commit contraventions that fall under the provisions of Law no. 123/2012 for which the fine is established in relation to turnover. This individualization is based on an entire evaluation process by the pluripersonal, collegial body, the Regulatory Committee. At the same time, in the content of the Procedure approved by Order no. 13/2022 there is Chapter II entitled *Establishment of sanctions, adoption of decisions by the Regulatory Committee*, so again, the issuer of the administrative act refers to the process of adopting the decision, from which, in our opinion, it is obvious that it is a volitional process of the competent body (the Regulatory Committee), not an administrative act.

Importantly at this point, we mention the fact that the primary legislator established through Law no. 123/2012, since its initial form, that, according to art. 93 paragraph (3) the finding of contraventions and the application of sanctions are made by authorized representatives of ANRE, and the finding and sanctioning of contraventions of deviations from the regulations issued in the field of electricity is governed by the common law rules established by O.G. no. 2/2001 regarding the legal regime of contraventions[39], so that the sanction of the contravention fine is applied to the violator exclusively through a report of finding and sanctioning.

Returning to the provisions of the two procedures, it is noted that art. 5 paragraph (1) of the Procedure approved by Order no. 12/2022 provides that the collegial body, the Regulatory Committee, meets in session, in order to establish and individualize the contravention sanction by decision that is adopted by simple majority vote. It is true that further, in paragraph (3) the situation is regulated in which, following the analysis carried out, the Regulatory Committee reaches the

[35] Published in the Official Gazette no. 202 of March 1, 2022.
[36] Published in the Official Gazette no. 195 of February 28, 2022.
[37] Order issued by the president of an administrative authority, so it can only be an administrative, normative, secondary legislation act.
[38] Collegial body, according to art. 4 para. (1) from Government Emergency Ordinance no. 33/2007.
[39] According to art. 94 and art. 194 paragraph (1) of Law no. 123/2012.

conclusion that the application of a sanction to the turnover is not required, then it issues a decision to this effect. The wording is unfortunate, because the collegial body does not issue, but adopts an administrative act, however, looking into the legal depth of the legal norm, we can easily deduce that the issuer of the Procedure approved by Order no. 12/2022 referred to the decision as a process, not as an administrative act. Thus, following the analysis carried out by the Regulatory Committee, it decides on the amount of the contravention fine that the determining agent specifically applies to the contravener[40]. In this context, it can be concluded from this moment that, in the absence of the issuance of the sanctioning report by the ascertaining agent, the will of the Regulatory Committee does not produce any legal effect, and the mere designation of this will as a decision does not mean its materialization in an administrative act. Furthermore, the provision that generated the legal situation analyzed in this paper is the one according to which the decision of the Regulatory Committee can be contested within 30 days from the date of communication, at the Bucharest Court of Appeal[41]. In our opinion, this provision cannot produce any legal effect, as it is not capable of establishing the competence and the term within which an act can be contested, let alone conferring a certain legal nature to that act, namely an administrative act, especially since neither Law no. 123/2012 nor O.U.G. no. 33/2007 provide for the existence of any appeal against the act generically called decision. Our conclusion is also in accordance with the provisions of art. 126 para. (2) of the Constitution according to which „*The competence of the courts and the trial procedure are provided only by law*"[42].

At the same time, it should be noted that the content of the Emergency Ordinance no. 33/2007 defines the Regulatory Committee as a deliberative forum that adopts decisions by majority, respectively that the acts resulting from these decisions (acts of deliberation, not their materialization) are signed by the president of ANRE, even if he voted against[43]. It follows that the primary legislator did not confer on the Regulatory Committee the attribute of issuing administrative acts, which could eventually be called decisions and which must be signed by all its members, but only of debating, deliberating, and submitting to a vote

[40] Art. 8*: Based on the decision to establish and individualize the sanction, the ascertaining agent applies the sanction by concluding the finding and sanctioning report which is communicated to the violator within the term provided for in art. 7 paragraph (1), together with the decision of the Regulatory Committee, the control report and the report.*

[41] Art. 7 paragraph (2) of the procedure approved by Order no. 12/2022.

[42] These aspects were also retained in civil sentence no. 2141/19 December 2024.

[43] Art. 4 paragraph (8): Decisions shall be adopted by simple majority. In the event of an equal division of votes, the vote of the chairman or, in his absence, of the vice-chairman presiding over the meeting shall be decisive. (9) The decisions adopted are binding on all members; members who voted against may request that their separate opinion be recorded in the minutes of the respective meeting. The President or the Vice-President who chaired the meeting is obliged to sign the documents resulting from the decision adopted, even if he voted against.

the approval of draft administrative acts, which are subsequently materialized in orders or decisions issued by the ANRE president.

In order to understand the differences between decisions (in the sense of an agreement of will subsequently materialized in an act signed by the ANRE president) and decisions adopted by other central or local public administration authorities, we mention for example the Government Decision and the Local/County Council Decision, authorities to which the constitutional and primary legislators expressly conferred the attribute of adopting decisions that have the legal nature of an administrative act. All the more so since neither Law no. 123/2012 nor OUG no. 33/2007 do not establish the competence of the Regulatory Committee to issue decisions, it follows that ANRE, through secondary legislation, could not introduce such provisions either.

Regarding the Procedure regarding the individualization of sanctions applied to turnover as a result of investigative actions, approved by Order no. 13/2022, in its initial version, it generated a series of interpretations refuted by the practice of the courts that seems to have taken shape up to this point[44]. Although at this point the analysis is purely theoretical, the procedure in question has been modified in order to better correlate with primary legislation and to avoid future misinterpretations[45], however, it has legal relevance, from the perspective of the practice of the Bucharest Court of Appeal pronounced up to this point, even in the absence (yet) of a final decision of the High Court of Cassation and Justice. Unlike the Procedure specific to control activity, the one relating to the individualization of sanctions related to investigative activity is much more complex, and it is necessary to analyze its provisions in conjunction with art. 24 paragraph (3) of the Regulation for the organization and conduct of investigative activity in the energy field regarding the functioning of the wholesale energy market approved by Order of the President of ANRE no. 25/2017[46], according to which the decision to finalize the investigation is subject to the appeals provided for in the Administrative Litigation Law no. 554/2004. This article could have been applicable in the situation where the decision would have included some elements that could not have been taken over in the minutes, so that the decision would have become a genuine administrative act contestable separately in admin-

[44] Although there is no final decision of the High Court of Justice to date, we will analyze in the next section of this study the decisions rendered to date, obviously, in anticipation of the first decision to be rendered by the High Court of Justice.

[45] Order of the President of ANRE no. 78/22.10.2024 amending Order of the President of ANRE no. 25/2017 (published in the Official Gazette of Romania no. 1105 of November 5, 2024), the Procedure approved by Order of the President of ANRE no. 13/2022 being correlatively amended, by issuing Order of the President of ANRE no. 79/22.10.2024 (published in the Official Gazette of Romania no. 1103 of November 5, 2024).

[46] Published in the Official Gazette no. 260 of April 13, 2017.

istrative litigation. In this regard, we point out that, „*After receiving the investigation report in its final form, the President of ANRE may order, as the case may be, for each market participant investigated, by decision to finalize the investigation: a) approval of the investigation report in its final form; b) completion of the investigation; (...) e) suspension of the license; (...)*"[47], therefore, if the contested decision had also included the suspension of the license, for example, a suspension which, according to art. 9 para. (4) of Law no. 123/2012 and the subsequent regulation issued by ANRE[48], can only be ordered by decision issued by the president of ANRE, it clearly follows that the respective decision would have fulfilled the necessary quality of an administrative act within the meaning of the Administrative Litigation Law and could have been challenged separately, at the competent Court of Appeal.

The Order of the President of ANRE no. 13/2022 does not contain any mention of the appeal against the decision to complete the investigation, which would derogate from the common law regime of administrative litigation (in fact, it could not have been derogated from by an administrative act from the law). It is understood from this that the sanctioned person will follow the normal procedural paths provided for by Law no. 554/2004, according to the rules of competence provided for by this administrative act and in compliance with all the procedural stages prior to the notification to the administrative litigation court. Moreover, art. 9 para. (2) letter c) expressly refers to the conclusion of a report of finding and sanctioning contraventions so that, regardless of the situation, the final sanctioning act is truly the latter, being the only one that is likely to produce legal effects.

From the above, several clearly defined conclusions result.

If the investigation/control team finds solid evidence of a violation of the law, given that the sanctions provided are related to turnover, the team draws up a preliminary report, then a final investigation report, or a control report in the case of control actions, and the Regulatory Committee can only approve the final investigation report/control report, but cannot supplement, correct or reject it, as there is no legal provision in this regard, neither in primary nor secondary legislation. In this situation, the Committee approves the completion of the investigation, an aspect materialized in the decision of the ANRE president, as a closure of the investigation activity through the same type of act as the one that marks the beginning of the investigation, namely the decision of the president[49]; therefore, the approval of the investigation report in its final form and the approval of

[47] According to art. 23 paragraph (6) of the Regulation approved by Order no. 25/2017.

[48] Regulation for granting licenses and authorizations in the electricity sector approved by ANRE Order no. 12/2015 – art. 5 para. (2) let. h) and art. 31.

[49] According to art. 9 para. (4) of the Regulation, „*In the event that, following the preliminary analysis, it is found that there are grounds, the president of ANRE shall order, by decision, the carrying out of investigations by his own staff empowered in this regard.*"

the completion of the investigation represent pure procedural formalities on the part of the Committee and the President of ANRE, and do not in any way transfer the competence to establish and sanction the contravention from the ascertaining/investigating agents to the members of the collegial body. On the other hand, if, following the investigation, the investigation team establishes that there are no solid indications regarding the violation of the law, which would justify the imposition of measures or sanctions by ANRE, then no preliminary investigation report and final investigation report will be drawn up and, following the proposal of the investigation team, the investigation will be closed by decision of the President and the parties involved will be informed[50]. The situation is similar to the control actions, the Regulatory Committee not having any powers to intervene on the findings of the ascertaining agent. Thus, the finding and sanctioning of the contravention, as a real effect produced against the contravener, are made only through the minutes of finding and sanctioning the contravention, issued after the decision of the ANRE president, and not through the final investigation report or the control report, these being prior acts that are communicated together with the sanctioning act.

In agreement with what has been argued, are also the provisions of art. 60 of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market in electricity and amending Directive 2012/27/EU[51], according to which „*Member States shall ensure the existence of appropriate mechanisms at national level to guarantee that the party affected by a decision of the regulatory authority has the right to bring an appeal before an independent body*". The legal norm represents a procedural guarantee that establishes the obligation of Member States to create effective national mechanisms so that any person affected by a decision of the regulatory authority, as an act of will, regardless of the name of the administrative act that this decision wears. In other words, the fact that an act is called a decision does not automatically entail the possibility of challenging that act in the administrative court. What is important in relation to the provisions of the European legal act is the fact that the state, through national legal levers, must offer the person concerned the possibility of challenging the harmful administrative act, not all acts prior to its issuance, acts which, as a general rule, under the provisions of the administrative law, are subject to court analysis together with the contested administrative act. However, in the specific situation analyzed, being in the realm of contravention law, the court entrusted with resolving the contravention complaint is competent to rule, indirectly, on the criticisms brought to the decision regarding the individu-

[50] This conclusion emerges beyond doubt from the contents of paragraph (6) of art. 23 in conjunction with paragraph (9) of the same article of the Regulation.

[51] https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX%3A32019L0944, accessed on 4. 05.2025.

alization of the sanction, this being the reason why it is communicated only together with the report by which the operator is sanctioned.

Along with the analysis of national legislation, we tried to identify similar legal provisions in other European countries. Following this analysis, which was difficult, especially due to the large number of existing normative acts, but also due to linguistic difficulties, with the exception of Bulgaria[52], which has a similar procedure, in the sense that there is both a sanctioning report and a decision prior to its issuance, in the other national legislations of European states[53] the sanction is applied by a decision, without being followed by another act applying the sanction separately.

3. Admissibility of the Inadmissibility of the Request Regarding the Annulment of the Decisions by Which the Sanction of the Contravention Fine Is Individualized at the ANRE Level. Jurisprudential Analysis

A preliminary discussion may also aim at identifying the competent administrative court that may be entrusted with resolving the case having as its object the request for the annulment of a decision on the individualization of the penalty to the turnover, starting from the general legal norm – art. 11 of Law no. 554/2004, by reporting to the provisions of the special legal norm – art. 5 paragraph (7) of OUG no. 33/2007. According to the latter legal provisions „*The orders and decisions issued by the president in the exercise of his or her powers may be appealed in administrative litigation at the Bucharest Court of Appeal, within 30 days from the date of their publication in the Official Gazette of Romania, Part I, respectively from the date on which they were notified to the interested parties*", but the legal norm must be interpreted in accordance with those stipulated in art. 5 in its entirety, according to its title – ANRE Regulations, respectively with paragraph (1) which provides that "*ANRE's orders, decisions or opinions regarding regulatory activity refer to:*

a) granting/modifying/suspending/refusing or withdrawing licenses or authorizations;

b) approving regulated prices and tariffs and/or their calculation methodologies;

c) approving technical and commercial regulations for the safe and efficient functioning of the electricity, thermal energy and natural gas sectors;

d) approving/endorsing documents drawn up by regulated economic operators in accordance with the legal provisions in force;

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[52] https://lex.bg/laws/ldoc/2135475623, accessed on 4.05.2025.

[53] For example, France (https://www.cre.fr/documents/decisions-du-cordis/cordis-20-janvier-2025-societes-danske-commodities-a/s-et-equinor-asa.html), Italy (https://www.arera.it/atti-e-provvedimenti/dettaglio/24/47-24), Spain (https://www.cnmc.es/expedientes/sncde01923), accessed on 4.05.2025.

e) granting/modifying/suspending/refusing or withdrawing certificates/ authorizations to economic operators and individuals carrying out specific activities in the electricity and natural gas sectors;

f) approving other regulations, norms, studies, documentation provided for by the legislation for the electricity and thermal energy and natural gas sectors."

It is easy to see that art. 5 refers only to the ANRE Regulations, namely to the types of orders and decisions issued by the ANRE President in the regulatory activity, or, it is obvious that the decision to establish and individualize the sanction related to turnover has nothing in common with the regulatory activity, as a result of which normative or individual administrative acts are born, susceptible to be contested in administrative litigation, based on the special, derogatory territorial competence, included in art. 5 paragraph (7) of OUG no. 33/2007.

Moreover, in the analyzed situation, obviously, the administrative litigation court could not analyze the criticisms of illegality without violating the norms of public order competence in Government Ordinance no. no. 2/2001[54] according to which a complaint may be filed against the report of the contravention and the application of the sanction within 15 days from the date of its delivery or communication, and the complaint shall be filed and resolved based on alternative jurisdiction at the court in whose jurisdiction the contravention was committed or at the court in whose territorial jurisdiction the contravention has its domicile or registered office. It is also provided that the only court exclusively competent to exercise control over the application and execution of the main and complementary contravention sanctions is the one entrusted with resolving the contravention complaint.

Based on these legal provisions, in recent practice the issue of the admissibility of administrative litigation actions has arisen in which the annulment of decisions was requested by which the sanction of the contravention fine was individualized to the turnover.

First of all, we consider the Decision of the Supreme Court of Justice no. 25 of November 6, 2017 to be relevant[55] which, in our opinion, the legal issue is similar to the cases we will analyze, a decision in which the supreme court held that „*the legal nature of the urban planning certificate is that of a preparatory act, its role being to prepare the legal issuance of the building permit. Not being an act capable of producing legal effects by itself, it was considered that the verification of the legality of the urban planning certificate can only be done within the framework of an action filed against the building permit, this representing the*

[54] Art. 31 paragraph (1), art. 32 paragraphs (1) and (2) and art. 34 paragraph (1).

[55] Regarding the interpretation and application of art. 6 paragraph (1) and art. 7 paragraph (1) of Law no. 50/1991 on the authorization of the execution of construction works, republished, with subsequent amendments and completions.

administrative act itself, producing legal effects. This reasoning is no longer verified in the situation where the urban planning certificate contains a building ban or other limitations that make it impossible to obtain the building permit. It should be noted that the urban planning certificate is always a producer of certain legal effects, in the sense that obtaining it gives the beneficiary the right to demand a certain conduct from the competent authority in relation to the procedure for issuing the building permit. To the extent that the urban planning certificate is followed by the issuance of a building permit, these legal effects cannot be viewed independently, being limited to the procedure for issuing the administrative act and being absorbed, in their entirety, into the effects produced by the final act of the authority. From this perspective, the inadmissibility of the action formulated exclusively against an urban planning certificate, when it is likely to be followed by the issuance of a building permit, is fully justified.

Returning to the analysis we have carried out, there are a number of cases in which the Bucharest Court of Appeal admitted the exception of inadmissibility invoked by the public authority issuing the decision, rejecting the action accordingly. Of these cases, only 3 decisions were drafted and published on the rejust.ro portal, the others being probably still in the drafting phase (being identified on the Bucharest Court of Appeal portal)[56].

Analyzing the three civil sentences drafted, in essence, the court held that the decision by which the sanction was individualized by reference to turnover lacked the character of an administrative act, given that „*following the issuance of the decision, the defendant issued a report establishing and sanctioning the contraventions (...). the decision does not represent a typical administrative act within the meaning of the provisions of art. 2 paragraph 1 letter c) of Law no. 554/2004 but represents an administrative operation preceding the contraventional engagement of the plaintiff for committing the contraventions indicated in the report, thus the legality of the decision is analyzed indirectly within the file having as its object the contraventional complaint*"[57]. At the same time, in the same sentence, the judge noted that „*the same litigious issue cannot be brought before two different courts, given that the applied contravention sanction is also contested, requesting the replacement of the fine with the warning sanction*". Moreover, the judge emphasized that „*the decision does not produce direct legal effects towards the operator, who is not even notified of this document, except with the issuance of the report of finding and sanctioning (...) and the provisions of art. 24 paragraph (3) of the Regulation would have been applicable in the situation where the decision would have produced other distinct legal effects, which would not have been taken over in the content of the report of finding*". In another decision, the same court held that „*the decision does not have the legal*

[56] Civil sentence no. 2062/13.12.2024, Civil sentence no. 483/25.03.2025.
[57] Civil judgment no. 7/14.01.2025.

nature of an administrative act, given that the contested act does not meet the defining elements provided for by law, namely it is not a unilateral act issued by the public authority in order to organize the execution of the law or the concrete execution of the law, nor is it a legal act that gives rise to, modifies or extinguishes legal relationships, and the fact that at the end of the decision in question it was mentioned that it can be contested within 30 days at the Bucharest Court of Appeal does not confer on it the legal characteristics of an administrative act and does not open the way for its challenge in administrative litigation"[58]. In his analysis, the judge started from the provisions of art. 126 paragraph (2) of the Romanian Constitution, according to which the jurisdiction of the courts and the trial procedure are provided for only by law. Therefore, in the absence of any special provision, derogating from the provisions of Law no. 554/2004, the jurisdiction and procedure for resolving administrative disputes relate exclusively to this general legal framework.

The judge further noted that "*the decision in question is only a preliminary or preparatory act for the issuance of the contravention report, not producing legal effects by itself and which cannot be contested separately through administrative litigation (...) the measures ordered by the decision do not become enforceable as a result of its issuance, but only on the basis of the contravention report concluded*"[59].

Last but not least, in a third decision, the Bucharest Court of Appeal[60] held that "*the decision does not represent a typical administrative act since it lacks the legal attitude to produce legal effects in the public power regime in terms of sanctioning the applicant for a misdemeanor*". The judge also concluded that the provisions of art. 34 paragraph (3) of the Regulation approved by ANRE Order no. 25/2017 were not applicable, since "*they would have been incidental only in the situation where the decision would have produced other distinct legal effects that would not have been taken over in the minutes, a situation in which the decision would have become a genuine administrative act, subject to direct judicial control*"[61]. It is important to note that, although there is no final decision of the High Court of Justice on this legal issue yet, the practice of the Bucharest Court of Appeal is constant. Obviously, after the resolution of the appeals by the supreme court, we will return with a continuation of this analysis.

4. Conclusions

From the analysis carried out, obviously awaiting a definitive solution from the Supreme Court, we nevertheless consider that we have managed,

[58] Civil judgment no. 2141/19.12.2024.
[59] Civil sentence no. 2141/19.12.2024.
[60] Civil judgment no. 1870/12.11.2024.
[61] Civil judgment no. 1870/12.11.2024.

through this study, to reflect on an important legal issue regarding the legal nature of the decision to individualize the contravention sanction in the event that the contravention fine is established as a percentage of the turnover and the delimitation between the typical administrative act and the preliminary administrative operation.

The question from which we started is the one according to which: *Is the decision to individualize the sanction an administrative act or a preliminary operation?*

From the identified case law, it can be concluded without exception that the court did not recognize the decision as an administrative act according to art. 2 para. (1) lett. c) of Law no. 554/2004 on administrative litigation. In this regard, it noted that the decision does not produce direct legal effects on the economic operator, it is part of the internal procedure for substantiating the sanction, which is ultimately embodied in the contravention report, the only act with direct and enforceable effect and, last but not least, there cannot be two parallel appeals for the same sanctioning content (decision and report).

Thus, due to both an unclear formulation perhaps in secondary legislation, but also a misunderstanding of the concept of decision, it can lead to an illegal situation in which two courts of different levels judge the same thing, at least one of them violating the exclusive competence of the other. In order to prevent such situations, it is obvious that we cannot confuse the decision of the administration as a volitional process with the decision as an administrative act. Finally, for better clarity of the legal norm, but also of the decision-making procedure that ends with the sanctioning of the operator with a fine related to the turnover, in our opinion, it would be appropriate to take over the model of most national legislations in European states, in the sense of sanctioning the operator by decision as an administrative act, without the need to issue a report of finding and sanctioning the contravention. Obviously, for this to be possible, it is necessary, and we formulate as a proposal de lege ferenda, to amend the specific primary legislation (Law no. 123/2012), correlative to the exemption from the application of Government Ordinance no. 2/2001 in the case of contraventions whose sanctioning is related to the operator's turnover.

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ADMINISTRATIVE INNOVATION IN A DIGITAL AND GLOBAL ERA: TECHNOLOGY, INCLUSION AND INTERCONNECTED GOVERNANCE

The Interdependent Relationship Between Administrative Law and Other Legal Fields. Challenges and Legal Solutions in Electronic Invoicing

Associate professor **Marta Claudia CLIZA**[1]
Assistant professor **Constantin-Claudiu ULARIU**[2]

Abstract

Administrative law stands as one of the oldest and most established branches of legal science. Over time, it has generated intense and meaningful scholarly and jurisprudential debate regarding its defining elements — discussions aimed at outlining its structural framework, identifying its core legal institutions, and establishing its intrinsic connections with other branches of law. These efforts have also underscored the practical relevance of fundamental legal tools rooted in this essential area of public law. Despite sustained doctrinal and judicial efforts to articulate a coherent and functional system of administrative law, ongoing and relevant legal debates continue to emerge. A particularly dynamic area of discussion centers on the relational configuration of administrative law institutions in conjunction with those from other regulatory domains, which pertain to both public and private law within the Romanian normative and institutional system. At present, an important and unresolved challenge lies in identifying and analyzing the legal and jurisprudential issues that arise from applying administrative law instruments, especially when these instruments significantly impact legal concepts and institutions from other areas of the law. These interactions not only affect public law but also extend into the domain of private law, where administrative measures often intersect with contractual, fiscal, and commercial legal frameworks. This article aims to conduct a thorough and systematic analysis — both inductive and deductive in method — of the legal instruments currently at the center of doctrinal debate. In doing so, it seeks to reflect a broad range of intellectual and normative challenges associated with the implementation of administrative law mechanisms, particularly in relation to other legal institutions in the context of enforcing electronic invoicing within the national economic framework.

Keywords: *challenge, normative reflection, legal resonance, structural relationship, administrative law, legal fields.*

JEL Classification: K23, K34

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[1] Marta Claudia Cliza - "Nicolae Titulescu" University of Bucharest; Lawyer at Bucharest Bar Association, Romania, ORCID: https://orcid.org/0000-0001-7021-8249, cliza_claudia@yahoo. com.
[2] Constantin-Claudiu Ulariu - "Nicolae Titulescu" University of Bucharest; Judge at Bucharest Tribunal, Romania, ORCID: https://orcid.org/0009-0009-3063-6601, claudiu_ulariu@yahoo.ro.

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1. Introduction

In the context of a natural socio-economic and legislative evolution closely aligned with the regulatory framework of the European Union, recent Romanian legislation has introduced a series of normative provisions aimed at implementing best practices in the area of establishing uniform standards for electronic invoicing. These provisions outline a legal and structural framework for recording economic transactions between two professionals (economic operators) in the form of a juridical act with a mixed structure, known as the electronic fiscal invoice.

The issuance of fiscal invoices holds essential legal, economic, and fiscal significance in any democratic society, and the member states of the European Union are no exception in this regard.

The legal rationale behind issuing fiscal invoices lies in the regulation of the economic system for the transfer of goods, services, and capital from one legal subject to another. This is achieved by recording these financial operations within the national fiscal system, thereby ensuring not only an accurate account of such legal transfer acts and economic relations but also a fair and objective system of fiscal imposition. This fiscal reflection must correspond to the real economic activity of the operators involved, materialized through the obligation imposed on businesses to effectively and accurately pay all taxes and duties owed to the state, based on the economic and financial operations in which they have participated and from which they have generated taxable income.

2. Defining the Concept and Legal Nature of the Electronic Fiscal Invoice

From the perspective of its legal meaning, a fiscal invoice is a document through which an economic operator, whether a legal entity or an authorized individual, as taxable subjects, reveals the list of goods sold or services provided, through which they have obtained taxed income.

All taxpayers registered in the national economic-legal system are required to issue a fiscal invoice to their clients, under the conditions where a series

of transactional relationships are structured between them, based on which economic agents transmit or purchase a series of goods and services expressible in monetary terms.

The fiscal invoice contains, in essence, details such as the goods sold, the quantity, the taxable value, and the taxes levied.

In most legislations in Western countries, the fiscal invoice is the main document based on which clients can request the tax credit for the value-added tax (VAT) paid (input tax credit).

As highlighted in legal doctrine, "*the mechanism through which the tax paid for purchases (input supplies) is offset with the tax owed for sales (output supplies) is known as tax credit. VAT legislation provides the possibility of benefiting from a tax credit not only for goods and services consumed as inputs but also for capital goods. This available tax credit is reflected in the taxpayer's electronic credit register, available on the official GST portal. Expenses not related to economic activity are not eligible for tax credit*"[3].

From the perspective of Romanian law, the fiscal invoice is the fiscal document established by Article 319 of the Fiscal Code, which must be issued by any taxable person, in the context of their participation in an economic activity carried out on the free market, and which materializes in any message or document in written form or issued electronically, with the only condition being to contain specific information related to the delivery of goods and the provision of services.

Therefore, the fiscal invoice represents, both in the specific domain of Romanian law and in the legal order of democratic Western countries, an element that reveals economic and financial operations, based on which the state, through its specialized institutions, can and must determine and apply taxes and duties provided by law.

However, in relation to the postmodern economic and social developments of the world's states, which involved the unprecedented development of complex international trade mechanisms, where electronic payment methods, investments in virtual currencies, and off-shore investment systems have created the need for national fiscal bodies in every country to adapt to these contemporary developments, from the perspective of how their fiscal systems align with these technological and financial, unconventional and accelerated developments.

From this perspective, an inherent and inevitable adaptation of the fiscal system required the adoption of complex and interrelated legislation within the European Union, aiming to implement the system of electronic fiscal invoices.

Thus, the preamble of Directive 2014/55 of the European Parliament and

[3] Shama Banu, Sana Ara, Shambhavi S M, Kavitha J. (2024), „Research on the GST's Input Tax Credit", *International Journal of Novel Reserch and Development,* vol. 9, no. 6, https://www.ijnrd.org/papers/IJNRD2406133.pdf, accessed on 08.05.2025.

the Council[4] recognized the necessity of ensuring legal lexicon interoperability as well as best fiscal practices through the use of electronic invoicing in public procurement, in order to stimulate fiscal optimization for national budgets, reduce environmental impact through the use of paper invoices, and reduce administrative burdens imposed by issuing and verifying invoices edited on paper.

In this regard, according to Article 2, paragraphs 1 and 2 of the Directive, an "*electronic invoice" is defined as "an invoice issued, transmitted, and received in an electronic structured format that allows its automatic and electronic processing," while "the main elements of an electronic invoice" include "a set of essential information components that an electronic invoice must contain to allow for cross-border interoperability, including the information necessary to ensure legal compliance*".

Additionally, in accordance with the provisions of Article 6 of the Directive, the main content requirements for the electronic invoice include, inter alia, process and invoice identifiers, invoice period, relevant information about the seller and buyer, the payment beneficiary, and the fiscal representative of the seller, contract identification, details regarding the delivery of goods and services rendered, data regarding credit and debit, item positions, and invoice totals.

Furthermore, in the preamble of Directive 2006/112 of the European Parliament and the Council[5], the principle was established that the implementation of a national electronic invoicing system within all EU member states would "*allow tax authorities to carry out their monitoring activities*".

A proper administration of the fiscal invoicing system is not only a rhetorical and conciliatory goal but aims at a specific and significant impact on the national fiscal system, including the shaping of viable "*monetary and fiscal policies suitable for stabilizing the exchange rate of the national currency*"[6].

In accordance with French specialized literature, we appreciate that the requirement for implementing a coherent issuing and verification system aims at the practical finality that "*member states can establish a later due date for the moment the taxable event occurs, in the case of issuing invoices or in cases where invoices are not issued or are issued late, within a certain period calculated from the taxable event date*"[7].

As a consequence, following the adoption of these secondary regulations in EU law, Romania has adopted a normative framework for implementing these

[4] Regarding electronic invoicing in the field of public procurement, published in the Official Journal of the European Union L 133/1.

[5] Regarding the common system of value-added tax, published in the Official Journal of the European Union L 347/06.

[6] Edamisan Stephen Ikuemonisan (2024), „Challenges and strategies in Nigerian agribusiness entrepreneurship for sustainable development", *CABI Agriculture and Bioscience*, 5, 115, doi.org/10.1186/s43170-024-00303-5.

[7] Pierre Di Malta (1995), *Droit fiscal europeén comparé*, Ed. PUF, Paris, p. 331.

European goals in structuring the procedures for implementing the electronic invoice in the national fiscal structure, as outlined in Emergency Ordinance No. 120/2021[8].

Thus, by the provisions of Article 10 paragraph (1) and Article 101 of the same normative act, it is established, for contractual relationships between taxable persons established in Romania according to Article 266 paragraph (2) of Law No. 227/2015, with subsequent amendments, for goods deliveries and service provisions taking place in Romania, that "*the issuer of the electronic invoice is obliged to transmit it to the recipient using the national electronic invoicing system RO e-Factura*".

By the provisions of Article 105 of OUG No. 120/2021, however, several exceptions to this rule are established, with some taxable persons explicitly exempted from this obligation as provided by the aforementioned norm.

According to the provisions of Article 4 paragraph (2) of the same ordinance, the electronic invoice must contain, in principle, the following requirements: a) process and invoice identifiers; b) invoice date; c) information identifying the economic operator who delivered the goods/products, provided the services, or carried out the works; d) information about the recipient of the electronic invoice; e) information about the payment beneficiary; f) information about the fiscal representative of the issuer; g) identification of the type of goods/products delivered, services provided, or works executed; h) reference to the public/sector procurement contract, concession contract for works and services, and, where applicable, defense and security procurement contracts; i) details regarding the execution of works, delivery of goods/products, or provision of services; j) payment instructions; k) information regarding credit or debit; l) information on invoice items; m) breakdown of VAT; n) total invoice amount.

Furthermore, according to the provisions of Article 132 paragraph (1) letter d) of OUG No. 120/2021, failure by economic operators established in Romania to comply with the provisions regarding the transmission of invoices issued in the national electronic invoicing system RO e-Factura, starting from July 1, 2025, for one or more invoices whose transmission deadline in the national system occurs within a calendar month, constitutes an offense.

This is the current domestic regulatory framework. We note that it is fully up to the competent authorities of the Romanian state how they choose to transpose the provisions of Directive 2014/55 into the domestic legal system. This EU member state enjoys a privileged position in terms of analyzing and evaluating the national factors influencing how economic operations and financial transac-

[8] Regarding the administration, operation, and implementation of the national system for the RO e-Factura electronic invoice and electronic invoicing in Romania, published in the Official Gazette, Part I, No. 960 of October 7, 2021.

tions, whose execution must be reflected in the content of a fiscal invoice in electronic form, are highlighted.

In this regard, it has been noted that, in principle, "*fiscal competence and fiscal power, which characterize fiscal sovereignty, belong, as a principle, to member states*"[9].

However, although Romania's right to appreciate and choose is discretionary, in accordance with general principles of administrative law, reflecting the public authority regime under which such decisions to implement the electronic invoicing system are made, it cannot be arbitrary or disproportionate.

In this regard, the Court of Justice of the European Union ruled that, in exercising their competences, member states "*cannot adopt or implement national provisions that impair the essential freedoms protected by the European Treaties. The scope of EU law is indeed broader than the competences of European authorities, so it cannot be argued that the absence of exclusive fiscal competence or the weakness of harmonization and cooperation in certain areas means that states have absolute freedom in direct taxation ... Consequently, and regardless of the absence of explicit provisions in the European Treaties, the Court of Justice prohibits all national fiscal measures that, due to direct or indirect discrimination or any other reason, restrict the freedom of movement of European taxpayers*"[10].

The justification for introducing the electronic invoice system into domestic legislation cannot therefore be solely based on a suspicion of fiscal regulators regarding the non-reporting of taxable income in an accurate, fair, and timely manner by economic agents, for the purpose of establishing a coherent and fair tax system, appropriately carried out by the competent fiscal authority, to reduce the rate of tax evasion within the national economic-financial system.

In relation to this aspect, doctrine has emphasized that "*a loss or expense can only be deducted from the taxable result to the extent that it is proven regarding its reality and its amount. However, when a business justifies an expense recorded through an invoice, it is up to the administration to establish the fictitious nature of the operation. Moreover, certain formal conditions are required for evidentiary purposes. Indeed, businesses are required to provide, in support of their declaration regarding their results, a detailed statement of the different categories of general expenses when their amount exceeds the values established by an order of the Minister of Finance*"[11].

Therefore, the good faith of taxable persons, in the manner of declaring

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[9] Alexandre Maitrot de La Motte (2022), *Droit fiscal de l'Union europeénne*, 3rd edn., Ed. Bruylant, Bruxelles, p. 27.

[10] CJUE, case C-446/04, Test Claimants in the FII Group Litigation, EU:C:2006:774.

[11] Olivier Débat, Patrick Serlooten (2019), *Droit fiscal des affaires,* 17th edn, Ed. Dalloz, Paris, p. 199.

taxed income, is presumed until proven otherwise, based on the general provisions of Article 447 paragraph (1) of the Administrative Code[12], related to the provisions of Article 14 paragraph (2) of the Civil Code[13] and Article 12 paragraph (4) of the Fiscal Procedure Code[14].

Thus, among the primary reasons for introducing the electronic invoice should be, in particular, ensuring transparency in the economic relationships between various taxpayers, ensuring the rapid processing of tax assessments by state fiscal authorities, and, ultimately, the recovery of claims from co-partners in the economic transaction, such as the recovery of VAT from the state.

In this regard, doctrine has noted that "*any taxpayer who performs operations that determine VAT liability is required to issue a dated and numbered invoice or an equivalent document. Failure to comply with this invoicing obligation is penalized with fines, and, on the other hand, the deduction of VAT by the client is only possible if it was invoiced to them. Electronic invoices have the same legal value as those issued on paper. The invoice is no longer defined by its material form or the quality of its content. Regarding the content, the invoice must obligatorily include, for each operation, the quantity, description, VAT rate, price excluding VAT of goods or services, and, for each rate, the total VAT amount*"[15].

It is true that in our era, in which "*electronic commerce has revolutionized the business model of international trade, whether business-to-business or business-to-consumer*"[16], it is almost impossible for tax authorities to maintain a clear record of economic transaction acts, and therefore, it is extremely difficult to determine the place where taxes are due by economic agents, as well as the amounts due in this regard.

For example, e-commerce companies, although their registered office is legally registered in some EU member states, nevertheless, the servers through which they conduct online sales operations are registered in tax havens, such as Panama, the Virgin Islands, Malta, etc.

Thus, there is a need to establish an integrated system for issuing, by these online merchants, electronic invoices with a precise and inevitable content, which will reveal to the state in whose territory the online commerce takes place, in this case Romania, the sums obtained as taxable income, which should be subject to fair and proportional taxation within the Romanian fiscal system, where it is necessary to tax the income that was generated even within the territory of our state.

To ensure an effective exchange of information between EU member

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[12] Emergency Ordinance No. 57/2019, published in the Official Gazette, Part I, No. 555 of July 5, 2019.
[13] Published in the Official Gazette, Part I, No. 505 of July 15, 2011.
[14] Law No. 207/2015, published in the Official Gazette, Part I, No. 547 of July 23, 2015.
[15] Olivier Débat, Patrick Serlooten, *op. cit.,* 2019, p. 706.
[16] Philippe Malherbe (2015), *Éléments de droit fiscal international,* Ed. Bruylant, Paris, p. 69.

states regarding the determination of taxable income for taxpayers, Article 20 of Directive 77/799[17] "*establishes the use of standardized forms and computerized formats, which must be used for all types of exchange. The use of these standard forms is accompanied by provisions regarding the use of the Common Communication Network (CCN), an electronic data exchange system. The communicated information must be transmitted, 'as far as possible,' electronically using this network. This reflects the Commission's intention to ensure that all fiscal systems use the same communication channel*"[18].

From this perspective, the system for issuing fiscal invoices, established by OUG No. 120/2021, appears, at first glance, to be necessary and rational.

However, from other perspectives, we discern the emergence of delicate legal issues, for which a thorough and teleological analysis of the applicable legal norms and principles is required, which, as we will observe, have a multi-disciplinary legal nature.

3. Discriminatory Elements Contained in the Legal Provisions Regarding Electronic Invoicing

An integrated analysis of the provisions of Article 10 paragraph (1) and Article 10[1] paragraph (1) and (2) of Government Emergency Ordinance No. 120/2021 shows that these norms contain a dual form of functional differentiation between the various types of taxpayers operating in the Romanian economic market, in the sense that, on the one hand, the obligation for economic operators to issue electronic invoices and transmit the invoices issued in the national electronic invoicing system RO e-Factura does not take into account the legal form of these operators or the nature of their economic activities, nor does it consider their distinct financial strength.

Thus, the mentioned legal provision makes no differentiation between, on the one hand, companies, regardless of their form of organization, regulated by Law No. 31/1990 and other special laws, and, on the other hand, between authorized natural persons, who should benefit either from a longer grace period to implement this electronic invoicing system, or be exempted from this obligation, considering the particular legal nature of these types of taxable persons, as well as their relatively poor financial solvency, which may make it difficult for them to acquire the electronic invoicing systems and transmit them into the national fiscal system.

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[17] Regarding mutual assistance between the competent authorities of the Member States in the field of direct taxation and insurance premium taxation, published in the Official Journal L. 336 of December 27, 1977.

[18] Michael Lang, Pasquale Pistone, Josef Schuch, Claus Staringer (eds.) (2013), *Introduction to European Tax Law on Direct Taxation*, 3rd edn., Linde, Viena, p. 219.

In this regard, we note that it is not fair to equate an economic agent representing a multinational corporation registered in Romania, which has practically unlimited financial resources, with authorized natural persons or family businesses, whose adaptation to the new system was abrupt and lacked support, facilities, or information from state authorities with fiscal responsibilities.

On the other hand, the content of Article 5 of Government Emergency Ordinance No. 120/2021 reveals a categorical distinction between two categories of recipients of the cited legal provisions.

Thus, there is a clear distinction between the situation of economic operators established in Romania, according to Article 266 paragraph (2) of Law No. 227/2015, with subsequent amendments and additions, and the spectrum of economic operators not established in Romania, according to the aforementioned legal provisions, who do not voluntarily opt for using the national electronic invoicing system RO e-Factura.

For the first category of subjects, the provisions of Government Emergency Ordinance No. 120/2021 establish the immutable obligation to issue electronic invoices in public procurement, while, for operators not established in Romania, the obligation to issue invoices in electronic format and transmit them to the national system through the dedicated IT platform does not apply inevitably but only if they "opt for using the national electronic invoicing system RO e-Factura."

Moreover, regarding economic operators using electronic fiscal cash registers integrated into unsupervised equipment, such as vending machines that operate based on card payments, as well as note or coin acceptors (except those integrated into machines used for delivering energy products), for which the integration of the printing device and customer display is no longer mandatory according to the provisions of Article 3 paragraph (21) of Government Emergency Ordinance No. 28/1999[19], with subsequent amendments and additions, they are exempted from the general obligation to issue electronic invoices under Article 10 paragraph (1), second thesis of Government Emergency Ordinance No. 120/2021.

For these subjects of law, the provisions of Government Emergency Ordinance No. 120/2021 do not provide any complementary clarification that would explain why the Romanian legislator opted to exclude them from the group of taxable persons required to issue invoices electronically and transmit these proofs of financial transactions into the national system for recording all fiscal invoices, for determining taxes and duties by the National Agency for Fiscal Administration.

[19] Regarding the obligation of economic operators to use electronic fiscal devices, published in the Official Gazette, Part I, No. 75 of January 21, 2005.

However, for the merchants covered by the provisions of Article 3 paragraph (21) of Government Emergency Ordinance No. 28/1999, the only legal justification emerging from the national regulatory framework is that they operate integrated fiscal electronic devices that work on card payments.

Yet, card payments do not necessarily guarantee sufficient transparency for the economic operations carried out by these taxable persons, and, on the other hand, they do not necessarily mean that these fiscal transactions performed with an electronic financial-banking instrument (i.e., a card) are easily identifiable by the tax authority, so that the tax authority can determine in an integrated and timely manner the establishment of taxes, duties, and all contributions due to the general consolidated state budget.

Therefore, this exemption, along with others, raises doubts about the fairness of the legal implementation of the national electronic invoicing system, and seriously calls into question the equity of the entire legal framework currently being analyzed in this article.

By considering these discriminatory dysfunctions in the content of the legal norms regarding the implementation of the national electronic invoicing system and the electronic registration of economic operations carried out by private enterprises or state-majority or fully state-owned enterprises on Romanian territory, we will subject to a proper multi-disciplinary analysis the hypotheses in which these provisions, lacking natural integration in the internal legal order, could establish cases of discrimination.

As revealed in legal doctrine, "*the principle of non-discrimination is evidently and intrinsically linked to the concept of equality before the law. Indeed, when we think about what equality before the law means in a contemporary constitutional system, often the first thing that comes to mind is non-discrimination. Other aspects of the principle, such as respect for the doctrine of precedent and commitment to equal subjection before the law, are rarely seen as central or emblematic examples of it*"[20].

Also, one of the fundamental elements for the cohesion of legal rules drawn from the Agreement on the European Economic Area, which is similar to the rules of the Treaty on the Functioning of the European Union, is the prohibition of discrimination based on economic, social, or nationality grounds, promoting fundamental freedoms and competition rights in the economic field.

The Court of Justice of the European Union has stated that "*one of the main objectives of the Agreement on the European Economic Area is to ensure the fullest possible realization of the free movement of goods, persons, services, and capital throughout the European Economic Area, so that the internal market established within the European Union is extended to the EFTA [European Free*

[20] Michael P. Foran (2023), *Equality Before the Law Equal Dignity, Wrongful Discrimination, and the Rule of Law*, Ed. Hart Publishing, London, p. 28.

Trade Association] states"[21].

Regarding this legal treatment inconsistency, the national case law has held that "*for a situation to be considered discriminatory, there must be two comparable situations where the treatment applied has been different. Subsequently, the differentiated treatment must aim at or have the effect of restricting or removing the recognition, use, or exercise, under equal conditions, of human rights and fundamental freedoms or of rights recognized by law in the political, economic, social, and cultural domains or in any other areas of public life*"[22].

As for the meaning of discrimination, it is defined by the provisions of Article 2 paragraph (2) of Government Ordinance No. 137/2000[23].

Thus, this form of inequity refers to any differentiation, exclusion, marginalization, restriction, or preference, whether legal or purely factual, regarding a particular subject of law or a group of subjects of law, based on criteria of race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, membership in a disadvantaged category, as well as any other criterion that aims to or results in the loss, limitation, or diminishment of the recognition, use, or exercise, under equal conditions, of human rights and fundamental freedoms or of rights recognized by law, in the political, economic, social, and cultural domains or in any other areas of public life.

Therefore, the institution of discrimination, including in administrative and fiscal law, is distinguished by creating a distinctive situation, either negative or positive, between an individual and another or between one category of citizens and another, based on criteria that are not objective and justifiable[24].

In this case, a "*unique logic that could explain why discrimination is wrong*"[25] can be identified.

From the analysis of this legal institution, it appears that its legal structure differentiates and combines a series of multi-disciplinary principles, including those of administrative law, civil law, labor law, as well as intrinsic elements of European Union law and those determined by the application of the provisions of

[21] CJUE, case Ospelt, C-452/01, ECR 1-9743, paragraphs 29 and 32.

[22] Bucharest Court, 2nd Section of Administrative and Fiscal Litigation, civil ruling No. 812/14.02.2025, available on the website https://www.rejust.ro/intern/g83gg234d, in the version from 09.05.2025.

[23] Regarding the prevention and sanctioning of all forms of discrimination, published in the Official Gazette, No. 166 of March 7, 2014.

[24] Alice Taylor (2024), „Interpreting Discrimination Law Creatively: Statutory Discrimination Law in the UK, Canada and Australia", *Industrial Law Journal,* volume 53, Issue 3, pp. 569–575, https://doi.org/10.1093/indlaw/dwae028.

[25] William Linton (2018), „Discrimination as Stigma: A Theory of Anti-discrimination Law", *Industrial Law Journal*, Volume 47, Issue 3, pp. 458–463, https://doi.org/10.1093/indlaw/ dwy016.

the European Convention on Human Rights[26].

Regarding the fulfillment of the conditions for discrimination in this case, as structured in administrative law, we observe that these conditions objectify in a material or substantial order requirement, namely the determination of essentially differentiated treatment compared to various subjects of law involved in the decision-making process, and, on the other hand, in a subjective or moral requirement, meaning that the treatment applied aims at creating a distinction based on race, ethnicity, social, economic, or any other criterion that limits or does not provide the opportunity to fully exercise the rights and freedoms of the individual or group of subjects of law targeted by the discriminatory act.

Regarding the legal nature of discriminatory treatment, it represents a state contrary to the legal principle of equality before the law, established at the constitutional level by the provisions of Article 16 paragraph (1) of the Fundamental Law.

In the jurisprudence of the Romanian Constitutional Court, it has been held that "*the principle of equality before the law presupposes the establishment of equal treatment for situations that, depending on the goal pursued, are not different. Therefore, it does not exclude, but rather presupposes, different solutions for different situations. Consequently, a different treatment cannot be merely the expression of the exclusive assessment of the legislator, but must be rationally justified, respecting the principle of equality of citizens before the law and public authorities*"[27].

Additionally, regarding the violation of equality in rights, the Constitutional Court has held that "*legal treatment differences are admissible for different situations when they are rationally and objectively justified*"[28].

In the same sense is the relevant practice of the European Court of Human Rights, which, in applying the provisions of Article 14 of the Convention, has stated that "*discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. A difference in treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means used and the aim pursued*"[29].

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[26] Andrew J. Morris, (1995) „On the Normative Foundations of Indirect Discrimination Law: Understanding the Competing Models of Discrimination Law as Aristotelian Forms of Justice", *Oxford Journal of Legal Studies,* vol. 15, issue 2, pp. 199–228, https://doi.org/10.1093/ojls/15. 2.199.

[27] Constitutional Court, Plenary Decision No. 1 of February 8, 1994, published in the Official Gazette of Romania, Part I, No. 69 of February 16, 1994.

[28] Constitutional Court, Decision No. 168 of December 10, 1998, published in the Official Gazette of Romania, Part I, No. 77 of February 24, 1999, and Decision No. 231 of May 25, 2004, published in the Official Gazette of Romania, Part I, No. 561 of June 24, 2004.

[29] ECHR, judgment of November 2, 2010, pronounced in the case of Şerife Yiğit v. Turkey.

In the matter of regulating the obligation of electronic invoicing, we observe that this legal differentiation in treatment between, on the one hand, economically vulnerable economic operators and, on the other hand, economic agents benefiting from a strong position in the country's economic or financial market, is unjustified by reasonable and proportionate considerations, namely objective grounds.

A similar distinction, from the perspective of legal treatment in electronic invoicing, can be observed between, on the one hand, companies registered in Romania and, on the other hand, professionals who have not legally established their registered office in Romania based on their own legal choice.

In contrast, from the way Government Emergency Ordinance No. 120/2021 is regulated, it is clear that the legal differentiation between categories is disproportionate and arbitrary, with the Romanian legislator making a subjective and discriminatory distinction between various categories of economic agents operating in Romania by unjustifiably imposing this electronic invoicing and registration obligation in the RO e-Factura national system only on some of them while excluding others, without revealing objective criteria or providing justification for this differentiated treatment.

In this case, not only is the principle of equal treatment of taxpayers, established by Article 5 paragraph (1) of the Fiscal Procedure Code, ignored, but also the principle of equality before the law provided by the provisions of Articles 7 of the Administrative Code and 30 of the Civil Code.

Thus, the multi-disciplinary nature of the unjustified unequal treatment imposed by the national legislator in the field of electronic invoicing is revealed, as it falls under principles applicable in several legal domains, all of which converge towards the idea of a biased attitude of the legislator towards certain economic agents subject to the principle of fiscalization and taxation of income generated on Romanian territory, to the detriment of other professionals who are obliged, within a relatively short time, to acquire and operationalize technical and informational systems to issue electronic fiscal invoices and transmit them into the national IT system RO e-Factura.

Regarding the nature of this discriminatory treatment, the doctrine distinguishes between direct discrimination, i.e., explicit, by applying an evident differentiated regime between one category and another, without a reasonable and sufficient justification, and indirect discrimination, which refers to a distinction made between subjects of law, which, on the surface, appears neutral but proves to be unjust, such as imposing requirements on certain subjects of law that few members of the targeted group can fulfill, compared to the larger group of subjects of law in society as a whole[30].

[30] Francisca Pou Giménez (2020), „Anti-Discrimination Law in Civil Law Jurisdictions", *International Journal of Constitutional Law*, Volume 18, Issue 3, pp. 1055–1063, https://doi.org/

In the case of indirect discrimination, it is distinguished by being hybrid, in the sense that it combines the structural elements and specific requirements of direct discrimination, with a precise focus on an unfair and unjustified measure targeted at a specific group, distinguished by various criteria, a hallmark of positive discrimination[31].

In the case of the regulation method established by the provisions of Government Emergency Ordinance No. 120/2021, structural elements of indirect discrimination can be identified, as certain groups of taxable persons are favored based on seemingly neutral and positive criteria, seemingly exempting certain groups of economic agents from the obligation to electronically invoice considering their specific position in the Romanian economic market, yet, in reality, these provisions contain discriminatory criteria and practices that are not objectively justified by pursuing a legitimate aim, and the means used to achieve that aim are inadequate and unnecessary, which means the provisions of Article 2 paragraph (3) of Government Ordinance No. 137/2000 are applicable.

4. Conclusions

The manner in which the Romanian legislator has understood to transpose the mandatory regulation of European Union law into the national normative system is deficient and imperfect, in the sense that it lacks normative coherence and a clear, precise, and equitable individualization of the legal subjects obliged to follow the steps of integration into the national system regarding the RO e-Factura electronic invoice.

Thus, a discriminatory situation is created between one category of taxpayers and other categories of taxable persons. In order to discern these elements of individualization of the institution of discrimination, the legal interpreter is obliged to resort to an integrated and deductive analysis, appealing to a series of legal norms and principles specific to several fields of domestic and international law.

In this way, the integrated manner in which the provisions of administrative and fiscal law intersect with the rules of law specific to other legal fields is revealed, an aspect that is, however, a natural and fruitful one in a democratic society in full evolution, marked by interrelated aspects.

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[31] Michael Conolly (1998), „Discrimination Law: Requirements and Preferences: Falkirk Council and Others v. Whyte and Others", *Industrial Law Journal,* Volume 27, Issue 2, pp. 133–142, https://doi.org/10.1093/ilj/27.2.133.

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4. Constitutional Court, Decision No. 231 of May 25, 2004, published in the Official Gazette of Romania, Part I, No. 561 of June 24, 2004.
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AI and Decision Support Systems in Public Administration: Interdisciplinary Insights from Romania

PhD. student **Monica-Teodora SCĂUNAȘU**[1]

Abstract

This article aims to explore the intersection of Artificial Intelligence (AI) and Decision Support Systems (DSS) in public administration, and initiate a new interdisciplinary framework for algorithm-driven governance. The integration of legal analysis, digital innovation theory, and empirical evidence in the research investigates how AI enhances decision-making quality, procedural transparency, and institutional responsiveness, especially in local contexts. It draws on the author's initial case study of Eprimăria as an experimental site for Romanian municipalities. The article presents a national-scale idea of AI for Public Administration (AI4PA). The proposed system imagines an interoperable, modular system in accordance with European regulatory frameworks (like the AI Act and GDPR) to facilitate explainable, traceable, and lawful digital decisions. The article presents both opportunities and obstacles, and explores algorithmic accountability, citizen-centric design, and cross-sector collaboration. Ultimately, it argues that responsible AI implementation can bridge administrative disparities, especially in under-resourced rural areas, and lay the foundation for a resilient and inclusive digital state.

Keywords: *artificial intelligence, public administration, e-government, assisted decision-making, interdisciplinarity.*

JEL Classification: H83, K23, O33

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1. Introduction

In the current landscape of rapid digital transformation, public administrations must simultaneously enhance institutional efficiency and respond to increasingly complex societal demands. This paper addresses a critical and timely question: how can AI-based decision support systems (DSS) contribute to a

[1] Monica-Teodora Scăunașu - National University of Science and Technology Politehnica Bucharest, Romania, monica.scaunasu@gmail.com.

model of public governance that is not only efficient and data-driven, but also legally accountable and citizen-oriented?

The core innovation of this study lies in its proposal for a national platform — AI for Public Administration (AI4PA) — conceptually grounded in the author's own applied project, *Eprimăria*. More than a digital service tool, AI4PA redefines the administrative act through AI integration, enabling legal reasoning, algorithmic auditability, and participatory governance.

The paper adopts an interdisciplinary methodology combining administrative law, digital policy, and behavioral governance. It draws on doctrinal analysis, comparative case studies (e.g., Estonia, Portugal), and empirical results from the *Eprimăria* pilot to define the conditions for legally robust and socially equitable AI implementation in Romanian public administration.

Structured across key dimensions — conceptual framing, regulatory foundations (including the EU AI Act and GDPR), technical functionality of DSS, managerial transformation, and applied practice — the paper culminates in a proposal for a modular, interoperable AI4PA framework.

Designed for national scalability, the platform would strengthen transparency, standardization, and digital inclusion, especially in under-resourced local governments.

Responding to the conference's theme of interdisciplinary challenges in administrative sciences, this study bridges technological potential with legal and institutional reality. It positions AI4PA as a strategic solution for Romania's digital reform and a potential pilot for responsible AI governance in the broader European Administrative Space.

1.1. Theoretical Framework

Understanding the integration of artificial intelligence into public administration requires a complex and genuinely interdisciplinary framework. Such a framework would have to borrow from information technology, administrative sciences, public law, management, and social sciences in order to understand thoroughly the structural and cultural transformation resulting from digitalization in state–citizen relations.

From the point of view of administrative sciences, AI is conceptualized as a driver of institutional modernization, aligned with the values of digital governance. Decision support systems based on AI facilitate an enhanced proactive administrative style, an immediate and accurate response to the needs of citizens while optimizing internal efficiency.

Systems theory, based on cybernetic models of management, understands the state as an open system regulated by ongoing cycles of information, decision, and feedback. In this framework, artificial intelligence is an evolved decision

node that can create predictive knowledge and keep up the balance between legality and effectiveness.

The deployment of AI in public administration should align with core principles of administrative law. These core principles are legality, transparency, impartiality, and the right to due process. As highlighted in Romanian legal scholarship (e.g., Stănilă[2], Predescu[3]), algorithmic decision-making raises new questions regarding legal responsibility, the right to explanation, and data protection, particularly under GDPR and the EU AI Act.

From the perspective of an organization, the use of AI in the public sector entails significant shifts, such as the formation of new, blended professional positions like digital ethics officers and policy data analysts. These shifts necessitate an innovative and multifaceted leadership style that integrates institutional ideals with technology and social relationships.

In a sociological context, the use of AI technology within governance frameworks is legitimate only as long as the public acceptance of such decisions exists. The confidence of the public in the decisions made relies not only on the perceived effectiveness of the outcome, but on the outcome being fair, explainable, and participatory — all elements that influence the digital public administration's long-term viability.

2. Decision Support Systems in Public Administration – Role and Functionality

Due to relentless pressure from social intricacies, legal policies, and heightened requests for effectiveness, decision support systems (DSS) have become crucial to ensure contemporary and effective governance. They arose in response to corporate management needs, and now, in the context of public administration, they are being adapted to the need for faster computation of data, prompt rational processing of data, and higher transparency in administrative actions. A decision support system is a strategic information system that amalgamates data, sophisticated models, and computational tools. In the public sector, the systems have become part of the decision support infrastructure and operate within the integrated framework of various information streams. DSSs evolve from mere information support tools to collaborative agents where part of the decision is done, generated, or optimized through machine learning algorithms.

This new paradigm also presupposes a conceptual realignment of public administration, no longer as a mere bureaucratic machine but as an open cybernetic system, where flows of information and feedback loops become essential

[2] Laura Maria Stănilă (2020*), Inteligenta artificiala, dreptul penal si sistemul de justitie penala. Amintiri despre viitor,* Ed. Universul Juridic, Bucharest.

[3] Ovidiu Predescu, Ovidiu-Roland Predescu (2023), *Inteligența artificiala azi. O perspectiva a dreptului, a drepturilor omului, a eticii si nu numai,* Ed. Universul Juridic, Bucharest.

elements of organizational equilibrium. It is in this vision that administrative decisions are not the outcome of sporadic actions, but of ongoing processes of data gathering, analysis, simulation, and assessment — enabled through intelligent infrastructures that include machine learning and logical rule-based systems. It is this very interaction between algorithmic components and institutional frameworks that captures the nature of the interdisciplinary posture advocated through the conference. The use of DSS in public administration can already be observed in various institutional practices, such as risk management in criminal justice systems (e.g., COMPAS in the U.S.), performance monitoring of public employees, resource allocation in social services, or urban planning within smart cities. In these areas, algorithm-assisted decision systems enable administrations to adopt a proactive stance, based on anticipating behaviors and potential outcomes, thereby increasing operational efficiency and reducing delayed or inadequate responses[4].

Beyond the technological dimension, decision support systems also raise significant managerial and institutional challenges. Workflow reorganization, role redefinition, and recalibration of performance assessment processes become necessary. Implementing DSS entails the development of new professional competencies, not only in technical fields, but also in decision-making and ethics. Public managers are thus called to become not merely resource administrators, but orchestrators of human–algorithm interaction, capable of interpreting and validating AI-generated recommendations and intervening when contextual or moral judgment is required.

It should also be noted that the application of a DSS in an administrative environment goes beyond the optimization of internal processes[5]. It also has a very robust democratic function, particularly when coupled with public participation and transparency procedures. If decisions are based on open and transparent data, and citizens are able to participate in the decision-making process via electronic feedback, consultative voting, or civic actions within electronic platforms, public administration confidence is greatly increased. The DSS is thus not just a technical tool, but also one of institutional legitimacy, particularly in the context of rapid, customized, and well-supported responses.

3. Public Administration and Artificial Intelligence: Opportunities

Over the past two decades, the practice of public administration has been actively engaged in a process of digital transformation, as much driven by the pressure of technological change as by the increasing expectations of citizens for

[4] Laura Maria Stănilă, *op. cit,* p. 35 et seq.

[5] B.S. McIntosh et al. (2011), "Environmental Decision Support Systems (EDSS) Development – Challenges and Best Practices," *Environmental Modelling & Software* vol. 26, no. 12: 1389–1402, https://doi.org/10.1016/j.envsoft.2011.09.009.

increased accessibility, speed, and transparency in public services. Artificial intelligence (AI) is an institutional transformation driver and an essential component to reengineer the state-citizen relationship[6]. AI reengineer public administration paradigm, management of resources, optimization of decision-making, and administrative efficiency. Artificial intelligence facilitates the automation of routine processes and alleviates bureaucratic tensions.

Public sector personnel are liberated from routine tasks and redirected to tasks that demand greater complexity and decision-making capabilities. Second, public decisions can be improved through predictive analyses and risk assessments based on historical and behavioral data models, that allows for better anticipation of social phenomena and more efficient resource allocation. AI facilitates citizen participation in the decision-making process through digital platforms that enable public consultation, electronic voting, and real-time feedback[7].

The visualization and correlation of public data are also enhanced through the use of AI tools, which can transform fragmented datasets into intelligible and accessible analytical dashboards, thus supporting more informed decision-making. Lastly, AI allows for constant monitoring of public services and institutional performance, helping to build a more responsive and adaptable administrative mechanism.

As noted in the academic literature, "the digitalization of local administration and AI-assisted decision-making provide unprecedented opportunities,"[8] particularly due to AI's ability to automatically extract relevant information, identify institutional bottlenecks, and optimize resource distribution. These benefits are already being leveraged in various national and European contexts.

AI's potential is especially visible in the fields of urban planning and territorial development. Smart city shows the potential of AI-assisted administration for mobility, energy, public health, and safety[9]. The aggregation of real-time data

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[6] João Reis, Paula Espírito Santo, and Nuno Melão (2019), "Impacts of Artificial Intelligence on Public Administration: A Systematic Literature Review," *2019 14th Iberian Conference on Information Systems and Technologies (CISTI)*, IEEE Xplore, Coimbra, Portugal, pp. 1-7, https://doi.org/10.23919/CISTI.2019.8760893.

[7] Shivani Nautiyal, Manu Sharma, Pradeep Joshi (2025), „AI and ML Enabled Smart Cities Information Management System for Disseminating CSR Initiatives", in S. Kannadhasan, P. Sivakumar, T. Saravanan & S. Senthil Kumar (eds.), *Proceedings of the International Conference on Sustainability Innovation in Computing and Engineering (ICSICE 2024)*, p. 65-72, Doi: 10.2991/978-94-6463-718-2_7, Springer Nature.

[8] Dazhao Ni (2022), "Public Administration in the Age of Digital Intelligence: Challenges and Responses," in Augustin Holl, Jun Chen, Guiyun Guan (eds.) *Proceedings of the 2022 5th International Conference on Humanities Education and Social Sciences*, p. 1313–20, https://doi.org/10.2991/978-2-494069-89-3_150, Springer Nature.

[9] Md Eshrat E. Alahi, Arsanchai Sukkuea, Fahmida Wazed Tina, Anindya Nag, Wattanapong Kurdthongmee, Korakot Suwannarat, and Subhas Chandra Mukhopadhyay. 2023. "Integration of IoT-Enabled Technologies and Artificial Intelligence (AI) for Smart City Scenario: Recent Advancements and Future Trends" *Sensors* 23, no. 11: 5206. https://doi.org/10.3390/s23115206.

and correlation seemingly unrelated phenomena makes AI a strategic tool for urban governance. In cities such as Barcelona and Copenhagen, AI platforms are used to manage traffic flow, monitor energy consumption, and plan emergency interventions, and thus fosters an adaptive form of governance grounded in intelligent response[10].

Another notable aspect is the use of conversational agents to mediate direct interaction with citizens. Chatbots answer questions, assist with form completion, and manage appointments in an automated manner. AI redefines the dynamics of the citizen–administration relationship and reduces the gap between institution and individual[11].

Through decision traceability, algorithmic audits, and impact scoring, public institutions can offer clear justifications for their decisions, thereby it increases trust in administrative authority. AI acts as a catalyst to advance the concept of e-government, in which the citizen becomes an active partner to shape public services, rather than a passive recipient[12].

The grasp of such a novel administrative paradigm calls for a deeply interdisciplinary approach, integrating technology, administrative sciences, social psychology, and public law. Artificial intelligence transcends the level of a simple technological solution, and presents itself as a cognitive challenge that impacts the entire modern governance systems. It provides a firm foundation for the realization of a data-driven, participatory, and flexible model of administration, which is perfectly in line with the conference theme of interdisciplinary challenges of administrative sciences.

4. Legal Challenges of AI-Assisted Decision-Making

As artificial intelligence continues to take on an increasingly dominant role in the making of administrative decisions, the legal community is confronted with a host of fundamental challenges to legality, legitimacy, and institutional responsibility. Here, one of the underlying principles of public administration is transparency in decision-making, but that is undermined when decisions are motivated by or generated through black-box algorithmic systems, which often defy being deciphered by the decision-makers and interested citizens. A central issue

[10] Benedicto Alwar, Hector Edgardo, and Edwardo Faustino (2024), "Integrating IoT and Artificial Intelligence for Sustainable Smart City Development: A Case Study Approach," *ITEJ (Information Technology Engineering Journals)* vol. 9, no. 2: 80–90, https://doi.org/10.24235/itej.v9i2.137.

[11] Kritika Bajracharya (2024), "Big Data and Artificial Intelligence Integration in Modernizing Governance and Public Administration Practices," *Global Research Perspectives on Cybersecurity Governance, Policy, and Management,* vol. 8, no. 12: 34–47, https://hammingate.com/index.php/GRPCGPM/article/view/7.

[12] Abdullah M. Al-Ansi, Askar Garadb, Mohammed Jaboobc, Ahmed Al-Ansid (2024), "Elevating E-Government: Unleashing the Power of AI and IoT for Enhanced Public Services," *Heliyon* vol. 10, no. 23: e40591, https://doi.org/10.1016/j.heliyon.2024.e40591.

of law is who is to be held responsible in decision-making. If a wrong or immoral decision is caused by a recommendation generated by a computer program, it has to be determined who is responsible: the institution, the public servant who made the decision based on the recommendation, the algorithm creator, or the AI system as a technological artifact? This ambiguity is exacerbated by the absence of a specific legal framework tailored to the realities of automated decision-making and the distribution of responsibility within digital ecosystems.

Equally significant is the citizen's right to understand the rationale behind administrative decisions that affect them. Many of the AI systems currently in use are based on complex neural networks, which are difficult to interpret even for experts. As a result, the "right to explanation" — enshrined in European regulations — is undermined by the opaque nature of these technologies. In the absence of explainable and verifiable mechanisms, AI-assisted decision-making risks deviating from the rule of law and the minimum guarantees of fair administrative procedures[13].

Another critical dimension concerns the respect for the principles of legality, proportionality, and non-discrimination. Algorithms inherently learn from existing data, which may reflect systemic biases or contain structural errors. Therefore, there is a real risk that AI will reproduce — or even amplify — existing social inequalities, leading to discriminatory or arbitrary decisions that may go undetected. Continuous oversight and the development of algorithmic audit methodologies are essential to ensure the ethical and legal compliance of automated decision systems. Furthermore, the protection of personal data becomes a foundational pillar in the context of digital administration. According to the General Data Protection Regulation (GDPR), any automated processing of data with legal implications for an individual must adhere to strict criteria of lawfulness, proportionality, and transparency[14]. Within the field of artificial intelligence, where decision-making in most instances is based on the processing of large quantities of personal data, said provisions set explicit technical and organizational boundaries. Fields of consent management, data anonymization, and the rights of erasure or rectification are just some of the aspects that need to align with the functional designs of algorithmic systems. The scholarly literature perpetually emphasizes the complexity of legal issues associated with artificial intelligence. Both Predescu and Stănilă argue that the full potential of these technologies has yet to be appreciated, which requires going beyond the paradigms of administrative law to a synthesis model that includes legal theory, technology ethics, and fundamental

[13] Steven M. Appel and Cary Coglianese (2021), "Algorithmic Administrative Justice," in Marc Hertogh, and others (eds), *The Oxford Handbook of Administrative Justice*, Oxford Academic, 481–502, https://doi.org/10.1093/oxfordhb/9780190903084.013.24.

[14] Gianclaudio Malgieri (2021), "'Just' Algorithms: Justification (beyond Explanation) of Automated Decisions under the General Data Protection Regulation," *Law and Business* vol. 1, no. 1: 16–28, https://doi.org/10.2478/law-2021-0003.

rights in a digital environment. The 2021 European Conference on Artificial Intelligence pointed out that re-legislating in the context of algorithmic governance requires rigidly defined laws for public administration that are agile[15], self-governing, open, and dependable. With such a premise, the difficulty shifts from normative to more conceptual challenges: it requires the reconstruction of administrative normative and legitimacy in a framework upheld by the relationships among people, institutions, and algorithms. There must be an equilibrium to incorporate all aspects where legal theory, computer science, public administration, and ethics converge to answer the needs of public administration and artificial intelligence regulation. It is only through this interdisciplinary collaboration that a legal framework makes it possible to build a modern, efficient, and ultimately responsible administration.

5. Managerial and Institutional Implications

The integration of artificial intelligence into public administration represents not merely a technological challenge, but above all an organizational and managerial one. Decision support systems based on artificial intelligence require institutional structural realignment, a change in the attitude of staff members, and a reorganization of the relationship between human beings, technology, and decision-making.

Most public institutions run on classical, inflexible organizational schemes with well-defined hierarchies and vertical decision paths. Accelerated models of digitalization need to be reconsidered and reorganized to adopt more adaptable systems based on collaboration, information sharing, and rapid decision-making. The integration of artificial intelligence offers a new operating model in administration based on constant feedback, self-adjustment, and timely responding. This transformation is a radical deviation from the classical bureaucratic culture.

Administrative officers not only need to be proficient in the use of technology, but also need to comprehend how algorithmic decisions are generated, what the limitations of these systems are, and how to interpret results.

New competence is not merely technical knowledge but rather ethical and legal factors, particularly in light of the fact that automated decision-making can have legal implications directly affecting individuals. The Romanian National Agency of Civil Servants stated that over 1.2 million people were working in public administration in 2019, and created a large workforce that, in theory,

[15] Thomas Dratsch, Liliana Caldeira, David Maintz & Daniel Pinto dos Santos (2020), "Artificial Intelligence Abstracts from the European Congress of Radiology: Analysis of Topics and Compliance with the STARD for Abstracts Checklist," *Insights into Imaging* vol. 11, article no. 59, https://doi.org/10.1186/s13244-020-00866-7.

could be aided by these technologies[16]. The clerical or support staff-level resistance or indifference to change, at least in terms of adopted digital technologies, is one of the most difficult challenges to this strategy. Intelligent decision support systems, for instance, have the potential to be seen as encroachments on autonomy that could undermine professional post the organizational stagnation. Such measures of artificial intelligence integration would require an open internal communications policy, teamwork, and system-wide organizational structure to be more welcoming toward change, especially culture shifts. The public manager's role becomes vital at this stage. The public manager, once a mere policy implementer, is now a digital transformation driver and as such must deftly navigate the convoluted overlap of technology, legal framework, and socio-administrative dynamics. A public manager in the 21st century is expected to have transversal competencies and would need to comprehend the information ecosystem, algorithmically assess risks, be law savvy, and possess leadership that encourages participation[17]. Essentially, a new profile emerges — that of a public innovation leader, formed in the spirit of adaptive governance, agile management, and outcome-oriented organizational design[18].

This new managerial reality also raises important discussions about the status, career path, and responsibility of the public manager in a hybrid administrative environment. In an administration where human–algorithm interaction becomes the operational norm, managerial roles must be redefined to reflect both emerging risks and new opportunities. The public manager becomes the guarantor of balance between efficiency and accountability, between innovation and institutional protection[19].

In essence, the managerial and institutional challenges generated by the introduction of AI in public administration are inherently interdisciplinary[20]. They require the alignment of strategic vision with organizational realities, legal norms with technological dynamics, and citizen needs with decision-making

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[16] Adriana Circiumaru (2024), "Transparency and Competence in the Public Sector – a New Recruitment System and a Unified Database for the Public Administration in Romania," EIPA, https://www.eipa.eu/epsa/transparency-and-competence-in-the-public-sector-a-new-recruitment-system-and-a-unified-database-for-the-public-administration-in-romania/.

[17] P. K. Agarwal (2018), "Public Administration Challenges in the World of AI and Bots," *Public Administration Review* 78, no. 6: 917–21, https://doi.org/10.1111/puar.12979.

[18] Jenny M. Lewis, Lykke Margot Ricard, and Erik Hans Klijn, "How Innovation Drivers, Networking and Leadership Shape Public Sector Innovation Capacity," *International Review of Administrative Sciences* 84, no. 2 (2018): 288–347, https://doi.org/10.1177/0020852317694085.

[19] Rhys Andrews, George Boyne, Richard Walker (2011). „The impact of management on administrative and survey measures of organizational performance", *Public Management Review*, vol. 13, no. 2: 227-255.

[20] Anca Florentina Vatamanu and Mihaela Tofan (2025), "Integrating Artificial Intelligence into Public Administration: Challenges and Vulnerabilities," *Administrative Sciences* vol. 15, no. 4: 149, https://doi.org/10.3390/admsci15040149.

structures. Without this alignment, technology risks remaining an isolated innovation with no lasting systemic impact.

6. Case Studies

The experiences of various European states in the digitalization of public administration demonstrate the diversity and dynamism of the strategies adopted, shaped by institutional culture, available technical resources, and citizen pressure for modern services. In the context of digital transformation and AI integration in the public sector, these examples offer valuable benchmarks for reflecting on the challenges and opportunities faced by Romanian public administration.

Estonia is widely recognized as a benchmark in the field of e-government. Through the "X-Road" platform, Estonian public institutions are interconnected in a unified digital ecosystem that enables secure data exchange and the automated provision of public services.

The Estonian system is based on the "once only" principle, under which citizens are not required to give the same information to different institutions. Administrative decisions are often supported by artificial intelligence technologies in risk evaluation and to handle bureaucratic processes. Italy serves as a case in point where digital evolution goes alongside a robust legal framework. The process of digitization in the judicial sphere commenced with Legislative Decree No. 82/2005, which instituted the Digital Administrative Code, and was later supplemented by laws that required documents to be transmitted and stored electronically. The "PCT" and "Giustizia Digitale" projects developed an integrated platform for e-signatures and the management of judicial documents[21]. Because of professional class trainings and procedural standardization, the professional frameworks alongside widespread homogeneous adoption became feasible. Spain developed and implemented significant systems for the digitalization of justice with the LexNet platform which is used by over 600 courts and enabled automatic notification of judgments as well as the exchange of documents electronically between legal practitioners. Spain has been focused and concerned with confidential and professionalized gateways to e-case files, and emphasized the safeguard of personal information in electronic systems. Slovenia sought to enhance interoperability and streamline processes within the system through the implementation of the COVL system. It serves as a technological framework for communication between different institutions. Slovenia encouraged the use of technology in integrated enforcement procedure automation to minimize expen-

[21] Giancarlo Buccarella, Francesco Fimmanò, Ines Simona Immacolata Pisano, *Giustizia Digitale. Processi telematici e udienza da remoto*, accessed August 14, 2025, https://shopdata.giuffre.it/media/estratti/ESTRATTO_024210838.pdf.

sive and time-consuming legal processes. Through defined procedures and application of standardised norms, Slovenia has ensured digital transformation with certainty and avoidance of fragmentation in the use of new technologies in the public sector.

Germany has aimed its digitalization policy at streamlining the enforcement system as well as institutionalizing the electronic process of debt recovery. Electronic notice systems and automated procedures have helped reduce delays, especially in debt enforcement cases, thus reducing administrative costs and accelerating the decision-making process.

In Romania, while it has developed more gradually and sometimes piecemeal, the judiciary has started implementing digital solutions, especially since the post-pandemic era.

Law No. 214/2024 on the use of electronic signatures, time stamps and the provision of trust services based on them, as well as the extended use of certified email and video conferencing, have created the conditions for a minimally functional digital infrastructure.[22] However, challenges persist in terms of interoperability, staff training, and the systematic integration of AI into decision-making processes. Despite these obstacles, there are visible signs of alignment with European trends, especially through pilot projects and the growing interest among scholars in consolidating a digital justice system tailored to citizens' needs.

These European experiences reflect a progressive convergence toward a shared digital administrative space, where AI, interoperability, transparency, and data protection become essential criteria for good governance. Within this landscape, Romania has the opportunity not only to adopt established models, but also to develop its own solutions through an interdisciplinary approach in which legislation, technology, institutional management, and organizational culture act in concert.

7. Applied Case Study: "Eprimăria" – Digitalizing the Administration–Citizen Interaction

A relevant example that supports the arguments presented in this paper is the "Eprimăria" project. The project involves the development and testing of a web-based application dedicated to local public administration, particularly in rural areas, and proposes a concrete alternative for the digitalization of public services, with a focus on efficiency, communication, and accessibility.

The application is based on a modular three-tier architecture and aims to reduce bureaucratic barriers between institutions and citizens. Through this platform, users can access public information, interact with civil servants via a chat

[22] Published in the Official Gazette, Part I no. 647 of July 8, 2024.

system, submit administrative requests online, schedule appointments, and participate in public consultations through electronic voting mechanisms. The functionalities are differentiated based on user type: citizens, municipal employees (by department), and platform administrators.

On the legislative side, the project considered the applicable regulations on electronic signatures, personal data protection (GDPR), and the need for institutional interoperability, inspired by Nordic models of digital governance. The platform complies with security requirements (two-factor authentication), role-based access permissions, and data backup mechanisms, all of which contribute to a robust and scalable digital ecosystem[23].

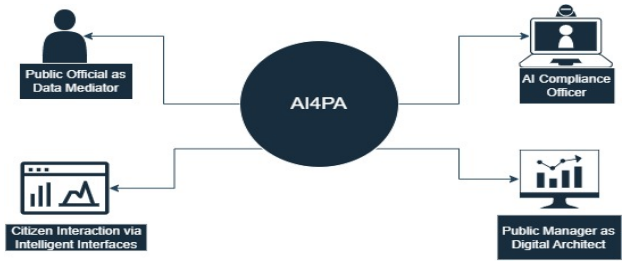

Figure 1 Institutional Impact: Transforming Roles in Local Administration through AI4PA

"Eprimăria" is therefore more than a technological proposal, it is a practical demonstration of the convergence between technology, legislation, public management, and citizen needs. Through its functionalities and architecture, the platform effectively reflects both the challenges and interdisciplinary potential of public administration digitalization, a core theme of this paper and of the conference.

Beyond its immediate technological component, the "Eprimăria" project may also serve as an exploratory foundation for developing decision support systems in local public administration. Structured data collection, user behavior analysis, request prioritization, and administrative workflow mapping create the conditions for a system that not only facilitates communication but also offers a solid basis for informed institutional decision-making[24]. The platform could be ex-

[23] Cristian Dumitrescu (2024), "Digitalization of Public Administration in Romania: The Way towards Efficiency and Accessibility," *Perspectives of Law and Public Administration* vol. 13, no. 1: 167–73, https://doi.org/10.62768/plpa/2024/13/1/18.

[24] Tara Qian Sun, Rony Medaglia (2019), "Mapping the Challenges of Artificial Intelligence in the Public Sector: Evidence from Public Healthcare," *Government Information Quarterly* vol. 36, no. 2: 368–83, https://doi.org/10.1016/j.giq.2018.09.008.

panded with modules for predictive analysis, impact scoring, or citizen satisfaction evaluation, transforming it into an active decision-making tool for local governance.

From this perspective, "Eprimăria" stands as a Government-to-Citizen (G2C) application that concretely illustrates the directions promoted by European e-government strategies. It demonstrates evolution of technical project into a digital governance mechanism. The direct impact on institutional efficiency, transparency, and public participation is evident. Moreover, the project identifies challenges of implementation of such solutions in the Romanian public sector such as limited digital infrastructure, staff training gaps, cultural barriers, and lack of systemic interoperability.

Integration of such initiatives at a national level contributes to align Romanian public administration with the norms and values of the European Administrative Space. Romania holds transparency, efficiency, and democratic participation as fundamental principles for AI. Thus, "Eprimăria" is not merely a practical digitalization exercise, but a functional demonstration of interdisciplinary potential to reconstruct the administrative system.

7.1. Legal Framework: The Administrative Act in the Age of AI

The integration of artificial intelligence (AI) and decision support systems (DSS) into public administration is reshaping the nature of the administrative act. Traditionally, administrative decisions are grounded in law, issued by a human authority, and justified through explicit reasoning. AI introduces new decision dynamics — algorithm-generated outputs, statistical modeling, and machine learning recommendations — raising challenges for legal accountability and procedural fairness.

In response to these developments, the EU Artificial Intelligence Act classifies most administrative AI tools (e.g., automated eligibility checks, digital permitting, citizen scoring) as high-risk systems, subject to legal obligations including human oversight, transparency, documentation, and algorithmic audit. This new category of administrative activity — algorithm-assisted decision-making — requires not only compliance with formal legality, but also structural safeguards embedded in code, ensuring that discretion remains legitimate, traceable, and contestable.

In this context, this paper proposes the development of a national platform: AI for Public Administration (AI4PA), built on AI and DSS, to support Romanian institutions — especially at local level — in delivering faster, more coherent, and citizen-oriented public services. AI4PA would serve not merely as a technological upgrade, but as a legal and institutional redesign of how administrative acts are produced, reviewed, and audited in a digital ecosystem.

Relevant international models support this vision. For instance, Portugal's AI4PA project, developed under the guidance of UNU-EGOV, aims to integrate data science and AI into public institutions, focusing on legal compliance, ethical standards, and institutional performance.

Similarly, Estonia's X-Road and Finland's AuroraAI illustrate how national platforms can integrate public services across domains through automated reasoning and citizen-focused design.

To be effective in Romania, however, such a system would have to be complemented by a responsive legal system to facilitate digital discretion without jeopardizing fundamental legal safeguards. This would need cross-professional collaboration between lawyers, engineers, institutional designers, and data ethics specialists[25]. AI should not substitute for administrative law, but as a tool to assist it in the age of the algorithm — when law, data, and regulation intersect.

Deploying a national AI-driven decision support system like AI for Public Administration (AI4PA) would not just automate procedures [26] — it would radically transform work and roles in local public institutions.

First, civil servants' traditional function as manual processors of requests, forms, and verifications would change to that of data mediator and system watcher. Civil servants would no longer process documents sequentially but would instead interpret system outputs, manage exceptions, and watch algorithm performance. This would not only demand computer literacy but also familiarity with legal and ethical concerns since human intervention is needed to safeguard fairness and accountability.

Second, there would be new hybrid professions. Companies would require AI compliance officers, data protection coordinators, and digital service analysts who can certify that AI systems are in conformity with the law and just. These are professions that blend law, technology, and administration, which is the interdisciplinary condition of contemporary governance[27].

Third, the work of public managers would basically be strategic in orientation. Rather than resource allocation and internal organizational design, local managers would be agents of digital change, charged with artificial intelligence technology adoption, partnership coordination with external institutions (academic or private), and ensuring service delivery is still citizen-centered.

Their leadership style would transition from operational to adaptive and

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[25] Camelia Raluca Voinea (2023), "The Impact of Artificial Intelligence on Public Services in Romania." *Academic Journal of Law and Governance*, no. 11.1-11.2: 21–31. https://doi.org/10.56177/ajlg.11.1.11.2.2023.art.3.

[26] Simona Rotaru, *Understanding Data Privacy Laws for AI in Romania*, Atrium Romanian Law Office. Romanian Lawyers, November 22, 2023, https://theromanianlawyers.com/data-privacy-laws-for-ai-in-romania/, accessed on 10.06.2025.

[27] OECD, *Future of Work*, OECD, 2020, https://www.oecd.org/en/topics/future-of-work.html, accessed on 10.06.2025.

systemic, aligning with agile and data-driven modes of governance.

Finally, citizen interaction with the institution would be enabled through smart interfaces — i.e., chatbots, dashboards, and automatic notifications —requiring a shift away from direct, in-person bureaucratic procedures to asynchronous, platform-based communication. Staff would be compelled to scrutinize feedback, sequence automated processes, and constantly adjust the system based on feedback from citizens[28]. These transformations would not imply automation replacing people, but a redistribution of administrative intelligence: from manual input to interpretative judgment, from repetitive execution to adaptive decision support. Such restructuring, if managed strategically, could elevate the public administration's efficiency, consistency, and responsiveness, particularly in rural or under-resourced areas where capacity gaps are greatest.

7.2. National Interconnection and Systemic Integration: AI4PA as a Public Administration Digital Infrastructure

The AI for Public Administration (AI4PA) national plan project must not be envisioned as a mere standalone technological innovation but as a holistic solution to the condition of extensive fragmentation of digital transformation in Romanian public administration[29]. As a design concept, AI4PA is to be an overarched technology of digital infrastructure that can connect central and local authorities into an integrated system under shared rules on interoperability, algorithmic transparency, and legality. The platform is intended to replace patchwork solutions with nationally integrated operating systems where decision-making procedures, data standards, and mechanisms for the delivery of public services are harmonized across the country.

Such a platform would be able to host decentralized application with a shared legal, ethical, and technical framework. Local institutions would be able to deploy variable modules without sacrificing the fundamental design of the platform, and data interchange would be through normalized protocols, under algorithmic control and real-time audits. Legality in this system would not be a retrospective shield; it would be an intrinsic design criterion built into the system from the outset.

AI4PA would be a redefinition of the administrative action itself. Artificial intelligence-aided decisions would be signed in line with precise legal stand-

[28] Emma Martien Branderhorst, Erna Ruijer (2024), "Digital Leadership in Local Government: An Empirical Study of Dutch City Managers." *Local Government Studies* vol. 51, issue 3: 576-599. https://doi.org/10.1080/03003930.2024.2363368.

[29] Marian Stoica, Bogdan Ghilic Micu (2020), "E-Government in Romania – a Case Study," *Journal of E-Government Studies and Best Practices,* Article ID 608643: 1–12, https://doi.org/10.5171/2020.608643.

ards, traceable and documented, thereby ensuring traceability and contestability[30]. The platform would enable a new decision-making paradigm where the administrative action is digital and legal, automated and responsible, efficient and procedurally legitimate.

Global role models validate this vision. Portugal's AI4PA project, launched with UNU-EGOV's guidance, illustrates how artificial intelligence can be integrated in government institutions without weakening democratic values or legal integrity. Estonia's X-Road system has enabled a fully interoperable digital government system, and Finland's AuroraAI provides predictive public services to major life events. These initiatives provide an integrated reference model for Romania, which could follow a similar trajectory adapted to its own unique institutional and social features.

In principle, AI4PA is an interdisciplinary effort. To develop this project effectively and conceive it properly, a call for collective effort from legal professionals, engineers, public administrators, policy analysts, and social scientists is necessary. Only through such collective effort can a rule-of-law-observing digital structure be constructed that meets the performance demands of modern governance. This platform is not meant to replace public officials, but to enable a redistributive shift of administrative astuteness—to divert it from routine work to judgmental assessment, and from bureaucratic reaction to strategic foresight. Implementation of a system such as AI4PA can make a critical difference in underrepresented or rural areas, where administrative capacity is low and the demand for transparency, efficiency, and accessibility is high. The system would not only facilitate the optimization of means but also the revival of faith in institutions and the minimization of geographic gaps.

Subsequently, AI4PA is more than a technological solution; it is a model of institutional change, that offers a digital platform for a new paradigm of public administration that is integrated, legal, effective, and citizen-centric. This framing is a direct reference to the larger theme of the present conference, showing how multi-disciplinary problems of administrative sciences can be addressed by integrated, forward-looking, and socially applicable projects of the 21st century.

8. Conclusions

Use of artificial intelligence in public administration has shifted from being a future possibility to an urgent requirement, driven by the increasing need for the efficiency of institutions, transparency, and responsiveness. In a world where societal pressures, systemic issues, and rapid digital changes prevail in the

[30] Sorin Lodoabă, Calin Rus, Dacian C Dragos (2025), "The 'Algorithmic Race': Insights from the Romanian public sector," *Italian Journal of Public Law*, vol. 17, issue 2: 735-765, https://www.ijpl.eu/the-algorithmic-race-insights-from-the-romanian-public-sector/.

environment, AI seems to be a major tool for reconfiguring administrative decision-making. But the technological change requires a broad reconsideration of the interface between the public institutions and the citizens and their internal institutional mechanisms. This research contributes to the literature by highlighting the multifaceted and multidisciplinary nature of the digital revolution in public administration, with a focus on the pivotal role of artificial intelligence.

It analyzes the theoretical and legal foundations of AI adoption in the public sphere, as well as its managerial, legal, and institutional implications. The proposed case study, based on the "Eprimăria" project, supports the argument that technical solutions cannot be dissociated from the normative and organizational context in which they are applied. The successful implementation of AI largely depends on the public sector's ability to learn, adapt, and collaborate.

The international models explored — Estonia, Italy, Spain, Slovenia, Germany — demonstrate that coherent digitalization requires more than digital infrastructure: it demands visionary leadership, continuous training of public personnel, and legal frameworks that safeguard citizens' rights without stifling innovation. Romania is at a turning point, where the accumulation of best practices, pilot projects, and strategic reflection can lead to the development of a more agile, transparent, and citizen-centered administration.

In line with the theme of this conference — *the challenges of interdisciplinary approaches in 21st-century administrative sciences* — this paper argues that the future of administration cannot be envisioned outside the dialogue between law, technology, public management, and behavioral sciences. Only through an integrated vision can resilient public systems be built, systems capable of responding to the complex and evolving needs of contemporary society.

Building on the exploratory results of the *Eprimăria* project, we propose the creation of a modular, interoperable framework adaptable to Romanian local administrations. Such a system could evolve into a national platform — *AI for Public Administration* — developed under academic coordination and deployed through partnerships with local authorities. This initiative bridges the gap between experimentation and systemic reform, and places Romania on the path toward a responsible and scalable AI-driven governance.

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The Impact of New Technologies on the Administrative Act

Associate professor **Elena Emilia ȘTEFAN**[1]

Abstract

Generally speaking, the best-known administrative act issued by public authorities in all countries of the world is the identity card that accompanies the individual for life. The scope of the study is to document the impact of new technologies on the procedure of issuing administrative documents, taking into account the fact that the current global trend in administration is the digitalization of public services and the issuance of documents in electronic format. The reason for this analysis is a news in the media according to which, as of 20 March 2025, electronic ID cards will be issued to individuals in Cluj, as part of a pilot program. The research methodology of the topic is interdisciplinary, combining information from national and EU law, a case study being included at the end of the article. The proposed theme is highly topical, as our country is on the threshold of an historic moment and a paradigm shift in the field of acts in general, namely the transition from the old to the new, to the tools of the future. The results of the study show that the digitalization of public services has impacted the legal regime of administrative acts. Notwithstanding, there is a need for standardization and for a highly developed legal framework, with a focus on data security, which takes into account the protection of fundamental human rights in the digitalization process.

Keywords: *administrative act, electronic ID card, digitalization, public administration, data security.*

JEL Classification: K20, K23

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1. Introduction

Nowadays, the international scientific community is focusing on new technologies to understand how they work, how they can be integrated into existing work and whether there are vulnerabilities that can cause damage, as it is a flow of personal data. Today's unprecedented technological developments, which

[1] Elena Emilia Ștefan - Faculty of Law, „Nicolae Titulescu" University of Bucharest, Romania, ORCID: 0009-0004-4154-3199, stefanelena@gmail.com.

have the benefit of bringing a qualitative leap forward in human existence, imperatively call for the modernization of public administration. Also, "in our era (…) public administration (…) does not (and cannot) remain unchanged, cannot be independent of the trends of the world around it, and so it can be said that public administration is constantly evolving"[2].

Two concepts are often talked about at European level: *the European digital identity wallet* which will enable EU citizens to access online services, without having to use private identification methods[3], and also *digital identification*[4]. According to art. 8 of the Charter[5] of Fundamental Rights of the European Union "Everyone has the right to the protection of personal data concerning him or her".

The European digital identity (eID) is no longer just a concept but looks set to come to life in the near future. There are studies which state that "with the increasing levels of digital transformation, focus on digital identities of individuals is increasingly getting prominence[6]". Thus, "the era of industrialization and industrial society is coming to an end[7]". It is therefore interesting to find out how the situation in Romania looks like bearing in mind that "international factors cannot be disregarded in the current background, in which life of each human community is closely linked to the fate of humanity as a whole[8]".

The paper addresses a topical issue of administrative documents in general and electronic ID cards in particular, in the context of digitalization. Actually,

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[4] Regarding the regulatory framework that makes up the digital identity, we note: Regulation (EU) 2024/1183 Regulation (EU) 2024/1183 of the European Parliament and of the Council of 11 April 2024 amending Regulation (EU) No. 910/2014 as regards establishing the European Digital Identity Framework, published in OJEU, L 30.4.2024. Furthermore, we note that Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, published in OJEU, L 257/73, 28.8.2014.

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"the most important activity of public administration entities of the adoption of administrative decisions that negative or positive consequences for natural or legal people[9]". The topic is of general importance to both the scientific community and individuals, "constant technological development changes all aspects of human life[10]". The research methodology combines specialized literature, legislation and administrative practice, the analysis being descriptive and analytical. The documentary sources accessed were in Romanian and English, selected according to relevance criteria.

The scope of the study is to assess the impact of new technologies on the procedure of issuing administrative acts. In order to achieve this research objective, the documentation of the electronic identity card was carried out by using research methods specific to law, such as the documentary, comparative and logical-deductive methods.

The sources used have been rigorously analysed and legally interpreted in order to reach a conclusion. The paper also proposes a case study in order to estimate the trends existing in several randomly selected countries with regard to this administrative act issued in electronic format. The research questions to be answered in the paper shall be: "*What is the regulatory framework for the electronic ID card?*", "*What is an electronic ID card?*", "*What are the elements contained by the electronic ID card?*".

2. The Administrative Act - Between Tradition and Modernity

A review of the literature shows that the administrative act takes an important place in administrative law courses[11]. Traditionally, it is analysed both as a means by which the public administration expresses itself and from the perspective of the conditions for direct action in administrative litigation. Moreover, "in any system of administrative law, the court reviews the factual and discretionary

[9] Simona Bareikyte (2021), „Toolbox of the public administration entity. Intersection of the principle of legality and administrative discretion in exercising the revocation of an administrative decision: the case of Lithuania", *Bratislava Law Review* volume 5, no. 2: 63-74, p. 65, DOI: 10.46282/blr.2021.5.2.255.

[10] Mariusz Novak (2024), „Electronic evidence in civil proceedings on the background of comparative law", *Studia Iuridica Lublinensia,* volume 33 no. 2: 223-237, p. 223, DOI: 10.179 51/sil.2024.33. 2.223-237.

[11] Antonie Iorgovan (2005), *Drept administrativ (Administrative Law)*, Vol. II, 4th edition, All Beck Publishing House, Bucharest, pp.20-100; Rodica Petrescu (2009), *Drept administrativ,* Hamangiu Publishing House, Bucharest, pp.305-357; Dana Apostol Tofan (2024), *Drept administrativ (Administrative Law)*, vol. II, C. H. Beck Publishing House, Bucharest, pp.1-101; Verginia Vedinaș (2023), *Drept administrativ (Administrative Law)*, edition XIV, revised and supplemented, Universul Juridic Publishing House, Bucharest, pp. 353-395; Emilia Lucia Cătană (2021), *Drept administrativ (Administrative Law)*, 2nd edition, C.H. Beck Publishing House, Bucharest, pp. 266-312; Marta Claudia Cliza (2012), *Drept administrativ (Administrative Law),* Second Part, Universul Juridic Publishing House, Bucharest, pp. 14-62.

determinations made by the administration"[12]. In the inter-war period, a distinction was made between acts of authority and acts of management, a classification which is no longer relevant today. While "acts of authority were unilateral acts, the acts performed by the administration were patrimonial, contractual acts (...)"[13].

According to Law no. 554/2004[14] of the contentious administrative, the administrative acts are typical and assimilated and the Constitutional Court, in its case law, has pointed out the following: "the qualification of a given act as an administrative act belongs exclusively to the courts, which are called upon to settle a dispute[15]". Furthermore, public administration in our country is subject to the rule of law and the supremacy of the Constitution. Moreover, it is stated that "legality is the quality of being in accordance with the law[16]".

In French administrative law courses, unilateral administrative acts, but also administrative contracts are analysed. For example, author Yves Gaudement develops unilateral administrative acts and administrative contracts[17]. Similarly, authors Jean Walline, Gabriel Eckert and Etienne Muller examine both the unilateral administrative act and the administrative contract[18], as well as Jacques Petit and Pierre-Laurent Frier[19]. Furthermore, according to French doctrine, "administrative law has a particular feature: it is originally the work of the judge"[20]. German administrative law courses also deal with both administrative acts and contracts. For example, author Anne Jacques-Gauche[21] details the administrative act in the part dedicated to the administrative procedure, presenting the administrative act and then public law contracts[22].

In its modern form, the electronic administrative act is regulated in na-

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[12] Paul Craig (2015), *UK, EU and Global Administrative Law. Foundations and Challenges,* Cambridge University Press, p. 477.
[13] Paul Negulescu (1934), *Tratat de drept administrativ. Principii generale (Administrative Law Treaty. General Principles)*, Vol. I, "E. Marvan" Institute of Graphic Arts, Bucharest, p.296.
[14] Published in Official Journal no. 1154 of 7 December 2004.
[15] Decision no. 477/2011 of the Constitutional Court, published in Official Journal no. 419 of 15 June 2011.
[16] Georges Vedel, Pierre Delvolve (1958), *Droit administratif*, Presses Universitaires de France, p. 373.
[17] Yves Gaudemet (2022), *Droit administratif*, 24e edition, LGDJ, Paris, pp. 329-401.
[18] Jean Walline, Gabriel Eckert, Etienne Muller (2023), *Droit administratif*, 29e edition, Lefebre Dalloz, pp. 279-401.
[19] Jacques Petit, Pierre-Laurent Frier (2023), *Droit administratif*, 17e edition, LGDJ, Paris, pp. 379-572.
[20] Clemence Barray, Pierre-Xavier Boyer (2020)*, Droit du contentieux administratif*, Gualino, Lextenso, p. 17.
[21] Anne Jacques-Gauche (2022), *Droit administratif allemand*, Presse Universitaire de France, Humensis, p. 154.
[22] Ibid, pp. 154-202.

tional legislation, such as art. 46 of the Code of Fiscal Procedure ["The tax administrative act is issued in writing, on hard copy or in electronic format", para. (1)]. The administrative act in electronic format is also available in the field of European funds ["Debt instruments issued in the implementation of projects financed by European funds (...), as well as other administrative acts issued by the managing authorities in the exercise of their public authority (...), shall be issued in electronic format, signed with a qualified electronic signature, in accordance with the legal provisions and shall be treated as authentic instruments" [GEO no. 65/2020 on some measures to digitize the system of coordination and management of European funds (...), art. 2^1][23].

3. Regulatory Framework for the Electronic Identity Card

3.1. Legislation Applicable to the Electronic Identity Card - Brief Considerations

Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement[24] is adopted at EU level. This European act proposes a standardized electronic version of identity cards. The Preamble states as follows: "This Regulation does not provide a legal basis for setting up or maintaining databases at national level for the storage of biometric data in Member States, which is a matter of national law that needs to comply with Union law regarding data protection[25] (...)" (par 21). The regulation covers the security standards in art. 3 para. (1): "*Identity cards issued by Member States shall be produced in ID-1 format and shall contain a machine-readable zone*". In other words, such documents "shall be based on the specifications and minimum security standards set out in ICAO Document 9303"[26].

At national level, the Code of Administrative Procedure is not adopted although "at European Union level, the Research Network on European Admin-

[23] Published in the Official Journal no. 381 of 12 May 2020.
[24] Published in the Official Journal no. 188, 12.7.2019, https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELE X:32019R1157, visited on 16.04.2025.
[25] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data (...), published in OJ L 119, 4.5.2016.
[26] It refers to ICAO Standards 9303 of September 2023, https://www.icao.int/publications/Documents/9303_p3_cons_en.pdf, visited on 13.04.2025.

istrative Law (RENEUAL) has developed (....), the Law of Administrative Procedure of the EU[27]". Acts of civil status have a mixed nature, both civil and administrative, but in this paper the analysis is carried out only from the perspective of administrative law. In the context of our country's international obligations, a succession of normative acts updated the legislation applicable to the electronic identity card. "National actors are especially important since they are mainly responsible for the everyday application of E.U. law"[28].

The analysed normative acts are: Government Ordinance no. 69/2002 on the legal regime of the electronic identity card[29]; Government Resolution no. 1982/2004 on the approval of the Methodological Norms for the application of Government Ordinance no. 69/2002 on the legal regime of the electronic identity card (...)[30]; GEO no. 97/2005 on the registration, domicile, residence and identity documents of Romanian citizens[31].

GEO no. 97/2005 provides the framework that regulates the registration, domicile, residence and identity documents of Romanian citizens, which ensures the achievement of legal relations between individuals, legal entities and the institutions of the rule of law. According to art. 2 para. (4) "the activity of registering Romanian citizens as well as the activity of issuing the identity documents of Romanian citizens is carried out in a unified manner and is coordinated by the Public General Directorate for Persons Records - D.G.E.P, at the central level and by the county public services for persons records, at county level". Furthermore, D.G.E.P. manages the National computerized system for persons records (S.N.I.E.P.).

3.1.1. What Is the Electronic Identity Card?

According to the provisions of art. 12 para. (3) of GEO no. 97/2005, *identity document* shall mean "identity card, ordinary identity card, *electronic identity card*, provisional identity card and national identity card, within their validity period". According to the normative act, the identity document is the proof of identity, Romanian citizenship and, where applicable, with domicile or residence in

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[27] Cătălin Silviu Săraru (2017), „Considerations on the sources of Romanian administrative law. The need to codify the rules of Romanian administrative law", *Juridical Tribune*, Volume 7, Issue 2: 224-236, p. 234.

[28] Davor Petric (2023), „The Court of Justice of the E.U.: a Contextualist Court", *University of Bologna Law Review*, volume 8, Issue 2: 11–52, p. 44, https://doi.org/10.6092/issn.2531-6133/18492.

[29] Published in the Official Journal no. 649 of 31 August 2002, republished in the Official Journal no. 844 of 15 September 2004.

[30] Published in the Official Journal no. 649 of 31 August 2002, republished in the Official Journal no. 844 of 15 September 2004.

[31] Published in the Official Journal no. 641 of 20 July 2005, republished in the Official Journal no. 719 of 12 October 2011.

Romania, within the validity period. Therefore, from the legal point of view, the electronic version of the identity card is a form of identity card that is distinguished by certain specific features. Moreover, "in a society based on democracy, it is essential that people be able to enjoy the rights and freedoms to which they are entitled[32]". It is therefore up to the applicant for an administrative act, when given the opportunity to choose, to opt in full knowledge of the facts for one category of administrative act or another.

As a general rule, here are the elements of the legal regime of the electronic identity card:

- "the period of validity represents a travel document in the Member States of the European Union and in third countries that recognize it as a travel document [art. 13 para. (2)].

- enables the holder to use an electronic signature, as well as the authentication in the computer systems of public institutions or of private legal persons [art.13 para. (4)].

- by creating the data set for authentication in the computer systems of public institutions or private legal persons, the holder of the electronic identity card is assigned an electronic identity, which is used for access to electronic public or private services by the verified user [art. 13 para. (16)]

- as of the date of fulfilment of the technical conditions for issuing the electronic identity card, the application for issuing the electronic identity card shall be processed by any community public service of persons records, regardless of the place of domicile or residence of the natural person [art. 14 para. (1^1)]".

3.1.2. Contents of the Electronic Identity Card

Government Resolution no. 1982/2004 approving the Methodological Norms for the application of Government Ordinance no. 69/2002 on the legal regime of the electronic identity card (...) details the necessary information that must be included in this administrative act. Regarding the form and content of the electronic identity card, according to the Methodological Norms, Appendix 2, we note the following:

a) the front side of the electronic identity card contains: name of the country; serial number-2 letters and number-six digits; name of the document; personal numeric code; gender; surname, first name; place of birth; place of residence; holder's signature; holder's photo.

b) the back side of the electronic identity card contains: date of issue,

[32] Ruben Miranda Goncalves (2024), „Reflection on the Systemic Efficiency of Contemporary Democracy", *Juridical Tribune – Review of Comparative al International Law,* volume 14, no. 3: 436-451, p. 439, https://www.tribunajuridica.eu/arhiva/y14v3/6.pdf.

expiry date, name of the issuer and other information complying with the European Union requirements.

At the same time, the shape of the electronic ID card is much smaller than the current ID cards, it resembles a bank card, its dimensions are 90 mm long and 55 mm wide. It is interesting to note the general normative specification on the form of the document, namely: "the electronic identity card is a plastic card on which the personal data of the holder are written and/or stored" (Appendix 2, item 1.1). In our opinion, all those involved in the whole chain of issuing the document and subsequently using it for identification purposes must strictly comply with data security rules which guarantee that the individual's fundamental rights are observed.

New features of the electronic identity card include in particular the following:

a) the medium for electronic storage of the information on the back of the document contains the following: the data on the front of the document; the data necessary for exercising the right to vote of the holder of the electronic identity card; the holder's photo; the data related to the health insurance; the information on social insurance; the holder's residence; the biometric identification data of the holder (according to the international regulations to which Romania is a party); the codes or cryptographic keys for generating the digital signature and for access to other information systems;

b) elements specific to the Romanian state;

c) securing elements.

3.1.3. Deadline for Issuing Electronic ID Cards

According to recent legislative changes (Government Resolution no. 231/2025 for establishing the date of the technical conditions set out in art. IV of Government Ordinance no. 12/2023 amending and supplementing certain normative acts containing provisions on persons records and electronic identity card[33]) the identity cards to be issued, whether simple or electronic, are governed by the following register of deadlines:

a) "20 March 2025, for the issuance of the electronic identity card: valid for 5 years for persons aged between 14 and 18; valid for 10 years after the age of 18; with unlimited validity after the age of 70 (...)" [sole article, para. (1) letter a)];

b) "2 June 2025, for the issuance of the electronic identity card: valid for 2 years for persons aged 0-2 years; valid for 4 years for persons aged 2-14 years" [sole article, para. (1) letter b)];

c) "20 May 2025 for the issuance of simple identity cards valid for 5 years

[33] Published in the Official Journal no. 225 of 13 March 2025.

for persons aged between 14 and 18; valid for 10 years after the age of 18; with unlimited validity after the age of 70 (...)" [sole article, para. (1) letter c)].

3.2. Case Study - Electronic ID Card, Pilot Project and Not Only

Digitalization of public administration on a global upward trend. In a specialized study it is emphasized that "in recent years, we saw a frenezy of regualtory and „self-regualtory" experiments to advance accountability in digital governance[34]". However, "digitalization brings with it new issues of responsibility, legal liability, limits and respect for citizens' rights and freedoms[35]". An interesting study that examines human rights, digitalization and security, claims that they are closely linked: "The new International Triangle can be brought together into one idea by recognising the interdependence and mutual influences between human rights, digitalization and security in the digital world, particularly in economic development[36]".

Researchers point out that "electronic identity documents are spreading worldwide and the digital identification procedures relying on them are increasingly important for national and international security[37]". Notwithstanding, "most ID documents in South America are chip less, which makes developing systems based on this technology difficult because it is usually either not enabled or the ID document in question is printed paper[38]".

For the first time, in Cluj, Romania, a pilot program for the issuance of electronic ID cards has been launched as of 20 March 2025[39] and this will be gradually implemented nationwide, according to a press release from the Ministry of Interior. The costs of the electronic ID card, from 20 March 2025 to June 2026,

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[34] Moritz Schramm (2025), „Curb your enthusiasm: why Europe's digital reforms may not become a global standard", *European Journal of Legal Studies,* volume 16, Special Issue on Law and Technology: 61-100, p. 63, DOI: 10.2924/EJLS.2025.LT.003.

[35] Elena Emilia Ștefan (2024), „Integrity and Transparency in the Work of Public Authorities. Aspects of Comparative Public Law", *Juridical Tribune – Review of Comparative and International Law,* volume 14, no. 4: 564-583. p. 565, DOI: 10.62768/TBJ/2024/14/4/03.

[36] Cristina Popa Tache (2024), „The new international triangle: human right-digitalization-security", *International Investment Law Journal*, Volume 4, Issue 1: 4-17, p. 4, https://investmentlaw.adjuris.ro/articole/An4v1/1.%20Cristina%20Popa%20Tache.pdf, visited on 12.04.2025.

[37] Luca Calderoni, Antonio Magnani (2022), „The impact on face image compression in future generation electronic identity documents", *Forensic Science International: Digital Investigation*, Volume 40, 301345, https://doi.org/10.1016/j.fsidi.2022.301345.

[38] Sebastian Gonzales, Juan E. Tapia (2025), „Forget presentation attack detention for ID cards on remote verification systems", *Pattern Recognition*, Volume 162, 111352, https://doi.org/10.1016/j.patcog.2025.111352.

[39] Public information available online https://www.mai.gov.ro/noua-carte-electronica-de-identitate-devine-disponibila-in-romania-cei-se-va-emite-incepand-cu-20-martie-in-judetul-cluj-punerea-in-circulatie-la-nivel-national-se-va-realiza-gradual/, visited on 07.04.2025.

are to be covered by external non-reimbursable funds through the National Recovery and Resilience Plan (NRRP)[40].

The research into legislation in several countries shows that the Italian eID card (Carta d'identità Elettronica Italiana) started to roll out throughout Italy in 2016. "Rome, Milan, Naples, and Turin were the first cities to launch the project in July 2016[41]". Luxemburg "has started to issue eID cards as of 2 August 2021[42]". In Spain, the Spanish identity document is called Documento Nacional de Identidad - DNI and the first electronic DNI, named DNIe2.0, was issued in 2006[43]. According to specialized literature, "the first electronic DNI, named DNIe2.0 (...) incorporated an electronic chip and several physical security elements to prevent card forging[44]". Furthermore, "(...) in 2015, the electronic DNI was improved by adding contactless capability into it. This revision was called DNIe3.0[45]".

Instead, "Belgian citizens will be able to apply for a digital version of the national identity card from November 2026[46]". At the same time, "the digital identity (e-ID) allows Swiss citizens and people with a Swiss residence permit to prove their identity online. The federal government will start issuing the e-ID in the swiyu wallet app in the third quarter of 2026 at the earliest[47]".

The research also identified studies that highlighted the vulnerability of legislation on issuing electronic ID cards. A specialized study shows that in Mauritius, in 2013, a number of individuals challenged the regulatory framework of the biometric ID card and, following the case law of the Mauritian Supreme Court, in 2017, the legislation was amended to provide more secure protection for individuals, as the laws were considered to interfere with the constitutional right to privacy of Mauritian citizens[48]. From this perspective, it seems to us to be in line with what the doctrine has stated, namely that "throughout history, how

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[40] Idem.

[41] Public information available online https://www.thalesgroup.com/en/markets/digital-identity-and-security/government/customer-cases/new-national-identity-card-for-italy, visited on 11.04.2025.

[42] Public information available online https://ctie.gouvernement.lu/en/dossiers/eID/eID.html#blo ub-2, visited on 13.04.2025.

[43] Public information available online https://www.icao.int/Meetings/TRIP-Symposium-2017/Presentations/TABORADA%20RAMIREZ.pdf, visited on 13.04.2025.

[44] Ricardo Julio Rodriguez, Juan Carlos Garcia-Escartin (2017), „Security assessment of the Spanish contactless identity card", *IET Information Security*, Volume 11, Issue 6: 386-393, p. 387, https://doi.org/10.1049/iet-ifs.2017.0299.

[45] Ibid.

[46] Public information available online https://www.biometricupdate.com/202503/belgians-can-apply-for-digital-national-id-cards-in-2026, visited on 13.04.2025.

[47] Public information available online https://www.eid.admin.ch/en, visited on 13.04.2025.

[48] Sunilduth Baichoo, Maleika Heenaye-Mamode Khan, Pramod Bissessur, Narainsamy Pavaday, Nazmeen Boodoo-Jahangeer, Neel M. Purmah (2018), „Legal and ethical consideration of biometric identity card: Case for Mauritius", *Computer Law & Security Review*, Volume 34, Issue 6, pp. 1333-1341, https://doi.org/10.1016/j.clsr.2018.08.010.

a nation is governed has consistently sparked lively disputes[49]".

4. Conclusions

In the interest of scientific research, the present study assessed in a personal manner the impact of new technologies on the procedure of issuing administrative documents, focusing on the electronic identity card, at conceptual, theoretical and practical level. The results of the study show that a modern public administration is not a structure outside society but is anchored in everyday realities, taking into account global trends.

The paper has captured the regulatory framework applicable to the electronic ID card, detailing its form and content elements. The documentation shows that technology makes life easier, but it also comes with challenges, with the need for strict regulations that respect fundamental rights and freedoms at the forefront.

From a theoretical point of view "The main purpose of the digitisation is to make available to the general public as much content as possible (...)"[50]. Starting from the Romanian premiere of issuing the first electronic ID card in Cluj in March 2025, through the case study carried out, the paper presented the experience of other countries in order to find out whether there is an ideal legal framework. Based on our analysis, we consider that this administrative procedure appears to be vulnerable because it involves a flow of personal data. In any case, "in the digital age we are in, processing personal data has become inevitable[51]". But is the current legislation, including the General Data Protection Regulation (EU) 2016/679, sufficient to cope with the new technological challenges that are impacting public administration?

As long as the electronic ID card appears to be a "plastic card on which the holder's personal data are written and/or stored", we consider that the protection of such personal data must be a national security priority. In relation to this administrative act, the state should invest in infrastructure to digitize data collection and in cybersecurity. The final conclusion of the study shows that, in the light of digitalization, there is a need for standardization, for clear legal regulations to organize the administrative procedure in order to protect fundamental rights.

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[49] Cătălin Silviu Săraru (2023), „A cross - country examination: administrative litigation in China and Romania", *Acces to Justice in Eastern Europe*, 6(3): 232-248, p. 233, 10.33327/AJEE-18-6.3 -a000313.

[50] Marta Christina Suciu, Mina Fanea - Ivanovici (2018), „The European digital library (Europeana). Concerns related to intellectual property rights", *Juridical Tribune*, Volume 8, Issue 1: 244-259, p. 255, https://www.tribunajuridica.eu/arhiva/An8v1/19.%20SUCIU_FANEA_IVANOVICI.pdf, visited on 25.04.2025.

[51] Ayca Zorluoglu Yilmaz (2025), „Joint controllership under the GDPR- concept, responsibilities, and liability", *Juridical Tribune – Review of Comparative and International Law* volume 15 no. 1: 93-107, p. 93, DOI: 10.62768/TBJ/2025/15/1/06.

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Digital transformation of public administration. Challenges and perspectives in Romania and Denmark

Lecturer **Andreea Nicoleta DRAGOMIR**[1]
Master's degree student **Adrian Nicolae VASIU**[2]

Abstract

The paper analyzes the digitalization process of public administration in the European Union, focusing on a detailed comparison between Romania and Denmark. The main objective is to highlight the best practices, challenges, and key factors in implementing digital governance. The study employs a comparative methodology based on the analysis of strategic documents, official reports, and quantitative indicators (DESI index, OECD, and Eurostat reports). The results indicate significant differences between the two countries: Denmark has adopted a coherent and integrated strategy, while Romania faces structural issues and fragmented implementation. The study's implications emphasize the necessity of a clear strategic vision, strengthening system interoperability, and investing in the digital skills of citizens and public officials to accelerate the digital transformation of Romanian public administration.

Keywords: *digitalization, public administration, e-government, European Union, digital transformation, interoperability.*

JEL Classification: H83, K23, K24, O38, L86

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1. Introduction

The digitalization of public administration is a strategic priority of the European Union, with the role of adapting institutions to the requirements of the digital age. Since the 1990s, the EU has promoted e-government, using information and communication technologies (ICT) to improve the efficiency, transparency and accessibility of public services. This transformation is not just a

[1] Andreea Nicoleta Dragomir - Faculty of Law, „Lucian Blaga" University of Sibiu, Romania, ORCID: https://orcid.org/0000-0002-9358-8098, andreea.dragomir@ulbsibiu.ro.
[2] Adrian Nicolae Vasiu - Faculty of Law, „Lucian Blaga" University of Sibiu, Romania, adrianvasiu@yahoo.com

technological modernization, but a redefinition of the relationship between the administration, citizens and the business environment. According to Darrell M. West, e-government[3] reduces bureaucracy and optimizes interactions with authorities, while Stephen J. Andriole[4] highlights its impact on the creation of public value. Thus, digitalization contributes to economic competitiveness and sustainable socio-economic development, requiring the adoption of innovative solutions.

This paper analyzes the theoretical foundations and EU policies regarding the digitalization of public administration, with a focus on the Romania-Denmark comparison. Denmark is a leader in e-government, having a fully digitalized administration, while Romania faces structural obstacles. The study identifies good practices, challenges and relevant lessons for the effective implementation of digitalization in a diverse European context.

Through this analysis, the paper contributes to both the academic literature and the debate on the modernization of public administration, highlighting the importance of technology for an efficient and accessible public sector.

2. Definitions and Concepts

In the context of the digitalization of public administration, clarification of fundamental concepts is essential to understanding the current transformations. This section defines the main terms and sets the basis for a further analysis of policies and practices in the European Union, with a focus on the comparison between Romania and Denmark.

E-Government. E-Government is the use of information and communication technologies (ICT) to deliver public services, facilitate the exchange of information and improve interactions between government, citizens and other entities[5]. The European Commission defines e-government as "the use of ICT in public administrations, combined with organizational change and new skills, to improve public services and democratic processes"[6]. This concept reflects how digital technologies increase the efficiency and accessibility of public services, going beyond the simple digitalization of existing processes and implying a redesign focused on the needs of citizens.

Digital Governance. Digital governance extends e-government, inte-

[3] Darrell West (2005), *Digital Government: Technology and Public Sector Performance*, Princeton, Princeton University Press, p. 10.
[4] Stephen J. Andriole (2018), „Skills and Competencies for Digital Transformation", *IT Professional*, Vol. 20, No. 6, pp. 78-81, DOI: 10.1109/MITP.2018.2876926.
[5] Darrell M. West, *op. cit.* (2005), p. 15.
[6] European Commission, *E-Government*, the document is available online at https://digital-strategy.ec.europa.eu/en/policies/egovernment, accessed on 5.03.2025.

grating policies and strategies that guide the use of digital technologies in administrative processes. Stephen J. Andriole emphasizes that it "implies transparency, accountability and citizen participation as essential elements of modern administration"[7]. An OECD report states that digital governance "refers to the use of digital technologies as an integral part of government strategies to create public value". Thus, digital governance is not limited to technology but aims to strengthen democracy and trust in institutions through a holistic approach.

Interoperability. Interoperability describes the ability of systems and organizations to collaborate and exchange data effectively. Helen Margetts notes that "interoperability is crucial for reducing redundancy and improving integrated services in public administration"[8]. The European Interoperability Framework states that "interoperability is a prerequisite for the delivery of cross-border and cross-sectoral digital public services". Its absence can fragment services, a problem in countries like Romania, where the administration is complex.

Digital Transformation. Digital Transformation involves integrating digital technologies into all aspects of public administration, fundamentally changing the way governments operate. Darrell M. West explains: "Digital transformation is not just about technology but about changing the organizational culture and the way services are designed.[9]" This involves redesigning services to make them more efficient and user-oriented. It is a complex process, requiring the adaptation of administrative structures and mentalities.

Data-Driven Decision-Making. This concept refers to the use of big data and analytics to make informed decisions. Stephen J. Andriole emphasizes that "data allows governments to optimize resources and anticipate the needs of citizens.[10]" Thus, data-driven decisions improve resource allocation and understanding of the needs of the population." In Denmark, this principle is already applied, contributing to more transparent governance.

3. Models and Theories of Digitalization in Public Administration

The digitalization of public administration is a complex process that involves the integration of information and communication technologies (ICT) into government structures to increase the efficiency, transparency and accessibility of services offered to citizens. This section explores the main models and theories that underlie this process, with a focus on their relevance in the context of the European Union and on the differences between the Romanian and Danish experiences, analyzed in detail in the following sections. The specialized literature

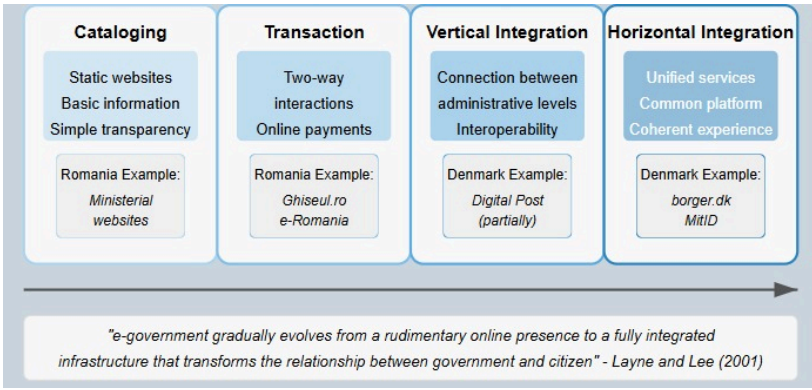
[7] Ibid.
[8] Helen Margetts (1999), *Information Technology in Government: Britain and America*, London, Routledge, p. 112.
[9] Darrell M. West, *op. cit.* (2005), p. 30.
[10] Stephen J. Andriole, *op. cit.* (2018), pp. 78-81.

provides theoretical frameworks that guide the understanding of digital transformation, from the early stages of computerization to the full integration of public services.

Layne and Lee's Maturity Model. The e-government model proposed by Karen Layne and Jungwoo Lee (2001) describes an evolutionary process of digitizing public administration, starting with **cataloging**, where information is available online through static websites, with the main objective of data transparency and accessibility. The next stage, **transaction**, involves two-way interactions between citizens and the administration, allowing for electronic operations, such as paying taxes or requesting documents. As digitalization progresses, **vertical integration** is achieved, which connects administrative systems at local, regional and national levels, facilitating the exchange of information between institutions. The process culminates in **horizontal integration**, in which public services are unified in a common digital platform, offering users a coherent experience and simplified access to public administration.

Layne and Lee emphasize that "e-government is gradually evolving from a rudimentary online presence to a fully integrated infrastructure that transforms the relationship between state and citizen.[11]" This model is useful for comparing the stages of development of Romania and Denmark: Denmark has achieved horizontal integration through the borger.dk portal, while Romania is still between the cataloging and transaction stages, with initiatives such as Ghișeul.ro only just beginning to facilitate two-way interactions[12].

Figure 1. *Digital Transformation of Administration: The Layne and Lee Model (2001)*



Source: *figure created by the authors*

[11] Karen Layne, Jungwoo Lee (2001), „Developing Fully Functional E-Government: A Four Stage Model", *Government Information Quarterly*, vol. 18, no. 2, pp. 122-136, https://doi.org/10.1016/S0740-624X(01)00066-1.

[12] European Commission, *Digital Economy and Society Index (DESI) 2022*, the document is available online at https://www.knjiznice.si/wp-content/uploads/2023/01/DESI_Full_European_Analysis_2022.pdf. accessed on 5.03.2025.

New Public Management (NPM). The New Public Management theory, developed in the 1980s and 1990s, promotes the application of private sector management principles to public administration, emphasizing efficiency, performance, and citizen-centricity. Christopher Hood, one of the founders of this approach, states that "information technology plays a crucial role in reducing bureaucracy and improving the accountability of institutions.[13]" In the context of digitalization, NPM advocated the use of ICT to optimize administrative processes. However, this paradigm has been criticized for fragmenting public services, a visible effect in Romania, where the lack of interoperability between institutions has limited the impact of digital initiatives. In contrast, Denmark has overcome this limitation through strategies that have corrected fragmentation, moving to a more integrated model.

Digital Era Governance (DEG). In response to the shortcomings of NPM, Patrick Dunleavy and his collaborators introduced the concept of Digital Era Governance in 2006, which proposes a holistic approach to digitalization. DEG promotes the reintegration of public services, a focus on citizen needs, and the use of technology as a central element of governance. Dunleavy notes that "the digital age requires a rethinking of public administration, placing the citizen at the center of processes.[14]" This model is reflected in the success of Denmark, where digitalization strategies have prioritized accessibility and integration, in contrast to Romania, where institutional fragmentation and the lack of a unified vision continue to be major obstacles.

The models and theories discussed – the Layne and Lee model, NPM and DEG illustrate the transition from basic informatization to a deep transformation, oriented towards efficiency and citizens' needs. In the EU context, these frameworks differentiate between states such as Romania and Denmark, highlighting both the challenges and opportunities of digital transformation. The subsequent analysis will use these perspectives to assess the specific policies and practices of the two countries.

4. Methodology

We resort to an analysis of public policies at the European Union level, examining official strategic documents (action plans, ministerial declarations, framework programs), European assessments and indicators (such as the DESI index – Digital Economy and Society Index, and eGovernment benchmarking reports). The aim was to identify the priorities assumed by the EU in terms of e-

[13] Christopher Hood (1991), „A Public Management for All Seasons?", *Public Administration*, vol. 69, no. 1: 3-19, p. 3. https://doi.org/10.1111/j.1467-9299.1991.tb00779.x.

[14] Patrick Dunleavy, Helen Margetts, Simon Bastow, Jane Tinkler (2006). „New Public Management is Dead—Long Live Digital-Era Governance". *Journal of Public Administration Research and Theory*, 16: 467-494, p. 470, https://doi.org/10.1093/jopart/mui057.

government, the instruments used for implementation (regulations, funding, coordination) and their impact on the Member States.

To concretize and contextualize the application of theoretical principles, we resort to **the comparative case study** between Romania and Denmark. These countries were chosen due to their contrasting positions in the digitalization rankings: Denmark is recognized as a European and global leader in e-government, while Romania is often at the bottom of the EU rankings on digital public services. The case study involved the analysis of national strategic documents (national digitization strategies, digital agendas), the institutional framework (digital government agencies, relevant legislation), as well as the collection of data on concrete digital projects and services in each country. Quantitative indicators (e.g. percentage of population using e-government services, DESI scores on the "Digital Public Services" dimension) were also integrated to measure the level of progress.

The comparative method consisted of assessing the similarities and differences between Romania and Denmark on several dimensions: strategic vision and governance, key digital infrastructures (eID – electronic identity, service portals), the degree of use of services by citizens, as well as the challenges encountered (barriers). This comparison benefited from triangulation of sources – combining official statistical data (e.g. Eurostat, European Commission reports) with case studies from the literature and national reports – to ensure the accuracy and impartiality of the conclusions.

5. European Union Policies on the Digitalization of Public Administration

European Union policies on modernizing public administration have evolved significantly, moving from simple e-government – the computerization of services – to digital governance, where technology redefines administrative processes and the state-citizen relationship[15]. Initially, EU strategies focused on the efficiency of services through ICT[16], but with digital advances, the emphasis has shifted to interoperability, transparency and civic participation.

The first European strategies focused on developing **e-government**, defined as using information and communication technologies (ICT) to increase efficiency and access to public services[17]. In the EU's vision, this concept includes the computerization of bureaucratic flows, the creation of online service

[15] Noella Edelmann, Nathalie Haug, Ines Mergel (2023), *Digital Transformation in the Public Sector*, in Faïz Gallouj, Camal Gallouj, Marie-Christine Monnoyer, Luis Rubalcaba, and Markus Scheuer (eds.), *Elgar Encyclopedia of Services*, Elgar Publishing, 2023, p. 332, https://doi.org/10.4337/9781802202595.Digital.Transformation.in.

[16] Darrell M. West, *op. cit.* (2005), p. 22.

[17] Ibid, p. 15.

portals and the automation of administrative operations.

However, as digital skills have advanced, the European agenda has begun to shift towards **digital governance**. It emphasizes the integration of ICT as a central element of the administration reform, while also aiming at interoperability, increased transparency, civic participation and the use of data in the development of public policies[18]. Basically, the EU proposes a vision in which technology is no longer just a tool for efficiency, but a catalyst to fundamentally redefine the way in which the state interacts with citizens and the private environment.

The eGovernment Action Plan 2016–2020 introduced principles such as "**digital by default**" (priority online services) and "**once only**" (no repeated requests for data), accelerating digital integration in national administrations[19]. Subsequently, the Ministerial Declarations in Tallinn[20] (2017) and Berlin[21] (2020) consolidated the EU vision on cross-border interoperability and inclusive digitalization.

The eIDAS[22] (910/2014) and Single Digital Gateway[23] (2018/1724) regulations established the legal framework for electronic authentication and unified access to public services in the European space (European Commission, 2018). Currently, **Digital Compass 2030** outlines future directions, aiming at the full digitalization of public services, increasing digital skills and expanding secure infrastructure[24]. Thus, the EU aims not only to computerize the administration

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[18] Patrick Dunleavy, Helen Margetts, Simon Bastow, Jane Tinkler (2006), *Digital Era Governance: IT Corporations, the State, and e-Government*, Oxford University Press, Oxford, pp. 25-29.

[19] European Commission, *EU eGovernment Action Plan 2016–2020: Accelerating the digital transformation of government*, COM(2016) 179 final, Brussels, 2016, pp. 3-4, the document is available online at https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52016DC0179, accessed on 10.03.2025.

[20] European Commission, *Tallinn Declaration on eGovernment*, 6 October 2017, the document is available online at https://digital-strategy.ec.europa.eu/en/news/ministerial-declaration-egovernment-tallinn-declaration, accessed on 10.03.2025.

[21] European Commission, *Berlin Declaration on Digital Society and Value-Based Digital Government*, 8 December 2020, the document is available online at: https://www.bmi.bund.de/ SharedDocs/downloads/EN/eu-presidency/gemeinsame-erklaerungen/berlin-declaration-digital-society.pdf?_blob=publicationFile&v=6, accessed on 10.03.2025

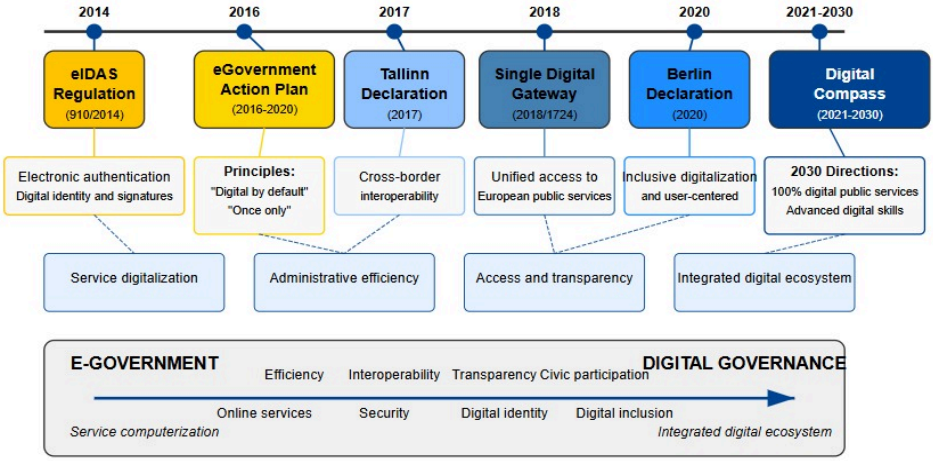
[22] European Parliament, Council of the EU*, Regulation (EU) No. 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC*, the document is available online at: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=celex:32014R0910, accessed on 10.03.2025.

[23] European Parliament, Council of the EU, *Regulation (EU) 2018/1724 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012* (Text with EEA relevance.), 2 October 2018, the document is available online at: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32018R1724, accessed on 10.03.2025.

[24] European Commission, *2030 Digital Compass: the European way for the Digital Decade*, COM(2021) 118 final, Brussels, 2021, p. 2, the document is available online at: https://eur-lex.eu

but also to create an integrated digital ecosystem, capable of responding to the needs of citizens and the economy.

Figure 2. *Evolution of the European Union's strategic framework for the digitalization of public administration*



Source: *figure created by the authors*

Despite a clear strategic framework, the implementation of digitalization of public administration remains uneven across EU Member States, with countries such as Denmark and Estonia advancing thanks to consistent political leadership, efficient interoperability infrastructures and an organizational culture open to innovation, while others, including Romania, face difficulties related to inter-institutional coordination and low levels of digital skills[25]. Although the EU supports this process through structural funds and monitoring through the DESI index, success depends on national commitment and stability of domestic policies[26]. Documents such as the Tallinn Declaration (2017), the Berlin Declaration (2020) and the Digital Compass 2030 highlight the transition from e-government, focused on the digitalization of procedures, to digital governance, where technology redefines administrative processes and citizen participation, underlining the importance of ethics, inclusion and interoperability.

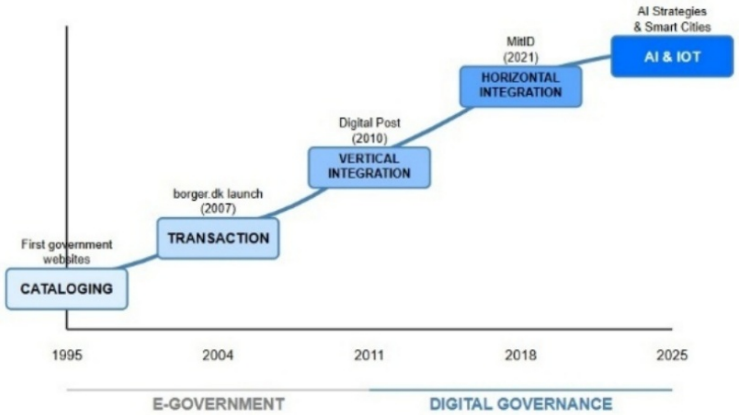
6. Case Study: Denmark – European Leader in Digital Governance

Denmark is a European and global leader in the digitalization of public

ropa.eu/legal-content/RO/TXT/?uri=CELEX:52021DC0118, accessed on 10.03.2025.
[25] Patrick Dunleavy, Helen Margetts, Simon Bastow, Jane Tinkler, *op. cit.* (2006), p. 29.
[26] Darrell M. West, *op. cit.* (2005), pp. 36-39.

administration, evolving from e-government – focused on the digitalization of services – to digital governance, which integrates technology into complex administrative processes to efficiently respond to citizens' needs. Since the 2000s, digitalization has become a national priority, supported by strategic investments in infrastructure, cybersecurity and interoperability[27].

Figure 3. *Evolution of digital maturity in Denmark*



Source: *figure created by the authors*

Platforms such as **borger.dk**[28] (public services portal)[29], **MitID**[30] (secure digital identity)[31] and **Digital Post**[32] (mandatory administrative correspondence)[33] reflect the maturity of this model, facilitating digital interaction between citizens and the state. Municipalities such as Copenhagen use predictive algorithms to anticipate resource needs (e.g. social assistance, traffic), exemplifying

[27] Karen Layne, Jungwoo Lee, *op. cit.* (2001), p. 122-136.
[28] Ministry of Finance Denmark, *Digital Strategy 2022-2025*, 2022, the document is available online at: https://digital-skills-jobs.europa.eu/en/actions/national-initiatives/national-strategies/denmark-national-strategy-digitalization-2022-2026, accessed on 10 March 2025.
[29] Borger.dk was launched in 2007 and constantly improved, this centralized portal provides access to over 1,000 public services, and is designed to be intuitive and personalized, a distinct feature of digital government compared to the simple online presence of e-government.
[30] Darrell M. West, *op. cit.* (2005), p. 78
[31] MitID was introduced in 2022 as a successor to the NemID system, MitID uses biometric authentication and integrates security with data management into a unified platform, reflecting the high standards of digital governance.
[32] European Commission, *Digital Economy and Society Index (DESI) 2023*, 2023, the document is available online at: https://digital-strategy.ec.europa.eu/en/policies/desi, accessed on 10.03.2025.
[33] Digital Post has been implemented mandatorily since 2014, this system eliminates physical correspondence between the state and citizens, reducing administrative costs and accelerating communication, an optimization typical of digital governance.

the use of data for proactive decisions, a pillar of digital governance[34].

Even in Denmark, the transition to digital governance has raised significant challenges, managed through strategic solutions. Digital exclusion[35] has been mitigated through education programs run by public libraries, facilitating access to technology for the elderly or those with low digital skills. In parallel, cyber threats have been combated through continued investment in infrastructure and the implementation of strict security standards[36], an aspect highlighted in the DESI reports. Regarding cross-border interoperability, differences in systems between EU countries have been an obstacle, but the eIDAS[37] regulation has facilitated the recognition of digital identities at the European level, contributing to solving this problem. Denmark thus exemplifies a successful transition from e-government to digital governance, based on a clear strategy, advanced technologies and a citizen-oriented administration. This model offers valuable lessons for countries like Romania, where digitalization is at an early stage and integration and interoperability still represent major challenges. Implementing similar practices, such as infrastructure investments, intersectoral collaboration, and data use, could accelerate the digital transformation of Romanian public administration.

7. Case study: Romania – the Difficult Path of Digitalizing the Administration

In contrast to Denmark, Romania is facing a series of delays and difficulties in the process of digitalizing public administration, although in recent years it has intensified its efforts in this regard. Romania usually ranks last among EU member states in terms of e-government. According to the DESI 2022 index, Romania and Greece recorded the lowest scores in the *Digital Public Services* chapter, well below the EU average. This reality is also reflected in the degree of use by citizens: only about a quarter (25%) of Romanians declared in 2024 that they had used the internet to interact with public authorities in the last year[38] –

[34] Shayane Betiatto dos Santos, Fabio Capellin, Marcelo Trentin, Sandro Cézar Bortoluzzi, Edson Pinheiro de Lima (2022), *Digital Transformation in the Public Sector: Enabling Technologies and Their Impacts*, in Victor Manuel López Sánchez, Francisco Gaudêncio Mendonça Freires, João Carlos Gonçalves dos Reis, Joana Maria Costa Martins das Dores (eds.), *Industrial Engineering and Operations Management* XXVIII IJCIEOM, Mexico City, Mexico, July 17–20, 2022, Springer International Publishing, p. 89.

[35] Helen Margetts, *op. cit.* (1999), p. 145.

[36] European Commission, *Digital Economy and Society Index (DESI) 2023*, 2023, the document is available online at: https://digital-strategy.ec.europa.eu/en/policies/desi, accessed on 10.03.2025.

[37] European Parliament, Council of the EU, *Regulation (EU) No. 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC*, the document is available online at: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=celex:32014R0910, accessed on 10.03.2025.

[38] Eurostat, *70% of EU citizens used online public services in 2024*, the document is available online at: https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20250226-1#:~:text=

the lowest percentage in the EU, together with Bulgaria, and compared to the EU average of 70%. In other words, 3 out of 4 Romanian citizens do not yet use e-government services, relying on traditional interactions (at the counter, on paper). This indicator summarizes the major challenge for Romania: *the digital gap* compared to the rest of Europe, both in the offer of services and in their adoption by the public.

Romania recognized the importance of digitalizing the administration relatively late compared to other EU countries. The first consistent strategy in the field was the *Digital Agenda for Romania 2014-2020*, aligned with the Digital Agenda for Europe, which included a pillar dedicated to e-government, interoperability and cybersecurity[39]. The stated goal was to create a modern public administration, by increasing internal efficiency and online access to services for citizens and businesses. However, the concrete implementation left much to be desired: the lack of inter-institutional coordination and insufficient funding meant that many of the targets of the 2014-2020 strategy were not fully achieved (for example, the target of 35% of the population using e-government services by 2020 was not achieved).

It was only in 2020 that an institutional restructuring aimed at giving a new impetus to digitalization took place: the Authority for the Digitalization of Romania (ADR)[40] was established as the central body responsible for the government's digital agenda (taking over responsibilities from the former Ministry of Communications). ADR was given the mission of coordinating e-government projects, developing interoperability policies and standards, and managing common platforms. At the same time, the unprecedented financial support through the National Recovery and Resilience Plan (PNRR) – where approx. 20% of the budget (out of the 29.2 billion EUR) is allocated to the digital transition – made resources available for major investments, such as the creation of the Government Cloud and a National Interoperability System. These ongoing projects aim to connect the institutions' databases and migrate them to a centralized government hybrid cloud infrastructure, which would facilitate the implementation of the "once-only" principle and increase the resilience and security of the systems.

Strategically, Romania updated its objectives with its participation in the Tallinn Declaration and the adoption of the National Strategy for the Digital

Among%20the%20EU%20countries%2C%20Denmark,had%20the%20lowest%20shares, accessed on 15.02.2025

[39] Ministry of Research, *Innovation and Digitalization, Digitalization Guide. Informative benchmarks of the digital transformation of public services,* 2022, p. 74, the document is available online at: https://www.mcid.gov.ro/wp-content/uploads/2024/07/20240702_ghidul_digitalizarii.pdf#:~:text=,1999%2c%20guvernul%20a%20decis%20s%c4%83, accessed on 15.02.2025.

[40] Authority for the Digitalization of Romania, *About ADR*, the article is available online at: https://www.adr.gov.ro/despre-adr/, accessed on 15.02.2025.

Agenda 2020 (later updated and extended for the 2030 horizon)[41]. The transition to digital communication was also explicitly legislated: for example, the Interoperability Law (Law no. 242/2022) obliges public institutions to, within 2 years, no longer request data or documents issued by other institutions from citizens, but to obtain them electronically through the interoperability platform. This law operationalizes the once-only principle and attempts to eliminate the famous situation of "walking papers" between counters by citizens. However, effective implementation requires considerable technical efforts and a change in the way the administration works.

7.1. E-Government Projects and Services in Romania

Although the overall offer of digital services is still modest, there are a few notable initiatives that are worth highlighting, both as successes and as examples of lessons learned:

The national online payment system – Ghișeul.ro. Launched in 2011, the Ghișeul.ro platform facilitates online payment of taxes and fees to public institutions, experiencing significant growth in recent years, especially in the context of the pandemic. Considered the most successful electronic public service in Romania, it exceeded 1 million users in 2023[42] (see **Figure 4**), benefiting from effective promotion and accessible functionalities, such as commission-free payment and simplified authentication. An important factor in adoption was the 10% fiscal incentive for the advance payment of local taxes. The platform exemplifies the success of public-private collaboration, being developed by APERO (Romanian Electronic Payments Association) in partnership with ADR, demonstrating that digitalization can have a significant impact when it offers efficient solutions, saving time and resources for citizens.

Virtual Private Space (ANAF). Launched by the National Agency for Fiscal Administration, Virtual Private Space (SPV) offers online access to their personal tax situation, the possibility of submitting declarations and requests and receiving administrative documents (tax decisions, notifications) electronically[43]. Although SPV is not yet used by all taxpayers, it has become the preferred channel for interaction with ANAF for hundreds of thousands of people in recent

[41] Ministry for Information Society, *National Strategy on the Digital Agenda for Romania 2020*, the document is available online at: https://epale.ec.europa.eu/sites/default/files/strategia-nationala-agenda-digitala-pentru-romania-20202c-20-feb.2015.pdf, accessed on 15.02.2025.

[42] Authority for the Digitalization of Romania, *Almost 100,000 new users registered in January on the Ghișeul.ro platform, administered by the Authority for the Digitalization of Romania*, 2021, the article is available online at: https://www.adr.gov.ro/aproape-100-000-de-noi-utilizatori-s-au-inscris-in-luna-ianuarie-pe-platforma-ghiseul-ro-administrata-de-autoritatea-pentru-digitalizarea-romaniei/#:~:text=juridice%20%C3%AEn%20Ghi%C8%99eul, accessed on 15.02.2025

[43] Ministry of Public Finance, *Virtual Private Space*, the document is available online at: https://static.anaf.ro/static/10/Anaf/Informatii_R/SPV/DocumentePF.pdf, accessed on 15.02.2025.

years, especially since some declarations (such as D112 or tax refund requests) are submitted exclusively online. SPV is an example of relatively successful sectoral digitalization, although it still needs to evolve in ergonomics and integration with other government services.

Local government service platforms. Some Romanian city halls and county councils have developed their e-service portals (e.g. in Cluj-Napoca, Oradea, Bucharest) where citizens can submit various applications online (for urban planning, certificates, permits) or make appointments over the counter[44]. These local initiatives show the potential, but also the fragmentation of efforts: the lack of a unified framework has led to disparate solutions that do not work interoperable and offer uneven experiences to citizens, depending on their locality. A current goal of the ADR is to standardize and aggregate these services in a *national hub* (a future national single portal), so that local services can also be accessed through a central interface – steps necessary to one day achieve an equivalent of borger.dk in Romania.

Electronic Identity Card Pilot Project. A basic digital service was missing in Romania until recently: *electronic identity for citizens*. In 2021, Romania issued the first electronic identity cards (with a chip) in a pilot project in Cluj-Napoca[45], allowing for online authentication of citizens and qualified digital signatures. However, the large-scale implementation of the new electronic ID cards has been postponed several times and is still in its early stages. The lack of a widely used eID has been a major obstacle, as many online services either could not verify the user's identity remotely or resorted to parallel solutions (e.g. authentication with username/password or online banking credentials – as is the case with some institutions). The PNRR is financing the issuance of 8.5 million electronic identity cards by 2026, which could address this gap and pave the way for single sign-on to online public services.

Challenges and causes of delays. Analyzing the situation in Romania, several factors can be identified that have slowed down the process of digitalizing the administration:

- *Institutional fragmentation and lack of coordination:* In the past, responsibility for e-government was dispersed among different entities (the Minister of Communications, and various departments within ministries). The absence of a clear leader and a single coherent strategy led to isolated projects, lack of standardization and even waste (e.g. IT systems developed by different ministries

[44] CityManager, *Evolution and revolution in public administration in Romania through technology*, the article is available online at: https://citymanager.online/, accessed on 16.02.2025.

[45] Euractiv.ro, *Cluj's pilot project of the electronic identity card reached 30,000 documents issued,* 2025, the article is available online at: https://www.euractiv.ro/news/proiectul-pilot-clujean-al-cartii-electronice-de-identitate-a-ajuns-la-30.000-de-documente-emise-70895, accessed on 16.02. 2025.

that do not communicate with each other). The establishment of the ADR somewhat centralizes these efforts, but its effective authority over all institutions needs to be strengthened.

- *Limited administrative capacity and human resources*: Implementing complex digital projects requires technical and managerial skills that the Romanian administration lacks. The low attractiveness of the public sector for IT specialists (due to uncompetitive salaries and bureaucracy) made it difficult to form strong internal teams. The administration often outsourced IT projects to private companies, which sometimes led to dependencies on certain suppliers and loss of control over system development.

- *Inconsistent funding and poor management of IT projects:* Many e-government initiatives in the past decades have failed or remained unfinished (e.g. E-Romania project[46]) due to poor planning and funding interruptions. The absence of a budgeted multi-annual strategy meant that projects depended on annual allocations and changing political priorities.

- *Resistance to change and organizational culture:* The introduction of digital solutions has sometimes encountered internal resistance within institutions – from civil servants who perceive new systems as a threat or an additional burden, to decision-makers who prefer traditional methods. The still heavily bureaucratic and paper-based organizational culture has made innovations slow to be adopted. For example, even where IT systems exist, paper-based procedures are often maintained in parallel, diminishing the benefits.

- *Low level of digital skills among the population:* Romania faces one of the largest digital divides: a part of the young urban population is highly connected and digitally competent, but large segments (elderly, rural areas) have very low basic digital skills. According to Eurostat data, only ~28% of Romanian citizens had at least basic digital skills in 2021, compared to the EU average of 54% (see **Figure 5**). This means that a significant percentage of people do not have the necessary skills to use online services safely and effectively, which requires digital literacy efforts and the maintenance of traditional channels in parallel.

- *Trust and security issues:* In the past, incidents such as security breaches or simply the perception of instability of public platforms have eroded citizens' trust in online services. For example, technical issues with platforms

[46] eRomania wanted to be a complex site where citizens had 20 online services available within the portal's domains, namely e-Health, e-Environment, e-Transport, e-Agriculture, e-Justice, e-Education, e-Culture, e-Church, e-Tourism, e-Association, e-Sport and e-Participation, e-Education, e-Health (electronic medical records), online payment of taxes, but also the standardization of authorizations - according to Economica.net, the article is available at: https:// www.economica.net/eromania-cand-se-lanseaza-cel-mai-mare-portal-din-romania-si-ce-va-conti ne_40144.html, accessed on 17.03.2025.

such as SIUI[47] (the single health information system) or blockages of some government websites have been widely publicized. If citizens perceive digital services as insecure (from a personal data perspective) or non-functional, they will prefer to continue interacting at the counter, even if it is more inconvenient. Therefore, the government must prioritize cybersecurity and system reliability, along with transparent public communication about these aspects, to gain users' trust.

The dynamics of recent years in Romania indicate *a positive trend:* the COVID-19 pandemic has forced many institutions to adopt digital solutions (e.g. online meetings, and electronic filing of documents) and has increased public acceptance of remote interactions. Funding through the PNRR offers a historic opportunity to build critical infrastructures such as the government cloud and interoperable systems, which will be the foundation for integrated services. The success of the Ghișeul.ro platform shows that, where the life of the citizen is simplified, he is willing to go online. The key will be the continuity of efforts and strict monitoring of the implementation of the assumed digital reforms. Romania now has the legislation and plans on the table; the challenge of execution follows, where the lessons offered by the Danish example – the importance of centralized coordination, the widespread adoption of eID, the standardization and gradual mandatory nature of digital channels – can provide valuable guidance.

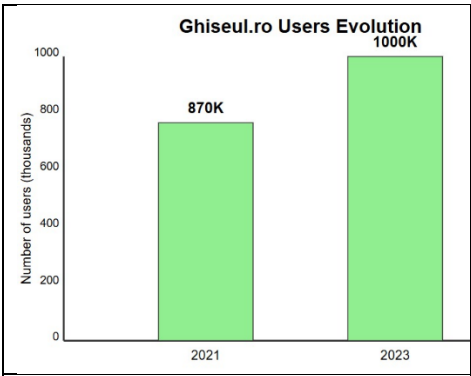


Figure 4. *Evolution of Ghișeul.ro usage*

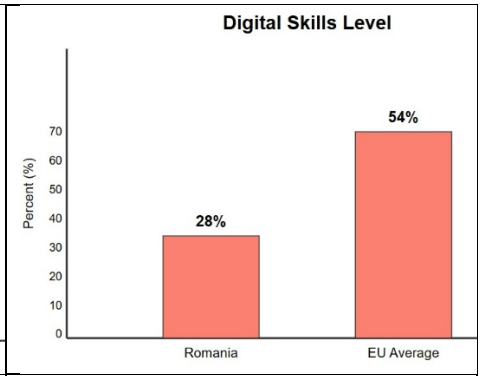


Figure 5. *Level of digital skills*

Source: *figures created by the authors*

8. Comparison Romania – Denmark in the Digitalization Process

The comparative study of the two cases highlights significant disparities

[47] Cursdeguvernare, *State digital platforms, unavailable – neither Ghișeul.ro nor SEAP works; the health IT system functions with syncope*, 2025, the article is available at: https://cursdeguvernare.ro/platformele-digitale-ale-indisponibile-nici-ghiseul-ro-nici-seap.html, accessed on 17.03.2025.

but also points of convergence that are worth discussing. From the perspective of strategic frameworks, both countries have officially stated their commitment to the digitalization of public administration, but Denmark has acted proactively and consistently since the 2000s, while Romania only in the last decade began to formulate strategies and create dedicated institutions (ADR in 2020). The result is that Denmark had a considerable temporal advance, allowing it to go through the stages of e-government (presence, transaction, integration) much earlier. While Denmark has already implemented state-of-the-art measures (e.g. single digital identity, proactive services based on the citizen's life), Romania is still laying the foundations (digital identity at the beginning, connecting databases). Thus, the digital maturity of the Danish administration is superior to the Romanian one - a fact confirmed by the DESI scores and the range of services available online (over 90% in DK vs. under 20-30% in RO of key services).

In terms of key digital infrastructures, the critical difference is the existence in Denmark of a fully formed digital ecosystem[48] (eID + single portal + digital mail + interconnected registers), compared to disparate fragments in Romania. For example, a Danish citizen can complete complex operations entirely online (change their address, change their family doctor, enroll their child in school), receiving confirmations in their digital e-Boks mailbox – all using the same NemID/MitID[49] authentication. In Romania, such an integrated journey is not yet possible: changing their address requires physical presence (at the Population Registration Service), school enrollment is partially digitalized only in certain municipalities, etc. In practice, the user experience in interacting with the administration is radically different: in Denmark, for most interactions, there is *a standard digital solution*, while in Romania, the citizen must navigate a mix of online and offline procedures, often unintuitive. This contrast explains why the usage rate is so different – in Denmark, it is simple and inevitable (even mandatory) to use digital channels, while in Romania you often don't have the digital option, or you don't trust it.

Another important comparative element is regulation and obligation. Denmark used the instrument of legal obligation (for example: exclusively digital communication, and mandatory online submission for certain requests) as a lever to accelerate the adoption of e-services. Romania, on the contrary, has long maintained traditional channels as the main ones, leaving the adoption of e-services to the discretion of the citizens and officials, which has led to a vicious circle: if

[48] IOPEU Monitoring, *Denmark improves the user experience of its Digital Post solution (SKAT, NemID*), the article is available at: https://interoperable-europe.ec.europa.eu/collection/nifo-national-interoperability-framework-observatory/document/denmark-improves-user-experience-its-digital-post-solution-skat-nemid#:~:text=The%20Danish%20Agency%20for%20Digitisation,by%20the%20Ministry%20of%20Finance, accessed on 13.02.2025.

[49] NemID/MitID authentication is a secure digital system used in Denmark for identification and access to government, banking and private online services.

few use online services, the administration is not pressured to expand and improve them, and if the services are not good, citizens do not use them – and so on. Only recently has Romania begun to introduce some *timid* obligations[50] (e.g. exclusively electronic communication with companies about ANAF for certain documents, mandatory online submission of applications for European funds, etc.). The Danish experience shows that, after a digital service reaches a certain level of quality and availability, making it mandatory (with accompanying measures) can exponentially increase its adoption and overall efficiency. Naturally, this must be done carefully in Romania, where digital literacy is lower – inclusion mechanisms are needed (assistance for those who do not manage online, maintaining assisted contact points).

A positive aspect common to both countries is the *alignment with European policies*: both Denmark and Romania participate in EU initiatives (eIDAS, Single Digital Gateway, Ministerial Declarations) and access European funds for digitalization. The difference lies in the efficiency with which they have used these opportunities. Denmark, already having an advanced infrastructure, was able to be in the group of pioneers (e.g. among the first to notify a national eID to the EU according to eIDAS, allowing its citizens to use NemID in other countries as well). Romania is only preparing to notify its future eID and implement the *Single Digital Gateway*[51] in 2023-2024. Thus, the starting gap has made Romania remain a *follower* in these initiatives, not a *leader*. However, in the long term, the adoption of common EU standards will help Romania recover some differences, providing it with models tested by others.

8.1. Impact and Results

If we look at the *concrete benefits*, Denmark is already reaping the clear fruits of decades of digitalization: budget savings (service processing costs have dropped drastically through automation and the abandonment of paper – electronic submission has saved tens of millions of euros annually), reduced waiting times for citizens (most applications are resolved faster digitally, some instantly), increased transparency (citizens can see the status of their applications online, access personal data, etc.) and greater trust in the administration. In Romania, the positive impact of digitalization is still limited, being felt punctually (e.g. the ~1 million Ghișeul.ro users have benefited from convenience, and taxpayers using

[50] Ministry of Public Finance, *Instructions for using the online declaration submission service*, the document is available at: https://static.anaf.ro/static/10/Anaf/Declaratii_R/instructiuni/instructiuni 2.6.htm, accessed on 16.02.2025.

[51] The Single Digital Gateway is a European Union initiative that provides a single online access point for citizens and businesses, facilitating access to information, administrative procedures and cross-border digital services in all Member States.

SPV save roads and time). On a large scale, however, the Romanian administration has not become significantly more efficient or more citizen-oriented yet – chronic problems persist (bureaucracy, long resolution times, opacity) that the incipient digitalization has not solved. However, there is the potential that once major projects (interoperability, cloud) are completed, there will be an *accelerated increase* in service quality and citizen satisfaction.

Figure 6. *Comparative table Romania – Denmark*

Aspect	Denmark (Digital Governance)	Romania (E-Government)
Digital Infrastructure	Single digital identity (NemID/MitID), integrated portal (borger.dk), mandatory digital mail	Fragmented initiatives (Ghișeul.ro, SPV), lack of national digital identity
Interoperability	Integrated systems at the national level, once-only principle fully implemented	Lack of interoperability, disparate systems
Citizen Participation	98.5% use of digital services, active engagement through digital platforms	25% use of digital services, limited participation
Innovation	Advanced use of technologies (AI, big data), proactive services	Basic digitalization, no integration of advanced technologies

Source: *figure created by the authors*

The Romania–Denmark comparison highlights a digital maturity gap, but also offers Romania a role model to follow. Denmark demonstrates the importance of long-term vision, coherent investment and user-centricity. Romania is at the beginning of a new cycle of digital transformation, with the opportunity to burn stages using lessons already learned by others and cutting-edge technologies. In the next section, I will analyze in more detail the benefits and challenges of digital transformation in public administration, synthesizing these comparative observations.

9. Conclusions

The process of digitalization of public administration in the European Union represents a central element of the modernization of governance, with profound implications for the efficiency, transparency and quality of services offered to citizens[52]. Through the analysis undertaken in this dissertation, we have high-

[52] SmartCityBlog, *What does E-Government mean*?, 2018, the article is available at: https://smartcityblog.ro/ce-inseamna-e-guvernarea/#:~:text=Guvernarea%20electronic%C4%83%20reprezint%C4%83%20procesul%20de,cet%C4%83%C5%A3enilor%20%C5%9Fi%20eficienzitate%20ap

lighted both the theoretical foundations of e-government and the practical modalities of implementation, highlighting the contrast between the situation in Romania and that in Denmark.

From the perspective of **theoretical foundations**, we have seen that e-government is defined as the use of ICT to reinvent how the administration operates and interacts with the public, to streamline and increase citizen participation. Conceptual models (such as the maturity stages) show us that digitalization is an evolutionary process, moving from basic computerization to integrated (*seamless*) transformation. Contemporary theories emphasize the need to be citizen-centric and integrate technology into modernization strategies to create public value. These principles have also been assumed at the EU level through political declarations (Tallinn, Berlin) and action plans, which have provided a common direction and concrete targets (such as "digital by default" services and the objective of 100% online services by 2030).

The comparative study Romania-Denmark allowed the identification of key factors that influence success in e-government. Denmark shows us the importance of strategic continuity and coherence, of the early creation of a unified digital infrastructure (eID, single portal, digital mail) and the adoption of courageous policies (mandatory electronic interactions) supported by good communication and digital education of the population. The results are remarkable: almost the entire population is active online in their relationship with the state, public services are considered accessible and reliable, and the benefits are seen in the efficiency of governance and citizen satisfaction. On the other hand, the situation in Romania highlights typical obstacles for *late adopters*[53]: lack of initial coordination, fragmented investments, critical infrastructures not yet implemented (national eID, interoperability), low digital skills and reluctance to change. The consequence is a low level of use and trust in digital services, which in turn slows down progress. However, Romania is now at a turning point, benefiting from a strong impetus through PNRR resources and the existence of a clear action plan. If these plans are executed consistently, there is the potential to recover some of the gap, especially since current technologies (cloud, digital identity, AI) allow *rapid qualitative* leaps when implemented correctly.

Recommendations for improving digitalization in European public administration, derived from the above, would be:

The EU must continue support for interoperability and standardization, through legislation (e.g. the future European Interoperability Act) and financial instruments. Pay increased attention to the dissemination of good practices – for example, creating guides and toolkits for less advanced Member States, based on

aratului%20administrative%20apparatus, accessed on 17.03.2025.

[53] *Late adopters* are people or organizations that adopt a technology, innovation, or change late, usually after it has already been tested and accepted by most early adopters.

lessons from countries such as Denmark, Estonia, etc. Also, monitor more closely the achievement of the Digital Compass targets, offering technical assistance where delays persist. A special focus should be placed on the digital skills dimension: without trained citizens and officials, investments in technology risk not being used to their full potential. The EU can facilitate training programs and exchange of experience between administrations (e.g. secondment of experts from Denmark to Romania for specific projects, or partnerships between leading and lagging municipalities).

For **Romania** (and other countries with a similar level): the main recommendation is to maintain consistency in the implementation of the assumed strategies. Major projects (interoperability, government cloud, electronic identity card) must be completed within the established deadlines and then leveraged to create citizen-centric services. **Procedural simplification** is required along with **digitalization** – any IT project should be preceded by a critical review of the administrative process it computerizes (rethinking forms, necessary steps, eliminating redundant requirements). The government should also adopt the "digital implicity" principle by updating the legislation: to ensure that, once the infrastructure is ready, certain services will become online only (with assistance for exceptions), thus forcing a paradigm shift. At the same time, it is essential to invest in **digital education**[54] – perhaps through national digital literacy programs for adults, by introducing digital administrative skills modules in schools (so that young people know how to interact with e-government), and continuous training for civil servants. Another recommendation is to *communicate and promote* the available services: many Romanian citizens do not use e-services either because they do not know about them or do not trust them. Public demonstration campaigns (such as "video guide: how to renew your driving license online in 10 minutes") could visibly increase usage. Finally, Romania should work closely with leading countries (including Denmark) – through joint pilot projects, and partnerships within EU programs (CEF Digital, Digital Europe, etc.) – to import not only technology but also organizational know-how.

For **Denmark** (and other leaders): continue to innovate and share the experience gained. Their next challenges are related to the integration of new technologies (AI, robotic process automation – RPA) in the provision of public services and to addressing ethical issues (the use of AI in administrative decisions must be done with caution and transparency). Digital leaders could also support more European govtech initiatives and cross-border experiments – for example, testing the *European Digital Identity Wallet* in real interactions between Denmark and other countries, creating pilot services accessible to citizens of other

[54] Li Yuan, Stephen Powell, *MOOCs and Open Education: Implications for Higher Education*, JISC CETIS, 2013, p. 4, https://publications.cetis.org.uk/wp-content/uploads/2013/03/MOOCs-and-Open-Education.pdf, accessed on 17.03.2025.

states (a Dane could access Romanian services with his eID and vice versa), which would materialize the vision of the *single European digital path*.

Finally, it should be emphasized that the digital transformation of public administration is a long-term process, which involves not only the implementation of technologies but also the evolution of organizational culture and societal behavior. Success is not measured only in the number of online services created, but especially in the added value that citizens feel in their daily lives about the state – be it in time saved, the transparency of decisions, or the feeling of empowerment in interacting with authorities. The European Union, through collective effort, is moving towards a new stage in governance, in which administration will not only be digitalized, but digital-native, designed around technology and the needs of the citizens. The comparison between Romania and Denmark shows us that although the starting points differ, the direction is common, and the benefits are worth the investment: a more efficient government, closer to citizens and prepared for the challenges of the future.

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Large-Scale Integration of Technical Systems in Cross-Border Police Cooperation Management: Challenges and Solutions for Public Administration[1]

PhD. **Iulian COMAN**[2]

Abstract

The study entitled 'Large-scale integration of technical systems in the management of cross-border police cooperation: challenges and solutions for public administration,' aims to analyse how the implementation and use of complex technical systems managed by EU-LISA influence the efficiency of police cooperation between states, highlighting the challenges encountered and possible solutions from the perspective of public administration. The objectives of the study include: 1. Assessing the impact of the main large-scale technical systems – the Schengen Information System (SIS), the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS) – on cross-border police cooperation; 2. Identifying the main administrative and operational challenges in integrating these systems, such as interoperability issues, legislative differences and concerns about personal data protection; 3. Proposing solutions to optimise the use of these technologies in support of international cooperation, taking into account the delays and technical difficulties reported in their implementation. To achieve these objectives, the research uses a mixed methodology based on qualitative analysis of relevant European policy documents and case studies on the implementation of the SIS, EES and ETIAS systems in several EU Member States. Preliminary results indicate that, although the advanced technical systems mentioned have the potential to improve information exchange and operational efficiency, there are significant obstacles related to interoperability, legislative differences and personal data protection. For example, the implementation of the EES has been delayed several times due to technical problems and concerns about border congestion. The implications of the study highlight the need for a coordinated approach at the European level to harmonise legislative frameworks and promote common standards for the effective integration of technical systems in cross-border police cooperation.

Keywords: *large-scale technical systems, cross-border police cooperation, public administration, interoperability, European security policies.*

JEL Classification: H83, K23, K24, O38

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[1] The information and views expressed in this article are those of the author and do not necessarily reflect the official opinion of the institutions analysed in the context.

[2] Iulian Coman - „Alexandru Ioan Cuza" Police Academy, Romania, iulian.coman@academiadepolitie.ro.

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1. Introduction

In an era of accelerated digitalisation and increased cross-border mobility, the internal security of the European Union (EU) has become increasingly dependent on the ability of Member States to cooperate effectively, particularly in the field of policing and border management. To respond to current challenges – from illegal migration to transnational crime – the EU has developed and operationalised several large-scale IT systems designed to facilitate the exchange of information between competent authorities[3].

The Schengen Information System (SIS), the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS) are part of the European technical and c e infrastructure and are managed by the EU-LISA agency. The effective implementation and use of these systems directly influence the ability of Member States to cooperate in real time, detect threats and take concerted action in situations of risk.

This research focuses on the Schengen Information System (SIS), the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS), as these are the central elements of the new European architecture for border security and police cooperation. Unlike other IT systems, such as VIS or Eurodac, these three tools directly integrate border control functions with operational prevention and law enforcement components, and are essential for the application of the interoperability rules recently adopted at the EU level. They are also the most advanced in terms of implementation and pose immediate administrative challenges for Member States.

However, integrating these systems into the administrative and operational processes of Member States requires overcoming complex challenges. These include the lack of interoperability between systems, differences in national legislation and concerns about personal data protection. Against this background, this paper aims to analyse the extent to which these difficulties affect

[3] Jose L. Wong Villanueva, Tetsuo Kidokoro, and Fumihiko Seta (2020) "Cross-Border Integration, Cooperation and Governance: A Systems Approach for Evaluating 'Good' Governance in Cross-Border Regions." *Journal of Borderlands Studies* 37 (5): 1047–70. doi: 10.1080/08865655.2020.1855227.

cross-border police cooperation and to propose sustainable solutions for optimising the use of these technological tools from a public administration perspective[4].

2. Assessment of the Impact of the Main Large-Scale Technical Systems – the Schengen Information System (SIS), the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS)

In the context of strengthening internal security and efficient border management, the European Union has developed and implemented a number of large-scale technical systems. These are designed to facilitate cross-border police cooperation and respond to the challenges of migration and transnational crime. Among the most significant are the Schengen Information System (SIS), the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS).

Schengen Information System (SIS). The SIS is the most extensive information exchange system in the field of security and border management in Europe. It allows competent authorities to enter and consult alerts on persons and objects, facilitating police and judicial cooperation between Member States. The system operates through a centralised database accessible to national authorities and is essential for the rapid identification of wanted persons, missing persons or stolen objects.[5]

The implementation of the SIS has had a significant impact on cross-border police cooperation, enabling the rapid exchange of information and the effective coordination of actions between Member States. However, the effective use of the system depends on the constant updating of data and interoperability with other IT systems.

Entry/Exit System (EES). The EES is an automated system that records the entry and exit data of third-country nationals visiting the Schengen area. It replaces manual stamping of passports and helps prevent illegal migration, identify those who overstay their legal stays and detect false documents. The system collects biometric data, such as fingerprints and facial images, and stores them in a central database.

Migration and Home Affairs

The EES improves the security of the EU's external borders and facilitates border control by reducing processing times and increasing efficiency.

[4] For an international and comparative perspective see Alessandra Russo, Eva Magdalena Stambøl (2022). "The External Dimension of the EU's Fight against Transnational Crime: Transferring Political Rationalities of Crime Control." *Review of International Studies* vol. 48, no. 2: 326–45. https://doi.org/10.1017/S0260210521000358.

[5] Online source: https://home-affairs.ec.europa.eu/policies/schengen/schengen-information-system_ro, accessed on 17 April 2025.

However, its implementation has faced technical and logistical challenges, including delays in launch and concerns about personal data protection.[6]

European Travel Information and Authorisation System (ETIAS). ETIAS is a pre-travel authorisation system for third-country nationals who do not require a visa to enter the Schengen area. It allows for the assessment of security and migration risks prior to travel by checking the information provided by travellers against various European databases, including the SIS, EES and Eurodac. The authorisation is valid for a period of three years or until the expiry of the passport.[7]

ETIAS contributes to strengthening the EU's internal security by enabling the identification of potential threats before they reach the external borders. However, the success of the system depends on interoperability with other IT systems and strict compliance with data protection rules.

Preliminary Conclusions. The impact assessment of SIS, EES and ETIAS highlights the crucial role of these systems in facilitating cross-border police cooperation and strengthening the EU's internal security. The effective implementation and use of these technologies require a coordinated approach at the European level, harmonisation of the legislative framework and continued investment in technological infrastructure and staff training. It is also essential to ensure interoperability between the different systems and strict compliance with personal data protection rules.

3. Identify the Main Administrative and Operational Challenges in Integrating These Systems, Such as Interoperability Issues, Legislative Differences and Concerns About Personal Data Protection

The large-scale integration of technical systems within the European Union, such as the Schengen Information System (SIS), the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS), is an ambitious initiative aimed at strengthening security and cross-border police cooperation. However, the integration process faces significant challenges, particularly with regard to the interoperability of systems, the harmonisation of the legislative framework and the protection of personal data[8].

Interoperability challenges. The SIS, EES and ETIAS systems were developed independently, each with different purposes and structures. This diversity has led to difficulties in ensuring effective interoperability between them.

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[6] Online source: https://www.sterlinglexicon.com/immigration-blog/eu-further-postpones-the-implementation-of-etias-and-ees-systems/, accessed on 19 April 2025.

[7] Online source: https://travel-europe.europa.eu/etias/what-etias_en, accessed on 19 April 2025.

[8] Tim Legrand, Christian Leuprecht (2021), „Securing cross-border collaboration: transgovernmental enforcement networks, organized crime and illicit international political economy", *Policy and Society*, Volume 40, Issue 4: 565–586, https://doi.org/10.1080/14494035.2021.1975216

The lack of effective interconnection can lead to gaps in information exchange and delays in the decision-making process of the competent authorities. To address these issues, the European Union has adopted regulations (EU) 2019/817 and 2019/818, which establish a framework for interoperability between large-scale IT systems in the areas of borders, visas, police and judicial cooperation, asylum and migration.[9]

The implementation of interoperability is based on four main technical components: the European Search Portal (ESP), the Shared Biometric Matching Service (sBMS), the Common Identity Repository (CIR) and the Multiple Identity Detector (MID). These tools are designed to facilitate access to relevant information for authorities and improve the identification of individuals, combat identity fraud and ensure data security.[10]

Legislative differences. Another major obstacle to the integration of these systems is the legislative differences between EU Member States. Each country has its own regulations on data protection, access to information and the use of IT systems, which can hinder effective cooperation and the uniform use of systems. For example, some countries may have stricter restrictions on access to biometric data or impose additional conditions for sharing information with other countries.

To overcome these differences, harmonisation of the legislative framework at the European level is needed to ensure a balance between security needs and respect for citizens' fundamental rights. This involves developing common rules and setting uniform standards for data protection and access to information.

Personal data protection. The protection of personal data is a central concern in the context of the integration of the SIS, EES and ETIAS systems. These systems collect and store a significant amount of sensitive data, including biometric information, which raises questions about the confidentiality, security and appropriate use of such data.

There are concerns that the interoperability of the systems could lead to excessive use of data and breach the principle of purpose limitation, according to which data should only be collected and used for specific and legitimate purposes. There is also a risk that individuals may not be adequately informed about how their data is processed and may not be able to exercise their rights, such as access to data, rectification or erasure.[11]

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[9] European Commission. (2017). Interoperability of EU information systems for security, border and migration management. Online source: https://ec.europa.eu/commission/presscorner/detail/fr/MEMO_17_5241, accessed on 20 April 2025.

[10] Ibid.

[11] Cristina Blasi Casagran (2021), „Fundamental Rights Implications of Interconnecting Migration and Policing Databases in the EU", *Human Rights Law Review,* Volume 21, Issue 2: 433–457, https://doi.org/10.1093/hrlr/ngaa057.

To address these concerns, the Interoperability Regulations include provisions on data protection, such as establishing the responsibilities of data controllers, implementing security measures and ensuring supervision by national authorities and the European Data Protection Board.[12]

Preliminary conclusions. The integration of the SIS, EES and ETIAS systems within the European Union brings significant benefits in terms of security and cross-border police cooperation. However, the integration process faces considerable challenges related to interoperability, legislative differences and personal data protection. To ensure the success of this initiative, a coordinated approach at the European level is essential, including the harmonisation of the legislative framework, the implementation of common technical standards and the guarantee of respect for citizens' fundamental rights.

4. Proposed Solutions for Optimising the Use of These Technologies in Support of International Cooperation

The effective use of large-scale IT systems such as SIS, EES and ETIAS depends not only on technological capacity, but also on strategic, legal and institutional alignment between EU Member States. As the literature shows, the impact of these systems is determined by how they are integrated into national processes, in a manner that is clear to us, by the clarity of the rules for their use and by the ability of public administrations to respond to the challenges of rapid digitalisation.[13]

Strengthening institutional capacity and specialised training. One of the most important gaps identified at the current stage of implementation relates to the level of preparedness of national institutions. Law enforcement authorities in several Member States do not have sufficient qualified human resources or standardised procedures for using European systems. To improve this situation, a multi-level training strategy is needed, including:

- continuous technical training in the use of the SIS, EES and ETIAS;
- practical exercises on information exchange in cross-border situations;
- joint training sessions for police, border guards and the judiciary.[14]

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[12] Online source: https://home-affairs.ec.europa.eu/policies/schengen/interoperability_en, accessed on 30 April 2025.

[13] Dimitra Markopoulou, Paul De Hert, Vagelis Papakonstantinou (2019), „The New EU Cybersecurity Framework: The NIS Directive, ENISA's Role and the General Data Protection Regulation", *Computer Law & Security Review*, vol. 35, issue 6, art. 105,336, https://doi.org/10.1016/j.clsr.2019.06.007. Also see Cristina Elena Popa Tache, Cătălin-Silviu Săraru (2025), "Dual Mandate of Digital Leadership or Upholding International Law Within Sovereign Constitutions," in Javier Cremades and Cristina Hermida (eds.) *Encyclopedia of Contemporary Constitutionalism*, Cham: Springer Nature, https://doi.org/10.1007/978-3-319-31739-7_236-1.

[14] European Union Agency for Law Enforcement Training, *European Union strategic training needs assessment 2022–2025,* Publications Office of the European Union, Budapest, 2021, pp. 19–

Although CEPOL, EU-LISA and Frontex already offer relevant programmes, these need to be expanded and adopted at the national level, particularly in countries with systemic delays.

Legislative harmonisation and clarification of access rights. Legal fragmentation continues to affect the coherent functioning of the systems. A clearer and more harmonised European legislative framework is needed, based on common rules on access to data, the purpose of its use and the conditions for its storage. A tiered access model could define:

- who has the right to access data;
- for what purpose;
- under what conditions of supervision and accountability?

The European Data Protection Supervisor (EDPS) has emphasised the importance of legal predictability and transparency, in particular in the case of biometric data and risk profiling.[15]

Application of privacy principles and independent supervision. The dilemmas between security and fundamental rights can be overcome by applying the principle of 'privacy by design'. The integration of technological solutions that protect privacy, such as pseudonymisation and data minimisation, should become a mandatory norm. At the same time, independent oversight is essential, both at the national and European level, through data protection authorities and judicial mechanisms.[16]

Promoting interoperability through open and scalable standards. Interoperability should not be imposed exclusively through legislation, but also promoted through open, modular technical solutions. Agencies such as EU-LISA should develop standard interfaces (APIs) that can be adapted to the existing infrastructure of each Member State. This would reduce costs, accelerate integration and encourage local innovation.[17]

Facilitating near real-time data exchange and crisis response. Europe's response to recent crises – the COVID-19 pandemic, the conflict in Ukraine and hybrid attacks – has demonstrated the need for real-time cooperation. Even though the SIS and the EES were not designed for live data transmission, a transition to accelerated operational interoperability is needed, especially in the context of risk management and rapid response.[18]

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[15] Online source: https://artificialintelligenceact.eu/wp-content/uploads/2022/05/AIA-EDPBEDPS-Opinion-18-June-21.pdf, accessed on 1 May 2025.

[16] González Fuster, Gloria, Rosamunde Van Brakel and Paul De Hert (eds.) (2022), *Research Handbook on Privacy and Data Protection Law: Values, Norms and Global Politics,* Research Handbooks in Information Law series, Edward Elgar Publishing, pp 1-8.

[17] Online source: https://data.europa.eu/en/news-events/news/embracing-open-standards-open-data-ecosystem-interoperability-across-europe, accessed on 1 May 2025.

[18] Dunja Duić, Marijo Rošić, (2022), "Interoperability between the EU information systems – from an idea to the realisation"*, Police and Security*, Vol. 31, No. 2: 118-148, https://hrcak.srce.hr/2809

Investments in secure communications infrastructure and rapid-response capabilities must be prioritised to enable the use of systems not only for administrative purposes but also as proactive operational tools.

5. Comparative Case Study: Romania, Germany and the Netherlands in the Context of the Implementation of the EES, ETIAS and the Use of the SIS

Romania. Schengen status: Romania became a member of the Schengen area on 1 January 2025, following the removal of air and sea border controls on 31 March 2024 and land border controls at the beginning of 2025, following a decision by the EU Council.[19]

Implementation of the EES and ETIAS: With a view to accession, Romania has made sustained efforts to prepare the technical and legislative grounds for the integration of the EES and ETIAS systems. According to the Ministry of Internal Affairs, the national infrastructure is interoperable with the platforms developed by EU-LISA and staff are trained in their use. However, like other Member States, Romania is following the updated EU implementation timetable: the EES is planned for October 2025 and ETIAS for the end of 2026.[20]

Use of SIS: Romania actively uses SIS for alerts on wanted persons, stolen or missing objects and refusal of entry. According to EU-LISA reports, Romania contributes consistently to the volume of alerts and ranks among the top Member States in Central and Eastern Europe in terms of police cooperation through SIS.

Germany. EES and ETIAS implementation: Germany is one of the countries that has officially requested a postponement of the EES implementation, citing technical and infrastructure difficulties, as well as concerns about border bottlenecks. The European Commission has accepted these arguments, updating the timetable to 2025 and 2026. The federal authorities are currently working with Frontex and EU-LISA to test the new operational flows.

Use of the SIS: Germany is one of the largest contributors to and users of the SIS. The German federal police and immigration services consult the system daily and the data is constantly updated. According to EU-LISA, Germany entered over 850,000 alerts in 2023, a large proportion of which relate to wanted persons or entry bans.

The Netherlands. EES and ETIAS implementation: The Netherlands

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[19] Online source: https://hungarian-presidency.consilium.europa.eu/en/news/bulgaria-and-romania-fully-join-the-schengen-zone/, accessed on 30 April 2025.

[20] Online source: https://travel-europe.europa.eu/etias/news-corner/revised-timeline-ees-and-etias-2025-04-14_en, accessed on 30 April 2025.

faces similar challenges to Germany, mainly due to the complexity of its decentralised IT infrastructure and the need for interoperability with other internal systems (e.g. migration and justice databases). Although the Dutch authorities are well prepared, they have supported postponing the implementation of the EES to prevent possible traffic disruptions at border points.

Use of the SIS: The Netherlands makes extensive use of the SIS, including for sharing alerts on missing persons, minors in danger and wanted items (vehicles, documents, weapons). It cooperates actively with other Member States through the SIRENE channels and is considered a model for the application of good practices in the standardisation of alerts.[21]

Preliminary conclusion. All three countries analysed – Romania, Germany and the Netherlands – are aware of the importance of the SIS, EES and ETIAS systems for strengthening the internal security of the European Union and effective police cooperation. However:

- **Romania**, which recently joined Schengen, is taking a proactive approach to implementation and is successfully aligning itself with European technical requirements;
- **Germany**, although it has the technological capacity, has reported logistical and staffing vulnerabilities that justify a delay;
- **The Netherlands**, with its advanced infrastructure, supports the postponement to ensure the stability of operational flows.

This comparison demonstrates that large-scale system interoperability depends not only on technology, but also on administrative capacity, political will and strategic synchronisation between Member States.

6. General conclusions

This paper has highlighted that the large-scale technical systems developed at the EU level – SIS, EES and ETIAS – offer considerable potential for strengthening cross-border police cooperation and European internal security. However, realising this potential is conditional on a number of administrative, legal and technical factors that need to be carefully managed.

The analysis has shown that the lack of functional and semantic interoperability, legislative fragmentation and data protection concerns remain major obstacles. At the same time, the lack of institutional capacity – in particular in terms of staff training and standardisation of procedures – affects the operational efficiency of these systems.

[21] Schengen Information System (SIS) statistics. (n.d.). [Data set]. European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice. Online source: http://data.europa.eu/88u/dataset/schengen-information-system-sis-statistics, accessed on 1 May 2025.

To overcome these difficulties, coordinated action at the European level is needed, including:

- harmonising legislative frameworks on data access and use;
- expanding specialised training for operators and decision-makers;
- applying uniform standards on data protection and cybersecurity;
- encouraging the development of open and scalable interoperable solutions.

Ultimately, cross-border police cooperation is not just a matter of IT infrastructure, but one of the shared administrative visions, political responsibility and respect for fundamental rights. Only through an integrated and balanced approach will the European Union be able to transform these technical systems into genuine tools for prevention, security and solidarity between Member States.

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At What Cost? Offshoring Implications for Labor and Migration in Morocco and Tunisia, 2010–2024

PhD. student **Amira NAMOUCHI**[1]

Abstract

This paper examines the impact of offshoring in information and communication services on employment and migration in Tunisia and Morocco, two increasingly integrated economies into global production networks. The objective is to assess whether offshoring contributes meaningfully to job creation and influences migration trends in both countries. Using a mixed-methods approach, the study combines empirical analysis of sectoral employment and net migration data with a review of national policies and structural labor market characteristics. The findings reveal that while offshoring has led to some increase in service sector employment, its overall impact on total employment remains limited due to persistent structural constraints and limited integration into knowledge-intensive sectors. Moreover, no significant impact was found on migration rates, due to structural factors such as human development, irregular migration and state policies that actively promote emigration as a means of development. The findings imply that for offshoring to become a more effective lever of development, Tunisia and Morocco must implement policies that foster higher-value employment, invest in skills training, and create more balanced incentives between offshore and onshore investment regimes.

Keywords: *offshoring, employment, migration, policy impact.*

JEL Classification: F66, F68, K31, J68

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1. Introduction

Digital globalization and the rise of Information and Communication Technology have reshaped global labor markets, especially via offshore out-

[1] Amira Namouchi - Doctoral School of Law and Political Sciences, University of Szeged, Hungary, ORCID: https://orcid.org/0009-0001-6434-3905, namouchiamira1213@gmail.com.

sourcing, which shifts production across borders. Over time, lower-middle income countries[2] have shifted in the global value chain — from low-skill production of intermediate goods to business services, and more recently, high-skill manufacturing in IT and software development[3]. In the Francophone world, the Maghreb stands out as the top nearshoring destination for French companies, with Morocco and Tunisia emerging as key offshoring hubs[4]. Morocco has notably strengthened its global position, rising 12 places to 28th in the 2023 Kearney Global Services Location Index. Its focus on digital upskilling has reinforced its role as a strategic hub for tech-driven business services. Supported by government initiatives, Morocco is investing heavily in outsourcing, aiming to create around 5,000 new jobs by 2026.[5] Tunisia, on the other hand, has paid attention to offshoring since 1972, by creating a specific offshoring regime offering tax and duty incentives[6]. From 2010 to 2022, offshore enterprises in Tunisia grew at an average annual rate of nearly 5%. Despite fluctuations like a dip in 2018, the overall trend shows steady growth, underscoring Tunisia's rising appeal as an offshoring hub[7]. The shift of jobs to new offshoring destinations raises critical concerns about labor market impacts, workers' rights[8] and economic migration.

[2] Lower-middle-income countries are those included on the Development Assistance Committee list of Official Development Assistance recipients, by the OECD, classified according to their gross national income per capita as reported by the World Bank. See: OECD, ODA recipients: countries, territories, and international organisations: DAC list of ODA Recipients. Online, accessed on April 22, 2025: https://www.oecd.org/en/topics/sub-issues/oda-eligibility-and-conditions/dac-list-of-oda-recipients.html#oda-recipients-list.

[3] Arnab K. Basu and Nancy H. Chau (2022), „Offshoring and labor markets in developing countries Lessons learned and questions remaining about offshoring and labor markets in developing countries," *IZA World of Labor*, No. 499, 2022. doi: 10.15185/izawol.499.

[4] José R. López-Cálix, Peter Walkenhorst, and Ndiamé Diop, *Trade Competitiveness of the Middle East and North Africa: Policies for Export Diversification*, The World Bank, 2010. ISBN: 978-0-8213-8074-1.

[5] Kearney, *The Global Services Location Index 2023: A New Era of Transformation*, 2023. Accessed April 22, 2025. https://www.kearney.com/service/digital-analytics/gsli/2023-full-report.

[6] Leila Baghdadi, Sonia Ben Kheder and Hassen Arouri (2019), „Assessing the Performance of Offshore Firms in Tunisia", *Journal of Economic Integration,* Vol. 34(2), pp. 280-307.

[7] Data on the number of offshore enterprises in Tunisia from 2010 to 2022 was collected from the National Institute of Statistics of Tunisia (*Institut National de la Statistique*), under the section "Number of Enterprises by Regime: Offshore," available at: https://www.ins.tn/. The annual growth rate was calculated as the year-on-year percentage change in the number of offshore enterprises. The compound annual growth rate (CAGR) over the entire period was computed using the formula: $CAGR = (ending\ value/beginning\ value)^{1/n} - 1$ where the beginning value is 19,269 in 2010, the ending value is 34,317 in 2022, and n=12 years. This results in a CAGR of approximately 4.93%.

[8] In this sense, 'labor rights' is used in a generic context, referring to the broader International Labor Standards as developed by the International Labour Organization. Central to these rights are the right to freedom of association and collective bargaining, the elimination of all forms of forced or compulsory labour, the elimination of discrimination in employment, and the right to a safe and healthy working environment.

Competing in the global value chain now exerts strong pressure on governments and private sectors alike to adopt market-friendly policies, often through financial constraints[9]. Economic migration has followed the rise of offshoring, driven by the persistent gap between core countries, where offshoring originates, and host countries[10]. In host countries, governments often establish deregulated economic zones with fiscal incentives to attract foreign investment, resulting in weakened labor protections and social dumping[11]. Cheaper labor costs, along with factors like a country's position in migration chains and its outsourcing regulations, influence its attractiveness to foreign investment, the types of tasks offshored, and the impact on migration profiles. For example, since 2003, Morocco's Labor Code has prioritized investment promotion and export-oriented labor[12]. For Tunisia the offshore regime was supported by various investment regulations, and recently unified in 2016[13]. Despite the growth in offshoring to Morocco and Tunisia and related regulatory reforms, there is limited understanding of how these changes impact labor, migration flows, and policy responses in host countries[14]. Besides, the study of offshoring in North African countries remains limited due to their emerging role as offshoring destinations[15]. Therefore, this research answers the following question to study the impact of offshoring activities in ICT services to Tunisia and Morocco: What are the socioeconomic consequences of

[9] Stephen Gill (1998) „New constitutionalism, democratisation and global political economy", *Pacifica Review: Peace, Security & Global Change*, Vol.10 (1), pp. 23-38.

[10] Piotr Żuk, „Offshoring, labour migration and neo-liberalisation: nationalist responses and alternatives in Eastern Europe", *The Economic and Labour Relations Review*, No. 2, Vol.31, 2020. DOI:10.1177/1035304620911121.

[11] Social dumping describes a situation where companies benefit from weaker labor protections or lower working standards in one country to outcompete others unfairly. It involves sidestepping fair employment practices to cut costs, gaining an advantage in the market by using cheaper labor without respecting proper social or labor norms. The Court of Justice of the EU recognized in different cases potential situations of social dumping and prioritized the right of collective bargaining motivated by combating social dumping over the freedom of establishment and the freedom to provide services. See: Case C-341/05, *Laval un Partneri Ltd. v. Svenska Byggnadsarbetareförbundet and Others*, ECR 2007 I-11767. See also: Matešić, M., Omazić, M.A, (2020) *Social Dumping (CSR).* In: Samuel Idowu René Schmidpeter, Nicholas Capaldi, Liangrong Zu, Mara Del Baldo and Rute Abreu. *Encyclopedia of Sustainable Management*. DOI: 10.1007/978-3-030-02006-4.

[12] Law No. 65-99 relating to the Moroccan Labour Code (Dahir 1-03-194 of 11 September 2003 promulgating the text of the Labour Code).

[13] Law n° 2016-71 of September 30, 2016 promulgating the Investment Law, Official Journal of the Republic of Tunisia (*JORT*), No.82, October 10, 2016. Previously different texts regulated investment incentives, but they were modified in 2017. See: Law No. 92-81 of August 3, 1992, establishing economic activity zones, *JORT* No.52, August 7, 1992. Law No. 93-120 of December 27, 1993, promulgating the Investment Incentives Code, *JORT* No. 99, December 28, 1993. Law No. 2017-8 of February 14, 2017, reforming the system of tax benefits, *JORT* No.15, February 2, 2017.

[14] Amulya Gurtu, Cory Searcy and M.Y. Jaber (2016), „Effects of offshore outsourcing on a nation", *Sustainable Production and Consumption*, Vol.7, pp. 94-105.

[15] Leila Baghdadi, Sonia Ben Kheder and Hassen Arouri, *op. cit.* (2019), pp. 280-307.

increased offshoring in Tunisia and Morocco, particularly in relation to employment, migration trends, and policy?

Outsourcing refers to delegating specific tasks or functions to an external provider, while offshoring involves relocating business operations to another country, either through a fully owned subsidiary (a captive unit) or by partnering with a third-party provider. While outsourcing decides whether a task should be handled internally or externally, offshoring focuses on whether it should be done domestically or internationally[16]. Besides the geographical dimension in defining offshoring, the legal qualification of this business strategy[17] depends on other factors such as on the level of control and partnership between parties. Hence, offshore outsourcing falls under the umbrella of outsourcing, while incorporating a geographical element[18]. The rapid expansion of outsourcing has been largely driven by the commodification of IT services. This has led to specialized outsourcing, where service providers manage specific IT operations like data center administration, client/server infrastructure, and technical support. Defining offshorable tasks is complex due to the diversity of ICT activities. However, the European Foundation for the Improvement of Living and Working Conditions has identified offshorable tasks based on their telemediability. Sectorally, tasks can fall within ICT-producing sectors like data processing and software services, or ICT-using sectors like finance[19]. The determination of tasks on the basis of services is proxied, from the Nomenclature of Economic Activities of the European Union, by NACE sector K.72 relevant to computer related activities and sector K.74 related to other business activities[20]. Research on outsourcing has

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[16] Ajay Sharma, Patricia Loh (2009), „Emerging trends in sourcing of business services", *Business Process Management Journal*, Vol. 15 (2), pp. 149-165, https://doi.org/10.1108/14637150910949425.

[17] Outsourcing has become an essential business strategy in response to globalization and increasing market competition. Companies are constantly seeking ways to enhance efficiency, reduce costs, and adapt to rapidly evolving consumer demands. The growing complexity and expense of developing and managing information systems, coupled with the need for highly specialized skills, make outsourcing a practical solution. By delegating certain operations to third-party providers, especially in developing countries with abundant human capital, businesses can cut costs, accelerate project timelines, and focus on their core strengths. Globalization has also contributed to lowering barriers to international competition, leading to cost savings in production and distribution. This strategy not only reduces overhead costs but also allows businesses to diversify their product and service offerings, increasing flexibility in a competitive market. See: Victor-Adrian Troacă, Dumitru-Alexandru Bodislav (2012), „Outsourcing: The Concept", *Theoretical and Applied Economics*, Volume XIX, No. 6(571), pp. 51-58.

[18] Sreedevi R., Tushar Tanwar (2018) „Outsourcing – A Review for Research and Practical Applications", *International Journal of Business and Economics Research*, Vol. 7 (1), pp. 20-24.

[19] Ursula Huws, Simone Dahlmann, *Outsourcing of ICT and related services in the EU: A status report, Foundation for the Improvement of Living and Working Conditions*, Office for Official Publications of the European Communities, 2004. ISBN 92-897-0906-5.

[20] European Commission. *NACE Codes Used in Merger Cases.* Accessed April 22, 2025. https://ec.europa.eu/competition/mergers/cases_old/index/nace_all.html.

been developed around focal questions, such as the factors that encourage and weaken outsourcing, the object and the extent of it, the type of this operation (i.e.: whether captive firms or offshore third-party), and the outcomes of offshore outsourcing[21]. The study of these outcomes includes, first, the offshoring decision, regarding the location[22], and factors like political and regulatory conditions that might influence these decisions besides the competences availability[23]. The impact of offshoring in the literature was addressed in the context of job creation and brain drain[24], besides concerns about the role of working conditions, inequality of income, and the development of poverty in various countries[25]. Research on offshoring economies consistently shows uneven labor market effects. High-skilled workers may benefit or remain unaffected, while medium- and low-skilled workers often face job displacement or wage pressures[26]. Offshoring and migration have been studied as globalization results that impact labor market outcomes[27]. Key axes, in this regard, include the productivity effect, which refers to productivity gains in complementary roles due to offshored job losses, and the displacement effect. Another outcome in the offshoring and migration literature is the task sustainability effect, where natives and offshore workers perform either similar or complementary tasks[28].

This study contributes to the literature by focusing on the underexplored perspectives of host countries in lower-to-middle-income regions, specifically Tunisia and Morocco. Unlike previous research, which centers on home-country labor market effects, this paper examines how offshoring reshapes employment and migration trends in host economies. By combining macroeconomic indicators with sociological analysis, it provides an interdisciplinary framework for understanding offshoring's broader societal impacts. Additionally, it addresses the

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[21] Nada Kakabadse, Andrew Kakabadse (2000), „Critical review – Outsourcing: a paradigm shift", *Journal of Management Development*, Vol. 19 (8), pp. 670-728.

[22] Carmen Stoian and Fragkiskos Filippaios (2008), „Dunning's eclectic paradigm: A holistic, yet context specific framework for analysing the determinants of outward FDI: Evidence from international Greek investments", *International Business Review*, vol. 17(3), pp. 349-367, https://doi.org/10.1016/ j.ibusrev.2007.12.005.

[23] Kearney, *Global Services Location Index (GSLI),* Accessed April 22, 2025. https://www.kearney.com/service/digital-analytics/gsli.

[24] Habibullah Khan & M. Shahidul Islam (2006), *Outsourcing, Migration, and Brain Drain in the Global Economy: Issues and Evidence*, U21Global Working Paper No. 004, Available at SSRN: https://ssrn.com/abstract=1606106 or http://dx.doi.org/10.2139/ssrn.1606106.

[25] Peter Auer, Geneviève Besse and Dominique Méda (eds.), *Offshoring and the Internationalization of Employment, A challenge for a fair globalization?,* Proceedings of the France ILO Symposium, 2005, https://www.ilo.org/media/323091/download, accessed April 22, 2025.

[26] Christian Keuschnigg and Evelyn Ribi (2009), „Outsourcing, unemployment and welfare policy", *Journal of International Economics*, Vol. 78 (1), pp.168-176.

[27] Beverelli Cosimo, Orefice Gianluca and Nadia Rocha (2011), „Offshoring and Migration in a World with Policy Spillovers", *SSRN Electronic Journal*, DOI:10.2139/ssrn.1946979.

[28] Ibid.

interconnected dynamics between offshoring, employment, and migration, which are often studied in isolation, while grounding the analysis in the specific regulatory frameworks and labor/migration profiles of these countries.

The study is divided into four sections. The introduction presents the background, scope, and contributions relative to existing literature. The main body includes two sections analyzing offshoring's impacts on employment and migration in the ICT sector, with theoretical and empirical background, data description, descriptive statistics, regression analysis, and a discussion of results. The conclusion summarizes findings, highlights policy implications, and discusses the potential benefits and drawbacks of offshoring in both contexts. To assess the impact of offshoring on labor and migration outcomes in Morocco and Tunisia (2010-2024), the study uses a mixed-methods approach combining descriptive and qualitative data analysis. Quantitative data from UNCTAD, ILO, and the World Bank cover indicators related to trade in services, foreign direct investment, employment, and migration. Due to a lack of direct offshoring measures, ICT service exports are used as a proxy. Two fixed-effects panel regressions are applied: one for employment in services, and the other for net migration, controlling for macroeconomic and demographic variables such as inflation, minimum wage, and technology readiness. This analysis offers a comparative evaluation of how digital offshoring impacts domestic labor markets and migration in the two countries, supported by contextual analysis of regulatory frameworks and literature triangulation.

2. Theoretical background

In Global Value Chains, firms operate within integrated networks, where each production stage is done where it's most efficient. Offshoring boosts this modularity by optimizing operations across borders for cost efficiency, talent, and innovation[29]. Countries' competitiveness is now measured not only by export performance but also by their integration into global production networks. Offshore zones play a key role, offering legal, fiscal, and administrative incentives to attract foreign capital, driven by labor and regulatory arbitrage[30]. Neoclassical theories of a unified labor market fail to capture today's market dynamics. Instead, the labor market can be seen as a decentralized network where firms and job seekers independently connect. Studies on offshoring and unemployment often use search and matching models, particularly the Pissarides framework of equilibrium unemployment[31]. Theoretical extensions of search-and-matching

[29] Bjoern Schmeisser (2013), „A Systematic Review of Literature on Offshoring of Value Chain Activities", *Journal of International Management*, Vol.19 (4), pp 390-406.
[30] Zoriana Lutsyshyn, Tetiana F. Rolova, Nina Yuzhanina, Mykola Mazur, Dmytro Perebyinis (2019), *International Economic Policy*, Vol. 30(1), pp. 70-111.
[31] Christopher A. Pissarides (2000), *Equilibrium Unemployment Theory*, 2nd edn., The MIT Press,

models show that labor market institutions, like collective bargaining, recruitment costs, and social protection, can influence how offshoring impacts wages and unemployment[32]. Grossman and Rossi-Hansberg's task-based framework identifies three interconnected channels through which offshoring impacts employment: productivity, relative price, and labor supply effects. Offshoring low-skill tasks can reduce production costs and boost domestic labor demand in the short term, but this is offset by global competition, which lowers prices and wages. Additionally, displaced low-skilled workers may flood the labor market, further depressing wages. These effects are uneven, benefiting high-skilled workers while burdening low-skilled workers with greater adjustment costs[33].

To assess offshoring's impact on migration, the literature often starts with traditional trade theory. In models like Heckscher-Ohlin and Samuelson's extension, labor is assumed immobile across borders. A labor-rich country specializes in exporting labor-intensive products, and the Factor-Price Equalization theorem suggests that, under free trade, factor prices (wages and returns to capital) converge across countries, even without migration. In this view, trade in goods mimics labor movement, and migration is seen as another channel for achieving factor price convergence[34]. However, this model fails to predict the size and composition of migrant flows, especially given the complexity of modern migration. In contrast, Harris and Todaro's neoclassical migration theory argues that migration is driven by expected income, considering job probabilities. The model suggests migration occurs when expected urban income exceeds rural earnings, even with urban unemployment[35]. In a broader framework, dual labor market theory suggests migration is driven not by individual cost-benefit analysis but by structural needs in advanced economies. Richer countries have a segmented labor market: a stable, well-paid primary sector and a secondary sector with low wages, instability, and poor conditions. Native workers avoid these secondary jobs, creating persistent demand for migrant labor[36]. Over time, migration becomes self-reinforcing through diaspora formation. According to causation theory, as more people from a community migrate, social networks reduce mi-

ISBN: 9780262161879, p. 75.

[32] Priya Ranjan (2013), „Offshoring, unemployment, and wages: The role of labor market institutions", *Journal of International Economics*, Vol. 89(1), pp. 172-186.

[33] Gene M. Grossman and Esteban Rossi-Hansberg (2008), „Trading Tasks: A Simple Theory of Offshoring", *American Economic Review*, Vol. 98 (5), pp. 1978-1997.

[34] George J. Borjas (1989), „Economic Theory and International Migration", *The International Migration Review*, Vol. 23(3), pp. 457–85.

[35] John R. Harris and Michael P. Todaro (1970), „Migration, unemployment and development: A two-sector analysis"*, American Economic Review,* Vol.1(60), pp. 126–142.

[36] Piore, M. J. (1970), *Birds of passage: Migrant labor and industrial societies*. Cambridge: Cambridge University Press. 1970, p. 82.

gration costs and risks, creating a feedback loop that sustains and expands migration flows, regardless of initial economic conditions[37].

In conclusion, task-based models focus on labor shifts and wage dynamics, while migration theories emphasize the role of economic and institutional forces. In Morocco and Tunisia, these dynamics are influenced by labor markets, offshore policies, and regional migration. The next sections use panel data and qualitative analysis to assess ICT offshoring's labor and migration outcomes in both countries from 2010 to 2024.

3. Data and Methods

Data for both countries from 2010 to 2024 is collected from secondary sources, covering labor, employment, migration, demographics, and macroeconomic indicators. This data is used for descriptive statistical and regression analysis. Two separate regressions were applied: Fixed Effects for employment, to account for differences between entities, and Pooled OLS for migration, due to limited variation between countries. **Tables 1** and **2** are a specification of the indicators used, their sources, and rationale

Table 1: List of indicators to measure the impact of offshoring on Employment in services

Variables	Indicators	Source	Justification
Dependent variable	Employment in services (% of total employment)	International Labour Organization modelled estimates database.	Represents shifts in labor toward services as a result of offshoring.
Independent Variables	Exports in telecommunication, computer and information services as % of GDP	UNCTADstat	Proxy for offshoring in the ICT sector.
	Inward FDI as % of GDP	UNCTADstat	Represents foreign involvement in the economy.
Control Variables	Frontier tech readiness index	UNCTADstat	Measures countries' capabilities to adopt and benefit from digital services.

[37] Hein de Haas (2021) „A theory of migration: the aspirations-capabilities framework", *Comparative Migration Studies*, Vol 9(8), https://doi.org/10.1186/s40878-020-00210-4.

	Inflation, consumer prices	World Bank	Controls for macroeconomic volatility affecting labor markets.

Source: *Author's conceptualization*

Given the limited cross-sectional variation in the panel data, the regression model choice was based on comparing Fixed Effects with a Pooled OLS model. The Fixed Effects "Within" Estimator was used, and an F-test assessed the joint significance of cross-sectional effects. The F-test compares the restricted Pooled OLS model without country-specific effects, to the unrestricted model with Fixed Effects, determining if unobserved heterogeneity across countries is significant. This was implemented in *RStudio* using the *pFtest()* function from the *plm* package, with the output F-statistic, degrees of freedom, and p-value reported below.

Table 2: List of indicators to measure the impact of offshoring on Net Migration

Variables	**Indicators**	**Source**	**Justification**
dependent variable	Net migration rate	World Bank	Represents the overall migration balance
Independent Variables	Exports in telecommunication, computer and information services as % of GDP	UNCTADstat	Proxy for offshoring in the ICT sector
	Inward FDI as % of GDP	UNCTADstat	Represents foreign involvement in the economy.
Control Variables	unemployment rate	ILOSDG Labour Market Indicators	Captures labor market pressures that may push emigration
	real minimum wage[38]	ILOSDG and World Bank	Captures purchasing

[38] Real minimum wage was calculated by the author through nominal minimum wage data collected from 2010 – 2023 for Tunisia and Morocco from ILOSTAT, adjusted to purchasing power. Purchasing power is represented by Inflation, consumer prices (annual %) data from the World Bank data portal for the same period. Real minimum wage = nominal minimum wage / (1+ inflation/100).

			power and wage pressure on low-skilled labor
	Human Development Index	UNDP	Reflects development conditions

Source: *Author's conceptualization*

The small p-value ($p < 0.05$) in the employment regression test leads to rejecting the hypothesis of no individual effects, supporting the use of a Fixed Effects model due to significant unobserved heterogeneity. However, in the migration test, the p-value ($p > 0.05$) is marginally significant, indicating no rejection of the Pooled OLS model.

Table 3: F-test for individual effects results (Fixed Effects vs. Pooled OLS)

Model	Test	F Statistic	p-value
Employment outcomes	F test for individual effects (1, 22)	26.539	0.0000365
Migration outcomes	F test for individual effects (1, 21)	3.4394	0.07776

Source: *Author's calculation*

4. Results

Offshoring decisions are largely driven by cost-effectiveness, with Tunisia and Morocco standing out as attractive destinations due to their low labor costs, offering a comparative advantage over other emerging hubs like those in Central and Eastern Europe[39]. Between 2010 and 2023, labor costs in Morocco were higher, with real minimum wages in Tunisia averaging 53.41% lower than those in Morocco[40]. Other factors, such as labor force growth, also make both countries attractive for offshoring. From 2010 to 2024, Morocco's labor force

[39] Zoltán Gál (2014) „Relocation of Business Services into Central and Eastern Europe (Evidence from Trade and Location Statistics)", *Romanian Review Of Regional Studies*, Vol. X(1), pp. 67-78.
[40] Based on the author's calculation of percentage difference of real minimum wage of Tunisia compared to Morocco from 2010 - 2023. The average is the sum of the percentage difference divided by the number of years.

grew by 9.4%, while Tunisia's grew by 9.72%[41]. Both economies have focused on export-led growth and improved infrastructure for ICT adaptation and digital transitions. From 2010 to 2023, ICT services exports exceeded imports, with the exception of Tunisia in 2021-2022. Morocco has also implemented strategic measures to boost digital transformation and offshoring in ICT, including the creation of the Digital Development Agency and the National Commission for Data Protection. National digital strategies like 'Maroc Numeric 2013' and 'Maroc Digital 2020' highlight Morocco's aim to lead North Africa in digital development[42]. Tunisia has implemented similar policies, with significant ICT sector growth driven by the Smart Tunisia strategy (2015) and the National Strategy for Digital Transformation 2021-2025, aiming to foster IT innovation and address graduate unemployment. A key development is the Elgazala Technopark, the first in Tunisia and North Africa, which hosts multinational corporations like Alcatel, Ericsson, Huawei, and STMicroelectronics, with most of its production being exported[43].

While there is no direct measure of offshoring intensity in Tunisia and Morocco, growth in telecommunication, computer, and information services exports signals rising demand for digitally deliverable services, often provided by offshore enterprises. The upward trend in ICT exports serves as a proxy for offshoring expansion, with increasing inward investment reflecting the growing importance of ICT in international trade, as shown in **Figure 2.**

Despite growth in ICT service exports and FDI inflows, both countries continue to face high unemployment. From 2010 to 2024, Tunisia consistently had a higher unemployment rate than Morocco, with an average difference of 6%[44]. This signals structural labor market issues, as Tunisia's real minimum wage is nearly half that of Morocco's, averaging 53.41% lower[45]. Demographic data shows both countries are net exporters of emigrants, with high negative net mi-

[41] Labor force averages were calculated using yearly data from 2010 to 2024 for Morocco and Tunisia from the World Bank, World Development Indicators database. Annual growth rates were derived by calculating the year-over-year percentage change in the labor force for both countries.

[42] MAA Fettouma (2023) „Digitalisation et développement des métiers de l'offshoring au Maroc: Essai de Modélisation", *Revue Française d'Economie et de Gestion*, Volume 4(2), pp. 376 - 395, ISSN: 2728-0128.

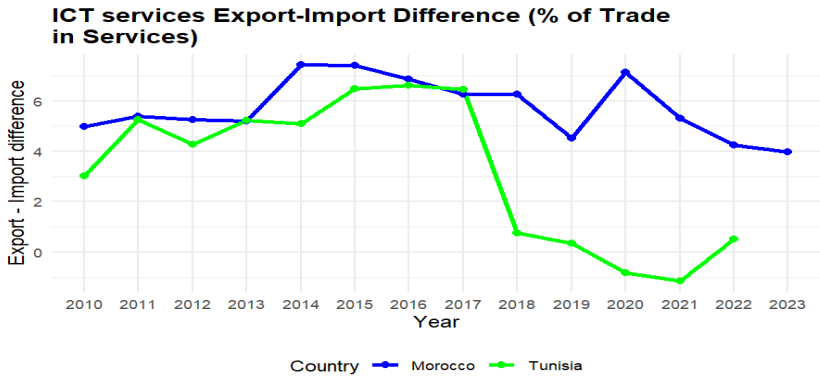
[43] République Tunisienne, Ministère des Technologies de la Communication, *Espace investisseurs: Infrastructures*. Online accessed on April 30, 2025: Infrastructures – Espace investisseurs – Open Data – Ministère des technologies de la communication et de l'economie numérique.

[44] Average unemployment difference calculated by the author from the difference between unemployment rates between Tunisia and Morocco based on ILOstat data for the selected period.

[45] Based on the author's calculation of percentage difference of real minimum wage of Tunisia compared to Morocco from 2010 - 2023. The average is the sum of the percentage difference divided by the number of years.

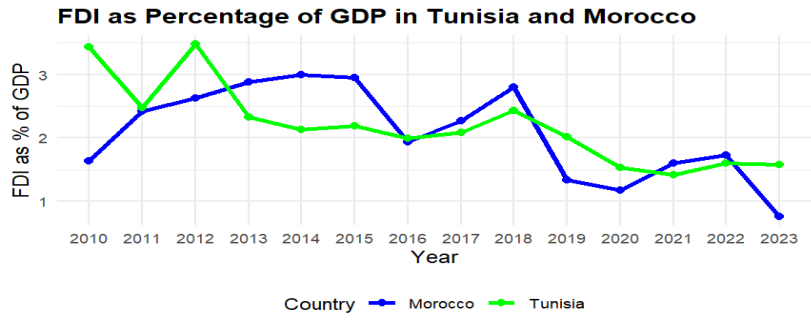
gration rates. Between 2010 and 2023, Tunisia's net migration rate was on average 62.28% more negative compared to its combined migration rates[46]. This suggests lower emigration from Tunisia compared to Morocco, possibly indicating higher immigration inflows. Additionally, from 2010 to 2023, Tunisia's Human Development Index was on average 9.38% higher than Morocco's[47], reflecting relatively stronger performance in health, education and income over time.

Figure 1:



Source: The author's calculation based on UNCTAD data on exports and imports by service category

Figure 2:



Source: Author's calculation based on UNCTAD data on FDI and GDP

To assess offshoring's impact on service employment, a fixed effects regression model was estimated using panel data for Morocco and Tunisia (2010-

[46] Based on the author's calculation of difference percentages of net migration rate data of Tunisia opposed to Morocco, as collected from the World Bank database, from 2010 to 2023.
[47] Based on the author's calculation of HDI difference percentage between Morocco and Tunisia from 2010-2023, based on data from UNDP.

2023), with service employment (% of total) as the dependent variable. The results in **Table 4**, show that ICT exports have a strong, statistically significant positive effect on service employment, indicating that increased offshoring in ICT boosts service sector jobs. In contrast, FDI inflows are negatively associated with service employment, suggesting the importance of non-service sectors. The Frontier Technology Readiness Index also positively impacts service employment, highlighting that digital preparedness supports labor absorption in services. Overall, the model explains 81% of employment variation, reinforcing the idea that digital offshoring and technological readiness drive service sector employment.

Table 4: Fixed effects regression model results relative to employment in services

Variables	**Coefficient**	**Robust Std. Error**	**t-value**	**Prob.**
Exports in telecommunication, computer and information services as % of GDP	5.094	(0.594)	8.58	1.8e-08
Inward FDI as % of GDP	–1.062	(0.306)	–3.47	0.002
Frontier tech readiness index	17.988	(7.214)	2.49	0.020
Inflation	0.293	(0.006)	48.28	2.2e-16
Model Summary				
$R^2 = 0.808$		Adjusted $R^2 = 0.765$		F-ratio = 23.20

Source: *Author's calculation*

On the other hand, to assess the impact of offshoring and employment indicators on migration, a Pooled OLS model was applied for both countries for the same period, with 'net migration rate' as a dependent variable. The model explains approximately 76% of the variation in the net migration rate and supports the large impact of human development index on net migration rates, indicating that improvements in development are strongly associated with less negative rates, which means less emigration. Exports in ICT related services and unemployment as well as real minimum wage do not seem to have an explanatory

power in their relationship to net migration rates, indicating that migration decisions in this context are more sensitive to broader development indicators than to short-term economic or labor market factors, as shown in **Table 5**.

In conclusion, the models indicate that ICT offshoring, as measured by exports of telecommunication, computer, and information services, has a positive and statistically significant effect on employment in services in both countries. This suggests that greater integration into global production chains in the ICT services sector is linked to job growth in services. In contrast, migration seems to be more influenced by structural factors rather than ICT services trade, as no significant relationship was found between the offshoring proxy and net migration rates.

Table 5: Pooled OLS regression results relative to net migration rate

Variables	**Coefficient**	**Robust Std. Error**	**t-value**	**Prob.**
Exports in telecommunication, computer and information services as % of GDP	-0.34	18.82	-0.02	0.986
Inward FDI as % of GDP	-3.26	8.54	-0.38	0.708
Unemployment Rate	0.71	0.15	4.79	< 0.001
Real Minimum Wage	-0.06	0.07	-0.90	0.380
HDI	338.51	6.68	50.69	< 0.001
Model Summary				
$R^2 = 0.869$	Adjusted $R^2 = 0.765$		F-ratio = 19.97	

Source: *Author's calculation*

5. Discussion and contextual analysis

To fully interpret the empirical findings, it is crucial to contextualize them within the broader regulatory, policy, and socioeconomic environments of Morocco and Tunisia. The increasing tradability of services and the emergence of both countries as regional offshoring hubs underscore the importance of institutional frameworks in shaping these dynamics. Since gaining independence,

both countries have pursued trade with key milestones like the Association Agreements with the European Union, which facilitated greater economic cooperation and market access[48]. Today, more than half of Morocco's and Tunisia's trade is conducted with the EU[49]. Currently, the two countries are aware of their position in international production chains, aiming to fortify their attractiveness and at the same time reach their development goals through setting different criteria to control investment flows, such as defining sectors of economic priority, assuring job creation as well as equal distribution of regional development[50]. The legal definitions of investments in both countries, while focused on national development, differ. In Morocco, the focus is on project- and production-centered perspectives, emphasizing tangible conditions for goods or services production and job creation[51]. The Tunisian legislator focuses more on the border economic development with the condition of risk assessment and recognizes two forms of investment: direct and participation investments[52]. This indicates that Tunisia's legal framework accommodates a broader range of foreign investments, whether capital- or labor-intensive. Both Tunisia and Morocco have competitive tax incentives for attracting investors, though with some differences. Tunisia's Tax Incentives Law No. 2017-8 offers a full exemption from corporate income tax on export-derived profits for the first year, with a gradual deduction to 25% by the fourth year[53]. Comparatively, Morocco grants exporting companies — excluding scrap metal dealers — a reduced corporate income tax (CIT) rate of 20%, or 10%

[48] Euro-Mediterranean Agreement, establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, Official Journal L 070, 18/03/2000, p. 0002 - 0204. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, OJ L 97, 30.3.1998, p. 2–183.

[49] European Commission, "EU Trade Relations with Morocco," European Commission, Trade and economic security, accessed on April 30, 2025, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/morocco_en. *See also*: European Commission, "EU Trade Relations with Tunisia," European Commission, Trade and economic security, accessed on April 30, 2025, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/tunisia_en.

[50] Dahir n° 1-22-76 du 14 joumada I 1444 (9 décembre 2022) portant promulgation de la loi-cadre n° 03-22 formant charte de l'investissement, Royaume du Maroc, Bulletin Officiel n° 7152 du 20 joumada I 1444 (9 décembre 2022), p 2089: Article 1. *See also*: Loi n° 2016-71 du 30 septembre 2016, portant loi de l'investissement, Jort n° 82 du 7 octobre 2016, Article 1.

[51] Décret n° 2-23-1 du 25 rejeb 1444 (16 février 2023) relatif à la mise en œuvre du dispositif de soutien principal à l'investissement et du dispositif de soutien spécifique applicable aux projets d'investissement à caractère stratégique, Bulletin Officiel Nº 7174 – 9 chaabane 1444 (2-3-2023), pp 762-767.

[52] Loi n° 2016-71 du 30 septembre 2016, portant loi de l'investissement, Jort n° 82 du 7 octobre 2016, Article 1.

[53] For tax incentives specifications in Tunisia see: Loi n° 2017-8 du 14 février 2017, portant refonte du dispositif des avantages fiscaux, Chapitre IV Avantages fiscaux, sous-section V - Entreprises nouvellement créées.

for lower net profits. Exported goods and services are fully exempt from VAT, with deductions allowed if supported by proper documentation. Additionally, firms in Industrial Acceleration Zones enjoy a five-year CIT exemption, followed by a fixed 15% rate[54]. Tunisia also offers a preferential regime in economic activity parks, granting full income and corporate tax exemptions on export-related earnings for the first ten years. Firms benefit from reduced VAT, duty-free import of equipment, and may sell up to 30% of their prior year's exports locally. Exporting firms are further exempt from standard procedures when hiring foreign managers or specialists[55]. These export-oriented regimes help explain the rise in offshoring-related exports in both Tunisia and Morocco. However, their differing investment approaches — Morocco's focus on tangible job creation versus Tunisia's broader development goals — lead to variations in labor market outcomes and competitiveness. As both countries aim to reduce regional disparities and strengthen their position in global value chains, they tend to attract offshoring in labor-intensive sectors like textiles and manufacturing, rather than in knowledge-intensive ICT services. This aligns with the empirical finding of limited impacts from ICT offshoring and FDI on employment indicators. Moreover, generous tax incentives and export-driven strategies risk triggering a 'race to the bottom,' potentially fostering informal employment and undermining broader socioeconomic goals[56]. For instance, labor markets in Tunisia and Morocco know high informal employment rates, especially in Tunisia. The causes of this phenomenon can vary due to local regulations and systems, but both countries struggle with poor access to credit and judicial inefficiencies, making it difficult for small firms to scale or integrate into formal value chains[57]. Therefore, other control factors, relative to the labor market challenges and social security systems indirectly impact offshoring success in these countries due to limited productivity and informality gaps. Despite lower labor costs, these structural issues make North Africa less competitive compared to regions like Central and Eastern Europe, where institutional conditions are more conducive to sustainable offshoring.

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[54] Ministère de l'économie et de finances et de la réforme de l'administration, Dispositif d'Incitations fiscales, 2021. Accessed on April 30, 2025: https://marocpme.gov.ma/wp-content/uploads/2021/12/MEFRA_Dispositif-dincitations-fiscales_2021.pdf.

[55] Loi n° 93-120 du 27 décembre 1993, portant promulgation du code d'incitations aux investissements, Titre III: Les Incitations À L'exportation, Chapitre I Régime Totalement Exportateur, Article 10 - Article 20.

[56] Empirical studies support that informal employment results from more market liberalization coupled with insufficient state intervention in safeguarding workers' social rights. *See*: Colin C. Williams (2015), „Tackling informal employment in developing and transition economies: a critical evaluation of the neo-liberal approach", *International Journal of Business and Globalisation*, Vol. 14(3), pp. 251- 268.

[57] Gladys Lopez-Acevedo, Marco Ranzani, Nistha Sinha, and Adam Elsheikhi, *Informality and Inclusive Growth in the Middle East and North Africa,* World Bank Group, Middle East and North Africa Development Report. Accessed on April 30, 2025. https://openknowledge.worldbank.org/server/api/core/bitstreams/8efcf7a6-3832-4e94-b826-cabc81be92d2/content.

While the impact of offshoring on employment is empirically supported and moderated by structural labor market challenges, the empirical analysis did not reveal a statistically significant relationship between offshoring and net migration rates. Instead, the findings align with existing literature that highlights the stronger influence of broader structural factors, unemployment and economic opportunity, on individuals' decisions to migrate. In the case of Tunisia and Morocco, migration patterns are also shaped by demographic and historical ties to Europe. Tunisia's higher literacy and education levels contribute to skill-based migration and brain drain, while Morocco's migration is more influenced by socioeconomic pressures such as youth unemployment and urban growth[58]. More recently both countries are becoming a transit destination for sub-Saharan migrants. These changes in migration patterns coupled with the need of cooperation with the EU to limit irregular migration and to encourage development, have initiated policy changes within them. In fact, migration and border management have become a means of conditionality in their partnerships with the EU. Transit migration has often been explained within an unintended policy impact of increasing EU policies. Which means that due to increasingly restrictive entry policies in Europe, the Maghreb and Mashreq regions, have become de facto staging grounds for migrants hoping to cross into the European Union, owing to their proximity[59]. Other factors contributing to the persistence of challenges can also be rooted in national migrant integration policies, and challenges to development such as unemployment and poverty rates.

The main implication of these challenges is the encouragement of emigration as a means of development, through diaspora engagement policies. In fact, in Morocco, diaspora has historically been seen as a development asset, leading to the creation of two main institutions in 1990: the Ministry in Charge of Moroccans living abroad and the Foundation for Moroccans Living Abroad. The first focused on monitoring migration, reintegration, and diplomacy, while the latter addressed cultural and educational matters. Relative to these institutions' approaches to diaspora is a homeland-centered rationality focusing on instrumental values of the diaspora-homeland tie, which can manifest mainly through remittances or investment[60]. Following the same approach since 1998, Tunisia solemnly highlights the importance of diaspora in skill development and

[58] Flore Gubert, Christophe J. Nordman (2009), „Migration trends in North Africa: focus on Morocco, Tunisia and Algeria", *OECD Journal: General Papers*, Issue 4, pp. 75-106, https://www.oecd.org/en/publications/oecd-journal-general-papers/volume-2009/issue-4_gen_papers-v2009-4-en.html.

[59] Ninna Nyberg Sørensen (2006), *Mediterranean transit migration*, Danish Institute for International Studies. ISBN: 87-7605-141-2, https://pure.diis.dk/ws/files/2638693/mediterranean_transit_migration_web.pdf.

[60] Rilke Mahieu (2018), „Competing Origin-country Perspectives on Emigrant Descendants: Moroccan Diaspora Institutions' Policy Views and Practices Regarding the "Next Generation Abroad", *International Migration Review*, 53(1), 183-209.

economic development through remittances and investment[61]. To further encourage this engagement, the Tunisian government has granted preferential fiscal treatment to Tunisians residing abroad who wish to create or participate in investment projects. This includes exemptions from import duties and taxes on equipment, materials, and one transport truck, whether imported or purchased from bonded warehouses. Additionally, purchases made on the local market from VAT-registered suppliers benefit from suspended VAT, consumption duties, and turnover taxes[62].

6. Conclusions

In conclusion, while the impacts of offshoring on employment and migration in Tunisia and Morocco are limited and context-dependent, the countries' experiences offer valuable insights into the structural constraints and opportunities facing emerging economies. The increase in service sector employment due to offshoring does not translate to a broad, generalized improvement in overall employment, largely because of challenges like informal unemployment and regulatory restrictions that limit the potential of the offshoring model. The confined role of both countries in labor-intensive sectors has kept them in lower positions within the Global Value Chain, preventing them from transitioning into knowledge-intensive industries, and cannot provide a solution for graduate unemployment, hence, for brain drain.

The limited impact of offshoring on migration is primarily driven by structural factors, as evidenced by the significant role of the Human Development Index in explaining migration trends, and by policy choices that promote emigration as a means of development. Emigration is viewed by both governments as an opportunity for economic growth through remittances and investment, with diaspora engagement policies actively encouraging the involvement of nationals abroad in the development of their home countries.

Looking ahead, policymakers in Tunisia and Morocco may benefit from expanding offshoring strategies to include knowledge-intensive sectors, which could enhance their global competitiveness and generate higher-value employment opportunities. However, this is strongly related to the need of skill matching, thus, to training programs initiatives and human capital investment. Mean-

[61] From the public meeting between Tunisian Minister of Foreign affairs, Migration and Tunisia's abroad, with IOM DG Amy Pope on May 5, 2025: Statement from IOM Spokesperson: IOM Chief Visit to Tunisia, IOM, News May 5, 2025. accessed on May 6, 2025, https://www.iom.int/news/statement-iom-spokesperson-iom-chief-visit-tunisia.

[62] Issam Briki, *Guide de l'Investissement pour les Tunisiens Résidant à l'Étranger*. Organisation internationale pour les migrations (OIM), Tunis. ISBN 978-92-9268-441-9 (PDF), https://publications.iom.int/books/guide-de-linvestissement-pour-les-tunisiens-residant-letranger.

while, the problematic challenges faced in labor markets and migration management can further be addressed in order to not fall into a race to the bottom, by easing access to onshore sectors. In fact, with the purpose of reaching a positive spillover effect of the offshoring regime, more balance seems to be needed between highly incentivised offshore and onshore regimes. Ultimately, achieving the sustainable development that these countries aim for will require aligning labor market reforms, migration policies, and offshoring incentives.

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