PN-AAN-181
ISN 27552

LAW AND POPULATION GROWTH IN ROMANIA

IOAN CETERCHI
VICTOR DAN ZLĂTESCU
IOAN M. COPIL
PETRE ANCA

PREPARED UNDER THE AUSPICES OF THE LEGISLATIVE COUNCIL AND THE NATIONAL COMMISSION FOR DEMOGRAPHY OF THE SOCIALIST REPUBLIC OF ROMANIA

Bucharest
1974

1974

WORLD POPULATION YEAR

ONE WORLD FOR ALL

LAW AND POPULATION BOOKS SERIES No. 8

The present book "Law and Population Growth in Romania" is part of the project "ROM/7A/01/A/33 settled between United Nations Fund for Population Activities and the National Commission for Demography of the Socialist Republic of Romania.

LAW AND POPULATION GROWTH IN ROMANIA

IOAN CETERCHI [1]
VICTOR DAN ZLĂTESCU [2]
IOAN M. COPIL [3]
PETRE ANCA [4]

---

[1]) *Professor at Bucharest University, Sc. D., President of the Legislative Council, Vice-president of the Academy of Social and Political Sciences, Corresponding member of the Academy of the Socialist Republic of Romania*

[2]) *Professor at the Academy of Social and Political Studies, Doctor of Laws, Counsellor of the Legislative Council, Member of the National Commission for Demography of the Socialist Republic of Romania*

[3]) *Doctor in Economics, Member of the National Demography Commission, Counsellor in the Secretariat of the Commission*

[4]) *Counsellor at the Legislative Council*

I. Demographic Policy in the Socialist Republic of Romania and its Legal Reflection 7
II. Personal Status 33
III. Prevention and Interruption of Pregnancy under the System of Romanian Law 51
IV. Child Welfare Measures 59
V. Assistance of Society to Meet Family Requirements . . 105
VI. Juridical Status of Children 161
VII. Marriage 179
VIII. The Legal Regulation of Health Protection 207
IX. The Property 217
X. Conditions of Work Integration and Labour Protection . 247
XI. Education 255
XII. Legal Regulation of the Military Service 269
XIII. Environment Protection 275
XIV. Protection of the Population Growth and Family Consolidation by Means of Criminal Law 281
Annex 297

Previous Page Blank

"A most important problem is that of ensuring steadier population growth — an essential factor of the dynamism and of the productive force of society. We have in view the adoption in future of a number of economic, social and public health measures, designed to contribute to the consolidation of the family, the stimulation of nataiity, the diminution of mortality and the increase in longevity. Thus, it is estimated that by the end of the next decade, Romania may number 24—25 million inhabitants".

NICOLAE CEAUŞESCU

Previous Page Blank

Chapter I

DEMOGRAPHIC POLICY IN THE SOCIALIST REPUBLIC OF ROMANIA AND ITS LEGAL REFLECTION

§ 1. *Demographic Policy of Socialist Romania*

1. As shown in the motto of this paper, the basic idea in Romania's demographic policy is to ensure the growth of the population as an essential factor of the dynamism and of the productive forces of society.

This implies close correlation of economic development and population growth so that, on the one hand, the necessary prerequisites should be ensured for a continuous rise of the living standards of the entire population and, on the other hand, manpower should be provided for the economic growth effort.

This correlation is reflected in the provisions of the law on planned economic and social development, which expresses the strategy of the economic growth of socialist Romania. Within the meaning of this law, economic and social development is achieved according to a sole national plan, being geared towards the growth of productive forces, the steadfast continuation of industrialization, the creation of an intensive agriculture, and the growth at a high rate of material production, which is a decisive element of the general progress of the country. In the chapter regarding the basic objectives of the planned economic and social development of the country, the law expressly states the steps necessary for the continuous growth of the population. The sole national plan, it is stated in art. 14, must lay down the economic and social steps necessary to ensure demographic dynamism, the continuous growth of the country's population — a basic factor of the national potential.

With a view to better use the labour resources of the country — the law adds — measures must be taken to assure the training and judicious distribution of the personnel, the constant improvement of their training, the directing of the labour force toward those sectors and areas on which the progress of the whole economic and social life depends, the rise of the general

Previous Page Blank

training and educational level, the creation of the prerequisites for the gradual levelling of the differences between physical and intellectual labour. For Romanian law, this is a basic text, the core of all legal rules regarding population.

Supplementing this text, the Labour Code stipulates in art. 3 that the distribution and full and rational use of human resources are achieved according to the goals of the economic and social development plan of the country, the requirements of the continuous growth of the economic and social efficiency of labour, the necessity of a harmonious and balanced development of all the districts of the country.

Romania's demographic policy should be understood in the context of the economic and social development programme of the country, as set forth by the X-th Congress and the National Conference of 1972 of the Romanian Communist Party.

The creation process of a multilaterally developed socialist society includes a period of several five-year plans extending approximately until the years 1985—1990.

It is conceived as a complex process, involving among others, the multilateral development of productive forces and their rational and scientific distribution over the whole territory of the country, the change of social structures, the rise in living standards and in the educational level of the entire population, all development directions which are most intimately bound up with the demographic problem.

In the multilateral development of productive forces, the policy of socialist industrialization plays a decisive part. Formerly considered as an "essentially agrarian" country, Romania is today known abroad for the high industrial development rate it has achieved so far and for the future rates it has in view which place it among the first countries of the world. In this respect the aim of the industrialization process is to make of industry the leading branch of the national economy[1]).

This process is characterized by the fact that it is achieved simultaneously with the intensified modernization of the structure of the various branches and sub-branches through prevalent promotion of the branches furthering technical progress, e.g. metallurgy, electrical power, engineering, and chemistry.

Industrialization also implies an effort to step up technological innovation, to continuously improve mechanization and

---

[1]) The statistical data used in this paper are extracted — excepting those for which another source is indicated — from the Statistical Year Book of the Socialist Republic of Romania for the year 1973, published by the Central Statistics Department.

automation, and to extend the range of products incorporating highly qualified labour.

In this connection the rise in the efficiency of economic activities is of an outstanding interest. Hence, the efforts made in order to increase labour productivity, to make intensive use of existing production units, to increase the efficiency of investment and steadily improve the quality of production.

The industrialization effort, however, does not lead to neglect of agricultural development. Agriculture is not viewed as a complementary branch of the economic mechanism, but, considering the human potential and the material it disposes of, as one of the decisive factors of rapid progress of the national economy.

Socialist agriculture is based mainly on two pillars.

The first is agricultural cooperation. As it is known, by 1962, when the agricultural cooperativization drive was completed, the overwhelming majority of the peasantry had joined the agricultural production cooperatives.

The second pillar consists of state farms. In the development of productive forces in agriculture, stress should be led in the first place on the effort to modernize the technical and material background of primary activities, particularly through complex mechanization of farming work, the rise in the chemicalization degree and the achievement of irrigation and melioration systems.

Simultaneously, there is an effort to organize and develop industrial activities in agriculture and to extend industrial method, to use intensely the tillable land and the labour processes based on automation and electrification.

A multilaterally developed socialist society implies a change of the social structure. Industrialization and multilateral development of production forces will result in the next two decades in the working class becoming the majority class of society. The programme for the creation of such a society involves a rise in the educational level of the members of the working class, so that its innovation and creation capacity should become one of the main development factors of the productive forces.

Simultaneously, it is to be expected a continuous reduction of the number of the peasantry within which the proportion of qualified workers will grow considerably.

As a result of the intensification of the technical progress and of the growth of the part played by science, on the one hand, and by the levelling of the essential differences between physical and intellectual labour, on the other hand, the intelligentsia

springing from workers' families will grow numerically with the technical intelligentsia accounting for a large part of it.

Following the aforementioned social processes, a continuous homogenization of the socialist nation is to be expected.

In the policy for the building up of the new society the steps sistematically adopted in order to raise the living standards of the population hold an important place. The ground of this rise lies in the growth of the national income per capita. The dynamics of the national income per capita shows that, while in 1948 it was 66% greater than in 1938, in 1972 it was 5.60 greater than in 1948. Today it amounts to 700—800 dollars and it is expected to go up to 2500—3000 dollars by 1990.

The rise of the people's welfare is illustrated by the constant increase in the incomes and real wages of the population.

Examining the dynamics of real wages we shall find that while in 1965 they were 125 per cent greater than in 1950, by 1972 they had risen to 282 per cent.

As simultaneously with the growth of real wages, the number of people working in the national economy has also increased, a considerable growth of the pay fund in the whole economy has been attained. In 1972 it was 3 times larger than Romania's entire national income in 1938, the most prosperous year of the inter-war period.

During the current five-year plan (1971—1975) real wages are to increase by 20 per cent. Through the growth of incomes, the incomes of the different categories of working people are to be brought nearer and a suitable differentiation is to be made, the aim of which is stimulation according to the contribution of each worker to the growth of the national income [2]).

Within this framework, the incomes of the cooperative peasantry have also increased. In the 1966—1970 five-year plan period, for instance, these incomes increased by 15.4 per cent as against the former five-year plan period, and they are further to increase in the current five-year period by 22—30 per cent as against the same period.

A guaranteed minimum income has been established for cooperative members — an income granted by the State and growing at a steady rate. By 1975 the real incomes of the peasantry are to exceed by 40 per cent the level attained in 1971.

Other steps — the increase of social insurance pensions, the improvement of the pension system in agriculture, introduced last

[2]) Some data and information used in this chapter are taken from the paper: Probleme de bază ale realizării societății socialiste multilateral dezvoltate. București, Ed. politică, 1972.

year, the increase in state allowance for children and childbirth aids, the granting of aids in new forms — have resulted in a considerable growth of the real income per capita.

At present, about one fifth of the total incomes is derived from the consumption funds.

The rise in the standard of living is expressed not only by the increase in incomes, but also by the considerable growth of consumption. Statistics show that in the two decades between 1950—1970 a growth of more than 7.27-fold of total commodity retail sales through socialist trade was registered, sales of foods increasing by 6 per cent, sales through the public network going up to 11-fold and sales of non food products 7.24-fold. In the following two decades it must be assured a food consumption at the level of the highest physiological standards, a better satisfaction of clothing and footwear requirements, a higher level of the equipment of the population with durable products, and an extension of the range and quality of services.

The years of socialist construction have been for Romania a period of great successes in solving the housing requirements of the population. The current five-year plan provides for the construction of over 500,000 flats only from state funds or with credits received from the state. Furthermore, it is appreciated that another 300,000 flats are to be built with the people's own funds. For the 1976—1990 period the construction of about 2,500,000 flats is provided for, the housing problem thus being entirely solved [3]).

The directions of the programme of the up-building of the multilaterally developed socialist sociey are much more numerous. We have confined ourselves to giving here only some examples to illustrate the economic bases of the Romanian demographic policy.

The implementation of this programme constitutes prerequisites for attaining the proposed demographic goals.

According to official estimates and forecasts, Romania's total population of both sexes and of every age — with the reserve necessary in all such forecasts — should be 22,282,000 in 1980 [4]), and about 24—25 million in 1990. By 2,000, according to certain hypotheses, the number might rise to 26—27 million.

---

[3]) The figures here quoted deny the contention of certain authors that the effects of the housing policy of the socialist states in Europe are, generally, antinatalist. See Peter B. Maggs. Law and Population Growth in Eastern Europe, in Law and Population Monograph series, number 3/1973.

[4]) On the 1-st July 1972 Romania had 20,662,648 inhabitants over an area of 237,500 sq.km.

It has also been estimated that the average increase of the population will be of about 190,000 annually. With an activity index of about 50 per cent — somewhat less than that established at the last census of the population — the number of the active population will be about 13,000,000.

It is expected, as a result of the decrease in the death-rate that the number of the population over 60 years of age will increase from 13.2 per cent in 1970 to 17.8 per cent in 2.000. The population of working age (from 15 to 59) will increase from 12,500,000 in 1970 to 15,061,000 in 2000, the average increase being of about 94,000 persons and the annual rate of 0.7 per cent.

It is envisaged that with a birth rate of 17—18 for every 1,000 inhabitants, with a general death rate of about 10 per 1,000 inhabitants — as recorded today among the population in western Europe — and with an average annual growth rate of the population of 0.7—0.8 per cent, Romania will have a growth rate of population suited to her economic growth [5]).

In order to give a more complete picture of Romania's development until 1980, we shall quote from a paper of President Nicolae Ceaușescu, the following indexes, compared with the year 1938 [6]) :

	1965	1968	1970	1975	1980
Population	122%	126%	130%	138%	145%
National income	4.1 times	5.2 times	6.2 times	9.0—9.3 times	12.4 times
Investment	10 times	14 times	17 times	24.5—25 times	34—36 times
Number of employed persons	3.1 times	3.4 times	3.6 times	3.9—4 times	4.4—4.5 times

These figures testify to the realistic character of the Romanian demographic policy which aims at the growth of the country's population in direct ratio to the growth of the possibilities of the national economy. The danger of a catastrophic gap between population and resources does not exist within the Romanian national economy.

2. The aforementioned policy outlines the content of the family planning concept.

---

[5]) Vladimir Trebici, Populația României și creșterea economică. Studii de demografie economică. București, Ed. politică, 1971.

[6]) Nicolae Ceaușescu, România pe drumul construirii societății socialiste multilateral dezvoltate. București, Ed. politică, 1970, vol. 4, p. 396.

The insertion in the sole national development plan of the economic and social steps necessary for the continuous growth of the population, that is of the number of children in each family, act — indirectly — towards the rise of fertility; each family should be determined to have at least four children so that the next generation should be numerically superior to the present one.

This outlook is not to be understood as state interference, depriving the family of the right to make free decisions concerning procreation. Family planning, in the sense we mention it, is *not compulsory for the family*. The duties deriving from the sole economic and social development plan concern only the assignments of state bodies — all state bodies having assignments in this area — which shall take all the steps of a sanitary organizational economic and educational nature while the spouses are free to make decision as to procreation.

It should be noted that, in another sense, family planning implies a conscious and free decision: freedom both from economic and from psychological factors which might affect the decision and determine the couples to give up procreation.

Actually, in analyzing the notion of "planning" we should underline the one-sided interpretation given to it in the literature dealing upon this matter: "family planning" is always understood in the sense of reducing the family.

Undoubtedly, planning signifies a quantitative expression of some indexes, which are raised or lowered. Starting from this notion, "family planning", as reflected in the many and varied measures whereby the demographic policy of the state is carried out, is also reflected by the measures intended to lead to the enlargement of the family, that is to the rise in the birth-rate.

Thus rounded off, the content of the notion of "family planning" seems to us to serve the specific interests of the various countries in which the evolution of the population and the problem raised by this process are and must be approached in accordance with the requirements of the law of interdependence between economic and social development and the evolution of the population.

Family planning thus implies, within the meaning of the Romanian law, *full respect of human rights*, seeing that each family may establish, as the Teheran proclamation also states, the number of children and the time to elapse between them.

Indeed, contraception is free. Some contraceptive products are freely sold, no legal rule forbids the use of medical products designed to avoid pregnancy.

Sterilization itself — though not actually practised — is not forbidden, as far as it does not affect physical integrity, which is punished by criminal law.

No provision forbids medical personnel to give advice regarding contraceptive practice.

As concerns the interruption of the course of pregnancy, this is allowed, as it is in many other states — as will be shown at large in another chapter — only in certain cases stipulated by the law (danger for the mother's health, serious disease of parents, which can be transmitted by heredity, infirmity or age of the mother, great number of children by one mother, rape or incest) and may be practised only by obstetrician-gynecologist physicians, in special public health units.

As results from the preamble to Decree No. 770/1966 "on the rules of pregnancy interruption" these rules have in view particularly the fact that the interruption of the course of pregnancy is an act with serious consequences for the woman's health.

In this respect, the law lays down *the right of a woman to health* as proclaimed for all people, in art. 12 of the universal Declaration of Human Rights. In view of this fundamental right of man, it is the state's duty to interfere and take adequate legal steps eliminating any policy which may endanger people's health.

Forbidding, in principle, the interruption of the course of pregnancy, the law simultaneously protects another significant social value : the right to life. The principle : "Infans conceptus pro nato habetur, quotiens de ejus commodis agitur" has an ample and profound significance, surely above the level of civil rights protection. It is a principle of universal value and expresses the highly human desire to protect life, not only from the moment of birth, but from its very conception. That is why the law forbids the mother herself — if she does not come under one of the legal exceptions — to put an end to the life of the child she has conceived.

The exceptions we are referring to are not to be understood as an inconsistency of the law, as a violation of this fundamental right. In the conflict opposing on the one hand the life and health of the mother and the risk of giving birth to ill or handicapped children, and on the other hand the — hypothetical — life of such a child, the option for the first category of values is natural.

3. The policy of encouraging the growth of the population, constantly prompted by the Romanian state, must be understood as part of what has come to be described as the "population problem".

Alarmed by the thought of the explosive population growth and terrified at the thought of the exhaustion of natural resources, mankind has become aware of the "population problem". The problem (the term expresses uncertainty and fear) is certianly valid for future generations, and also applies to contemporary world.

This awareness has resulted in a joint effort of the scientists from different domains to understand the scope of the problem facing mankind and subsequently to seek the best remedies for them.

Dark forecasts have become the fashion. Papers like the "Limits of Growth" have revived the ancient Malthusian theories and presented before mankind the picture of a catastrophic future, in which an overpeopled world will be condemned to death by subnutrition, following the total exhaustion of the planet's resources. Cassandra was surpassed by computers. The proposed solution was to reduce the population. Authors of renown like Gaston Bouthoul or Paul Ehrlich considered extreme solutions such as war in order to bring down the number of people.

Apparently more peaceful, but essentially just as little human, the international anti-natality movement tends, in its turn, towards "demographic relaxation" through abortion propaganda, especially in the overpeopled countries of the "third world".

We have good reasons to refute both the premises and the conclusions of such theories. The premises which have given rise to the pessimistic estimates regarding the exhaustion of resources are contested today by a great number of scientists. As Alfred Sauvy recently pointed out important economic and sociological factors are neglected : the reaction of man against difficulties [7]).

Deep-going investigations have pointed out the fact that scientific and technological progress has brought important changes in the consumption of resources, the improvement of the processing of resources already known and the growth of their efficiency, simultaneously with the intensification and introduction in the economic circuit of new resources and the changing of the share of consumption of each [8]).

Scientific and technological progress has been transformed under the conditions of contemporary society into an efficient instrument responsible for more rational and more economic use

---

[7]) Alfred Sauvy, Population and Economic Development in World Conference of Population, Documentary Bulletin No. 1/1974, p. 29.

[8]) See article series : Anti — „Limitele Creşterii' by Victor Calcan, Eng., D., in Era Socialistă, Nr. 8 and 9/1974.

of the resources already known and for the development and effective "creation" or new resources. As U. Thant remarked, the most astonishing feature of the developed economies today is their capability to insure within the shortest delays, the type and quantities of resources desired, so that resources no longer set limits to decision making for the decisions themselves "give birth" to resources [9]).

We do not propose in this paper to set forth the directions in which it is forecast that the resources of the planet will develop. It seems essential to us that through the very serious calculations of economists and scientists in technological and futurology problems the ideas regarding growth limits have been seriously incriminated and found guilty of not having sufficiently considered the creation capabilities of the human mind.

As regards the conclusions drawn from the ideas of the limits of growth, the solutions suggested by some authors prove, in our opinion, a certain lack of political realism.

The most frequent sin of all the theories which challenge the destiny of mankind in its entirety is their absolutism. The authors we mention have not succeeded in escaping this sin either.

Their thesis involves the idea of a world-wide strategy, practised in the name of the general interests of mankind.

The authors we have referred to overlook a circumstance which is essential in our opinion, namely that mankind does not possess a development strategy at the world level yet.

Let us look at the geography of the contemporary world. It gives a picture of mankind with enormous economic gaps, with antiethical demographic problems, with different social and political systems.

Is there today a concept unanimously accepted all over the world for the planning and coordination of economic development? Who could answer such a question in the affirmative despite the obvious trends to consolidate peaceful coexistence?

Certainly, we cannot deny that if such a concept existed mankind would score remarkable achievements. Nevertheless, we are afraid that to speak of such a concept, we risk being considered as utopians.

The economic, demographic and political geography of contemporary world prevents us — being realists — to speak about the "general interests of mankind".

Certainly, a certain number of international strategies have been adopted under the sponsorship of the United Nations, such

---

[9]) Quoted after Alwin Toffler, Le choc du futur, Paris, Denoël 1971, p. 28—29.

as the Provisional Indicative Programme for Agricultural Development worked out by FAO, the World Food Programme worked out by UNO and FAO, the World Programme for the Use of the Labour established by the ILO, the U.N. International Development Strategy for the Second Decade, etc.

These plans have however a limited character, being often considered only as guides and not being compulsory for all countries.

In its turn the World Population Conference to take place in Bucharest in August 1974, will set forth a plan of activities regarding the population of the world. With a view to adopting this plan, the experts' advisory committee appointed by the Population Committee has recently worked out a report the realism and balance of which we cannot but appreciate.

"One of the important characteristics of the Plan — it is said in the above-mentioned report — is the fact that it is based on a systematic analysis of the world situation and not on generalized hypotheses, which cannot but conceal the variety of demographic situations and the variety of government reactions against these situations" [10]).

Indeed, in order to reach an efficient dialogue one must consider the demographic and economic realities of each country. This seems for us to be an axiom, the infringement of which may be costly for mankind, for it would contribute significantly to changing the present day picture of the world. The reduction of the growth rate of the population in a country in which the demographic explosion appears fully may achieve a certain degree of economic relief for the existing population.

But for a country in which the growth trend of the population is deficient, the consequence of further reduction may endanger the very existence of the nation, as well as the economic growth programmes which could no more be implemented because of a shortage of the necessary human element.

"A region which cannot give its inhabitants an acceptable life — Kurt Waldheim said recently — cannot apply solutions identical with those which are necessary in the regions where development involves a growth of labour" [11]).

---

[10]) Nations Unies, Conseil économique et social, Commission de la population, Troisième session extraordinaire, 4—15 mars 1974, Rapport du comité consultatif d'experts du plan d'action mondial de la population, p. 5—6.

[11]) Kurt Waldheim, Speech delivered at the occasion of the proclaiming of the year 1974 as the world year of population, in the World Conference of Population, Documentary Bulletin No. 1/1974, p. 7.

Therefore, not a world-wide solution, but a diversified one appears to be the only thing possible. "The general interests of mankind are indeed the interests of the states which compose it and they do not always coincide. One may, however, hope that if each state adopts the demographic policy best suited to its interests, the whole mankind will surely benefit by it." [12])

This is the deeply realistic spirit from which starts the report of the experts advisory committee.

It has also been admitted that ... "not one demographic policy must be adopted for the whole world, but demographic policies. The action plan must mainly encourage and incite the governments to formulate reasonable and explicit demographic policies, considering their own social, cultural and economic needs"' [13]).

Nobody can better know the particular needs and aspirations than the states concerned. Therefore, firm observance of the sovereignty of each state represents an essential prerequisite for the solution of the population problems. In the chapter "Principles and Objectives", the mentioned report says textually : "The recommendations stated in the present action plan regarding policies aiming at the solution of demographic problems must consider both the variety of the conditions prevalent in the different regions of each country and in different countries and the sovereign right of the governments to establish their own demographic policies".

Therefore we consider that the theoretical basis of the promotors of the theories we referred to is open to discussion. Moreover, we think that their juridical basis is questionable too.

Actually, as attested by the answers communicated by the governments to a recent inquiry initiated by UNO, following a resolution adopted by the General Assembly, there is at present an important number of countries the demographic policy of which is geared towards speeding up the rate of population growth.

The steps taken by the P. R. Bulgaria, in order to stimulate natality are relevant in this respect. Among them we should mention a project which provides for the granting of an important state loan to young couples, the return of which is pro-

---

[12] and [13]) Ibidem p. 7.

portional to the number of children, thus with the birth of the third child the whole loan is considered to have been repaid[14]).

In Hungary, the Committee for long-term planning of labour resources and standards of living has established as a primary objective of the demographic policy the stimulation of the continuous growth of natality so as to ensure a greater reproduction rate of the population than the present one. An ample programme of organization as well as social and economic means are provided to this end [15]).

Natality policies are likewise found in other European countries from among which we will mention S.F.R. Yugoslavia, Czechoslovakia and Greece.

Many decades ago — particularly after the Second World War — France was known all over the world for its population growth policy and for the efficiency of the steps taken to this end.

An active demographic policy, indirectly geared towards helping the growth of the population is also promoted by some Northern countries. Thus, in Sweden and Finland stimulation of the numerical growth of the population is pursued either through the realization of social objectives, or through immigration.

Generally, on the European continent, the overcrowding problem is not serious, and consequently no European state pursues a firm antinatalist policy.

4. The main way of solving the population problem does not consist, in our opinion, in the neo-Malthusian solutions proposed, but in the bridging over the great economic gaps of contemporary world.

The overpeopled states are indeed poor states, which do not benefit from the gains of modern civilization. "Demographic" explosion actually means the explosion of famine, poverty and illiteracy, in other words, the explosion of underdevelopment.

The reduction and, ultimately, the bridging of these gaps in the economic, technological, scientific and other fields, is at present a primary need in ensuring peace, international security

---

[14]) Resolution 1838 (XVII) and Resolution ECOSOC 1048 (XXXVII) as well as document E/CH 9/282/10 Sept. 1973 UNO. See also Emil Mesaros, Priorități și orientări actuale în politica demografică. In : Revista de filosofie, No. 1/1974, p. 39.

Ivan Stefanov, Modern Problems of Demographic Policy in Bulgaria, Warsaw. Iodwisin 15—18.III.1972.

[15]) Egon Szabady, Economy and Population, Warsaw Iodwisin 15—18 III/1972. This latter two notations are from Emil Mesaros, op. cit. p. 40.

and the general progress of mankind leading to the solution of the problems of population, energy, environment protection, etc.

Therefore, we consider that the complex population problems must be closely bound up with the concern to establish contemporary international relations relying on new demographic principles, with a view to achieve a new international economic and social order. They can never be considered apart from the imperative need to promote the interests of the developing countries.

Therefore, as President Nicolae Ceaușescu stressed during the proceedings of the Interparliamentary Union which took place in Bucharest recently, it is necessary to take action for the settlement of international relations that lead to the reduction and bridging of the gaps in the economic development of different states, to the creation of conditions enabling all nations to benefit by the achievements of modern civilization. Such relations must express the hallowed right of each people to be the owner of its riches, raw materials and power resources, so that they may be used for its own economic and social development. They must ensure the access of all peoples to the achievements of modern science and technology, the removal of obstacles and discriminations, the insurance of a balanced ratio between the prices of raw materials and those of industrial products, as well as commercial exchanges and co-operation under conditions of security and stability.

The setting up of a new economic and social world order, based on democratic principles, constitutes a necessity for the future development of mankind, while simultaneously enabling the states to work out demographic policies allowing of the free development and assertion of all peoples in a better and fairer world.

Demographic development is unthinkable in a world divided into rich and poor nations, and into military blocks, with mankind's gigantic resources continuing to be wasted on armament.

The discussion of the problems of population growth provides more than any other topic a possibility of approaching all the urgent problems of contemporary world.

Therefore, we have come to consider the "law of population" not only as a set of rules regarding the growth of the birth-rate, but as a comprehensive system of rules contributing to the multilateral development of the population, to the improvement of the quality of life.

§ 2. *Law and Population*

5. The concern for the rules of population growth has so far penetrated legal science but timidly. Until quite recently nowhere in the world have jurists been concerned with the complex and serious population problems, nor have they engaged on a synthetic examination of the legal rules regarding the growth of population and its standard of living.

It goes without saying that law cannot be either separated or excluded from the factors that affect the evolution of the population. On the contrary, it may be asserted without fear of exaggeration that it is a most important factor. It is consequently all the more paradoxical that it should not have been sufficiently examined, and that the social effects of its enactments should not have been studied, despite the difficulty of the research-works and their relevance being disclosed only in the long run.

A law-population relation doubtlessly exists and careful research will show that it is subject to important changes with the passing of time.

There was a time when the states had not raised the problem of working out a consistent policy regarding population growth and law only accidentally exerted an influence — a rather general one — on the growth of population, for istance, by establishing family relations, paying allowances for children, etc. In a subsequent period, when a demographic policy was evolved, the laws were directly concerned with the implementation of such a policy, in order to enforce on the population a certain demographic behaviour.

In our opinion, one may speak about the existence of a "population law", a legislation designed to provide legal normative instruments for the implementation of a demographic policy only from the moment when the various states evolved demographic policies.

In Romania, for instance, the social and legal steps adopted during the period before the IX-th Congress of the Romanian Communist Party (1965) reflected the general concern to raise the standard of living of the population, while after that Congress, steps were adopted pursuing directly the stimulation of population growth, as a definite objective of the development strategy of our country during the period of the creation of a multilaterally developed socialist society.

It should not be overlooked that the conscious creation of a socialist and communist society implies control over the reproduction process of the population, through deep-going study of the laws of population development under socialism, and the working out of a strategy based on such laws.

Such a strategy implies close correlation between economic development and the growth of population, on the one hand, in order to create the prerequisite for the continuous rise of the standard of living of the entire population and, on the other hand, in order to permanently provide the labour force necessary for the economic growth effort. From the legal point of view, the correlation, as was pointed out in the precedent paragraph, is reflected in the provision of the law on planned economic and social development, which represents the basic normative act for the "population law".

Once the concept of "population law" has been accepted, the problem of its essence, of its content and limits arises.

Dr. Luke Lee, the promoter of the legal studies bound up with population problems has recently tried to define the "population law" as the body of laws which is directly or indirectly concerned with the growth of population, the distribution of goods and the aspects which regard the people's welfare, which are affected in one way or another by the number of the population and the destination of goods [16]).

It is obvious that, thus defined, the "population law" has not the significance of a branch of law in the conventional meaning of the term. It has no object of regulation nor a method of its own.

In this case the term "law" defines a set of rules of different kinds, which become coherent only in the light of a certain interest which commands their union, and of a specific approach. The system of relations between these rules take a certain shape or another, depending on that approach. Thus, legal rules are no longer considered as belonging for ever to a certain branch of law. Such a "law" joints constitutional, administrative, civilian, labour and penal rules, which interweave in order to build up a certain interest, a system within which the legal branches, institutions and rules appear to be harmoniously bound up.

Though useful owing to its pragmatic character, this concept requires, however, some explanations, for the jurists trained at the school of "continental" legal systems.

---

[15]) Luke T. Lee, Population law; a new curriculum for law schools. Background paper presented to the UNESCO workshop on the Teaching of Population Dynamics in Law Schools, February 18—22 1974, Paris.

In our opinion, such a procedure may be of scientific value only if it observes two essential rules.

First it must use the concepts crystallized in the "conventional" branches of law in the exact meaning they have in those branches. The use of these concepts in a different context could not create an "antilaw", a sphere of law that dissolves traditional constructions, but, on the contrary, may represent an act which implies profund knowledge of these concepts, in other words, an act which confirms their validity when they are viewed from an original angle. Then, one must always consider the rules and laws which are formulated by the scientific branches around which they revolve, demography, economics, sociology, etc. and use the concepts proper to those sciences in the way they were defined by them. It should never be forgotten that it has an auxiliary part to play and must adapt itself to the requirements of those branches, endeavouring to come to conclusions useful to them.

The two basic rules mentioned above explain the scientific usefulness of scientific research of this kind. Such usefulness is not or, at least, not essentially, of a juridical order. "Population law" should use only concepts, principles, and institutions well known in legal science, though they may be used in another context. Legal novelties should not usually crop up here. The marriage institution, for instance, one of the essential chapters of the "population law", should be taken, tale quale, such as it has been studied in the family law. The same holds good for all the institutions bound up with "population law".

Certainly, we cannot wholly deny the hope to do creative work in legal science, and in the sphere of population law. An original approach to various institutions and rules, achieved by the special outlook that law implies, may be an excellent opportunity for fertile associations, similarities and comparisons, whereby legal science may be enriched.

The usefulness of the population law is fully brought out in another respect : its value does not consist in the novelty of research alone, but in its comprehensive character and in the emphasis laid on the elements which exert a special influence on the trend of population evolution.

Such preoccupations involve inter-branch studies. In the multibranch team, the "population law" is the contribution of the law scientist to the investigation of population problems, contribution which is taken over by the economist, the statistician or the politics scientist in order to continue the research.

We must clearly lay down that basing the "population law" on the standpoint from which we consider its legal regulatory settlement does not mean to impose a purely subjective criterion. Ultimately, this way of considering things does not by any means exclude the existence of an objective criterion. To choose legal rules from the point of view of their use in the implementation of the demographic policy of the state and of their constant influence on the demographic behaviour ultimately means to select them according to the criterion of functionality, in other words, as far as they serve — directly or indirectly — the aims of the demographic policy of the state [17]).

6. But the definition given to "population law" raises another problem, for it includes not only the rules which are *directly* connected with population problems, but also those *indirectly* bound up with them.

There are legal institutions specially created for the implementation of the demographic policy of the state.

Another category of institutions, though not created with the express intention of affecting demographic processes, have nevertheless strong effects on these processes, so that they may be considered to have a direct action.

Finally, we come accross another series of legal institutions which pursue different aims and which act only in a general way and marginally on the evolution trends of population. Their number may be very large. The inclusion of the latter institutions in the "population law" is questionable, we must admit it. Certainly we should not refute the viewpoint of the author quoted above, for he expresses essentially the requirements of modern demographic sciences which approach the population problem from many angles, considering the different factors which influence its growth trends, including those which generally act for the improvement of the quality of life. However, a number of points should be cleared up here [18]).

---

[17]) When thus considering the "population law" we have in mind a thesis which was formulated at a symposium, organized by Virginia University, on the part to be played by laws in the solution of population problems. See : Population law : New-Wine in New Bottles by David Zunderman in The World Population Crisis : policy implications and the role of law, the University of Virginia-School of Law, March 12—13, 1971, p. 90.

[18]) In a paper published in 1971, Arthur Larson suggests a division of the legal rules into four distinct categories. We could not assume this viewpoint, the division implying distinctions difficult to be made in the Romanian law. See :*Introduction* in Population and Law, a study of the relations between population problems and law, edited by Luke T. Lee and Arthur Larson, Sijtfoff-Deiden, 1971.

7. The discussion about the content and limits of the population law draws attention to the problem of the branches of law concerned. It is well understood that nearly all branches of law are involved. That does not, however, mean that the specific angle from which are considered the legal principles adopted from the various branches does not create between them a certain hierarchy of values depending on the real influence they exert on the evolution trends of population.

At the top of the hierarchy are, no doubt, the constitutional rules regarding the basic rights and duties. The deeply humanistic character of the population law results in that it finds its reason for existence in the practice of these basic rights.

"The countries which consider that their present demographic growth rate hinders the achievement of their objectives regarding social development and welfare are insistently invited, unless they have already done so — it is stated in the report of the consultative committee of experts we quoted above — to consider the insertion of numerical objectives of demographic growth in their development plans and programmes and, in order to achieve these objectives, to evolve demographic policies *compatible with the basic rights of man, as well as with their own value system, and their own aims*"[19]) (our underlying).

Romania's entire demographic policy, closely correlated with the objectives of economic growth, starts from the idea of equality between sexes and implies enjoyment of the basic rights such as the right to work, mentioned by art. 18, to leisure (art.19), to material insurance in old age, and in case of illness and disability (art. 20), to education (art. 21), to insurance by the state of the necessary conditions for the development of the physical and intellectual aptitudes of young people (art. 24), and of political rights, social and political freedom and inviolability, as warranted by the Constitution.

a) Regarding the provisions of the ordinary legislation, we must place first those provisions specially created for the implementation of the demographic policy of the state. As this policy constantly pursues the growth of population, the main place in this category of provisions is held by those designated to bring down mortality.

---

[19]) Nations Unies, Conseil économique et social, Commission de la population, op. cit., p. 10.

Among the steps taken the major significance belongs, no doubt, to the stimulating provisions.

These steps are introduced by a very large range of normative acts.

In this respect it is very difficult to make a clear distinction between direct and indirect measures, between measures taken in order to directly implement the demographic policy, and those which promote a wider range of values.

As part of the group of stimulating rules the fiscal benefits should also be mentioned consisting of certain tax reductions established by Decree No. 153/1954, as well as the far from negligible benefits — moral and material stimuli — bestowed on mothers of large families, who are awarded the orders of "Heroine Mother" and "Maternal Glory".

Furthermore we should mention Decree No 700/1966, which establishes the regime of interruption of the course of pregnancy and the exceptional cases in which it may be carried out.

This decree is supplemented by a series of measures — penal, fiscal and economic — with either coercive or stimulating effect.

Among coercive measures the first to be mentioned are the provisions regarding penal sanctioning of abortion in art. 185 and subsequent articles of the Penal Code.

We should likewise mention the fiscal coercive rules in Decree No 1086/1966, consisting of the increase in the taxation of childless people, depending on the income cashed and the social category to which the incomes belong.

b) The second category referred to above includes the juridical institutions, which, *though not established with the intention of directly influencing demographic processes, for they aim at a larger number of social values, have such an effect on these processes, that they may be considered to have a direct action.*

In the order of their importance for the population law, we will first mention a number of rules for the support of minors. The legal duty of seeing to the support of minors, as established by the Family Code in art. 86 and the articles that follow, works to the same effect as the rules introduced by Law No 3/1970, on the allowances paid to families who have taken upon themselves to bring up minors and the rule regarding the minor child's social insurance, included in Law No 27/1966.

Moreover, mention should be made of the rules regarding the organization of creches and day nurseries, as well as of the fact

that the state bears, wholly or only partially, the expenses made to this end. All these rules illustrate the idea current in demographic sciences that under the conditions prevailing in modern society, with its high degree of urbanization, with the considerable dispersal of the population, and the continuous improvement of the means of communication, with women being constantly promoted in the political, social and economic life, the family, mostly, restricted to two generations — nuclearized as sociologists put it — discards a number of its traditional functions which are taken over by the state. The idea also occurs, though in another context, within the framework of the Family Law, the assumption of certain functions by the state being one of the most interesting directions in the evolution of this branch of law.

It should likewise be considered that the problem of the legal status of children must have its place in the same category of rules, for it has a decisive influence on the growth of the population. The equality in principle between children born within and out of wedlock, as established by the Family Code in art. 63 and constantly put into effect in Romanian law, should also become a basic principle of the population law. Furthermore, the rules regarding registry activities — investigations, denial of maternity and paternity, or refusal to admit it, are issues of the highest interest when considered in this light.

A basic value of the population law is derived from the idea that the growth of the birth-rate should be primarily achieved within family. From the biological and social points of view the family is the basic cell in which it is desirable that the population growth should occur, and this is a result not only of moral considerations, but also for reasons deriving from the century-old experience of mankind. Nowhere can the upbringing and education of children be achieved better than within an organized family.

However well run and supplied crêches and day nurseries may be, however qualified and solicitous the care bestowed on children they will never completely replace the atmosphere created for child within the family.

These are the reasons why marriage and divorce should become important chapters of the population law. The same reasons determine the taking over of some institutions by the state, such as those dealt with in Law No. 3/1970 on the protection given to certain categories of minors, whose aim is to supplement

such protection, if it cannot be achieved within the family, because it is disorganized, or because the education given to the minors is inadequate, or again because the minors require special protection — as in the case of the handicapped ones.

In the life of a family the home is of great importance. The decision to bring children into the world is often affected by the dwelling conditions of the family. This is the reason why the rules in Laws No 4 and 5/1973, by which families with several children are allowed certain priorities and facilities in the leasing of dwellings from the state housing fund or in obtaining loans for building a home of their own, may be considered as direct means whereby the state policy regarding population is implemented.

A higher birth-rate is only one of the ways leading to the population growth. A second, just as important, making it its aim to lengthen the life of the citizens and implicitly to improve their health and welfare, is the decrease in the death rate.

The Romanian socialist state has for many years made considerable efforts to this end and its efforts have materialized in a steady decrease in the death rate. A number of legal provisions have made an essential contribution thereto.

The entire set of legal regulations for the protection of health — the complex measures regarding free medical care, the organization of a large network of units for public health assistance, the disease control programmes, the compulsory medical examinations, the various vaccination and inoculations, the gratuitousness of medicines for certain diseases and for children — are part and parcel of the population law.

The specific quality of these measures is their comprehensiveness, in other words, the fact that the protected social values are very complex.

The decrease in the death-rate is their final result. Their primary aim is to enhance the working capacity of all citizens, to constantly increase the number of the active population, and to raise the general level of the population's health — an essential condition for the welfare of society.

c) The measures mentioned above are in the nature of a transition to a third category of juridical regulations concerning the population law. While in the preceding cases the growth of the population was the direct result of the intervention of legal regulations, the category of *indirect measures* is characterized by

the fact that their aim is the general progress of society, the attainment of the basic objectives of society, in other words, that they contribute to the improvement of the quality of life and thus affect the population problem. Occasionally, no doubt, these regulations also have marginal consequences, closely bound up with the problem, sometimes meeting half way the major aims of the demographic policy of the state, at other times constituting opposing factors, negative factors of higher phenomena or values.

Education is a typical element within this category. It is not necessary to emphasize its general effect on the quality of life : a high educational level of the entire society.In this respect the legal regulations on education must indisputably be included in the population law. But education regulations also have other effects on the population growth.

Statistics currently quoted in the literature of speciality demonstrate that the educational level of population is inversely proportional to fertility. This rule, which is confirmed under all social systems, is, in an advanced society like ours where the access to education is ever wider, a restricting factor of population growth. It is likewise proved scientifically that, as the access to higher forms of education becomes easier, an increasing number of young people postpone marriage and procreation until they have finished their studies. This results in a diminuation of fertility, for demographic studies consider the best age for procreation to be between 18-22 — the average age of the population attending higher education.

Similar effects are also produced by the regulations concerning military service as a duty of honour for all citizens. It is not necessary in this case either to emphasize the importance of this duty for the consolidation of the defence capacity of one's native country, for the defence of national independence and sovereignty. But the regulations on military service are linked to the population law in other respects, too. First, one has to consider the age at which the young people are conscripted and the legal duration of military service — a period during which young men do not generally establish families, nor deliberately procreate. For the same reasons, the regulations on the postponement of, and exemptions from conscription are of interest, as well as the circumstance whether only men or women are called up for military service.

Of no less interest for the population law, on account of certain secondary effects, are penalty regulations. Such elements as penalty suspension or correction labour, at large introduced by Law No. 6/1973 or the possibility given to the convicted husband or wife to be visited by their consort, allowed by certain laws, have a certain influence on the growth of the population. Nor should death punishment be overlooked [20]).

Finally, there is a certain category of regulations which do not produce, even marginally, direct effects on the population growth, but which have a general influence on the quality of life.

In this category we will note three institutions. First, *ownership*. Under the socialist system, the whole national economy is based on socialist ownership of production means. The existence of a unique fund of state socialist ownership constitutes a most important guarantee of observing the basic rights of all citizens. Co-operative ownership as well as personal ownership, derived from labour, are in their turn, means of insuring the welfare of the population. Within the unique development plan of the national economy, the population growth is correlated with the constant rise in the standard of living.

This has induced us to consider the institution of ownership, generally, as one of the chapters which could not be absent from a textbook of population law.

The second institution is the protection of the labour of young people and women. These two important chapters of the labour law, to which the new Labour Code attaches special importance, special measures being laid down in Chapter VII, for instance regarding the labour of expectant or nursing mother, interdiction of nightwork for women, protection of the health of young people and the duration of their working time, are all closely bound up with the population law, though they do not have any direct effects on the birth-rate. They play an important part in ensuring the normal development of young people and the conditions required to enable women to preserve

---

[20]) See : Prof. dr. Ion Filipescu, Les droits de l'homme et la mortalité, report submitted to the Symposium on population and human rights, Amsterdam, 21—29 January, 1974.

their physical and intellectual resources in order to bring up and educate the younger generation.

Finally, the third institution : *the protection of the environment.* The law adopted to this end in 1973 is an important contribution to the improvement of the living conditions of the active population, strict tasks being assigned to all organs and factors which are called upon to contribute to the prevention and elimination of pollution.

We have left penal law provisions for the end on account of their special position and the part they play. Protecting the most important values of the socialist legal system, penal laws play an important part in the attainment of the moral, political, social and economic objectives of our society regarding the growth of population.

On the whole, most of the values protected by penal laws exert a certain influence on demographic trends.

However, in the Penal Code and in the Special Penal Law, there are certain offences the incrimination of which was designed to greatly consolidate the efficiency of the measures whereby the state's demographic policy is concretely expressed. Such are the offences regarding the violation of the regulations on the interruption of the course of pregnancy or those grouped in the Penal Law in the chapters "Offences against the Family", "Offences against Public Health", "Offences of Social Parasitism", „Offences Regarding Sexual Life".

These special regulations, some of which have been referred to above, must be considered, in our opinion, as integral parts of the population law, as they make a significant contribution to the achievement of the objectives of the demographic policy of the state.

As we have pointed out, there are still many more regulations in various branches of law, which, owing to their indirect action on the general trends of population growth, may claim the status of chapters of the population law. But seeking to keep within bounds as one should always do, we confined ourselves to the above-mentioned items. A collection of rules made up according to the criteria we have used in the present case would never be exhaustive.

An exaggerated enlargement might be harmful to the destiny of the very subject matter, as persisting in this way, step by step, the danger arises of including, if not all, at least the majority of the provisions of the law in force. The lawyers who would do so may be reproached with "legal imperialism" — an accusation one brought against the experts in civilian law, for including in their branch entire fields which were common to several branches of law. The result may be vagueness in the delimitation of the subject matter, which would be only to its prejudice and would prevent it being sufficiently defined.

Chapter II

PERSONAL STATUS

§ 1. *Fundamental Rights*

1. It is indisputable that in the literature concerning population law — a literature of no long standing — no problem has aroused a greater interest than that of the rights of man. It may be asserted that the population law was born from the very discussions which had taken place about the fundamental rights and liberties enjoyed by the inhabitants of our planet in various countries.

This is easily accounted for because — as we have shown in the introductory chapter — it is on these rights and liberties that is based the entire legal system from which, directly or indirectly, the demographic policy of the states has been evolved.

Woman's equality with man, mankind's possibilities of leading a dignified existence, without privations, the complex support accorded to the family and to the youth, the possibilities of being educated and of undergoing vocational training, the protection of the ill and of old and disabled persons, on the one hand, directly influence the growth of the population and its economic development. Social and political rights and liberties, on the other hand, indirectly affect the same values, for they offer to citizens the possibility to promote and defend them.

The very definition of the fundamental rights most clearly expresses this fact. Romanian literature on constitutional law defines the fundamental rights as those rights which are *essential for the material and intellectual development of the citizens,* and also for *assuring their participation in the government of the state* [1]).

That is why the concept dominating the matter of fundamental rights, in a constitutional system or another, a concept which in the last analysis, affects the whole legal system, is of excep-

---

[1]) See : Tudor Drăganu, Drept constituţional. Bucureşti, Ed. didactică şi pedagogică, 1972, p. 209.

tional interest. Little wonder, therefore, that the discussions we were referring to above have dealt upon this very subject.

The Romanian juridical science does not consider the fundamental rights to have a different character from that of other subjective rights. As it has already been shown, like any other subjective rights, they are powers warranted by the law to the will of the active subject of the juridical relation, on the basis of which the latter is able, with a view to turning to good account a direct personal interest, to display a certain behaviour which, if need be, may be enforced upon him with the aid of the coercive force of the state [2]).

Abiding by such a position, the above thesis adopted by Romanian juridical literature simultaneously rejects two different concepts.

On the one hand, it rejects the concept which considers the fundamental rights not as subjective rights, but as elements of the capacity of usage. It has justly been observed that such an outlook provides no explanation of the necessity of giving a material and juridical guarantee for these rights, and neither can it explain the correspondence with the obligations assigned to the citizens, most precisely established by the Constitution and also by the ordinary laws, obligations forming the object of certain concrete juridical relations [3]).

On the other hand, the concept from which we start repeals the "jus naturale" ideas, which recognize in the fundamental rights the expression of some inborn rights acquired by each person outside any legal organization, rights prior to the institution of the state and which are enforced upon it. Being considered as indissolubly related to the human person, those rights seem to be the same for all times and in all types of society.

Starting from the marxist thesis according to which the law of a society is the expression of the interests of the dominating forces of the respective society, raised to the rank of law, our concept cannot in any way be conciliated with the natural law concept. Subjective rights in general and implicitly fundamental rights — as elements of the superstructure, are determined, in the last analysis by the economic basis of each society. In other words, they are not granted once and for all and to all societies, but change their nature and content with the transformations brought in production relations.

---

[2]) Ibidem, loc. cit.

[3]) Nistor Prisca, Drept constituțional. București, Tipografia Universitară, 1970, vol. I, part. II, p. 199.

This is the very concept which underlies the inextricable relations — which we analyzed in the first chapter of the present work — between the requirements of the economic growth of contemporary Romania and the legal regulation for increasing the population, and which determines us to reject the thesis that the right to family planning — in the sense usually attributed to this term — finds its justification in the natural law, as a right indissolubly bound up with man.

To embrace such a concept does not on any account mean lapsing into juridical positivism. The Romanian juridical doctrine — of marxist inspiration — does not limit itself to considering the juridical norm and the subjective right in themselves detached from the economic basis of society, which determines their content and causes them to differ essentially from one social system to another.

2. The idea that the fundamental rights are identical as to their nature with all the other subjective rights finds a good illustration also in the identity of their object, some of them having the same object as certain subjective rights. This occurs in the case of the right to work, the right of personal inviolability, etc. The situation has induced an author to compare the fundamental rights to the stars around which the other subjective rights gravitate [4]). Owing to the fact that it is on them that the entire ensemble of civic rights relies the fundamental rights form the object of a constitutional regulation.

In characterizing the system of fundamental rights in the Constitution of the Socialist Republic of Romania of 1965, we may deduce the following ideas, which seem to us to be essential.

a) Firstly it will be noticed that the guarantee of private ownership of production means does not stand in the centre of the system — since such a type of ownership is not to be met with under the socialist system — but social-economic rights — as, for example, the right to work, the right to rest, to material aid in case of illness or old age, that is the very fundamental rights which have a direct influence upon the demographic policy of the state, being juridical pledges of material welfare under the conditions of a socialist society.

b) The constitutional regulation does not limit itself to the proclamation of the fundamental rights ; in a realistic and efficient manner it lays particular stress upon their guarantee. Thus, the Constitution sanctions for non observance of the fundamental rights and, on the other hand, it provides the elements of the material basis necessary for their exercise, elements resulting, in

---

[4]) See : **Tudor Drăganu, op. cit, p. 211.**

the last analysis, from the existence of the state socialist property, whose beneficiary is the whole people. The consistent policy of increasing the population and permanently raising its living standard thus finds not only juridical support, but also the juridical and social economic premises for its implementation.

c) The realistic character of the regulation also results from the fact that there is no obstacle whatever against the fundamental rights throughout the legislation, their exercise having to be effectuated in a plenary manner.

d) The fundamental rights are protected without any discrimination ; the Constitution, like the whole ordinary legislation, establishing complete equality of rights for all citizens, without distinction as to sex, nationality or religion.

3. Equality of rights is not a simple fundamental right, or a mere pledge, it is more than that ; in our opinion, it is the premise of all fundamental rights.

This is the reason why the Constitution of 1965 lays down under the heading of the fundamental rights and obligations of citizens : "The citizens of the Socialist Republic of Romania, without distinction as to nationality, race, sex or religion, are equal in rights in all fields of economic, political, juridical, social and cultural life".

The Constitution — it is to be noted — has conceived the principle of equality, in a very broad spirit ; equality is not confined to the fundamental rights, but reflects itself, in equal measure, upon all the subjective rights. It concerns alike all fields of the social, political, economic, juridical and cultural life.

Consequently, no normative act of a lower level than the Constitution, will be able to insert discriminatory provisions for certain categories of persons, as such provisions would have a non-constitutional character. In this respect art. 17 of the Constitution states in par. 2 and 3 "The state warrants equality of rights for the citizens. No restriction of these rights and no difference in their exercise upon the ground of natonality, race, sex or religion are allowed. Any manifestation for the purpose of establishing such restrictions, national-chauvinistic propaganda, instigation to social or national hatred, are punished by the law".

In the application of this fundamental principle, art. 22 and 23 of the Constitution give certain explanations which are also of great interest for the population law. The first article states that the coinhabiting nationalities enjoy free usage of their mother tongue and also of books, newspapers, reviews, theatres, education of all degrees, in their own language. In the administrative-territorial areas inhabited by a population of another nationality than the Romanian one, all institutions use orally and in writing

also the language of the respective nationality and appoint employees, office workers etc., from its ranks or other citizens who know the language and the way of life of the local population [5]).

The second text, we have already dwelt on in this work on account of its numerous implications for the problems of the population declares : "In the Socialist Republic of Romania, women enjoy rights equal to those of the man. The state protects marriage and the family and defends the interests of mother and child".

It should be pointed out that it is only under the conditions of the socialist system that women have attained in Romania a social and juridical status equal to that of the men. In the past, legislation incorporated many discriminations between sexes as regards both political and civil rights. Thus, women were given the right to elect and to be elected to parliament only in 1946. The Civil Code of 1864 by establishing the principle of the disability of married women — a principle abolished only in 1952 — made women's position inferior to that of the man, in many respects. This situation ceased in 1948, when the first constitution of the socialist type was adopted. The latter established complete equality in rights between man and woman and implicitly abrogated all the contrary dispositions of the ordinary legislation.

4. Among the fundamental rights provided by the Constitution, we will insist firstly, for the reasons indicated above upon social economic rights[6]).

a) From among the latter rights, the most important under the conditions of the socialist system is undoubtedly the *right to work*. Art. 18 of the Constitution states : "In the Socialist Republic of Romania, the citizens have the right to work. Each citizen is ensured the possibility of displaying, in keeping with

---

[5]) The works existing up to the present have dealt very little with the rights of the co-inhabiting nationalities. In our opinion, the juridical status of the co-inhabiting nationalities, which ensures the complex development of certain important categories of the population, should be considered as a priority object of research for "the population law". We may even affirm that the problem is not so important in those countries in which the co-inhabiting nationalities enjoy perfect equality — a reason for which we do not insist upon this aspect in the present work — as in the countries which practise a discriminatory policy towards them, such discriminations sometimes giving rise to measures hindering or delaying the growth of the population, keeping them at a lower living standard than that of the rest of population or restricting their access to certain places or free circulation. By the examination of such problems, the population law will establish once more its humanistic vocation.

[6]) See : Victor Dan Zlătescu, Les droits économiques et sociaux dans la République Socialiste de Roumanie, in Cahiers de droit comparé No 23/ 1971, p. 337.

his training, an activity in the economic, administrative, social or cultural fields, paid according to its quantity and quality. Equal pay for equal work".

The constitutional text also provides that a special law establishes measures for the protection and security of work, as well as special measures for the protection of the work of women and youth.

We should underline a fact of particular interest: the fundamental law does not confine itself to proclaiming the liberty to work; giving a concrete content to the notion of the *right* to work, it ensures to each citizen the possibility of getting a job, in other words, it confirms the liquidation of unemployment. And facts prove that in Romania owing to a high rate of economic growth, there has been no unemployment for a long time.

b) In art. 19, the Constitution grants to the citizens the *right to rest and leisure*. The constitutional pledges of the right to rest consists in the establishment of a working day of 8 hours at most, of a weekly day of leisure and of paid annual leaves.

It is specified that in the sectors where work is hard or very hard, the duration of the working day is reduced below 8 hours, without any cut in wages.

The Labour Code of 1972 also provides that until the elimination of the causes which determine conditions of unhealthy, hard or dangerous work, at some working places the duration of work for people working in such conditions is reduced below 8 hours daily without any reduction in the remuneration. It is also provided that for the persons whose working programme is carried out during the night, the duration of work is one hour shorter than for the work carried out during the day, without any cut in the wages.

c) Another fundamental right provided by art. 20 of the Constitution is the right to *material aid in case of old age, illness or disability*.

The manner of realization of this right differs in keeping with the capacity of the respective persons. Thus, for workers and office employees, it assumes the form of pensions and illness benefits, paid within the framework of the state social insurance system, and for the members of co-operative organizations and of other public organizations, in the form established by those organizations.

In this respect, Decree No 535/1966 lays down the right to old age and disability pensions for the members of co-operative farms, and also the right to pensions for their children, when bereaved of both parents. The decree also establishes the right of the members of co-operative farms to aid for temporary disabi-

lity, paid maternity leaves, balneo-climatic treatment and allowances for children.

We should mention that these categories of people also enjoy the right to medical assistance and medicines under particularly advantageous conditions, aspects to be examined in another chapter of this work.

d) According to art. 21 of the Constitution, *the citizens of the country enjoy the right to education.* To ensure the enjoyment of this right, education is general and obligatory, education of every degree is free of charge and there is also a system of state scholarships. The Constitution lays down that education in the Socialist Republic of Romania means state education. We will not insist upon this fundamental right, because the regulation of education is, on its turn, the object of a special chapter of the present work.

e) Another fundamental right of evident interest for the population problem is *the right of young people to have the conditions necessary for the development of their physical and intellectual aptitudes,* ensured by the state, as provided for by art. 24 of the Constitution.

In the juridical literature it is underlined that this constitutional disposition establishes for the state the obligation of taking concrete measures with a view to giving to the younger generation the possibility for a multilateral development. Such measures include : the organization of varied forms ef education, so that all the aptitudes and talents of young people may be enhanced, the adoption of special measures for the protection of their work, etc.[7]).

In the application of these constitutional provisions, the Labour Code in the chapter headed "The Work of Women and of Young People", lays down the following fundamental provision : "The youth enjoy the careful attention of our socialist society. Multilateral education, the training and the vocational integration of the youth, the appropriation of the necessary knowledge for the exercise of a profession are all free of charge".

The Code prescribes the obligation of the Ministry of Education and of other state bodies to establish close relationships between the theoretical education and the practical training of schoolchildren and students, by creating all the necessary conditions for carrying out such a task.

The Labour Code lays down that all the young people are ensured working places in keeping with their training, aptitudes and aspirations.

---

[7]) See : Tudor Drăganu, op. cit., p. 228.

Special provisions concern the conditions of young people's work. Thus, art. 161 of the Labour Code stipulates that for the protection of their health, young people below 18 years of age appointed to a post, cannot be assigned to places where conditions are hard or dangerous, nor can they be utilized for night work. Likewise, young people of up to 18 years cannot be utilized for work of longer duration than the working day, save in exceptional cases, provided by the law.

The law establishes that the working day of young people between 14—16 years should be of 6 hours duration without any deduction from their wages. For young people under 18, the duration of the rest leave is of 18-24 working-days, differentiated, according to the law, according to the age, so that the youngest should benefit by the longest holiday.

f) Another right which justifiably finds place among the fundamental rights in a state which puts the principle of socialist legality at the basis of the activity of all its bodies is *the right of the person prejudiced in one of his (or her) rights by an illegal act of a state body to request from the competent authority, under the conditions laid down by the law, the annulment of the act and the reparation of the damage.*

A special law — No 1/1967 — establishes the concrete conditions for the exercise of this right.

5. If social economic rights operate directly on the growth of the population and its living standard, the action of the second category of fundamental rights — the *political* ones — is, evidently, indirect. By assuring the possibility of the citizens to participate in the government of the state, political rights are no less important a part of the legal regulations included in the population law.

From these rights we will mention the right of Romanian citizens to elect and be elected to the Great National Assembly — the supreme body of state power — and to the people's councils — local bodies of state power. Pursuant to art. 25 of the Constitution, the right to vote belongs to all citizens who have attained the age of 18 while citizens of 23 years may be elected as deputies to the above bodies. The right of entering as candidates — it is stated in the Constitution — belongs to all working people's organizations: to the organizations of the Romanian Communist Party, to trade unions, co-operatives, youth and women's organizations, cultural associations and other mass and public organizations.

Our fundamental law establishes the right of electors to dismiss any deputy, pursuant to the same procedure applied when he was proposed and elected.

The only persons unable — according to the Constitution — to elect and be elected are the lunatics, the mentally deficient, and the persons deprived of these rights by the sentence of a court of law.

6. A special category of fundamental rights includes *social political rights.*

a) Among these rights, *the liberty of associating in public organizations* plays an important part. Art. 27 of the Constitution provides the right of the citizens to associate in trade unions, co-operatives, youth, women's and social cultural organizations, in creation unions, in scientific, technical and sportive associations and in other public organizations.

The state — it is stated in the Constitution — assists the activity of mass and public organizations, creates conditions for the development of their material background and protects their patrimony.

The Constitution also establishes the part to be played in socialist society by the Romanian Communist Party.

b) A second fundamental right belonging to this category stipulated by the Constitution is *the freedom of speech, of the press, of assembly, of meetings and demonstrations.* The text of art. 28 speaks about the protection of this right by the state.

In order to give it a real content and to render it useful to socialist ideals art. 29 specifies that the freedom of speech, of the press, of meetings and demonstrations cannot be utilized against the socialist system and the interests of the working people. Associations of the fascist or antidemocratic type are prohibited. Participation in such associations and propaganda of a fascist or antidemocratical nature are punished by the law.

c) In close relation with the above considerations, the Constitution establishes in art. 30 *the liberty of conscience and of religion.*

The liberty of conscience, granted to all citizens, confers on each of them the right to have any opinion or religious faith, as it also confers the right to have no religious faith whatever. That is why the constitutional text specifies that "anyone is free to have a religious faith or not" thus confirming at the same time both the liberty of religion and liberty towards religion.

A corollary of these liberties is the liberty of the religious cult, that is to say, the liberty of manifesting religious feeling by external signs, as, for example, certain rituals, the forming of groups of believers, the organization of church associations etc. "Religious cults — the Constitution declares — are organized and are functioning freely. The manner of organization and functioning of religious cults is established by the law".

Consistent with the idea that religious liberty signifies at the same time liberty towards religion, the Constitution proclaims that schools are separated from the church.

d) Finally, the last right of this category is the *right to petitioning*. In accordance with this text, the state bodies are obliged to solve the petitions of the citizens concerning rights and interests, whether personal or public. Consequently, the fundamental law gives the right to petitioning a very wide significance on the one hand, because the petitions may refer not only to the defence of some rights, but also of mere interests, and, on the other hand, because the interests may concern not only the persons who make the applications, but society itself or a certain group of it. Thus, the right to petitioning becomes one of the methods by which the masses participate in the government of the state.

It is to be noticed that the text mentioned above establishes the *obligation* for the competent body to solve the petitions.

7. A last group of the fundamental rights is made up of what is described as *inviolabilities*. Its object is to protect the person and his or her private life against any unwarrantable interference.

a) First comes the *inviolability of the person*, guaranteed by art. 31 of the Constitution. No person — it is stated in the text — can be detained or arrested unless there is against him (or her) a well-founded proof or evidence that he (or she) has committed a deed punishable under the law. The inquiring bodies are entitled to order the detention of the presumed author for 24 hours at most. No one may be arrested — it is laid down in the Constitution — except by virtue of a warrant for arrest issued by a court of law or by a public prosecutor. In a special paragraph the above-said article states that the right of defence is guaranteed throughout the trial. The Code of Penal Procedure of 1968 provides a detailed regulation of the inviolability of the person, developing these principles.

b) *The inviolability of the domicile*, stipulated in art. 32 of the Constitution, signifies that no one may enter the domicile of a person without his (or her) consent, except in cases and under conditions laid down in the law.

Pursuant to this text, the state has the obligation to establish by law the cases when the domicile or residence of a person can be visited. The detailed regulation of such cases and conditions is included in the Code of Penal Procedure.

c) In accordance with art. 33 of the Constitution, the *secret of correspondence* and of *telephone conversations* is guaranteed. This right signifies that the citizens may communicate in writing

(including telegrams and telexes) and also by telephone, inside or outside the country, without the communications being intercepted, in any way whatsoever, by persons other than the addressee or by the state bodies excepted the cases when it is necessary to know the contents of the correspondence — as specified in the Code of Penal Procedure — in the interest of a penal pursuit or of justice.

It should be mentioned that this right was extended by the Penal Code of 1968. According to that Code — the penal offence of violating the secret of correspondence — consists not only in the interception of the communications effectuated by post, telegraph or telephone, but also by any other means of long-distance transmission.

d) Consistently observing the principles of proletarian internationalism and of socialist humanism, the Constitution of the Socialist Republic of Romania accords the right of sanctuary to foreign citizens pursued for their activities in defence of the interests of the working people, and for their participation in the fight for national liberation, or for safeguarding peace.

The foreign citizen to whom such a right was granted is assimilated with Romanian citizens from the point of view of the right of living upon the territory of the country and of the impossibility of being extradited.

8. The concept which inspired the legislator of the Constitution was that the fundamental rights are correlated with a number of civic obligations, designed to contribute to the defence, the consolidation and development of the economic system and of the socialist state ; in other words, being a corollary of the fundamental rights, these obligations contribute to the protection of the social values which ensure the effective realization of the fundamental rights. That is why the same persons who enjov the fundamental rights have also the civic obligations established by the Constitution.

These obligations are the following :

a) the obligation to defend socialist property ;

b) the obligation to contribute to the consolidation and development of the socialist system ;

c) the obligation to observe the Constitution and the laws of the country ;

d) the obligation to perform military service in the ranks of the armed forces of the Socialist Republic of Romania ; as for the conditions of performance of military service, we shall revert to this subject in detail in a subsequent chapter ;

e) the obligation to defend the country.

§ 2. *Romanian Citizenship*

The regulation of citizenship is of interest to the population law because being a citizen, a person may fully participate in the political and social life of a country and is protected against certain discriminations which the national law might establish between citizens and non-citizens.

As we shall demonstrate in the following paragraph, such fear is unfounded in Romania because Romanian law, by a consistent application of the national treatment, grants to foreigners the same civil rights as to Romanian citizens.

The principles set forth in the preamble to Law No. 24/1971 on Romanian citizenship openly express the spirit in which this important problem is regulated. "The citizens of socialist Romania, tied body and soul to their forefathers' land, to the traditions and ideals of our people, joined together by common interests and aspirations, being the sons of the same motherland, are equal members of society, the state protecting them equally, without any restriction or difference as to nationality, race, sex or religion, or the way in which the citizenship was acquired".

The fundamental principle of the new law is, therefore, that of perfect equality of rights for all citizens. Based on the idea of the deep-seated link between the citizens and their native land, the law provides that the rights and obligations of Romanian citizens, the ways of acquiring and losing Romanian citizenship, are the exclusive attribute of the Romanian state. That is why, when a Romanian citizen is considered by the law of a foreign state to have the citizenship of that state, the provisions of the foreign law have no effect under the Romanian law. Marriage between a Romanian citizen and a foreigner produces no effect concerning the citizenship of the parties. Likewise, as a consequence of the same principle, the change of citizenship of one of the consorts does not affect the Romanian citizenship of the other, according to the Romanian laws. Likewsie, a declaration of nullity, the annulment or dissolution of marriage, do not affect the citizenship of the other consort who has obtained Romanian citizenship during the marriage.

9. The law provides four ways of obtaining Romanian citizenship : a) by birth ; b) by repatriation ; c) by adoption and d) by request.

According to the first of these forms, a Romanian citizen is :

— a person born of parents both of which are Romanian citizens, upon the territory of the Socialist Republic of Romania ;

— a person born upon Romanian territory, even though only one of the parents is a Romanian citizen ;

— a person born abroad, and whose parents' or only one of them, possess the Romanian citizenship.

A child found upon Romanian territory is a Romanian citizen, if neither parent is known.

A person who has lost the Romanian citizenship may recover it, according to the law, as an effect of repatriation, if, wishing to be reintegrated in Romanian socialist society he (or she) has obtained the repatriation authorization.

On the same date, the children of the repatriated person, who are under age obtain the citizenship unless they live abroad with the other parent. At the same time the consort of the repatriated person may on application obtain the Romanian citizenship, after renouncing the foreign citizenship.

The citizenship is obtained on taking the oath of loyalty to the Socialist Republic of Romania.

The citizenship can be obtained by adoption if at least one of the adopting consorts or the unique adopter, are Romanian citizens and provided that the adoptee has not reached the age of 18. (It is to be noted that, pursuant to the Family Code, also people who are of age may be adopted, under exceptional conditions).

If the adoption is declared null and void or is annulled, an adoptee under 18 is considered to have never had the Romanian citizenship only if he (or she) lives abroad or if he (or she) leaves the country in order to live abroad. Otherwise, in our opinion, a minor does not lose the Romanian citizenship. Under the same conditions, the minor whose adoption has been dissolved loses the Romanian citizenship.

The fourth way of obtaining the citizenship is by applying for it. According to the constitutional amendment of 1974, only the President of the Republic is entitled to confer the Romanian citizenship.

The citizenship is given if the applicant :

— was born and lives on Romanian territories on the date of the application or if, though born elsewhere, the applicant has lived in Romania for at least 5 years or, if married to a Romanian citizen, for at least 3 years. These terms may be reduced for serious reasons ;

— gives proof of loyalty towards the Romanian state and people by his attitude and behaviour ; the applicant has proved that he (or she) has become integrated in the economic and social life of the country ; that he (or she) is ready to contribute to the defence of the independence and sovereignty of the country, and is worthy of becoming a Romanian citizen assuming all the obligations resulting there from ;

— has reached the age of 18 ;

— is carrying on an work useful for society or, if unable to work possesses sufficent means to live on ;

— renounces to foreign citizenship by an authentical declaration.

10. The effects of Romanian citizenship consist in a number of rights and obligations devolved only on Romanian citizens.

From among the *rights,* we should mention :

a) the right to elect and be elected in the representative state bodies ;

b) the right to be appointed to certain posts closed to foreigners ;

c) the right not to be banished ;

d) the right to diplomatic protection.

From among the *obligations,* we will mention :

a) the obligation to be loyal to the homeland ;

b) the obligation to accomplish military service in the ranks of the Romanian armed forces and to defend the country ;

c) the obligation to fulfil the task of people's assesor in law courts, if elected to that post.

11. According to Law No. 24/1971, the loss of Romanian citizenship may take place in the following ways :

a) By withdrawal of the citizenship by the President of the Republic, when the respective person, being abroad, becomes guilty of deeds hostile to the Socialist Republic of Romania, or likely to prejudice its good name ; if he joins the armed forces of a foreign state, occupies a public post in the service of another state without the authorization of Romanian authorities, leaves the country secretly or fraudulently, has obtained the Romanian citizenship fraudulently and, finally is considered by the effect of a foreign law to have become a foreign citizen and has not applied for approval of the renunciation to Romanian citizenship or the application has not been approved.

b) Exceptionally, for serious reasons, a citizen who has reached the age of 18 may renounce the Romanian citizenship, with the approval of the President of the Republic, if he binds himself by an authenticated statement, not to accomplish, after the loss of Romanian citizenship, any deeds likely to be prejudicial to the interests of the Romanian state and people, if he is not accused of or implicated in a penal offence and has not to execute a penal conviction ; if he has no patrimonial obligations towards the state or towards natural persons or corporate bodies

in our country, or, having such obligations, he fulfils them or offers reliable pledges that he will fulfil them.

Although in principle, the loss of citizenship after approval of the renunciation has no juridical effects on the citizenship of the consort or of the children, a minor will lose the Romanian citizenship together with his or her parents if both parents obtain the approval of renunciation to the citizenship and the child lives with them abroad. If the parents lose their citizenship at different times, the child loses it together with the last. Likewise, a minor who, in order to live abroad, leaves the country after his parents have lost the Romanian citizenship, he loses it in his turn on the date of his departure.

A minor who is a Romanian citizen and is adopted by a foreign citizen, loses his citizenship if the adopter demands it expressly and if the adoptee is considered, according to a foreign law, to have obtained a foreign citizenship. In case of nullity or annulment of the adoption, the minor is considered never to have lost the Romanian citizenship — the effects are therefore "ex tunc", retroactively, provided he lives in the country or returns to it. What occurs if he does not fulfil such conditions ? In case of adoption, our opinion has been that the minor does not lose the Romanian citizenship obtained in this manner, in a similar hypothesis. In the present case, however, we feel inclined to the contrary solution, taking into account that the child has meanwhile obtained another citizenship, in pursuance with the foreign law.

Nevertheless, in case of the dissolution of the adoption, — and the law expressely provides here a contrary solution — a minor acquires the Romanian citizenship again on the date when the adoption was dissolved (the effects are produced "ex nunc") if he lives in Romania or if he returns in order to reside in the country.

The law also provides that a foundling loses the Romanian citizenship if, before reaching the age of 18 his (or her) filiation has been established as regards both parents who are found to be foreign citizens, and if, in accordance with their national law, the child is considered to have the same citizenship as the parents or the citizenship, at least, of one of them. Under the same conditions, a child loses the Romanian citizenship if its filiation has been established only with regard of one of the parents who is a foreign citizen, and the other parent is unknown. In such a case, the Romanian citizenship is lost on the date of the establishment of the child's filiation.

§ 3. *The Status of Foreigners*

12. All the Romanian legislation in force concerning the access of foreigners to the national territory is recent. The considerable progress made in political, economic, cultural and tourist exchanges due, on the one hand, to the policy of peace, cooperation and international detente constantly promoted by Romania, and, on the other hand, to the continuous advance of its industrial production and of the whole national economy have induced an important increase in the number of foreigners coming to and establishing themselves in Romania. Full regulation of the foreigners' status guaranteeing, in compliance with international treaties, the foreigners access to sojourn in and departure from the country, their rights and obligations, the conditions of their work in Romania, has been an important legislative task, solved by a number of normative acts, from among which we shall mention only the Law No. 25/1969 concerning the status of foreigners and Decree No. 424/1972 on joint companies, and also the recent constitutional amendment of March 1974.

The basic idea of the whole regulation, as reflected in the first article of the law, is that in Romania foreigners enjoy the same fundamental rights as Romanian citizens — excepting political rights — and also civil rights and any other rights established by the law or by the international agreements to which Romania is a party.

According to the provision of this law, foreigners are considered to be those persons who are not Romanian citizens — possessing either a foreign citizenship or none.

In other words, the principle from which the law starts is the national principle.

The access of foreigners to Romania is admitted by virtue of the acts for crossing the frontier visaed by the Romanian authorities. A foreigner cannot enter the country if :

a) he has acted against Romania's interests or there are indications that, being in Romania, he might act *against* the interests of the Romanian state ;

b) there are well-founded indications that he wishes to enter the country for the purpose of committing criminal offences ;

c) he has infringed the rules referring to the status of foreigners in Romania or to customs laws, currency laws or the laws on the crossing of the Romanian state frontier ;

d) he has been deprived of the right of sojourn in Romania, or he was expelled or is undesirable ;

e) he cannot prove that he can support himself during his stay in Romania.

The domicile of a foreigner in Romania is established, according to the Constitution, with the approval of the President of the Republic.

The foreigners who come to Romania for a sojourn longer than 120 days, shall inform thereof the competent bodies in the locality where they are to reside, within 3 days of the crossing of the Romanian frontier. The same obligation is stipulated for the foreigners who enter the country several times, for their personal interest, for a duration longer than 120 days annually.

The law also provides that, for considerations concerning public order or the security of the state, changes of residence and the establishment of a domicile or residence may be confined to certain areas or localities.

The Ministry of Home Affairs is entitled to abolish or to limit the right of sojourn in Romania of the foreigner who has infringed Romanian laws or who by his attitude and his behaviour has prejudiced the interests of the Romanian state. In such a case, the foreigner must leave the country within 24 hours of the date when he was informed about this measure.

13. One of the most important aspects of the status of foreigners is concerned with their rights and obligations.

As regards political rights, we will mention, in the first place, the right of sanctuary, mentioned above. The other political rights resulting from Romanian citizenship are not accessible to foreigners.

The law acknowledges to foreigners the other fundamental rights : the right to work, to rest and leisure, to material assistance in case of old age, illness or disability, the right to education, etc.

At the same time, foreigners enjoy democratic liberties, as provided by the Constitution, as, for example, liberty of conscience, of speech, of the press, of holding meetings and demonstrations, personal liberties — liberty and inviolability of the person, of the domicile, the secret of correspondence and of telephone calls, etc.

Among civil rights, we should mention especially, because of their particular conditions, those concerning marriage and the adoption by, or of, a Romanian citizen which we examined in the respective chapters.

As to property, it is unanimously admitted that foreigners cannot have in Romania more extensive rights than Romanian citizens.

In the chapter relative to property, we have shown the content of the right of personal ownership of Romanian citizens. Consequently, foreigners cannot claim the right to be landowners or owners of commercial or industrial enterprises in Romania.

Foreigners enjoy the right of succession, without any restriction, like any Romanian citizen. In short, they may accomplish any juridical act, according to Romanian laws.

14. The law concerning the status of foreigners relies on the idea that foreigners may be appointed in institutions, enterprises and any state or public institutions, but without occupying leading posts. The provisions of the decree relating to the formation of joint companies, which permit the appointment of foreign citizens to such posts, are excepted from this rule.

No foreign citizens can be appointed in the institutions and organizations which, by the specific nature of their activities, are important for the defence and the security of the state, nor can they be appointed within the system of the bodies of state power, in military units, etc. Foreigners cannot be either elected or appointed to a justicial body, or to the post of public prosecutor and cannot be members of the college of barristers.

In order to appoint a foreigner or to confer on him the quality of member of a public organization, when the law allows it, the agreement of the Ministry of Home Affairs is necessary. Such an agreement is not, however necessary for foreign citizens who come to Romania to carry on an activity over a determined period, by virtue of a contract or of an international appointment.

15. Foreigners are appointed to leave Romania on the basis of documents stipulated by the law for the crossing of the Romanian state frontier.

The law includes special provisions concerning the way in which foreigners are permitted to leave the country when accused or implicated in a penal suit, or when they have committed contraventions of particular seriousness ; also if they have to satisfy an obligation for their support, obligation resulting from public services or an obligation to pay damages to the state or to a socialist organization, on account of deeds coming under the penal law.

Chapter III

PREVENTION AND INTERRUPTION OF PREGNANCY UNDER THE SYSTEM OF ROMANIAN LAW

§ 1. *General Observations*

1. In compliance with the social policy of the Romanian state the maintenance of the birth-rate at the level necessary to ensure a natural and satisfactory surplus of the population is a categorical imperative from the demographic point of view. To this end, legislative interventions have always pursued and continue to pursue the growth of the birth-rate. Which signifies that legal regulations could on no account oblige to births restriction.

As it is known, the problem of birth control assumes two aspects which are all the more different as they are placed successively in time : prevention of pregnancy and its interruption. That is why they should be examined separately.

§ 2. *Prevention of Pregnancy*

2. *Absence of legal regulation.* As regards its first aspect, we should specify from the outset that this is a problem which does not constitute the object of an express regulation, as it is the case with the interruption of the course of pregnancy. This signifies that its solution can only be examined in the light of the general principle of common law. And, from this standpoint, it should be underlined from the first that the act of procreation is not forbidden to any category of persons whatever. Sterilzation is not even obligatory for those who, because of their mental condition, are not authorized to marry, according to the Family Code (art. 9), as, for example, the mentally deficient and alienated.

In the second place, we should specify the real data within which the problem of the liberty of the family structure arises.

The liberty of birth control implies the legally established right for men and women to avoid fecundation by adequate means in order to prevent pregnancy, and consequently temporarily or permanently to ensure the sterility of the sexual act.

However, the problem of admitting such a right can only be put with reference to the methods which resort to extrinsic material means. Natural methods consisting either in the limitation, by common consent, of sexual intercourse within certain periods of the calendar — as recommended according to the "Ogino-Kanus" methods of "basic temperature" and „calorimetrical tests" — or by practising imperfect intercourse [1]), constitute measures of preventing pregnancy lying, by their very nature, outside legal preoccupations. Even though some of those methods may prejudice the health of the parties, it is no less true that their practice belongs to a category of acts which eludes juridical censure owing to their more than personal nature.

The question is therefore confined to medical and surgical methods and to the usage of mechanical means of preventing fecundity. Among such methods — some of them widely applied in practice while others are only being investigated — we shall enumerate, for the reader's guidance, hormonal methods, spermicides, prostaglandines, immunological means, intrauterine contrivences, and surgical interventions, specifying again that there is no disposition in Romanian legislation with regard to the liberty of utilizing them. As part of this enumeration, we must distinguish the use of preservatives by men from all other methods, whose application, due to the complexity of their use, to their secondary effects and to possible accidents, are a serious and real danger for one's health. Because preservatives do not present any risk, it is possible to positively affirm that their utilization is absolutely free and so they may be purchased in state shops.

As for the other methods, one may assert, with the same certainty, that they are applied, as regards women, under medical control, in all cases in which the special law allows the inter-

---

[1]) In this chapter large use has been made of the information and conclusions of a scientific nature drawn from Dr. I. Lemnete's work: „Reproducerea umană şi contracepţia", Bucureşti, Ed. medicală, 1973.

ruption of pregnancy ; since it is not admissible — even if the law does not say anything about it — that in such cases as will be enumerated in the following paragraph, the prevention of pregnancy, whose interruption is authorized by the law, should not be permitted.

In this respect, the means of preventing pregnancy are included in the system of measures "designed to ensure the preservation of people's health, by fighting against the noxious effects of pregnancy or the complications of interrupting the pregnancy... of women who, owing to certain psychological elements or to certain social factors, belong to the category of persons who fulfil the conditions required for therapeutic or legal interruption of pregnancy" [2]).

With this end in view, there has been created, in our country, a first "centre of contraception", called upon as part of medical consultations, to indicate the most suitable method for the prevention of the pregnancy of women "legally entitled to the interruption of pregnancy or presenting medical counter-indications as regards pregnancy" [3]) ; even though the application of the method indicated would determine sterility of an irreversible nature.

3. *Application of Penal Code Provisions*

It has not yet been established, because such an issue has not come forward in judicial practice, whether such methods might be applied without coming under the provisions of the Penal Code, by a person in the capacity of a physician or without such a capacity — so that the sexual act accomplished by a man should become sterile or that a woman should avert pregnancy in other cases than those in which pregnancy might be legally interrupted ; at the same time, whether the agreement of the respective man or woman is liable to assign a lawful character to the method utilized ; in other words, whether induced sterilization should entail the application of art 182 of the Penal Code, which punishes the deed "the result whereof is the loss of a sense or organ, cessation of their functioning, a permanent physical or psychical infirmity...".

---

[2]) I. Lemnete, op. cit., pag. 127.
[3]) Ibidem, p. 133.

In the light of this text, the problem would only arise if sterility is of an irreversible nature. But it is still to be established whether sterility thus induced may be considered as a cessation of the "function of the organ", taking into account the fact that procreation is the supreme finality of copulation.

But the problem cannot be solved according to those elements alone, because, if incrimination of such a deed seems unavoidable when the deed was committed without the consent of the person concerned, it is debatable when sterilization was effected at the request or with the agreement of the person concerned.

As shown above, such an issue has never come before the law courts, and is not likely to come in future. The only sect which practised sterilization in our country in the past disappeared long ago, and the means of preventing pregnancy, liable to induce sterility of an irreversible nature cannot be obtained and applied even by medical men, except in very uncommon cases when an intervention is authorized by the competent medical commissions.

§ 3. *The Interruption of Pregnancy*

4. *Prohibition of Abortion*

The Romanian law (Decree No 770/1966) establishes, as a general rule, the interdiction to interrupt pregnancy. The interdiction relies upon the consistently pursued line of protecting natality, since the liberty to interrupt pregnancy may seriously prejudice the natural growth of the population. But, apart from this, and above all other considerations, this prohibition is called upon to protect in equal measure both the life of the women and the intrauterine life of the child to be. The ancient adage "infans conceptus pro nato habetur quotiens de suis commodis agitur" has been a constant rule along centuries under the various social systems; it was adopted, as a general formula, by the Romanian legislation in force "the rights of a child are acknowledged from its conception..." (Decree No. 31/1954, art. 7); and, of course, this does ont amount only to the acknowledgement of the child's civil rights, but more than that — to the

protection, with penal means, of its essential right to life, to existence; it is a contingent right, it is true, but no less absolute for that, which must prevail when clashing with the interest of the woman to interrupt her pregnancy. It is a point of view fully laid down in our Penal Code. This may be clearly inferred from the fact that abortion is punished even if the woman herself has induced it.

5. The considerations which call for the prohibition of abortion are not only the result of a logical deduction or of ethical imperatives. They are fully supported by the negative experiment made in our country during the application of the former legal system, under Decree No. 463/1957, which allowed the interruption of the course of pregnancy at the request of the expectant mother alone.

Liberty of abortion has had serious consequences on the health of the women who have interrupted their pregnancy; there was a particularly important growth of cases of sterility, of extrauterine pregnancies, infections, etc. Legal leniency has also pointed to the demographic danger caused by the considerable decrease in the birth-rate. Whilst 426,000 children were born in 1956, during the following years their number decreased gradually to reach 301,000 in 1963. These figures most categorically condemn the experiment made when liberty was granted by the law to women to practise abortion without any restriction.

6. *The Cases when Abortion May Be Authorized*

The law in force at present in our country establishes some derogations from the general rule which prohibits abortion when higher considerations justify the waiving of the child's right to live. Although such cases are admitted "only exceptionally" they are more numerous than those provided by similar laws under other legislative systems because they rely not only on reasons of a medical nature — saving the mother's life — but equally on eugenic, social and ethical reasons.

As stated by the Supreme Court (Decision No. 5988/1971), in reference to the legal rules on abortion, the establishment of the ruling to prohibit abortion and to the exceptions allowed must be fully in compliance with the "demographic and social imperatives which, on the one hand, require that there should

be no decrease in the birth-rate nor births of underdeveloped infants, permanent bearers of bio-physical blemishes ; and, on the other hand, that the health and procreation faculty of expectant mother should not be impaired".

In the first place, the interruption of pregnancy is allowed, according to the law, in cases when a choice must be made between the life of the mother and that of the child, when "pregnancy puts the life of the woman in a perilous condition, which cannot be averted by other means". Furthermore, abortion is lawful when it is justified by eugenic considerations, when "one of the parents is afflicted with a serious malady, which is transmissible by heredity or which induces serious congenital malformations" ; a principal example of serious illness is mental defficiency, which also constitutes an obstacle to marriage. The instructions given for the application of this law (No. 819/1966), specify the diseases likely to endanger the life of the mother and also those likely to induce an abnormal physical condition in the child.

It is under the same category of exceptions determined by eugenic reasons that falls the lawful interruption of pregnancy when "the woman is over 40 years old" for the age of the mother may imperil the physical or the psychical condition of the child ; likewise, if pregnancy is the result of an incest.

Another category of lawful abortion is justified by social considerations, namely when "the woman is afflicted by serious physical or sensorial infirmities" or when "she has already given birth to four children whom she is alone to support". Finally, the last exception is founded upon purely ethical considerations, to wit "pregnancy resulting from rape".

Abortion is allowed in the above-said cases only during the first three months of pregnancy. In absolutely exceptional cases it may be effectuated within a term of six months at most, but only if the mother's life is menaced.

The interruption of pregnancy can only be effectuated by specialist physicians in special public health institutions in obstetrics and gynaecology wards and hospitals and on the basis of authorizations issued by the competent medical commissions, in pursuance of the law. In cases of utmost emergency, when

the interruption of pregnancy cannot be postponed, physicians, even non-specialist ones, are authorized to accomplish it in the surgical sections of the public health units where they work, without the authorization of the medical commission, but with the obligation of informing the prosecuting body about the necessity of an intervention, in writing and in advance, when possible, or during the following 24 hours after its accomplishment in order to enable the public prosecutors to establish, according to the view of a medical expert and to any other elements, whether the interruption of pregnancy, under such conditions, was really necessary.

7. *The Provisions of the Penal Code.* The interruption of pregnancy — of real pregnancy — by any adequate means, whether internal, external, surgical, or even physical, apart from the above-mentioned conditions, constitutes an abortion offence, which is punished distinctively according to the provisions of the Penal Code (art. 185—188 and 182), namely according as the abortion was effectuated with or without the consent of the woman, by a physician, by another person, or by the woman herself. Finally, the sanction varies according to the purpose in view, and the ensuing consequences. It is more serious when the abortion has been committed in order to get a material benefit or when it has caused serious bodily injury to the expectant mother and all the more so, in case of death.

Also punished as independent offences, are the deed of the pregnant woman who has agreed, whether expressely or tacitly, but always of her own free will, to the interruption of pregnancy accomplished by another person, and also the deed of the physician who, after having effectuated, in case of extreme urgency, such an intervention, without having previously got a legal authorization, does not inform the prosecuting body, within the legal term, about the operation he has made.

In all cases, the accomplishment of an abortion offence implies an effective interruption of the course of pregnancy, which signifies that such a condition is not fulfilled when on the date when it was accomplished, the pregnancy had already been interrupted, owing to a former cause. In a diametrically opposite case it has been ruled that the offence exists also if the inter-

ruption of pregnancy has not induced the suppression of the child's life.

It has likewise been ruled that the extrauterine nature of the pregnancy does not avert the application of the sanction in case of its unlawful interruption.

As part of the penal measures aiming directly at the prevention of abortion offences one must more particularly point to the provision of the Penal Code which punishes the mere possession outside special public health institutions of any special instruments whatever for the interruption of pregnancy or of any other means of inducing abortion established by the provisions of the competent body (Order No. 886/1966) and which are possessed, at the same time, for the purpose of committing abortion offences.

Chapter IV

CHILD WELFARE MEASURES

§ 1. *General Considerations*

1. To provide the patrimonial means necessary to the upbringing and taking care of children is one of the main purpose pursued by the provisions of the Family Code and of other normative acts specific to Romanian law ; this is a natural priority order, since the sustenance of children comes to the foreground of the measures required for their welfare. That is why we also begin with this problem and insist more particularly upon this main aspect of the system meant by the law for the safeguarding of children's interests.

Amongst the juridical institutions designed to ensure the upbringing of children, who do not possess any personal means of livelihood, a prominent place is held by the peremptory obligation, laid down by the law, for parents or other blood or in-law relations or for other persons without any kinship to the child, to cover totally or partially, the expenses required for the child's upbringing. And in case a child under-age and without any fortune has no parents or other people obliged by the law to provide him with the necessary means of livelihood, the task devolves on the community. Under these circumstances, as it is stipulated in art. 127 of the Family Code, "the tutelary authority shall ask the state social insurance body to contribute to the child's subsistance".

The obligation to support the child which devolves upon society is therefore of a subsidiary nature. Its fulfilment is, in the first place, the task of the natural parents who, by giving birth, have taken upon themselves a juridical responsibility for the upbringing of their children ; and the obligation to support them, which devolves upon the other categories of persons enumerated in the law — the material aid which the members of a family are obliged to give each other (art. 2 F.C.) — is justified by the feelings of real affection which characterize the relations between the members of a socialist family, or which, the law

assumes, exist similarly in the case of other persons on whom the same obligation is incumbent, feelings whose existence becomes manifest in the juridical life by the patrimonial aid which is the voluntary carrying out by these persons of the obligations of giving sustenance.

But, as will result from subsequent explanations, the subsidiary nature of the obligation devolving upon the state as regards the support of children is to a great extent only apparent; because an important part of the elements which constitute the object of such an obligation — the content of this juridical notion — consists of the attributions devolving upon the state bodies called upon to carry them into effect free of charge, for example, the measures regarding people's health condition, public education, and also the other activities concerned with the vocational training of children, which, owing to the conditions existing in our country, no longer represent — and to an increasing extent, too — a patrimonial assignment for those obliged to support them. The fulfilment of such an obligation actually amounts only to the right to utilize, without any pecuniary sacrifice, the facilities offered by the state, free of charge, for the upbringing and education of children. And we must underline that the exercise of such a right has not always an optional character, because, in most cases its exercise is a real obligation, whose fulfilment is ensured by the application of sanctions expressly provided by the law.

Furthermore, the contribution of the state materializes constantly, as far as the support of children is concerned, in allowances and other categories of allocations, which will be dealt with subsequently.

The contribution of the state to the support of children — under its various aspects — is one of the economic means whereby the constitutional principle (art. 23) according to which the state is called up to protect "the interests of children" is applied in Romanian law.

2. The obligation to support one's children incumbent on the parents is of a permanent nature, which means that it never ceases, whatever the age of those who ask for it in this capacity.

Children are entitled to sustenance — provided they satisfy the conditions established by the law — even if they are of age.

In case of children, as for other categories of persons, between whom the law creates the obligations of sustenance, e.g. between husband and wife, grandparents and grandchildren, great-grandparent and great-grandchildren, brothers and sisters (art. 86 F.C.) — the age of the person claiming means of suste-

nance does not affect the existence of that obligations. It is a general rule of the system of common law established by the law in the enactments concerning the rights to sustenance. It is no less true that in the relations between ascendants and descendants, their age — specifically the years of minority — is liable to determine, as far as the obligation of sustenance is concerned, the application of a juridical system, different from common law enactments, a system derogatory both from the rules applicable to the other categories of persons, between whom the obligation of sustenance is incumbent and from those applicable to the same obligations when the child comes of age. Full capacity of exercise is therefore liable to induce not the cessation of the obligation of the ascendants to support their descendants, but only the transposition "ipso jure", of the legal system which regulates the exercise of the respective right to sustenance. As it will be specified hereafter the continuation of the special system hitherto valid is admitted only in exceptional cases when the extension is justified by the necessity of carrying on studies or vocational training.

In this work, because of its purpose, we have to examine only the rules which constitute the special juridical system called upon to ensure the support of children under age.

§ 2. *The Obligation to Provide Means of Sustenance for Children under Age*

3. *The persons obliged to provide means of sustenance.* In the overwhelming majority of cases, the task of supporting children under age devolves upon their natural parents, no matter whether the children were born in or out of wedlock on the implicit condition that in both hypotheses filiation as regards parents should be established according to the rules expressly and distinctly laid down in the Family Code, depending on the nature of filiation.

4. In case of adopted children, the duty to support them devolves on the adopters, and this not only when the adoption has been authorized "with all the effects of natural filiation" (art. 79 F.C.) in which case, on the one hand, the adoptee acquires, from the date when the adoption comes into effect, the rights of a child born in wedlock towards its parents and at the same time becomes akin to the relations of the adopters as a natural child of the latter, and, on the other hand, by the effect of

adoption, the rights and obligations resulting from kinship between the adoptee and the natural parents and their kinsfolk cease.

The obligation of providing means of sustenance, also devolves on the adopters even in case of an adoption with limited effects ; in this case the adoptee and his (or her) descendants acquire with regard to the adopter the rights belonging to the child born in wedlock towards his (or her) parents or the rights which the descendants of the child born in wedlock have as regards his (or her) ascendent. In the hypothesis of such an adoption — in contrast with the adoption with full effects — the adoptee and his (or her) descendants obtain the new right of sustenance — towards the adopter — without losing the earlier right of sustenance belonging to him (or her) with regard to his (or her) natural parents. The right of sustenance of old standing and the new one cannot however be simultaneous or according to the subjective choice of the child. This signifies that in case of adoption with full effects (adoptio plena), children are entitled to claim sustenance only from the adopters and their kinsfolk, whilst in case of adoption with limited effects (adoption minus plena) they can avail themselves of the support of their natural parents if the adopters are not able to offer the support to which they are obliged in the first place by the law (art. 89 F.C.). The obligation of sustenance devolving upon parents therefore acquires by the effect of limited adoption a subsidiary character.

We should, however, add that the obligation of providing means of sustenance resulting from adoption, does not always cease with the dissolution of the adoption ; and this holds good whether the adoption has been authorized with or without full effects, the law courts being entitled to oblige the adopter to pay to the adoptee an allowance during the period of minority.

5. The obligation of providing means of sustenance may also devolve on the person who, of his (or her) own free will and gratuitously, has taken a child to bring him up without having fulfilled the legal formalities for adoption, be it with full or restricted effects. This is a measure of particular protection of the interests of children under age, in accordance with the rules of social life and with the spirit of lofty humanism which characterizes socialist law. The situation which creates the appearance of an adoption link is therefore liable to give rise to the juridical relation of the obligation of sustenance.

Sometimes, such a situation may assume a juridical quality, even though it is invested with the juridical form of adoption. This occurs when the parents exercise their right to bring

an action for "the restitution of the child by any person who keeps it without being entitled to". In such a case, the judges are not obliged invariably to admit the claim of the natural parents; they may reject their request "if the restitution is contrary to the child's interests" (art. 103 F.C.). The person who has taken a child in order to bring him up acquires indirectly a juridical title by the court's decision, and can no longer be considered as keeping the child with no right.

The obligation of sustenance in this case arises conditionally and always has a subsidiary character. Art. 88 of the Family Code specifies that a child under age cannot claim sustenance from the person who is keeping him (or her), except if the natural parents — or the adoption ones — are dead, reported missing or in need, no difference being made whether the death of the parents is proved by a death certificate or stated in the judgement of a court of law, according to legal provisions (Decree No. 31/1954, art. 16 and seq.). "Reported missing" is understood to describe a situation in which the parents are absent from their home, and no news are available to prove that they are still alive. This regardless of the fact if there is or not a judgement ascertaining that the parents are reported missing.

6. The right of a child under age to means of sustenance is sometimes founded upon the existence of an affinity link i.e. of a juridical relation established by the law between one of the consorts and the kinsfolk of the other; in such a case the affinity does not constitute the only foundation of the obligation of sustenance. According to the law (art. 87 C.F.), the consort who has contributed to the support of the other consort's child — irrespective of the fact that the filiation link was established in wedlock, out of wedlock or by adoption — is obliged to continue supporting the child. In such a case, the obligation to continue supporting the child arises out of the link of affinity between the child and the consort of the child's parent, but only when the sustenance was initially given by the parent's consort voluntarily. At the same time, the consort's obligation has a subsidiary character, its existence being conditional upon the death, disappearance or straitened circumstances of the parents of the child under age.

7. Finally, a child under age may claim means of sustenance from the heir of the person who was obliged to give it to him — regardles of the legal grounding of the obligation previously established — and also from the heir of a person who, without any legal obligation, had accomplished it of his or her own free will. Seeing that the obligation of the heir does not have

a personal character, the amount of the allowance due to the child is equal to that incumbent on the deceased, according to his or her capacity. At the same time, the heir's obligation is limited, according to the value of the hereditaments and conditional upon the death, disappearance or straitened circumstances of the natural parents of the child. The obligation of the heir is consequently of a conditional and subsidiary nature. As for its grounding, it is certain that such an obligation is not founded upon the existence of a kinship or affinity link and cannot be considered as an encumbrance on the inheritance, according to common law provisions seeing that the sustenance obligation — which is considered to be above all a juridical relation "intuitu personae" — ceases on the death of the obligee (art 95 F.C.). Moreover, in the second situation, — means of sustenance offered voluntarily by the deceased — the heir is obliged by the law to continue the sustenance to which the deceased was not obliged by the law. Taking into account this aspect of the heir's obligation, jurisprudence has ruled that similarly with the first hypothesis — where the law refers to the compulsory nature of the support granted by the deceased — it is not necessary that the obligation should have been established by a judgement of the court, being sufficient that its existence should result from the fulfilment of the conditions laid down by the law.

Jurisprudence has also ruled that the obligation to continue the sustenance is incumbant only on the legal heir or on the general devisee who has accepted the inheritance. And if several heirs are under the obligation to pay the allowance, the obligation — by derogation from the common law in this matter — is binding upon them all. The allowance must be paid jointly and severally (art. 96 F.C.). It signifies that the minor is entitled to sue any of the heirs for the whole amount of the allowance due, and that the one who has paid in full is authorized to claim from each of the other heirs — by a regress action — the due part of the allowance proportionally to the value of the inherited property.

Finally, we should specify that in the juridical literature the prevailing interpretation is that the child can only claim sustenance from the heirs — by virtue of this disposition of the Family Code — if he or she is not heir to the deceased.

8. In the absence of persons mentioned above, the child is entitled to claim sustenance — or only the amount needed to make up the amount — from brothers or sisters, from grandparents, and lastly from greatgrandparents; but in such cases the

obligation of sustenance does not come under the same juridical system as when it devolves on parents.

9. *The juridical system specific to the obligation of providing means of sustenance for children under age.* Pursuant to common law provisions concerning the obligation of sustenance, the existence of such an obligation is conditional on the obligee's possibility to fulfil it and on the need of the claimant. But — and this is undoubtedly specific to socialist law — the right to sustenance can only be exercised if the holder "is in need, having no possibility of earning anything owing to disablement" (art. 86 F.C.). Consequently, it is necessary for the claimant to prove not only that he has no income, either from work or from any other means admitted by the law — or any property whose sale might provide means of sustenance, but also that he is unable to obtain any means of livelihood by working, which signifies that the right to means of sustenance may be exercised only by those who do not work because they are hindered from doing so by their age, by their health condition or by other legal causes of incapacity. This is a natural condition in the juridical structure of the socialist system of our country, where its members, in the capacity of producers of material and spiritual values and, at the same time of proprietors of the means of production of the whole national production, have the right — and also the moral obligation ensuing from this right — of performing useful work for society and they are not exampted from fulfilling such an obligation except by proving the existence of legal or well-founded causes of incapacity. Among which the excuse that no work could be found cannot be taken into consideration, because in our society the "right to work is ensured to all citizens" (art. 2 of the Labour code) — a guarantee relying on realities since by the manner in which the recruiting of the labour force is organized and by the possibilities offered for the re-training of the working people, the application of Constitutional provisions has been fully achieved (art. 18), in pursuance of which "to each citizen is ensured the possibility of displaying, according to his (or her) capacity, an activity in the economic, administrative, social, or cultural field, remunerated according to its quantity and quality".

Consequently, under our system, unemployment cannot be put forward as a cause of the impossibility of working, and this not only as a mass phenomenon, but also individually. The intensive and high rate of constant industrial development — implied by the implementation of the economic plans — raises on the contrary the problem of the recruitment of the labour force required in ever growing proportions by the industrialization process of the national economy. And the satisfaction of these per-

emptory exigencies is the principal cause justifying the purpose of the demographic policy of the Romanian state, whose legislative system is called upon to encourage and support, by all possible means, the growth of the population.

On the other hand, the condition that the person in need may ask for an allowance only when unable to work, is one of the measures of a legislative nature called upon to eliminate all tendencies of social parasitism, whatever the form they may assume, for they are altogether incompatible with the principles of socialist ethics and equity. Under a social system where exploitation and oppression of man by man have been entirely abolished, it cannot be admitted that the law should permit people able to work to claim sustenance from their kinsfolk and thus live by exploiting their work.

10. With regard to this principal rule of common law, concerning the obligation of sustenance, the law admits a single exception, viz. in favour of descendents under age : "As long as they are under age, descendants have the right to sustenance, regardless of the cause of the need in which they find themselves" (art. 86 F.C.).

As results from the terminology of the law, the exception refers not only to the obligation of sustenance existing between children and parents, but likewise, in all cases when the allowance is claimed by a descendant under age, in this capacity, from greatgrandparents. And, by an interpretation, the exception has been extended, by analogy, to all similar cases in which the obligee has to pay the allowance to the child under age in place of the natural parents, as is the case of the obligation devolving upon the consort of the parent or of the person who has taken upon himself the upbringing of the child.

In order to establish exactly the realm of application of this legal exception, we must show that until the age of 14 children have no possibility of earning anything because of the legal interdiction to work. With a view to protecting young people's labour, it is only from the age of 14 that minors may be appointed to temporary jobs — in keeping with their physical development, their aptitudes and knowledge — and only from 15 in industrial enterprises, with the authorization of the parents or guardians (art. 7 Labour Code). The age at which minors acquire full working capacity — after which they are obliged to carry out work useful to society — is the age of 16. Consequently, in fact, only minors between 16—18 — or until the date of their marriage, if they marry before — are exonerated from the obligation of producing proof of their working incapacity ; the exception provided by the law applies to them alone.

When claiming the allowance, they have merely to prove that they are in need, that they have no personal means of livelihood.

11. In this respect, we should point out a second exception to common law. In conformity with common law, the need, as a justification of the right to sustenance, signifies not only the lack of income — of sums regularly and at fixed intervals entering the patrimony of a person — but also of any other property by the sale of which means of livelihood may be obtained.

In case of children, however, the law (art. 108 F.C.) specifies that the need exists whenever the child does not possess a personal income or the income is insufficient. Children may therefore claim sustenance from their parents — and from them alone — even though they possess property which could be turned to account. It is a solution of greatest favour for children under age which is called upon to keep in their patrimony the existing property ; parents, therefore are not exonerated from their obligation of sustennace by the children's property, but only by their incomes, for, otherwise, the existence of a child's property would have been an indirect source of patrimonial advantages to the parents, an emolument derived from the quasi-right to the child's estate. Now, in establishing the family law, the law (art. 106 F.C.) specifies, most categorically, that "the parent has no right to the child's estate".

With regard to the establishment of the material condition of the child, we should also point out that the category of the child's incomes, which the court has to take into account when deciding about the obligation of sustenance, comprises also the sums which the minor is entitled to receive as a pension or social aid from the state social insurance bodies, whose system will be examined in a special paragraph.

12. *Establishment of the obligation of providing means of sustenance.* The law courts are in every case solely competent to establish the existence of the obligation of sustenance if the conditions required by the law are fulfilled, and also its extent, its kind, and the terms and manner of fulfilling it. In certain cases, the judges are, however, bound to decide only after listening to the conclusions of the tutelary authority (art. 42 F.C.) The exclusive nature of the competency of judicial bodies in this matter has not been impaired in any way by the disposition of Law No. 3/1970 on the situation of certain categories of children, seeing that, as it will be shown herunder, the support of the minors is taken over entirely by the state, their parents being obliged solely to compensate the expenses

paid from the budget by contributions whose amount is established in the first place by the competent administrative bodies.

13. According to the provisions of the Family Code, of general application, the sustenance due is proportionate to the need of the claimant (art. 94 F.C.). "The need" of the claimant — a notion called upon to determine, first and foremost, the object of the obligation — comprises, under common law, all that is considered as necessary to life, namely lodging, food, clothing, and medical assistance. The complex content of this notion has not been specified by the law ; it has been determined solely by interpretation of the legal institution.

As part of the special structure of the parents' obligation towards their children under age, the notion of need has a more comprehensive content, because, as the law provides (art. 101 and 107 F.C.), parents are obliged to bring up their children looking after their health and their physical development, their education, instruction and vocational training, according to their capacities and in conformity with the purpose the state has in view in order to make them useful to the community.

The obligation of sustenance therefore has a wider object in this case, since it includes, besides the necessary support expenses, also the expenses required for the improvement of the social personality of the child and which are no longer necessary when the child is of age, and which do not apply to the other categories of persons entitled to sustenance. And the comprehensive content of the notion of need finds its application not only in case of the obligation of natural parents, but also in the case of other categories of persons obliged to provide for the child's support instead of the natural parents, as, for instance, adopters, the consort of a parent, or a person who has taken upon himself to bring up the child without the fulfilling of any adoption formalities.

14. The need of the child does not however constitute the sole unit of measure determining the extent of the obligation of sustenance, for sustenance can only be established in accordance with the patrimonial means of the obligee (art. 94 F.C.). Consequently the extent of the obligation of sustenance cannot exceed the limit of need of the person entitled to it nor the material possibilities of the obligee. The law does not define the notion of "means" as far as the obligee is concerned. The law being thus defective, jurisprudence has ruled that the obligation of sustenance can only be established in accordance with that part of income or property of the obligee which exceeds the amount necessary for meeting the expenses required for his own needs and for the fulfilment of the legal or con-

ventional obligations devolving upon him, provided, naturally, such obligations have been not assumed deliberately, for the purpose of eluding the fulfilment of the obligation of sustenance.

In the appreciation of the patrimonial means of the parent subject to the obligation of sustanance, we should paricularly mention the rulings of the courts which have decided that judges should consider not only the incomes — the gains obtained by labour — effectively realized, but also in the absence of such incomes the sums which the parent might have realized if he (or she), had not refused to work. It is a juridical construction specific to Romanian socialist law, in which the right to work ensured to each person, implies the obligation to exercise that right. Excepting certain very uncommon cases, independent of the obligee's will as, for example, the execution of a term of imprisonment for another penal offence than that of familiy abandonment (art. 300 C.P.), or the performance of military service — any person able to work has always the possibility to earn money in keeping with his (or her) training. It has consequently been ruled that the mother who has made up her mind to attending university courses, cannot of her own free will decide that she is exonerated from the obligation devolving upon her under the Family Code to support her child. The fact that she is a student does not hinder a mother from obtaining incomes by her work, according to the legal dispositions in force, which give students such a possibility in return for a supplementary effort.

The obligation of the parent, who had no means of livelihood but is able to work, to an allowance to his or her child is a measure called upon to compel him or her to carry on a productive activity, seeing that, as it will be shown hereinafter, there is the menace of a penal sanction which is applied in case of non-execution in bad faith (mala fide) of the obligation of sustenance devolving on the parent as a result of a judgement of the court.

15. In establishing the obligation to provide means of sustenance which devolves on the parent towards his or her children, the law has issued special dispositions as regards payment possibilities. When sustenance is due by the parent or by the adopter, the highest amount of the obligations is fixed proportionally to the number of children entitled to sustenance, namely: up to a fourth of the incomes for one child, a third part for two children, and half for three or more children (art. 94 F.C.). The court is, of course, entitled to fix a smaller allowance than that which results from the application of legal norms. The amount of the allowance for each child separately is generally a deter-

mined sum. The court is however authorized to fix it in the form of a percentage of the monthly wages of the parents; this is a practical proceeding advisable when the parent does not possess other incomes. If the needs of the children are similar, their allowance may be a lump sum. Nevertheless, the judgmen shall specify for each child individually the term up to which the allowance is owed; on condition, of course, that the circumstances which have justified its amount should remain unchanged up to the expiration of the established term.

Although the text of the law refers "in terminis" only to the natural parent and to the adopter, without making any distinction between kinds of adoption, the legal upper limit has been applied in all cases in which the obligee must fulfil the obligation instead of the natural parents, viz. when they are dead, missing or in need; this is the case of the obligation devolving on the parent's consort (art. 87 F.C.), or on the person who has taken a child to bring and educate him (art. 88 F.C.). The allowance due to the child is established in the same manner in case of dissolution of the adoption, too (art. 84 F.C.).

The highest limit of the parent's obligation is not to be considered as a disfavour measure with regard to the system of obligation which, in pursuance of the dispositions of the common law, may be established for other categories of obligees according to their "means" without any limitation; because the legal limit refers only to "labour gains", with regard to which the law establishes how much from the respective emolument is necessary for the subsistence of the parent himself and how much may be allotted to the children's support. If the parent possesses in addition other incomes besides what he earns by working — or even property that may be sold — the extent of his (or her) obligation will no longer be established at the legal upper limit, but, in pursuance of common law provisions, according to the totality of patrimonial means. In such a case, however, for the non-execution of the supplementary allowance so established it is not the earnings that are pursued, but only the other patrimonial means of the parent.

16. At any rate, in the application of the legal upper limit, by "labour gain" — according to jurisprudence — it is meant, in the case of wage earners, the net sums, effectively collected and having a permanent character and in case of members of agricultural co-operative of production the amount of the monthly allowance shall be established proportionally to the income in kind or in money, during the expired agricultural year, from the work carried out both at the co-operative and

on his individual homestead. It has also been specified by jurisprudence that the notion of children to which the text of the law refers concerns all the children who have right to sustenance from their parents without distinction as to the character of the established filiation : whether within or out of marriage, from a former marriage, or, finally. by adoption.

17. In the overwhelming majority of cases, the support of children is ensured in kind, as part of the affectionate relations existing between the members of a family in a home.

The intervention of justice becomes necessary only in case one of the parents refuses to contribute voluntarily to the child's support, in accordance with legal dispositions. Such a situation occurs in case of divorce or separation de facto and sometimes even when parents continue to live under the same roof. In this case the court will be called upon to decide, according to the law, the contributory part of each parent, taking into account, in appreciating the child's needs and estimating its revenues and also the patrimonial means belonging to the parents, the situation existing at the moment when the judgment is delivered.

The parents are obliged to ensure together the support of the child, but each of them in proportion to the personal means. In pursuance of the Family Code (art. 97), which merely lays down the constitutional principle of perfect equality of rights between man and woman (art. 23) — "both parents have the same rights and obligations towards their children under age". The establishment of an equal contribution for their children's support — without taking into consideration the possible difference in their patrimonial means — would have signified a mechanical application of the rule of equality at the opposite pole of the principales of ethics and socialist equity, called upon to constantly guide the interpretation of the rules of Romanian positive law. This is the reason why the obligation of sustenance is established in the case of parents too, in accordance with the possibilities of each of them. The text of art. 29 F.C. confirms this interpretation in the form of a general disposition, according to which husband and wife are obliged to contribute to household expenses in proportion to the means of each of them ; and the children's support definitely belongs to the aforementioned category of tasks. Besides, according to the rulings of the courts, in the establishment of the obligation of each parent, one must consider also — as a contribution in kind — the work carried out by them, in their household, for the support of the child.

18. Although the law does not state it precisely, both juridical literature and jurisprudence generally admit that the child is entitled to claim the whole allowance from any of its parents, and that the parent who has paid the allowance may claim from his or her consort the share due by the latter in the execution of the obligation of sustenance. The character "in solidum" thus assigned to the obligation of sustenance incumbent on the parents is usually justified by the nature of the link of filiation between the child and its parents, and especially by the effective juridical protection which must be granted when the interest of a minor is at stake.

19. Usually, the allowance is established in cash, a sum of money which one of the parents is obliged to pay to the other for the sustenance of the child, periodically at the terms appointed by the judgement of the court.

The allowance cannot be established in the form of a lump sum. It has been considered, in this respect, that the establishment of the obligation of sustenance by a court of law in the form of a total sum, is in contradiction with the successive character of the debt — which is essential for such an obligation — and with the purpose pursued by its payment.

The court may establish in some cases, according to circumstances, that the obligation of sustenance should be carried out in kind, integrally or partially (art. 93 F. C.), by placing at the disposal of the children all they need for their existence. The execution "in re" is established generally in cases when the parent who owes it is a member of an agricultural co-operative of production.

20. We should also point out that when the patrimonial means of the parents are not sufficient to satisfy the needs of the child, the court may oblige to a complementary payment those who are subsidiarily bound by the same obligation towards the child, in the order of the priority established by the law in this respect (art. 89 F.C.), or in the absence of legal stipulations, resulting from the nature of the existing conditions of the respective obligations.

The obligations established for these categories of persons may have as an object either the full payment of the allowance due to the child, or only that part which cannot be made up by parents.

21. *Proceedings for the establishment of the obligation of sustenance.* The establishment of the obligation of sustenance must be claimed before the court by the child, either personally, with the authorization of the legal protector — if its legal competency is restricted — or by its legal representative. Such an

action may, however, be brought also by the public attorney according to art. 45 of the Code of Civil Procedure, which lays down his right to starting any action, except those strictly personal, if he appreciates that this is necessary for the protection of the working people's interests. In the light of the prominent principle of Romanian legislation — which always prescribes special protection of the child's interests — the exercice of the right of sustenance cannot be considered as an action "strictly personal", but, on the contrary, as an action belonging to the category of those called upon to defend the interests of the working class, seeing that to provide for the means necessary for the support of children is essentially a matter of public interest.

The tutelary authority also has the legal competency to bring an action for the purpose of obliging one of the parents to pay an allowance to the child who lives with the other parent, in case the latter, by ignorance, by negligence or owing to any other motives, does not do so.

In a single case — divorce — the allowance need not be claimed by a distinct application. The court is obliged, by virtue of the divorce suit, to establish "ex officio" the contribution of each parent to the upbringing and education of children and to oblige the parent who has not the child in his or her keeping, to pay to the other parent the sum fixed for its support. In order to protect the interests of children, the existence of the allowance application is assumed by the law as an action accessory to the divorce suit of the parents (art. 42 F. C.). This is the solution adopted by the decision of the Supreme Court No. 10 of November 13, 1969.

22. The parents are, however, entitled, when they divorce to establish the contribution due by each of them for the support of their children (art. 42 F. C.). Their agreement is effective on condition it has been authorized by the court, which is called upon to control whether the legal dispositions concerning the extent of the obligation of providing means of sustenance have been observed. This signifies that the parents agreement cannot fix a smaller allowance than the one the child is entitled to by the law. The parents may therefore agree to pay allowance higher than the legal one if, of course, in so doing no infringement of the law is intended, as, for exemple, the reduction of the allowance due to another child.

Likewise, although the renunciation of a parent to the contribution due by the other for the support of the child is a rule without any juridical effect, — because the right which is the object of the renunciation is in fact the child's right — the judges may consent to the agreement of the parents whereby the parent

who has not the child in keeping is temporarily exempted from the contribution or is obliged to a smaller one, if the other parent is able to ensure satisfactory material conditions for the child's support and education. Such an agreement is perfectly valid, since it is not prejudicial, in any way, to the child's right to sustenance according to its needs and to the possibilities of the parents. Indeed, in case the material situation of the parent who takes upon himself (or herself) to support alone the child's expenses has changed, the foregoing agreement does not hinder the court from obliging also the other parent to support the child.

Although the legal disposition concerns only the agreement concluded between the parties on the occasion of a divorce, such a convention, regarding the child's sustenance, also might be concluded in other situations. The minor, however, will always be entitled to claim the allowance provided by the law if the said agreement infringes legal dispositions, which in such a matter obviously have a peremptory character.

This imperative character of the legal system concerning the child's welfare gives also rise to other restrictions as regards the contractual liberty of the parties. Thus, it is indisputable that a stipulation whereby a minor gives up its right to ask for the establishment or the modification of the obligation of sustenance or for its fulfilment in the future, cannot be considered as valid.

23. Measures of particular protection — from the procedure point of view — have been created by the law in favour of the children entitled to sustenance.

The whole procedure is exempted from fiscal duties.

The action may be brought not only before the court within whose jurisdiction the defendent's residence comes — as provided by the common law (art. 5 of the Code of Civil Procedure) — but also before the court within whose jurisdiction the claimant's residence comes (art. 10 of the same Code).

In this action it may be demanded that the obligation of providing means of sustenance should be established in advance and be carried out later, namely when the legal conditions for the existence of the right to means of sustenance are fulfilled (art. 110 of the same Code).

The judgement of the first court whereby the child's allowance has been fixed may be carried out immediately, and provisionally, without waiting for it to become final and without any specification in the text of the judgement that it was rendered with provisional execution. Even the dispositions in the judgment that admits the divorce of the parents, concerning the minor's allowance have an executory character if, in fact, the

child is in the care of the parent to whom it was entrusted by the judgment. It is only when the allowance is claimed by the child together with the action for the establishment of filiation out of wedlock towards the father that the judgement whereby the paternity and the payment of the allowance have been established is not executory ipso jure though the judges can authorize the temporary execution of that part of the judgment concerning the allowance until the date when it becomes final.

24. For the owed sums, the court which has issued the executory title, is obliged to order "ex officio", a stoppage from the wages and other periodical labour incomes. In this case, the stoppage is executory without being subjected to the formality of confirmation by a distinct act of procedure (art. 461/1 Code of Civ. Pr.), according to common law provisions in this matter. It is only by an appeal that the questions of the legality and justice of the stoppage may be raised. As we have already shown — in the matter of the obligation of providing means of sustenance the stoppage is considered as confirmed "ipso jure".

Moreover, the stoppage instituted under these conditions is valid even in case the parent owing the allowance changes his or her place of work or is pensioned. In such situations, the socialist organization where the respective parent had been working before, shall send, by registered letter, the executory title either to the socialist organization where the parent has been appointed to, or to the competent social insurance body which, from the date of the receipt of the title, is obliged to carry out the stoppage (art. 461/1 Code of Civ. Pr.).

25. The date on which the action for the allowance has been entered is of particular importance because the allowance established by the judge must be paid from that date. Its payment cannot be extended to the period preceding the action, save in exceptional cases when it is possible to prove that the delay in bringing the action before the court is the parent's fault or that the child entitled to the allowance has been forced to get into debt in order to meet his (or her) need, before having entered the action for allowance; seeing that, apart from such exceptional circumstances, in the matter of the obligation of providing means of sustenance it is always assumed that the person entitled to an allowance was not in need as long as he (or she) made no claim. The allowance can on no account be claimed for a past period exceeding a limit of 3 years of the extinctive prescription.

26. *Execution of the obligation of providing means of sustenance.* As the purpose of such an obligation is to permanently provide the child under age with the necessary means of liveli-

hood, it follows that payment of the allowance is to be made successively, on the periodical dates appointed by the judgment, in the interest of both debtor and creditor. This signifies, on the one hand, that the creditor cannot claim payment before the term of payment and, on the other hand, that the allowance cannot be paid in advance, before the appointed dates.

But at the same time, to prevent the obligation becoming a burden for the debtor, the creditor is not entitled by failing to exercise his rights at the appointed dates, to let the instalments accumulate and consequently to replace the successive execution of the obligation by another modality of payment, viz., that of integral payment of the accumulated instalments.

Nevertheless, the parents could agree that the allowance, which was established by the court to be paid by one of them in the form of sums owed periodically, should be replaced by an anticipatory deposit of the sum equivalent to the instalments which would have been paid periodically throughout the time established by the judgment. In such a case, the creditor will not be able to get the whole sum thus deposited, but only the instalments owed periodically, at the time appointed by the court. Such an agreement is not liable to impair the successive character of the execution of the debt, which is essential in the obligation of providing means of sustenance, because by its conclusion the parties have in view only to ensure to the child the periodical payment of the allowance necessary for its support; and in case of a change of the criteria which have determined the amount of the allowance, its anticipatory deposit, according to the parents' agreement, is not likely to hinder the establishment of another amount, according to the changes that have occurred in the meantime.

27. The execution of the obligation of providing means of maintenance comes under a special juridical system. The dispositions on this matter are actually measures which, by derogation from common law provisions, protect and ensure the priority fulfilment of this category of obligations

The sums owed as an obligation to provide means of sustenance may amount to a half of the wages and other pecuniary rights due to workers and employees of any kind, of the remuneration owed to the members of handicraft co-operatives, of the pensions and sums due as royalties to writers, inventors and innovators.

In case such claims come into competition with other categories of claims, they are to be paid before, within the limit of half the value of the sums to be stopped from the incomes.

For payment of the allowance certain categories of claims can be subject to stoppages which, pursuant to the common law, are not stopped to wit : illness benefits accorded by State social insurance bodies for temporary disabilities, recovery of health, etc. (art. 409 Code of Civ. Pr.).

28. But legal dispositions are not concerned solely with facilitating the exercise of the right to means of sustenance ; in its turn the allowance due to the minor is guarded against its pursuit by the child's creditors. The allowance can only be stopped for debts incurred for food or rent, or by virtue of other privileged claims and only in so far as the court appreciates that the execution does not endanger the existence of the minor (art. 408 Code of Civ. Pr.). It is a juridical system justified by the purpose of the obligation namely to avoid the child being in "need" ; and as a necessary juridical consequence of such a rule, the creditors of the child are not allowed to exercise, on his behalf his right to means of sustenance by way of an oblique action, as they may exercise all the other rights of their debtor (art. 974 Civ. Code).

And the interdiction of legal compensation should be considered as another corollary of the same rule. A person owing an allowance to a child cannot claim that the obligation has been fulfilled by compensation with any other debt the minor, in his turn, may owe him (art. 1147 Civ. Code).

29. Besides the means of execution specific to civil law, the realization of a claim is also ensured by means of indirect coercion, that is by a penal sanctioning of the offence described as "family abandonment" and also by the sanctioning of the contravention consisting in the ejection of the child from the home by the parent obliged to provide for his support (Decree No 153/1970, art. 3).

30. *Cessation of the obligation to provide means of sustenance.* The obligation to provide means of sustenance ceases as soon as the conditions which, according to the law, justify its existence cease : in the first place, the legal quality, or the need, of the person entitled to means of sustenance and the legal quality, or the possibility, of the person called upon to pay the allowance.

Sometimes, however, the cessation of the obligation to provide means of sustenance only signifies that a new obligation devolves on another person.

The obligation ceases "ipso jure" when there is no doubt that the conditions on which its legal existence is founded are no longer fulfilled. The cessation of the obligation must be established by the judgment of a court of law, which will appre-

ciate whether the elements upon which the obligation was founded, according to the law, have ceased to exist.

The obligation of providing means of sustenance is eminently personal and therefore ceases — except for one single case when the law lays down that the execution of the obligation must be carried on by the heir (art. 96 F. C.) — by the death of the debtor or of the person entitled to the allowance (art. 95 F. C.); the creditor's heirs are not even entitled to claim payment of the sums which were owed to the child and were not claimed before the child's death.

31. The loss of parental rights, as regards the person and property of children — in case the parents have forfeited those rights — does not exempt parents from their duty to provide the child with means of sustenance. It is what the law (art. 110 F. C.) has considered necessary to specify with reference to the case when the loss of parental rights is the result of the judgment of a court of law founded upon the dispositions of the Family Code; undoubtedly the obligation continues even though the interdiction of exercising parental rights results — as a complementary or accessory punishment — from a penal sentence (art. 64, 71 P. C.); in the latter case the problem arises whether the obligation may be fulfilled by seizing upon other patrimonial means than the earnings of the convicted person.

The more so the problem of exoneration cannot arise when, without the parents having forfeited their rights, the upbringing and education of children have been entrusted to other persons or to an institution. As it will be shown hereunder, such a measure is taken, in the first place, in the case of children belonging to categories with regard to which a special law (No 3/1970) lays down the necessity of special measures for their protection. The children's upbringing and education may be entrusted to other persons or institutions also in accordance with the dispositions of the Family Code. This is a situation which may occur when such a measure must be taken as a result of the divorce of the parents or of the fact that the filiation of a child out of wedlock has been established with regard to both parents (art. 42—44 and 65 F. C.).

In all these situations in which the children are entrusted to other persons or institutions, the parents' obligation to provide means of sustenance is transformed into an obligation to contribute to the expenses incurred by the state by taking over the support of these categories of children. The particular aspects which characterize the structure of the new juridical system — contribution to the child's support — will be dealt with hereinafter under No. 47.

32. In the juridical literature, a diametrically opposed problem has been raised, namely whether the right to means of sustenance ceases when the creditor becomes guilty in regard to the obligee of one of the offences which according to the Civil Code (art. 655) are liable to cause the loss of the right to succession for unworthiness; as, for example, in the relations between parents and children, when the child has been convicted for having attempted to murder his (or her) parent or when the child has accused his (or her) parent unjustly of a deed to which the death penalty is attached.

33. Amongst the causes which determine the cessation of the obligation devolving on the parents to provide means of subsistance, it is necessary to insist only upon the case when the child comes of age.

The special juridical system under which comes the obligation of the parents to provide means of sustenance to their children — the specific features of which have been underlined in the above paragraph — is applicable, in keeping with the dispositions of the Family Code, exclusively during the period of the children's minority. As soon as children come of age — when they are 18 years old, or when they marry (Decree No 31/1954 — art. 8) — the application of the special rules and of the obligation of providing means of sustenance founded on those rules ceases "ipso jure". Children who are of age are only entitled to claim on allowance from their parents if they fulfil the conditions established by the common law as regards acceptance of the application for an allowance. The rule concerning the cessation of the special system of the obligation to provide means of sustenance from the date when the minor has acquired full capacity of exercise is expressly stated in the Family Code more than once in most of the legal dispositions on that matter which clearly specify that the right to an allowance is valid "as long as the child is under age."

The initial effort of some law courts to extend the application of the special system beyond the majority age — namely up to the date when the child has finished the studies necessary to his (or her) training — has been rejected as contrary to the dispositions of the law. Thus, the Supreme Court has ruled that children who have attained their majority are entitled to an allowance from their parents only when they are not able to make a living because of their incapacity to work. "No text of the Family Code or of any other law stipulates the obligation of parents to provide means of sustenance to the children who have attained their majority if they attend the courses of a higher school. In such a situation, the fact that the child who

has come of age has no possibility of earning anything is not due to his (or her) incapacity to work — as the law states — but exclusively to the child's desire to continue his or her studies."

34. Subsequently, however, by Law No 27/1966, the right of the child to a successor pension was extended up to the age of 25, when the extension is necessary for the continuation of the child's studies (No 40). Besides, under Law No 3/1970 the state has taken upon itself the task of supporting certain categories of minors, and the same age limit has been established for the period of support when children continue their studies. (see No. 46).

The application of these legal dispositions has determined an unprecedented change in jurisprudence, a change which is particularly significant as regards the methods of interpretation of the legal dispositions in force and the possibility of their evolutive adaptation to the new social realities, without a direct modification of the rules; it is a sudden change which, at the same time, shows that the spirit of equity, which is the basis of socialist humanism, constitutes the most important factor in the interpretation of Romanian positive law, especially when the interests of minors are at stake.

By the guiding decision No 2/1971, the Supreme Court has admitted, it is true, by analogy with the dispositions of the above-mentioned special laws, the extension of the obligation of providing sustenance devolving upon the parents after the majority of the children and until they finish their studies, without exceeding the age of 25 and only if the children show great interest and perseverance and obtain corresponding results. And, in another decision, the same Court states that the child who has come of age is entitled to claim in order to continue his or her studies not only the payment of the allowance established previously, but also its modification, if the conditions which have determined its amount have changed ; likewise, the child who has attained majority is entitled to demand payment of the allowance even though the whole sum representing the periodical instalments due during his or her minority had been deposited in advance, according to the agreement concluded by the parents.

35. Taking into account the undeniably creative nature of the decision of the Supreme Court, the reasons alleged in support of the adopted solution are worth mentioning extensively. "The reason of the ruling according to which a person who has come of age is entitled to an allowance only if, being in need, has no means of livelihood, owing to a disability is the fact that the legislator meant to make it impossible for a person able to work

to lead a parasitical life, which cannot be asserted about a child coming of age who solicits from his parents, in the most natural manner, to be assisted materially to carry on his studies". Consequently, the term "inability of work" is not to be understood to mean only an absolute incapacity due to physiological or medical causes, but also the inability resulting from the satisfaction of social exigencies. "The obligation of the parents" also results from the dispositions of art. 101 F.C., which state that parents are obliged to take care of their children as regards their physical development, by providing them with all the necessary means of livelihood, and, at the same time, with a view to their education, instruction or vocational training. In the spirit of the above mentioned text, such an obligation cannot cease before the cessation of the process of the child's education, a process which, when he is engaged in higher studies, lasts even after his majority and, therefore, the obligation of the parents subsists after that moment, too. Such an interpretation of the dispositions of the Family Code is corroborated by the subsequent provisions of Law No. 27/1966 concerning state social insurance pensions and by those of Law No. 3/1970 referring to the protection of certain categories of children which state that in case of continuation of studies, the right of the descendent to a pension and the right to be provided with means of livelihood by the state, are extended up to the age of 25 ; throughout this period the parents are obliged to pay to the Treasury a pecuniary contribution established according to their patrimonial means. "So that — the guiding Decision further states — considering the efforts made by the state in order that the citizens may acquire an appropiate vocational and special training and education enabling them to become active factors in the building up of a new society, among which should be mentioned free education of all grades, the widening of the educational network, the scholarship system and other facilities, it is inconceivable that the parents should keep outside all such efforts and not utilize the possibilities they enjoy in order to offer their own children the necessary education and vocational training". And "with regard to the age up to which the child who continues his studies is entitled to ask his own parent to support him, it can only be the same age — 25 —, established by the normative acts mentioned above, which are to be applied by analogy".

36. The guiding decision of the Supreme Court refers expressly to the parents' obligation to support their children. The considerations in support of the solution adopted militate, however, in favour of the application of the extension of the obligation to all similar cases, therefore applying also to the other

categories of persons obliged, under the Family Code, to provide means of sustenance to children in place of the natural parents, for example the adopter, and the consort of the parent or of the person who has taken upon himself to bring up the child without going through adoption formalities ; however, this does not apply to the heirs of the deceased, who are obliged to pay the allowance in their capacity of heirs only, without their obligation showing the features of a personal juridical relation.

We should also specify that a parent's obligation to provide means of sustenance for his (or her) child ceases before the age of 25 on the child's marriage after coming of age or if the child becomes of age by the effect of marriage by virtue of the fact that husband and wife owe each other support before all other categories of obligations.

37. The authority of the judgments passed with regard to the obligation of providing means of livelihood. According to the common law (art. 1200 — 1203 Civil Code), judgments enjoy the authority of an adjudicated case in the sense that claims solved by them cannot be brought again for examination before the same court or before other courts of law. The authority of an adjudicated case of a judgment may be invoked whenever the new aplication is identical with the one previously solved; this is what occurs when a second claim having the same object and founded upon the same juridical causes as the first is to be judged between the same persons who have appeared in the same juridical capacity as parties of a suit that has been tried.

In the matter of the obligation of providing sustenance, the power of an adjudicated case of a judgment — even if the decision becomes final after exercise of all possible proceedings against it and even though the allowance was established in a divorce suit — comes into effect only *"rebus sic stantibus"*, i.e. as long as the situation on which it is founded remains unchanged.

In order to serve its end, the obligation to provide means of sustenance must be adapted continuously both to the present-day needs of the beneficiary and to the patrimonial means of the obligee. As a consequence, the power of an adjudicated case of a judgment issued in this matter is limited in time, being valid as long as the conditions existing when it was issued are not modified.

The provisional and conditional character of the authority conferred on judgments is expressly laid down by the law as a disposition of general application for the whole matter of the obligation. "The court of law will be authorized to increase or to diminish the obligation of providing means of sustenance or to decide its cessation according to the changes in the means of

the obligee or the need of the person who receives the allowance" (art. 94 F.C.).

Consequently the cessation or the modification of the object of the obligation — or of the manner in which it has to be carried out — may always be established as many times as there is a change in the situation, on the demand of one of the parents, of the child, after the latter has reached the age of 14, of the state attorney, of the tutelary authority or of any protection institution. And the Supreme Court has ruled that the sentence ordering the cessation or the reduction of the allowance has a retroactive effect to the date when the cause which has justified the admission of the action has appeared, if, from that time, the debtor has not been pursued on the basis of the previous judgment whereby the allowance was granted, in contrast with the contrary hypothesis when by a subsequent judgment the amount of the allowance established previously is increased which becomes effective only from the date of the application, excepting the case when it is proved that the action has been delayed by the guilty deed of the debtor.

We must, however, underline that the relation of independence between the two criteria which determine the extension of the allowance — the need of the creditor and the debtor's means — finds its full application in case of the modification of the obligation and also in case of its initial establishment, namely that increased needs of the creditor only entail an increase in the allowance in proportion to the material possibilities the debtor has at his disposal. And inversely, the increase in possibilities cannot determine an increase in the amount of the allowance if the needs of the creditor are unchanged.

In the Romanian jurisprudence it has also been admitted that the courts are authorized to exonerate the debtor from payment of the allowance due over an interval during which, being unable to work, he did not have the means necessary to the execution of the obligation ; or even to suspend payment of allowance for a certain period during which the debtor is unable to pay or the child has no need of the allowance.

Lastly, we should point out that the authority of an adjudicated case cannot be invoked when it is requested that the obligation to provide means of sustenance should be re-established after its cessation had been decided by a previous judgment.

On that occasion it is useful to specify that the subsequent change of the material situation of the parents or of the minor's needs may also justify the modification of the parents' agreement, when the amount of the allowance has been established by their common accord and not by a judgment of the court ; although,

in pursuance of the common law, "legally concluded conventions have legal power between the contracting parties" (art. 969 Civil Code).

§ 3. *The Taking over by the State of the Obligation to Provide Means of Sustenance*

38. *General considerations.* The concise disposition of the Family Code (Art. 127) — which, as it has already been shown, lays down that in case "the minor is unprovided and has no parents or other kinsfolk obliged by the law to support him, the tutelary authority shall ask the state social insurance bodies to contribute to the child's support" — has been widely developed by the system created by Law No. 3/1970 concerning the protection of certain categories of minors.

However, before examining the dispositions of that law, it is necessary to explain the conditions under which pensions or social assistance may be granted to the minor within the framework of the state social insurance system ; in reality, by granting the aid, the state takes over, totally or partially, an obligation which otherwise would have devolved upon the parents, in so far as the amount of the allowance accorded by the state covers the needs of the child. Indeed, the obligation of the parents may cease or be diminished, to the same extent, since the "need" of the child, which is the juridical foundation of the obligation, no longer exists or cannot be any more invoked otherwise than to supplement the sum received as a pension.

39. *The right of the child to a pension within the system of the state social insurance system.* The pension which the child is entitled to receive, pursuant to the dispositions of Law No. 27/1966 concerning state social insurance pensions and supplementary pensions, belongs to two different categories.

40. In the first place, the child may receive, in his own name, a disability pension, namely in case when he has lost his working capacity whether entirely or partially. The amount of the pension is established, according to the incapacity of the child, within three categories of disability (art. 15 and seq.). Disability of the 1-st degree is characterized by total loss of working capacity and the need of the invalid of being nursed and watched over by another person ; disability of the II-nd degree is characterized by total loss of working capacity, too, but without requiring the assistance of another person, and lastly, the III-rd category implying only a partial loss of working capacity.

The conditions prescribed by the law to the beneficiary of a disability pension differ according to the character and nature of the cause which have determined the working incapacity, namely, according to its being due to a labour accident, to an occupational disease, or to an accident without any connection to one's job, or to an ordinary illness.

In the first case, the disability pensions is granted — without any condition as to the length of service — to all wage-earners, to those doing military service, or to those engaged in state missions or public tasks, also to students and school pupils doing vocational practice. Some of these categories, provided by the law, imply the age of majority. But as shown before, the obligation of providing means of sustenance may be incumbent on parents as regards also children who have attained their majority up to the age of 25, provided they carry on their studies. So that, in most cases, for the establishment of the obligation of the parents to provide means of sustenance, the measure in which the pension due to the child is likely to provide him with necessaries is of interest.

The legal system specifies the meaning of the notions which condition the granting, in such cases, of the disability pension, namely what is understood by the term "labour accident" and "occupational disease", conferring on these notions a wide and protective content for those who claim a disability pension. Thus, by labour accident are understood not only accidents which occur during the fulfilment of work duties on the premises of the unit where the victim works, but also in any other place where the respective person displays his (or her) activities ; likewise, industrial injures are considered to be those which occur before or after work or during the time assigned for rest, under the working schedule, if the victim finds himself (or herself), in places where services duties are carried out. Moreover, injuries suffered during transport from home to the working place and inversely, and even during the time when the nonresident wage-earners are authorized to visit their family, are also assimilated to labour accidents.

In order to illustrate the large meaning assigned by the law to the notion of labour accident — on whose existence depends the pension and its amount — we will point out that one also considers as labour accidents those which occur on the occasion of the fulfilment of a public assignment and that by the phrase "public assignment" is meant any action undertaken by a person of his own accord, either to prevent or ward off a danger which threatens the socialist system or public property,

or for the defence of the law system or the saving of a human life.

The amount of the allowance is established in accordance with the degree of disability and the category to which the work effectuated by the beneficiary belongs, pursuant to its nature and conditions of achievement; in case of a disability of the I-st degree, the pension also comprises a supplementary sum designed to cover the expenses incurred by the payment of another person attending on the invalid.

In the second case, when the working disability is occasioned by an ordinary accident or malady, the disability pension is granted to the wage-earners if the incapacity to work was produced during the work. The pension may also be granted when the disability occurred later on — within a year from the cessation of work — if the conditions provided by law are met. Besides, such a pension is due to those who fulfil military duties if the disability is caused by an ordinary malady during military activities or within a year from their cessation; in the latter case, provided the conditions established especially by the law are satisfied.

As regards workers, the disability pension is accorded only if on the date when the disability occurred they satisfy the conditions required as to years of services, established by the law according to the age of the invalid; the time of service demanded by the law — with regard to the category of persons dealt with here, namely those who do not exceed the age of 25 — is of one to two years, according to their age.

The disability pension may also be granted when the conditions concerning the length of service are satisfied only to the extent of half the figure established by the law, the amount of the pension being diminished in this situation in relation with the time necessary for the integral pension. For workers afflicted with consumption, no condition as to length of service is necessary.

In this case, as in the first one — when disability is due to a labour accident or to an occupational disease — the amount of the pension is also fixed with reference to the degree of disability.

We must specify, however, on this occasion, that in the humanist spirit which characterizes the organization of social assistance to persons unfit for work, those who do not fulfil the conditions of the law for being entitled to a pension are not deprived of any assistance from the state. Those who have reached the pensioning age — also the invalids of any degree affected by an ordinary illness or by an accident outside work time — are entit-

led to receive a monthly sum as social aid, if they do not possess personal means and if they have worked five years effectively. in the first case, or a quarter of the time requested for the pension in case of the illness benefit assigned for disability ; it goes without saying that in case of children social assistance granted for disability is alone of practical interest.

41. In the second place, the child may be entitled to receive a pension, in his capacity as "successor" of a deceased parent, if the latter was a pensioner or if, on the date of his death, the parent fulfilled the conditions required for receiving a pension ; in this case, the law specifies (art. 29 and seq. F.C.) that if a wage-earning mother died in childbed, children are entitled to a successor pension even though the deceased mother did not fulfil the required conditions as to length of service.

In case of death of one of the parents, children are entitled to a successor pension even if the surviving parent is a wage-earner or has other earnings.

The title of the children to a successor pension generally ceases at the age of 16, age when, according to the law, the minor acquires full working capacity. With reference to this general rule, the law nevertheless provides the following two exceptions : a) the right to the pension is extended until the end of the studies pursued by the minor, but not later than the age of 25 ; b) the right to a pension is exerted during all the period of a child's disability if the disability, regardless of its degree, has occurred before the cessation of the right to a pension i.e. before the age of 16 or 25.

A successor pension — as well as a disability-pension is granted upon the child's application when it has reached the age of 14, with the authorization of its legal protector, or, in the contrary case, upon the demand of the child's legal representative ; it is not necessary to prove, in support of such a demand, that the minor was in the care of the deceased parent.

For the establishment of a child's successor pension, the calculations are based on the pension of the deceased parent, if he was a pensioner ; and, in the contrary case, either the old age pension, or the pension corresponding to the 1-st degree of disability, which would have been due to the deceased parent, according to the cause of his death. The most advantageous pension shall always be taken "ex officio", as an estimation basis, in case the deceased parent was entitled or would have been entitled to several pensions.

The law also specifies that for the establishment of a successor pension due to the children bereaved of both parents, the cumulative pensions due or which would have been due to the de-

ceased parents shall be taken as an estimation basis, and in case of several such pensions, the most advantageous of them.

The way of establishing a successor pension varies according to the number of those entitled to it; if there are three and more successors, the pension is equal to the sum which has served as an estimation basis pursuant to the legal disposition mentioned above; if there are two successors, the pension will amount to 75 per cent of the respective sum and when there is only one, to 50 per cent of the same sum.

Finally, if the deceased parent had received "social assistance", his (or her) children also have the right to social assistance as successors, if they satisfy the conditions provided for a successor pension and have no personal means of livelihood.

42. *The support by the state of some categories of children.* The upbringing, education and protection of children under age are an important preoccupation for the Romanian state. As part of this preoccupation, a prominent place is held by the protection of minors who do not enjoy, in their families, the necessary conditions for their physical, moral and intellectual development, in conformity with the aims of the socialist state, so that they may become useful elements of society.

Law No 3/1970 prescribes measures and has appointed various institutions for the special protection of such minors, in accordance with the different categories to which they belong.

The dispositions of the law establish the principle that the expenses incurred for the welfare of the respective minors are the state's concern. The expenses thus incurred do not always remain — definitively or integrally — a burden on the communities, because the law also states that the parents or persons who, according to the Family Code, are obliged to support the minors for whom protection measures have been taken, have to pay the state a contribution established in relation with their material means.

The first category of minors who enjoy the special protection of the state is made up of children under guardianship and who have no personal patrimonial means to support themselves nor the right to ask relatives or other persons for means of sustenance in keeping with the conditions of the Family Code. The minors whose parents are dead or are declared dead, are unknown, reported missing or have forfeited their parental rights, are put under guardianship "ipso jure"; finally a court of law is authorized to decide the setting up of guardianship when passing a sentence whereby the adoption is cancelled and the adoptee is a minor (art. 113 F.C.).

The minors who belong to this category — and also those whose health is endangered in their own family because of chronic maladies of a transmissible nature of some of its members may be protected, in the first place, by being placed in another family. By this measure, the children are entrusted to a family — or even to an unmarried person — who consents to ensure their support and other conditions of a moral, material and hygienic nature, required for their upbringing and education. For their support, those to whom they have been entrusted are entitled to receive from the state throughout the period when they keep the child, a monthly allocation whose amount is established by decision of the Council of Ministers on condition the respective persons should not be obliged, according to the law, to provide for the minor. In such a case, the Ministry of Labour is authorized to establish the conditions under which the allocation paid by the state is no longer to be paid, fully or partially.

The task of placing a child in a family devolves upon the executive committee of the district People's Council or of the Bucharest Municipality, through the agency of the competent social assistance body and with the authorization of the parents or of the guardian, who shall at the same time decide the manner and the conditions in which the children are to be educated ; the rights and obligations of the parents or of the guardian, as to the person and property of the child, are in no way impaired by this measure.

43. In case the protection measure cannot be applied in this form, the minors of this category — and also those whose physical, moral and intellectual development is endangered in the family environment, may be entrusted to another family or to a person, who consenting to take over the task of educating them acquires towards them the rights and assumes the obligations which according to the law, devolve upon the parents as regards their children. It is a transfer of rights and obligations wholly justified since by such a measure the aim in view is precisely to protect minors against the evil influence to which they were subjected by the exercise of parental rights. Those to whom the children are entrusted also acquire the right to an allocation from the state, which is established in the same manner as when the child is entrusted to a family and which is also paid only when the respective persons are not obliged by the law to ensure the support of the child : the Ministry of Labour having the support of the child. In these cases the Ministry of Labour is competent to establish the conditions according to which the allocation is no longer to be paid by the state, whether fully or partially.

The entrusting of the child is decided by the commission for the protection of minors, without the consent of the parents or of the guardian. It stands to reason that the persons to whom the minors are entrusted must offer the same pledges as regards the living conditions of the children, as in case the children are placed in a family.

In both cases, whether placed in a family, or entrusted to other persons, the children are entitled to establish their domicile in the dwelling place of the persons where they will live henceforth, even though these persons live in one of the country's towns considered, according to the law, as "large towns" and where — in keeping with this classification — the liberty to establish one's domicile is restricted (Decree No. 307/1971, art. 2).

44. If neither of the protection measures indicated above are possible, the minors of the categories previously described — also the deficient ones, who due to their disability, stand in need of special care, which cannot be ensured in the family — will be entrusted for upbringing, education and vocational training to specialized protection institutions, in accordance with their age and the category they belong, viz. crêches for children up to 3 years ; homes for children under school age, and kindergartens, schoolhostels or workshop hostels, vocational schools, technical or general education lyceums for deficient children, considered as wholly or partially recoverable ; lastly, homes for children absolutely deficient and unrecoverable. Until their admittance to one of the aforementioned institutions, the children's welfare is ensured, without delay, by the so-called "reception centres" organized by the district People's Councils and the Peolple's Council of the Bucharest Municipality. The children are received in these centres or in "crêches" if they are 3 years old, according to the decision of the Commission for the protection of minors on whose territorial areas they have been found or discovered ; and in an emergency, until the commission decides upon the case, children are received by virtue of the request made by militia officers or by the tutelary authority.

Finally, the last category of minors who stand in need of special protection and to whom the law refers distinctly is made up of minors who have committed penal offences — but who do not satisfy the legal conditions for penal responsibility (art. 50 P.C.) — or of minors who are only in danger of accomplishing such deeds or whose conduct may contribute to the spreading of vices or immoral habits amongst other minors. Those who belong to these categories may be left in the care of their parents or guardian — but will be closely watched — or may be confined,

for a period more or less long, to a special reformative school, if they have reached the age of 10.

The measures of placing minors in specialized protection institutions — measure whereby the parents are deprived of the exercise of their parental rights upon the person of the confined children — is prescribed by the decision of the commission for the protection of children, attached to the Executive Committee of the district People's Councils and the Bucharest Municipality, under the guidance of a central Commission of the Ministry of Labour called upon to co-ordinate, in its entirety, the state activities for the protection of minors.

The commissions for the protection of minors decide the confinement on the basis of a social inquiry carried out by specialized officials without the authorization of the parents or of the guardian ; the decision of the commission is issued after the parents or the guardian, and the minor, if he (or she) is 10 years old, have been heard.

45. The decisions of the commission whereby one of the protection measures provided by the law has been taken, are immediately executory, but such decisions must be notified, as the case may be, to the parents or to the guardian, to the family or to the institution to which the minor has been entrusted, to the state attorney, tutelary authority and also to the minor, if he has attained the age of 14.

On receiving the notification, the persons and the institutions mentioned above, are entitled to appeal against the decision within 5 days of its receipt, before the local court in whose area the minor has his (or her) domicile. The proceedings relating to the application of legal dispositions are exempt from all fiscal duties. The court is obliged to solve the appeal within 15 days at most of the date when it was submitted, the judgment of the court being final.

Following the appeal, the court is called upon to examine whether the conditions prescribed by the Family Code for the existence of the legal obligation to provide means of sustenance are fulfilled, and whether for the establishment of the amount of the contribution, which the above mentioned persons are obliged to pay to the state, their patrimonial means have been taken into account and also whether the amount of the contribution does not exceed the expenses incurred by the state for the support of the child.

The child welfare commissions are obliged permanently to keep track of the development of those for whom protection measures have been taken and at the same time to examine the complaints and claims of the minors, informing thereof, the

protection institutions and the bodies to which such institutions are subordinated, if they are well founded.

When circumstances, which have determined one of the measures mentioned above, change, the body which has decided its execution — the executive committee of the People's Council or the child welfare commission — is authorized to cancel the respective measure or replace it by another, to decide to change the family or the person who has the minor in keeping or the institution where the child is confined.

Under the same conditions, the administrative bodies are entitled to decide the withdrawal or the change of the protection measure when it was ordered by a judgment of a court of law, but only in cases the judgment was passed as a result of an appeal against a decision of the commission for the protection of minors. As the law itself specifies, such a modification of an administrative nature would consequently not be justified when the measure of entrusting the child falls, according to the Family Code, entirely and exclusively within the competence of courts of law. This is what undoubtedly occurs occasionally when such a measure is necessary as a result of the parents'divorce or is due to the fact that the filiation of the child born out of wedlock has been established with regard to both its parents (art. 42—44, 65 F.C.). This is what may happen also in case of an indirect entrusting, resulting from a judgment that rejects the parents' applications to the effect that the person unlawfully keeping the child should return him (art. 103 F.C.); or when as a result of the forfeiture of the adopter's parental rights, the court is entitled — taking into account the minor's interests — not to allow to the natural parents the exercise of their parental rights and to entrust the minor to another person (art. 76 F.C.).

In the latter cases, the doubt as regards the justice of the solution results from the fact that the application of the respective text was founded upon the dispositions of art. 104 of the Family Code — at present abolished — establishing the general and exclusive competency of the courts of law with regard to the measure of entrusting minors to other persons or institutions.

46. The protection measures indicated above — except for the confinment of minors in children homes for the unrecoverable deficient, until they come of age — cease at the end of compulsory education. Nevertheless, the minor who after going through a general education school, carries on his vocational training or the studies he had been previously engaged in, may ask for the extension of the protection measure until their end, but only up to the age of 25 years at most. Likewise, if on graduating a general education school, the minor is unfit for work or did not get a job

because of other serious reasons, the duration of protection measures is extended "ipso jure" till the cessation of the incapacity or of the reasons which prevent the minor from work, but not after the age of 18.

The prolongation of protection measures implies further payment of the allowance for as long as the minor does not receive, in another form, any support from the state. Eventually, the confinement of the minor in a special reformatory school lasts, as a rule, until his majority, with the possibility of its being extended with the minor's assent, up to the end of his vocational training or of his studies, though not beyond the age of 20 in the first case and the age of 25 in the second.

47. The protection measures established according to the dispositions of this law imply the taking over by the state of the expenses necessary for the children's support as long as the protection system lasts since both the expenses incurred by the protection institutions and payment of the allowance to the family where the child is placed or to the family or person to whom the minor has been entrusted "are allocated from the state budget". Payment of these expenses by the state with regard to these categories of minors does not signify that their parents are totally exempt from the obligations devolving upon them under the dispositions of the Family Code.

The special law (art. 19) states expressly that the persons having the legal obligation to support a minor for whom protection measures have been taken will have to pay, in virtue of the decision issued by the body which has taken the measures, a monthly contribution to the state during the whole period of its application.

"The amount of the contribution is established in compliance with the provisions of the Family Code, according to the average income realized during the last 6 months, previous to the obligation to pay, and for the members of agricultural production cooperatives, in conformity with the income of the preceding year". If the situation changes, the amount of the contribution is to be modified accordingly.

Consequently, the court is entitled to cancel the obligation of the parents to pay the contribution only when, pursuant to the provisions of the Family Code, they are exonerated from the obligation to supporting the child.

The two parents must be obliged to pay the contribution in proportion to their material means, even if, being separated or divorced, one of them is obliged by judgment to pay an allowance for the child entrusted to other parents for upbringing and education.

In such a situation the court, on the application of the interested person, shall suspend payment of the allowance from the date when the minor has been confined in the protection institute.

According to legal dispositions, in case the minor, for whom such a measure was taken, is the beneficiary of a successor pension or has other incomes smaller than the expenses incurred by the state for his support, the pension or the incomes will serve to cover these expenses; and the parents or persons on whom the obligation of supporting the child devolves, will have to pay the difference in the form of a contribution, according, of course, to their material means. If the successor pension or the incomes are higher than the expenses, the minor is obliged to support them entirely, the surplus remaining at his disposal.

48. As part of the application of the special protection measures provided by Law No 3/1970, the obligation of supporting minors assumes aspects of a juridical system altogether different from that of the common law, as established by the provisions of the Family Code.

In the first place, the expenses necessary to the support of the minor are no longer established, in each case separately, between the two co-ordinates which determine the establishment of the allowance under the common law system, namely, the minor's need and the patrimonial means put at his parent's disposal. The sums necessary to the support of the minor are generally established in accordance with his needs, which depend on the category to which he belongs. The amount of the allowance, when the minor is placed in a family or is entrusted to a natural person, is established by a decision of the Council of Ministers — at present it is fixed at 400 lei per month (DCM No 821/1970); while the funds necessary to the protection institutes for the support of the children entrusted to them, are established by the ministries to which they are attached.

In neither case, therefore, does the criterion of "patrimonial means" come up in establishing the sums necessary for the children's support since they are paid from the state budget. Thus, the support of children is always completely ensured, without any patrimonial reserve or restriction. The material possibilities of the parents do not play a decisive part, save as regards the establishment of the contribution owed by them to the state for the support of the child — a contribution whose amount cannot exceed the sums paid by the state and is, therefore, considerably smaller than the support expenses.

The contribution must be paid by the parents as long as the support of the child is the state's concern, in some cases up to the age of 25.

This is a juridical system characterized by complete separation of the process whereby the living standard of the child is established from the process determining the amount of the parents' pecuniary contribution. Under this system, the state takes entirely upon itself, the support of the child, even though the material means of the parents do not make it possible on any account to compensate expenses by their contribution.

49. We must recall on this occasion that the special system created by the Law No 3/1970 is applied not only to the categories of children to which its dispositions refer especially, but also to the minors whose upbringing is entrusted to other persons than their parents — or to protection institutions — by virtue of the dispositions of the Family Code (art. 42, 64).

We should also add that in the application of the dispositions of the said law, a very wide interpretation has been adopted in order to ensure that by that system benefit as many categories of minors as possible. Thus, pursuant to the rules for the organization and working of the "child's home", children are received and brought up there if their parents are destitute, imprisoned, affected by chronic maladies requiring long hospitalization or addicted to alcoholism. Not only orphans deprived of means of subsistence are received, but also those morally abandoned and whose practical or intellectual development is for that reason endangered ; also, children whose physical condition is imperilled owing to ill treatment at the hand of their parents ; at last, the premature children or those belonging to mothers who are schoolgirls or students, and have no income. However, the mothers of sucklings or premature children may be admitted as attendants, gratuitously, in the respective institutions.

The protection system under the said law is a peremptory proof of the interest and ungrudging sacrifices the Romanian socialist state is prepared to make for children in need of special protection.

§ 4. *Supervision of the Care Given to Minors*

50. *General considerations.* Under the system of Romanian law the protection of the interests of minors is a general preoccupation, as regards all categories of children and not only some of them. The system adopted by the disposition of Law No. 3/1970, examined above, constitutes the special rules relative to the care given to children when they do not find satisfactory conditions to ensure their upbringing and development in the

family environment. The provisions of Law No. 3/1970 consequently constitute a legal system departing from the dispositions of common law.

According to latter dispositions, the protection of children is ensured by the supervision permanently exercised by the state over the way in which parents or guardian accomplish the obligations devolving upon them towards children under age.

"Parental power" — considered as an aggregate of rights of an absolute character, called upon mainly to protect the interests of the parents — is now only a vestige of the legislative past. The Family Code, in the system adopted for the welfare of minors, undoubtedly admits the parents or guardians legal rights, but it primarily prescribes obligations concerning children under age.

The rights assigned to parents cannot be exercised otherwise than "in the interest of children" (art. 97 F.C.). This signifies that parental rights are of a nature fundamentally different from the conventional category of subjective rights. "The interest" — defended by the law, which admits such a right, is not the interest of the person who enjoys the right, the interest of the parent, but, on the contrary, the interest of the child, of the person in whose favour the right is to be exercised. Within the framework of this juridical construction, the notion of parental rights comprises, in reality, under this description, the juridical instruments called upon to facilitate and to ensure the fulfilment of parental obligations. And, all the more so this is the purpose of the rights assigned to the guardian concerning the person and the property of the child under age.

51. *The exercise of parental rights.* Supervision over the exercise of parental rights is practisted both by the tutelary authority and by the courts of law.

The tutelary authority, local body of state administration, is invested with many and various attributions as regards child welfare. But, first and foremost, it is obliged to exercise effective and permanent supervision over the manner in which the parents fulfil their obligations as to the person and property of the child.

With that end in view, the delegates of the tutelary authority are entitled to visit the children in their home and to inquire, in every way, about the care bestowed on them, about their health, physical development, education, and vocational training, in compliance with the aims of the socialist state, with a view to prepare them to an activity useful to the community.

The delegates of the tutelary authority have also the right to give in this respect, what advice they think fit for (art. 108 F.C.).

The efficiency of the control thus performed is ensured by the protection measures which the commissions for the protection

of minors and the courts of law are entitled to take; we have already dealt with the former, we will now refer to the measures that can be ordered by the courts of law at the request or at the advice of the tutelary authority.

Courts of law are competent to decide, in the first place, upon the problem of entrusting the children to other persons than their parents or to protection institutes if such a measure is justified by the interest of the children. But in contrast with the commission for the protection of minors, courts of law have a limited competency, that is to say, they may only take such a measure in case of the parents' divorce (art. 42 F.C.); or when the filiation of the child born out of wedlock has been established as regards both parents (art. 65 F.C.); likewise, but indirectly, when the parents' applications for the return of the child from the person who keeps it without being entitled to it is rejected, being contrary to the minor's interest. (art. 103 F.C.). Finally, if as a result of the adopter forfeiting his parental rights, the court is authorized to entrust the child to another person than its natural parents. We have had the occasion to show the reserves that might be made to the abrogation of art. 104 of the Family Code in reference with the keeping in force of the legal dispositions corresponding to the last two cases of children entrusted to people outside the family.

The courts of law cannot decide upon the measure of entrusting the child to someone for protection, except "for serious motives" and after hearing the parents, the minor, and the tutelary authority.

When the child is entrusted to another person or to a protection institute, the court has to establish, at the same time, which of the parents is entitled to exercise the right to administrate the child's property and to represent him and authorize his juridical acts; because the person or the protection institute to which the child has been entrusted will enjoy only the rights and obligations devolving on parents with regard to his person.

The authority of an adjudicated case attached to judgments concerning the entrusting of a child — as well as to those which refer to the obligation of providing means of sustenance — is not absolute. The authority of such judgments cannot be opposed except "rebus sic stantibus", i.e. only as long as the well-founded motives which have justified the judgments are valid. As soon as circumstances change, at the request of any of the parents or of the child — if he has attained the age of 14 —, of the tutelary authority or of one of the protection institutes, the court of law

will be able, under the same conditions, to modify the protecting measures previously decided upon (art. 44 F.C.).

52. The supervision exercised by the tutelary authority may determine the application of a more serious sanction than that of the entrusting of the child to another person or institution. When, on the occasion of the control, it is established that the health or physical development of the child is endangered by the manner in which the parental rights are exercised — namely by an abusive conduct or by serious negligence in the fulfilment of parental duties, or if the education, or vocational training of the child is not conducted in a spirit of devotion to the Socialist Republic of Romania, the tutelary authority is entitled to ask the court of law to order the withdrawal of parental rights of the guilty parent (art. 109 F.C.).

The application of such a sanction belongs to the exclusive competency of courts of law. As a result, the guilty parent forfeits entirely his (or fer) parental rights as regards both the person and the property of the child which signifies that if both parents forfeit their rights, the child is put "ipso jure" under guardianship (art. 112 F.C.). Nevertheless, in every case, the tutelary authority may permit the guilty parent to keep up personal relations with the child if, by these relations, the upbringing, education or vocational training of the child is not jeopardized (art. 111 F.C.).

The judgment whereby the parent forfeits his parental rights is not invested with the absolute character of the authority of an adjudicated case.

The court of law is entitled to reinstate the guilty parent in the exercise of his (or her) former rights, if the circumstances which have justified this measure have changed and reinstatement no longer endangers the upbringing, education, vocational training and patrimonial interests of the child (art. 112 F.C.).

53. Besides the constant obligation of supervision over the exercise of parental rights by the parents or by those to whom the children have been entrusted — the tutelary authority also has the right and the task to arbitrate the misunderstandings between parents with regard to the exercise of their rights or the fulfilment of parental obligations.

As a general rule, the Family Code (art. 99) declares, in this respect, that whenever the parents are at strife in connection with the exercise of their rights or the fulfilment of their personal obligations, the tutelary authority, after hearing them, is called upon to solve the conflict, being guided in its decision exclusively by the child's interest.

The legislator considered it necessary to refer expressly to the application of this rule when the disagreement between the

parents — who do not possess a common family name — concerns the name of their child. In default of agreement between parents, the tutelary authority of the area where the child resides is authorized to decide, with the parents' advice, whether the child will bear the name of one of them or their joint names (art. 62. F.C.).

The right to arbitrate the disagreements between parents does not always belong to the tutelary authority. In some cases it has been exceptionally assigned by the law to the courts of law. Thus, when the parents do not live together and do not agree with which one of them shall the child live their disagreement is solved by the court, which will decide, taking into account the child's interests and after hearing the tutelary authority and the child itself if he is 10 years old (art. 100 F.C.). Likewise, when the parents do not agree as to the extent of the obligation of supporting the child — or with regard to the manner and the modalities of its execution or to the part of the contribution due by each of them — the conflict is solved by a court of law, after hearing the tutelary authority (art. 107 F.C.).

In certain cases the tutelary authority is required to arbitrate the misunderstandings between parents and children. For example, the tutelary authority may allow the child who has attained the age of 14 at his request, to change the sort of education or of the vocational training established by the parents and even to change his residence if needed for the improvement of this education or vocational training (art. 102 F.C.) ; in making decisions, the tutelary authority must take exclussively into account the minor's interests.

54. It is also on the tutelary authority that devolves the task to supervise the conclusion of juridical acts of greater patrimonial importance for the child, both if the acts are concluded by the parents, in their capacity of representatives of the child, and if the child with a restricted capacity, concludes them himself, with the consent of his parent.

Thus, the parent who has the right and the obligation of managing the minor's property, cannot conclude, without the anticipated consent of the tutelary authority, in the capacity of representative, the juridical deeds which exceed, by their nature, the limits of the administration right. The law enumerates by way of example and in order to individualize such categories of acts — the renunciation of the patrimonial rights of the child or the sale or pawning of his property, as a pledge for certain debts (art. 105, 129 F.C.).

Along the same line, the minor with a restricted capacity cannot conclude any act, which does not belong to the category

of management acts, otherwise than with the previous agreement of the tutelary authority, beside the consent of the parent (art. 105 and 133 F.C.).

The law provides a single exception with regard to the conclusion of acts of sale. The property liable to deteriorate or which has become useless to the minors — and which, at the same time, represent an insignificant value from the patrimonial standpoint can be sold without the consent of the tutelary authority.

In all cases, the contracts of sale of the child's property can only be concluded for value, because, in pursuance of the provisions of the Family Code, neither the parent on behalf of the minor, not the minor aged 14 can perform even with the consent of the tutelary authority — acts of liberality or acts guaranteeing the obligation of another person (art. 105, 129, 133 F.C.).

If the anticipated consent of the tutelary authority is necessary for the validity of the juridical act, such a consent shall be granted only if the conclusion of the respective act is required to satisfy some needs of the child or is obviously beneficial to him. The consent is to be given for each juridical act separately and, in case of sales, the consent shall mention whether the sale is to be effectuated by private agreement, amiably, or in any other way (art. 105, 130 F.C.).

Finnaly, a decisive part in defending the child's interests, is played by the tutelary authority when it is called upon to approve the child's adoption with full or limited effects. The tutelary authority shall give its consent to the adoption by a decision giving the grounds for it, and only after checking whether the conditions laid down by the law with the only purpose of protecting the interests of the minor, have been fulfilled (art. 73 F.C.)· namely, whether the adopter is able to ensure the normal physical and moral development of the adopted child and whether the adoption does not pursue the purpose of obtaining profits from the child or other aims contrary to the law or to the rules of social life (art. 72 F.C.).

The decision of any kind issued by the tutelary authority within the limits of its competency may always be attacked by a higher hierarchical authority which, according to the law, exercises the attributions of guidance and control.

55. *Obligation of the guardian.* The same attributions of supervision — of a permanent or only an occasional nature — are assigned to the tutelary authority when the child is under guardianship, when the obligations towards its person and pro-

perties are no longer fulfilled by its natural parents, but by a guardian. The Supervision becomes all the more necessary since, in this case, the upbringing and development of the child no longer enjoy the guarantee which is the tie of natural affection between parents and their children. The obligations of the guardian are only based on the juridical system of guardianship, which is an obligatory task and which the appointed person can refuse only in exceptional situations, especially laid down by the law (art. 118 F.C.).

Control of the guardian's activity by the tutelary authority is facilitated — and particularly justified — because he is appointed by this authority (art. 116 F.C.).

Everything that has been shown above, as regards the manner in which the tutelary authority is required to exercise its supervision attribution — when the obligations concerning the person and property of the child devolve upon parents — are equally valid and the more so when the respective obligations are incumbent upon the guardian. The criterion of appreciation remains the same, because, as the law specifies (art. 114 F.C.) guardianship — as well as parental rights — "are exercised only in the interest of the minor".

It is consequently necessary to show, on this occasion, only the special measures laid down by the law for the supervision which the tutelary authority exercises over the guardian's activity, measures which are required owing to the different nature of the relations existing between the guardian and his ward, as compared with the relations on which the fulfilment of parental duties is based.

The tutelary authority is obliged to inform in writing the guardian about his appointment and, since the guardian's obligations begin only from the date of the notification, until that date the tutelary authority is entitled to take temporary measures, as required by the minor's interests (art. 119 F.C.).

After the guardian's appointment and in his presence, an inventory of the minor's property shall be drawn up by the delegate of the tutelary authority, according to the dispositions of the Code of Civil Procedure (art. 126 F.C.).

The tutelary authority is required to establish the sum needed annually for the support of the minor and the management of his (or her) property, and the expenses thus established will have to be covered by the minor's income. If the income is insufficient, the tutelary authority is entitled to sell the minor's property (ar. 127 F.C.).

Otherwise, the sums belonging to the minor — in case they exceed the needs resulting from domestic expenses and the management of the minor's estate — shall be deposited, in his (or her) name "with a state savings bank from where they will only be withdrawn with the approval of the tutelary authority" (art. 131 F.C.).

If the minor is indebted to the guardian — or to his consort, his kinsfolk in direct line or his brothers and sisters — such debts can only be paid with the previous express consent of the tutelary authority. During the guardianship it is not admissible that any juridical act be concluded between the minor and the guardian — or the other categories of persons indicated above — even with the approval of the tutelary authority (art. 126, 128 F.C.).

With the same purpose in view, that is the minor's welfare — the Family Code states that whenever there are opposed interests of a patrimonial nature between the minor and the guardian, the tutelary authority shall appoint a special trustee to defend the interests of the minor, if, of course, the conflict of interests is not of the kind to require a change of guardian (art. 132 F.C.).

As long as the minor is under guardianship, he is obliged to live with the guardian, and it is there that he is considered by the law to have his domicile. The minor may be entitled, by the decision of the tutelary authority, to have another residence, if the change becomes necessary for the improvement of his education or of his vocational training.

The tutelary authority is obliged to exercise a permanent and effective control over the way in which the guardian fulfils his duties as regards the person and property of the minor.

To facilitate supervision, the tutelary authority may ask for the co-operation of state administration bodies and also of protection institutions (art. 136 F.C.). With the same end in view, the guardian is obliged to present to the tutelary authority every year — within 30 days of the end of calendar year — a full report on the manner in which he has looked after the person of the minor and has managed the minor's estate. Besides this annual report, demanded by the law, the tutelary authority may ask the guardian, at any time during the year, to render account of the activity displayed by him in his capacity as guardian (art. 134 F.C.).

Along the line of supervision, the tutelary authority is obliged to verify the account presented by the guardian — both as regards the minor's income and the expenses incurred for the

minor's support and the administration of the estate entrusted to him. It is only if the report submitted for verification is properly drawn up and fully in accord with reality that the guardian is granted discharge (art. 135 F.C.).

In the discharge of its control attributions, the tutelary authority is greatly aided by the exercise of the right which belongs not only to the minor, but to any person whatever, of informing it, by means of a complaint, of the facts or deeds of the guardian which are of a kind to injure the interests of the minor.

The tutelary authority has the competency to decide whenever it considers it necessary, upon the dismissal of the guardian who, in the fulfilment of his duties, commits abusive deeds, or deeds which demonstrate serious negligence or which make him unworthy of being a guardian. The tutelary authority may dismiss him not only in such cases, but whenever it finds out that the guardian behaves improperly, contrary to the rules of social life, or when he does not fulfil satisfactorily the task entrusted to him (art. 238 F.C.).

Finally, the tutelary authority is obliged to dismiss the guardian if he is under a juridical disability, has forfeited his parental rights or been declared to be unable as a guardian, or if he was dismissed from another guardianship ; also, in case the guardian has lost totally or partially some political or civil rights or when, between him and the minor, a conflict of interest has arisen which cannot be solved by the appointment of a trustee ad hoc (art. 117, 118 F.C.).

On the cessation of guardianship, for any motive whatever, the guardian is obliged to submit to the tutelary authority within 30 days at most of the date of the cessation, a general report concerning the whole period of exercise of his attributions. It is only after the verification and the approval of the accounts — and after the minor's property has been handed over — that the tutelary authority may grant to the former guardian the discharge of his administration. But even if the guardian has received the discharge, it does not signify that he is exonerated from the responsibility resulting from the damage caused to the minor by his fault (art. 140, 141 F.C.). Although the gurdianship is generally a gratuitous task, the guardian cannot avail himself of the rule applicable in the matter of mandates (art. 1540 F.C.), according to which when the mandate is gratuitous, the responsibility is applied "with lesser strictness than in the contrary case". The guardian is always responsible for the damage caused by his faults, be the fault as insignificant as it could. He is

responsible even if he did nothing but authorize the juridical acts concluded by the minor with limited capacity and even if the damaging juridical acts were concluded with the approval of the tutelary authority. The responsibility of the administrative body, in such cases, does not replace, but is added to the responsibility of the guardian, and only ceases together with the term of the extinctive prescription.

The responsibility of the guardian is not always only of a patrimonial nature. The guardian may be answerable under the penal law (art. 214 P.C.), and be sentenced from 3 months to 2 years of imprisonment or to payment of a fine, if his administration satisfies the conditions necessary to be described as fraudulent, namely if the guardian deliberately caused the minor damages in managing the property entrusted to his care.

Chapter V

ASSISTANCE OF SOCIETY TO MEET FAMILY REQUIREMENTS

1. The family, as a basic cell of the social organism, enjoys, under the socialist system of our country, a constant and multilateral protection which, by means of a great variety of legislative measures, ensures the satisfaction of the material needs of its members, through as large a contribution as possible, in pecuniary form, from the state or from public organizations. In the present work we cannot deal in detail with the whole system of measures taken for such an end. Consequently we shall confine ourselves to enumerate them in order to build up the complex picture of all the aid and assistance wherewith the social community meets family charges : indemnities, allowances and paid leaves at the children's birth or for nursing ill ones ; gratuitous medical assistance for mother and children, allocations and state family assistance or the allowance granted by the state to mothers of large families ; the allowance paid for the children of the members of co-operative farms ; the assistance accorded by the state to wives while their husbands do military service ; aid in the form of exemption from taxes, and the establishment of special prices at which the products designed exclusively for children are sold ; the system of crêches and kindergartens ; free education of all grades and free textbooks during compulsory general culture education and for secondary education ; scholarships, students' hostels, canteens for students and schoolchildren, aids and allowances granted under the social ensurance system for disability and old age ; canteens and homes for all people without any means of livelihood ; free transport, etc.

§ 1. *The System of State Allowances for Children*

2. *General considerations.* The legal structure of family protection has been shown above. According to it the state takes upon itself — directly or indirectly, totally or partially — the

task of supporting children, either by granting allowances for disability or to descendants, or by placing children in families or by entrusting them to certain persons or to child welfare institutions. The assistance granted in these forms presents necessarily a sporadic character because it is conceded only to children entitled to such an aid or to those belonging to those categories of minors standing in need or special protection which they cannot find in their families.

Besides this system, with a limited application, Romanian law has also established another system having a large application as regards the pecuniary assistance granted by the state to parents in order to enable them to bring up their children.

Under the name of "state allowance for children" the contribution of the state to the task of bringing up children makes itself felt in the overwhelming majority of families, as the allowance is accorded not only to the parents working in socialist organizations, but also to many other parents, assimilated from this point of view, by the law, to the wages-earners by virtue of the activity they are displaying — or had displayed in the past — for the benefit of society.

The allocation is not granted to parents whose income makes a pecuniary assistance from the state superfluous.

Thanks to the state allowance system, parents are therefore sure that the birth of their children will not be an excessive burden likely to influence and lower their living standard from a patrimonial standpoint; likewise, that the birth of a child is not likely to diminish the pecuniary means affected to the support of preceding children. The working people are no longer inclined to avoid giving birth to children, under the impulses of material interests, for the "allowance", which is an obvious manifestation of the spirit of social solidarity, is called upon to meet in a substantial proportion the expenses incurred by the family budget for the support and education of children.

The allowance is not only a measure of equity specific to the socialist system, but at the same time it is one of the means whereby the demographic policy of the Romanian state is carried out — a policy consisting of stimulating by all possible means and with stintless material sacrifices the birth of children and, consequently the continuous growth of the country's population.

In 1971, the number of children born in our country was 19.5 per thousand inhabitants, i.e. a natural increase of the population of 1 per cent per annum. In 1950, the number of children amounted to 26.2 per thousand inhabitants.

To keep up the birth-rate at the level necessary to ensure a natural satisfactory surplus of population is a prominent and constant problem of our social policy.

That is why the legislative history of the allowance, as an institution, in Romanian socialist law, shows a continuous process of enlargement of its application to as numerous and various categories of children as possible, and more particularly a constant increase in the amount of the assistance granted in this way.

At present, the number of children receiving the allowance is of 4 million, and the sums paid out have increased from 74 million in 1955 to 7 thousand million in 1972. The budgetary burden of the state which amounted to only 1.1 per cent in this respect, was raised to 15.4 per cent of total budgetary expenses in 1972. So that the state allowance for children is by this time an important source of income for each family.

The ascendent rate of legislative interventions — from the date of the creation of the institution by the D.C.M. No. 2671/1954 — has been determined exclusively by the increase in budgetary possibilities of the state for the fulfilment of its purpose concerning the growth of population.

The extension of the application of the allowance for children and the increase in its amount reflects, therefore, step by step the ever greater successes obtained by the working people in the attainment of the planned objectives concerning the development of the national economy. Therefore, this institution evolves towards an ever greater support granted to large families in keeping with the increase in the national income and the possibility of affecting an ever larger part of it to the material and spiritual welfare of the people, which is the supreme aim of the policy of the Romanian state and of the continuously increased efforts which our working people do not hesitate to make.

3. *Rules governing the right to allowance.* The state allowance for children is granted — according to Decree No. 285/1960 — in case one of the parents at least belongs to one of the following categories :

a) employees of state socialist organizations having a labour contract concluded for an undetermined time, as it is specified in the instructions (No. 1515/1966) issued by the Ministry of Finance regarding the application of the legal rules ; by "state organizations" one must understand the state economical enterprises and organizations, the annex farms and the enterprises organized by means of extrabudgetary funds of state institutions and economic enterprises or organizations.

Also the teaching staff engaged under a labour contract concluded for the duration of the school year are entitled to the allowance; likewise, the workers who, according to the laws in force, are considered to make up the permanent staff of the work teams of state building enterprises and the employees of artistic entertainment institutions who, pursuant to the law, have the same rights and obligations as the employees engaged by a labour contract of undetermined duration; lastly, those engaged by labour contracts of undetermined duration who are remunerated upon a percentage basis;

b) students who attend higher educational and doctoral courses and who receive a scholarship;

c) writers, painters, sculptors and musicians, members of professional unions;

d) invalids, who attend vocational schools for the recoverable deficient.

e) retired people of every category and those who receive a social assistance allowance;

f) students of military schools and those who accomplish their military service.

From the above enumeration of categories of persons entitled to the allowance for children, it follows that such a right is not enjoyed by the employees of co-operative organizations and of other categories of public organizations. The law (art. 16) does expressly, recommend, however, to the respective organizations to extend the application of the allowance for children in favour of the staff of their units; a legal directive which public organizations hastened to take into account, in so far as their financial means allowed them.

4. The amount of the allowance for children is established according to tariff wages or to the pension or the income of the parent — in conformity with the category to which he belongs —, and in relation with the number and age of the children and finally, with the locality where the parents live, whether it is a rural or an urban one.

If the monthly income of the parent does not exceed 2,500 lei, allowance is accorded for each child separately, regardless of their number; its amount is however different according as the parents live in a town or in a village, being greater in the former case; another criterion is the parent's income, namely, whether it is under 1,500 lei or between 1,500—2,000 lei or above 2,000—2,500 lei: in the last two cases the amount of the allowance is naturally, for obvious considerations of social justice, lesser than in the case when the income does not exceed 1,500 lei.

The allowance accorded, depending on these criteria, for the first child, becomes continuously larger with each of the following children, until the ninth one inclusively ; the allowance due to the latter remains unchanged for the future children, too.

For the establishment of the progressive amount of the allocation, all children up to 18 years old are considered, but only provided the obligation to support them devolves on the parents ; therefore no count is kept of those who receive scholarships, whose support is paid for by the state or public organizations or of those children for whom the state pays an allowance when placed in a family or when the minor is entrusted to a family or to a person.

If the monthly income of the parent is more than 2,500 lei — without exceeding 3,000 lei — the allowance is not paid for the first child, but only for the following ones. And if the income exceeds 3,000 lei — without reaching 4,000 lei — the allowance is paid from the 3-rd child on.

In both cases, the amount of the allowance rises for each of the following children, and including the ninth.

The allowance is no longer accorded if the parent's income amounts to more than 4,000 lei per month.

5. The law establishes precisely the way in which the income of the parent should be appreciated in determining the allowance. In this respect we must underline that, with a view to a better protection of the child's interest, the amount of the allowance is determined, exclusively, in relation to the income of the parent entitled to collect it, even though, in pursuance of the provisions of the Family Code, the two parents are equally obliged to ensure the support of the child proportionately to their means.

The law also specifies that for its establishment, the amount of the allowance or of the sum due to the child in this form is not added to the wages, pension or other incomes taken into account in determining the right to an allowance.

Finally, we must show that at present the granting of a state allowance for children is no longer conditional on the income derived from agricultural activities by the parents entitled to receive it.

The age of the children only affects the amount of the allowance indirectly, viz. in establishing it only the children who are not yet 18 years old are taken into account.

Depending on all these elements the allowance may vary, for a child, from 60—240 lei per month, taxation free.

6. We should mention that in the application of the dispositions of the decree, those entitled to a state allowance are not

only children born in wedlock but, equally children born out of wedlock; in the latter case, if the filiation of the child has been established according to the provisions of the law.

And, with a view to eliminate juridical formalism and to give priority to the protection of the child's interest, the provisions of the law have been interpreted to mean that the state allowance must be considered to have been legally paid for the child born out of wedlock even though its filiation was only established after payment was effectuated.

Likewise, the right to an allowance also belongs to adopted children — without distinction as to type of adoption — and to those whose support has been entrusted by the competent authorities to families who fall under the legal categories entitled to receive a state allowance.

7. The above-mentioned criteria constitute the general rule in establishing the amount of the allowance.

But the law admits many exceptions to this rule all of them pointing one way, that is favouring children; the exceptions concern the income of the parent, the number of children, and the place of the domicile. Based on these considerations, the allowance is higher than if it had been derived from a strict application of common law provisions.

The main exception, in this respect, concerns the category of workers and foremen, who benefit by an allowance for all their children, regardless of the amount of their tariff wages.

Another exception, equally important — is created by the appendix to Decree No. 285/1960, which enumerates the categories of persons authorized to receive the state allowance due to town dwellers, even though they live in rural localities; another exception of great importance is due to the fact that, after continuous amendments, the text of the appendix includes an ever larger number of categories for which the situation of the domicile no longer affects the amount of the allowance.

Eventually, on the general line to protect the child's interests, the allowance is integrally paid to mothers who, having under their care children under 6 years, are working part time only.

8. The amount of the state allowance, established according to legal criteria is not an irrevocably acquired right; it may be modified whenever the situation which has determined its amount is changed, consequently whenever the parent's income, the domicile or the number of children, are no longer the same.

9. The state allowance is paid for children under 16 excepting only those who have suffered a disability before that age

and who further benefit by the allowance during the time when they are disabled, but until the age of 18 only.

The allowance is not paid for children under 16, if they are in the care of the state or of a public organization. Finally, the state allowance for children is not payable together with the scholarship to which the child is entitled or with the support allowance granted by the state as a measure of special protection — according to the provisions of Law No. 1/1970 — when the child is placed in a family or is entrusted to another person than its parents. In all these cases, the persons entitled to receive the two allowances due to the child, are obliged to choose one of them.

10. The state allowance is accorded for the purpose of covering the expenses necessary for the upbringing and education of children. Considering this special purpose, the parent who receives the allowance is obliged to utilize it according to its legal destination, for the allowance is a right that does not belong to the parent, who collects it, but to the child, in whose exclusive interest it is granted. The fact that the parent is designated, in the legal terminology, as the "beneficiary" of the allowance only signifies that the parent has the right and obligation of cashing it for the child and of utilizing it in conformity with the dispositions of the law.

Such a right — like all the rights of the parents as regards the person or fortune of children — is included in a "sui generis" category of subjective rights, because the "interest" protected by the law is not the interest of the apparent possessor of the right, but the interest of the child, the only real beneficiary of the emolument corresponding to the right under discussion.

And owing to this purpose, the rules governing the state allowance are of an indiscutably imperative nature, according to which it is inconceivable to accept as valid a juridical act that stipulates a renunciation, assignment, amendment or any other transaction with regard to the exercise of the said right.

11. The state allowance due to the child born in wedlock is paid to the father if the parents belong to the categories entitled to it except when the father is attending doctoral courses or accomplishes his military service, in which cases the allowance is paid to the mother.

If only one of the parents belongs to the legal categories, the allowance is paid to him or her.

If the parents are divorced, the allowance is paid to the parent to whom the child was entrusted by the divorce judg-

ment, regardless of the fact whether both of them or only one is included in the legal categories and without being necessary that the law courts should name in the judgment the parent to whom the allowance has to be paid, since the judges are obliged to decide to whom the child is to be entrusted.

If the child is entrusted to neither of its parents, but to another person, that person will be authorized to receive the state allowance due to the child.

If the parent to whom the child was entrusted marries again, the right to the allowance will be established in keeping with the new family situation, irrespective of the fact that the child was or was not adopted or that an upkeep allowance is or is not paid. When the child is born out of wedlock, the allowance is paid to the parent in relation to whom filiation was established and who at the same time falls under one of the legal categories, from the date of the act whereby filiation was voluntarily acknowledged or from the date when it was established by the judgment of a court of law. If filiation was established with regard to both parents, the allowance will be paid to the parent who has the child in keeping, according to the dispositions of the Family Code (art. 65), and provided the respective parent or the other one, is included in the legal categories. Jurisprudence has ruled that if the mother of a child born out of wedlock is married to a wage-earner, the allowance is to be paid to her husband no matter whether he has adopted the child or not, or whether filiation towards its father has been established or not.

Finally, the child entitled to a successor pension receives the allowance established in pursuance of the criteria applicable to the living parent, if he or she belongs to the categories enumerated by the law. Otherwise, or if the child is an orphan bereft of both parents, he will receive an allowance established proportionately to the pension to which he is entitled or to the situation of his domicile, whether urban or rural.

In all the cases jurisprudence has ruled that the child may ask for the allowance due to him if the parent authorized to receive it does not accomplish the necessary formalities for cashing it.

12. If the allowance has been paid to the parent who, according to the legal provisions mentioned above, was not entitled to receive it, and who, at the same time, did not utilize it for the child's support — that parent has the obligation of giving back to the other parent the sums unjustly cashed, these sums being claimed by virtue of the principle of enrichment without

cause — within the term of common law established for extinctive prescription.

There also have been cases in which the parent who had not the quality to receive the allowance, has hindered the other one from cashing it, consequently, situations in which the parent entitled to the allowance had to claim damages from the other one who, by his or her illicit and guilty deed, has hampered the payment of the state allowance designed for the child's support.

In order to put an end to the divergences arising in the settling of such litigations by the law courts, the Supreme Court, by two decisions — No. 4/1971 and No. 4/1972 — established not only the procedure applicable in such cases, but, in order to justify the directives given to the courts, in this respect, placed in full light the juridical nature of the aid, which is the state allowance, and the specific purpose of this institution. According to the juridical description the Supreme Court has given in its analysis, the allowance is considered as an indemnity granted by the state to be utilized for the satisfaction of the needs of children as regards upbringing and education. In view of this purpose and without any confusion being possible with the institution described as "support pension" the state allowance nevertheless has the same juridical characteristics because it pursues the same goal, to wit the protection, by legal means, of the same interest, the interest — both individual and public — of ensuring the support of the child.

Identity of juridical nature entails of course, the application of the same legal regulations for the two juridical institutions. Thus, as it was pointed out by the Supreme Court, "as long as a parent unjustly receives the state allowance for children, diverting it from the purpose for which it was granted, or prevents its being cashed by the parent entitled to it, he (or she) infringes his (or her) own support obligation for it is the function of the state allowance to cover the expenses which would otherwise have to be borne by the child's parents".

As a consequence, the state allowance for children comes from all viewpoints, under the same juridical system as the support pension.

In the first place, as regards the establishment of the competence of the law courts and of legal proceedings, the Supreme Court has ruled that in such litigations — by derogation from common law provisions — the lawsuit, exempted from stamp duties, is brought directly before the local court in whose territorial district is situated the claimant's domicile, without the formality of conciliating the parties before the panel of judges.

But that is not all. The application of the same juridical system also signifies that just as in the case of the support allowance, if the court obliges the parent to return the state allowance unjustly cashed, or to pay the damages due, it is obliged to order "ex officio" a stoppage from the salary of the third party, concluding to this effect and notifying the third party thereof also ex officio. In the same manner, and along the same line of departure from common law dispositions, the court of appeal, when modifying a judgment referring to an allowance which has to be returned or to the sum allowed as damages is obliged to send ex officio without any delay its final judgment to the first court which, without any application being necessary, shall render it enforceable and modify by another conclusion the stoppage previously established or shall cancel it according to the executory title.

Finally, as regards the identity of the juridical system, the Supreme Court has ruled that, as regards the highest percentage that may be stopped from the wages and the legal order of priority in the payment of the respective debts, the same legal dispositions are applicable as in the case of debts incurred through non-fulfilment of the support obligation.

As a general principle, it has been established that the legal rules concerning the support allowance are applicable not only to the state allowance for children, but to all the forms of assistance accorded to children, regardless of the source of the funds from which they are paid because in all these cases the same reasons prescribe prompt satisfaction of the needs resulting from the upbringing and education of children.

13. The law specifies, for each category separately, the socialist organizations which are obliged to pay from the funds of the state budget — based on a legal authorization — the allowance for children to those entitled to receive it; the law also, stipulates that the sums owed as a result of a state allowance for children and which, for any motive whatsoever, were not received monthly, within the legal terms, can be paid retroactively, for a 12 months period at most from the date of the claim.

In this respect, the juridical system of state allowances differs from that of the support pension which, as has already been shown, can only be claimed for a past period in exceptional cases.

The short term of this special prescription is not applicable when the amount of the state allowance is claimed, on the grounds of unlawful enrichment or as damages from the parent who has cashed it unjustly or has not cashed it owing to guilty negligence;

in such cases, the parent is responsible within the limit of a three years' prescription under the common law as provided by Decree No. 167/1958.

14. We should also mention that payment of the state allowance is conditional upon the parents' observing the rules stipulated by the law in order to ensure labour discipline, which is one of the main supports in the implementation of the plans of the national economy on which the possibility of budgetary expenses directly depends.

Thus, the state allowance for children is not paid during the months when the wage-earning parent is absent without leave more than three working days ; or to the parent for the months during which he (or she) did not work because of a holiday without pay, an exception being made for the legal leaves for studies, for the first holiday without pay allowed during a calendar year for a period not exceeding 15 working days and finally for the leaves accorded as a result of a reduction of activities in the socialist organizations, owing to atmospheric conditions.

As regards the application of this rule it should be pointed out — as a significant example of the decisive part played by the "child's interest" in the interpretation of legal dispositions that a district court (Decision No. 112/1972 of the district court of Suceava), established the responsibility, of a punishable nature, of the parent for the prejudice caused to the child by his or her guilty deed, depriving him of the assistance represented by the state allowance. The court considered it a fault on the part of the wage-earning parent for non-observance of the labour discipline, being repeatedly absent without leave from his working place for more than three days each month.

15. The right to a state allowance for children ceases whenever the conditions requested by the law for the exercise of this right are no longer met.

In the first place, when the child's parent does not belong any more to the categories of beneficiaries of the state allowances ; an exception is made for graduates of higher education and who receive the state allowance for their children during the period between the date of graduation and the date of their taking over their duties within the term established by the appointment order.

In the second place, the right ceases when owing to a change in the number of children or in the parent's income according to which the amount of the allowance was established, the legal conditions which justify the right are no longer satisfied.

Finally, the right is abolished when the child attains the age up to which an allowance is paid or when its support is taken over by the state or by a public organization, and also

when instead of a state allowance, another form of assistance on the part of the state has been chosen as being more advantageous.

The sums unjustly paid as state allowance are recovered from those who cashed them in bad faith or, in case of insolvency from the persons who by mistake ordered or effectuated the payment.

By derogation from common law dispositions (art. 992 Civil Code), which lay down the obligation of giving back the sums cashed without a just reason, a parent is not obliged to return the allowance except if he has collected it in bad faith, or has induced payment by a guilty act, either by untrue or reticent declarations, or by not informing the socialist organizations about the circumstances which had caused the loss of the right to an allowance or the diminution of its amount. The derogation is along the line of legal protection of the child's interest.

§ 2. *Assistance Granted for the Children of Members of Agricultural Co-operatives of Production*

16. In the socialist sector of agricultural activity, by the decision given on June 11, 1971 by the Council of the National Union of Agricultural Co-operatives of Production — among other measures for the improvement of the living conditions of the members of agricultural co-operatives of production — it was also decided to give a monthly aid of 50 lei per child, if at least one of the parents works in such a co-operative.

The aid is accorded on condition that during the respective month one of the child's parents should have worked 15 days at least, carrying out the production tasks in pursuance of the labour rules established by the general assembly of the co-operative ; the aid for children is accorded also during the period when the co-operative member being unable to work, receives the assistance he is entitled to on account of his disability.

The aid for children is also accorded if the parents are pensioners of production co-operatives.

In both cases, the aid is accorded until the date when the children attain the age of 16 and only if they do not receive any allowance from the state.

The different level of the aid accorded for the children of the members of agricultural co-operatives of production — as compared with the assistance represented by the allowance granted by the state — is accounted for not only by the yet insufficient funds of such co-operatives, but also by the facilities which the kind of remuneration of agricultural-labour offers to the families carrying out their activity in production co-operatives.

§ 3. *State Family Aid and the Aid Accorded to Mothers of Large Families*

17. *State Family Aid.* As it results from what was said above with regard to the system of state allowance, the aid given under this title for the support of children is established in favor of many categories of parents, but only of those especially ennumerated by the legal dispositions. The patrimonial aid of the state is not denied even to families with many children who are not entitled to receive the state allowance because the respective parents — although living exclusively from the earnings obtained by work do not enter the categories of working people strictly specified in the dispositions of the Decree No. 285/1960.

Those who are not entitled to a state allowance — or to any other assistance for children from the state — may therefore benefit by the "state family aid" created as far back as 1950 (Decree No. 106).

The support given under this title is not only a patrimonial aid but, mainly, an impulse meant to facilitate and to stimulate the increase in large families; it is a legislative measure along the general line of the demographic policy steadfastly pursued by the Romanian state.

As it folows from the very title of the decree, the state family aid is accorded only to families having at least four children in their care; and according to the explanation given by the dispositions of the law, the children are considered to be in the care of the family until the age of 15 or 18, according as they live in rural or urban localities.

The state family aid, which begins with the birth of the 4th child, is paid for each child separately up to the date when the child attains the age of 5.

18. The legal dispositions expressly specify the categories of parents entitled to receive the state family aid; but the determination — in the largest possible way of the respective categories allow all people living on their earnings to be included in the legal provisions. Those entitled to it are not only the employees of socialist organizations and the pensioners but also agricultural producers who work on their individual homesteads.

This aid is accorded within each category, in relation both to the income of the parents and to the number of children; such an aid is granted only if the parents' income does not exceed a certain amount. This condition is no longer applicable when the parents have 7 or more children.

A different system is applied if the aid is given to single mothers. In such cases, if the mother satisfies the conditions con-

cerning her income in the category of working people to which she belongs, the aid begins on the birth of her first child and ceases only when her last child attains the age of 12.

19. In pursuance of the conditions stipulated by the dispositions of the Decision of the Council of Ministers No. 491/1950, the amount of the family aid is established by the executive committee of the people's council of the respective commune, town, municipality or of the Bucharest City. According to these dispositions, the amount granted for the 4th child increases with the following ones. Nevertheless, in all cases — for the same considerations specified above — the amount of the aid is higher when the parents live in towns and not in the country.

The control over the observance of the legal disposition concerning the establishment and payment of family aid is exercised by the executive committees of the district people's councils or of the Bucharest City.

20. *Aid granted to mothers of large families.* With a view to increasing the support accorded by the state to large families, the dispositions of the Decree No. 411/1972, assign a monthly aid of 200 lei to the mothers who have in charge 8 or 9 children, and of 300 lei to those who have 10 or more children. It is interesting to observe, on this occasion, that in conformity with statistical data, approximately 7000 children are born in our country annually, who in their families, have the rank of the 8th born.

In establishing the number of children entitling parents to family aid, the law takes into account both the children under 18 years of age and who are still in their mother's care, those who, after this age, carry on their studies in any kind of educational establishment and have not attained 25 years, and the children, regardless of their age, who cannot work owing to some disability.

On condition they should be in their mother's care, not only the children born by the respective mother are taken into account but also those of the husband, resulting from a former marriage, and even children out of wedlock. It goes without saying that the children who have been adopted or whose upbringing has been entrusted to other persons by the judgment of a court of law according to the provisions of the Family Code, cannot be considered any longer as being in the care of their mother. The same holds good for the children entrusted to certain institutions by the commisions for the protection of minors, pursuant to the provisions of Law No. 1/1970 ; with regard to adopted children, the fact that the adoption has been authorized with full or only with restricted effects has no bearing on the granting of the family aid.

The aid granted to the mother is further paid even if the condition regarding the number of children is no longer satisfied, provided the decrease in the number is due to the fact that some of them have reached the age of 18 or 25, have graduated their studies, have recovered their working capacity or have died.

Payment of the aid is stopped — or its amount diminishes from 300 to 200 lei — if the number of the children in their mother's care has decreased as a result of the fact that one or perhaps more of them have been adopted or their upbringing has been entrusted to other persons by a court of law or by the commission for the protection of minors.

Finally we should point out that this family aid — in contrast with the other forms of assistance wherewith the state supports large families — is not in any measure conditional on the amount of the mother's income or its nature, nor on the locality, whether urban or rural, where she lives. The aid is therefore accorded to mothers even though they are not employed, members of co-operatives of production or pensioners and even if their incomes are not derived from work.

It is necessary to point out also that wherever children find themselves under their father's care — because of the death of their mother or for any other reason — the aid is to be paid to the father as long as the conditions provided by the law concerning the number of children are satisfied.

In all cases, establishment and payment of the aid are the concern of the executive committee of the respective people's council in whose territorial district the parent entitled to the aid lives.

§ 4. *Aid Granted to the Wives of Those Who Go through Military Service*

21. Along the same line of the particular interest shown by the state in the upbringing of children and in the support accorded to those unable to work, we should mention the aid to the wives, who are not entitled to an allowance for children or to an assistance from social insurance bodies, when their husband goes through military service.

Such an aid, created by the Decree No. 258/1956, is granted only to those wives who are unable to work owing to some disability or to pregnancy, or who have children under 8 years of age; the amount of this aid is higher for those wives who belong, cumulatively, to at least two of the above-named categories.

The aid is also conditional upon the wife possessing no personal patrimonial means likely to provide her with means of livelihood.

The amount of the aid varies with the situation of the wife, being smaller in the countryside than in a town. The aid cannot be under 100 lei, nor above 200 lei.

In a single case, namely when the mothers have children under 8, the aid is paid even though they are not married to the child's father who is going through military service. It is then necessary and sufficient that, in such a case, the filiation of the illegitimate child should be established towards the father according to the provisions of the Family Code, by a voluntary recognition of paternity or by a judgement of a court of law.

The aid to expectant mothers is paid from the first day of the calendar month marking the beginning of the 5th month of pregnancy; after birth she is to receive aid in the capacity of mother of a child under 8.

The aid due to the mother in such a capacity is paid, in case of her death, to the persons who have the motherless children under their care.

In all these cases the right to family aid is annulled with the cessation of the cause which justified it that is to say, at the end of the month when the man has fulfilled his military obligations.

The aid accorded by virtue of this law cannot be collected together with the state allowance for children; the mother entitled to both aids has to choose one of them (Decree No. 285/1960, art. 13).

The establishment of the amount of the aid, as its payment are the concern of the executive committee of the people's council of the commune, town, municipality or the sector of Bucharest City on whose territorial district the woman authorized to receive it lives according to the recently modified text of art 5 of the Decree No. 258/1956. Control over the manner in which these attributions are exercised is the concern of the executive committees of the district people's councils and of the Bucharest Municipality.

§ 5 *Aid Accorded in the Form of Reduction of, or Exemption from Taxation*

22. *Taxation of decorated mothers.* When examining the many aspects of the aid granted by the state for the support of a family's material needs, we should also mention the measure of

a financial nature which is the reduction of the tax upon the incomes of the population.

But a measure such as the reduction of taxation, which we shall deal with in the first place, is only an accessory juridical effect, of a patrimonial nature, of the higher reward and distinction, of a non-patrimonial nature this time, which is the honorary title of "Heroine Mother" and the orders "Heroine Mother" or ""Maternal Glory".

The titles and orders mentioned above and also the "Maternity Medal" have been established by the Decree No. 195/1951 with a view to evidence the social merits of giving birth to and bringing up a great number of children within the same family ; these distinctions constitute at the same time an impulse to the growth of the birth-rate, and, therefore, to the attainment of the aim pursued by the demographic policy of the Romanian state.

The practical efficiency of the measures designed to stimulate the attainment of the proposed goal may be exemplified by the fact that in a single district — the Argeş district — the number of mothers awarded the "maternity Medal" and the orders of "Maternal Glory" and "Heroine Mother" has now reached the figure of 4,000.

The orders conferred on women, owing to maternity, occupy an important place in the hierarchy of decorations in the Socialist Republic of Romania (Decree No. 550/1957, art. 5).

Such decorations are awarded only to the mothers with many children, as follows :

a) the honorary title of "Heroine Mother" — together with the order of "Heroine Mother" — are awarded to women who have given birth and have brought up 10 or more children ;

b) the order of "Maternal Glory" — IIIrd, IInd an Ist class — is awarded to women who have given birth to 7, 8 or 9 children, respectively.

c) the "Maternity Medal" — IInd and Ist class — is awarded to women who have given birth to 5 or 6 children, respectively.

All these decorations are awarded only when the last child of the number of children provided by the law reaches the age of 1, and on condition that the rest of children should be living ; an exception is made for those who died or were reported missing during the antifascist war, and who are taken into account as regards the number of children entitling the mother to these decorations.

The mothers distinguished with the title of "Heroine Mother" or with the orders "Heroine Mother" or "Maternal Glory" enjoy the advantages offered to those awarded with other orders of the

Socialist Republic of Romania. The awarding of these decorations entails an income tax reduction of 50, 40 or 30 percent, according to the class of the respective order (Decree No. 153/1954 concerning taxation of the population incomes ; art. 9 modified by Decree No. 564/1968).

When the heroine mothers are members of an agricultural co-operatives of production their income calculated according to the number of working days which they or the head of the family have done at the co-operative, is totally exempted from taxes due for the incomes resulting from agricultural activities (Law No. 61/1968, art. 3).

Reduction or the exemption from taxation is a pecuniary gain which is added to the aid granted to the same mothers with many children, as shown in the above paragraphs.

23. *Taxation of those who have to support large families.* The tax to be paid by the wage-earners on the income collected by them at their permanent place of work is reduced by 30 per cent if their tariff wage does not exceed the sum of 2,000 lei per month and if they have the obligation to support more than 3 persons (Decree No. 153/1954, art. 9 modified by Decree No. 564/1968).

Taxation of the members of agricultural co-operatives of production who have to support at least 3 children under 15 is reduced as regards the income corresponding to the working days done by them at the respective co-operative as follows : by 15 per cent if they have 3 children ; by 20 per cent if they have 4 children ; by 30 per cent if they have 5 children and by 40 per cent if the number of children is above 5 (Law No. 61/1968, art. 4).

24. *Tax payable by the wives of those who go through military service.* The incomes corresponding to the number of working days done at an agricultural co-operative of production by the wives of those going through military service, and who have children, are totally exempted from the tax on incomes resulting from agricultural activities (Law. No. 61/1958, art. 3).

§ 6. *Birth Indemnities and Other Facilities for Mothers to Enable Them to Bring up Their Children*

25. *Birth Indemnities.* Among the measures for the stimulation of natality and the support of large families it was granted to mothers — under Decree No. 954/1966 — an aid of 1,000 lei on the birth of each child, starting with the 3rd ; this aid was granted before that law only to mothers on the birth of their 10th child.

The sum accorded under this title is paid from funds specially provided in the state budget through the agency of the executive committee of the people's council of the commune, town, municipality or of the sector of Bucharest City, in whose territorial district is situated the domicile of the mother entitled to receive it.

The aid is not taxable and cannot be pursued by creditors, whatever their claim may be. It is not subject to any condition and is paid without being affected by the income of the mother and of her family, or by the fact that she is married or not.

As it is specified in the instructions issued by the Ministry of Finance with a view to the application of this law (No. 1556/1966), in the establishing of the right accorded to mother on the birth of her 3rd child and of the following ones, all the children born previously are taken into account even though the child for whom the aid is claimed — or the children born before — are no longer under the care of the mother or are dead.

In case of twins, the birth of each of them is considered separately in counting the children whose number entitles the mothers to receive the aid. If the mother is dead or has been laid under an interdiction, the aid due to her is to be paid, according to legal provisions, to the child's father or to the person to whom the child was entrusted.

Birth indemnities may be claimed within the term established for extinctive prescription running from the date of the child's birth.

In case of aids illegally paid, the respective sums are to be recovered from those who have unjustly cashed them, in pursuance of the dispositions of the Code of Civil Procedure, with the application of the Penal Code, when such payment is considered as a penal offence.

26. *Special prices for products designed exclusively for children.* Another means of a patrimonial nature, by which the state takes upon itself the expenses incurred by the family in bringing up children is the disposition of Law No. 19/1971 (art. 44), which, with regard to the manner of establishing the prices of consumer goods, provides for the possibility of fixing lower prices for products designed exclusively for children ; thus, the retail price of such products incorporate a lesser amount of taxation on the movement of goods than applicable in case of the prices of products for grown-ups ; more over, the prices of the goods designed for children may even be exempted from taxation.

27. *Special measures for protection of mothers' health and for ensuring care for children.* The assistance of every kind, mentioned above, is a pecuniary contribution whereby the state

enables the families to meet the expenses incurred for the support and education of children. Besides this assistance, of a patrimonial nature offered directly in the most various and efficient forms, the protection of the state as regards care for children also manifests itself by many other measures pursuing the same end, namely to ensure to the mother the best conditions for bringing up as large a number of children as possible.

The new Labour Code (Law No. 10/1972), which have come into effect recently, greatly extends the measures pursuing the protection of all people working in state socialist organizations; these measures are called upon, within the sphere of the complex notion of "social insurance", to provide workers with medical assistance in case of illness or labour accidents, payment of pecuniary indemnities for temporary disability, assistance for the improvement or the recovery of health by treatments in bathing and health resorts, old age and disability pensions, and other measures of a special protection nature, as, for example, the sums paid to a wage-earner on the death of a member of his or her familiy; all these measures "constitute", as it is underlined in the Labour Code (art. 144), "the expression of the great care of our society for the producers of all material and spiritual values."

From among these measures, we will now dwell upon those referring, especially, to the protection of maternity, of mothers' and children's health.

28. To this category belong, in the first place, the dispositions of the Labour Code (art. 152), which forbid, most categorically, the appointment of expectant or nursing mothers to jobs with unhealthy, difficult or dangerous conditions or conditions medically counterindicated. Nor are they allowed to work overtime. If expectant or nursing mother work under such conditions, the state socialist organizations are obliged to appoint them to other places of work, no deduction being made from their wages.

Likewise, expectant methods from the 6th month on and nursing mothers cannot do night labour (art. 156), even if they belong to categories of personnel admitting of night work for woman.

29. In the second place, the Labour Code (art. 155) provides paid maternity leave, guaranteed by the Constitution (art. 20), viz. 52 days before childbed and 60 days after it. The pregnancy leave is accorded for periods of 30 days at most, according to the medical certificate issued by the specialists physician of the sanitary district on whose territory the expectant mother has her domicile.

If the mother gives birth before the end of the first leave, the second one — after childbed — is extended by the number of

days of the pregnancy leave of which the mother did not actually avail herself.

If the mother gives birth to a still-born child, or the child dies after its birth, the period of childbed leave is reduced to 42 days, and if the child's death occurs after the expiration of this term, the leave ceases immediately.

30. The duration of the paid maternity leave of women who work as members of agricultural co-operatives of production, has been fixed at 60 working days, by decision of the Council of the National Union of agricultural co-operatives of production of 11.VI.1971.

The sum payable over the interval of pregnancy and childbed leave is established according to the number of years worked in the co-operative — an amount representing 50—90 per cent of the daily average income collected by the mother during the last 12 months.

31. After expiration of the leave granted on the occasion of childbed, the socialist organizations are obliged to allow the mother to interrupt — every 3 hours at most — the programme of the day, in order to feed and look after the new-born child; this interruption cannot exceed 2 hours daily, in which time is included the half hour necessary for feeding the baby, the rest being necessary to go to, and return from, the domicile.

32. The right to such interruptions is accorded only until the child attains the age of 9 months, but it may be prolonged with 3 months in case of premature children, or distrophic ones or of those who require special nursing measures according to medical prescriptions.

At the mother's request, the measures of the interruption of work for feeding and looking after the baby, can be replaced by a 2 hours reduction daily of the normal programme of activity. The interruption of work or the reduction of the programme, for the purpose of feeding and looking after the child, does not affect the remuneration of the work or the other pecuniary rights due to the mother.

33. Among the measures of this kind is also the obligation of the socialist organization to accord, on the basis of a certificate issued by a competent physician, to mothers whose children, under 3 years of age are ill, paid leaves for taking care of them; the leaves obtained for this purpose do not affect the duration of the annual rest leave to which the mother is entitled (art. 157).

In case of common diseases, the leave granted to the mother for taking care of her child varies between 1—14 days; if the disease is a transmissible one, the leave may rise to 21 days; and

in case of certain serious maladies, as for example, poliomyelitics, or in special situations — a child immobilized in plaster, or other similar cases — the duration of the leave may attain 90 days.

34. Another advantage granted to mothers in the interest of their children — if they have not reached the age of 6 — is their right to work half time only in a post corresponding to her qualifications ; under such conditions she is considered to have worked full time when her length of service is calculated.

35. The right to solicit an appointment to a half time job is granted to the mother only in case the child is not looked after in a creche or a day nursery ; and her application is only approved if the activity of the respective socialist organization allows of the utilization of employees working half time, without endangering the fulfilment of production tasks (art. 158).

Once appointed to half-time jobs, employed mothers cannot be detached temporarily or delegated to other localities.

36. The nursing of children is facilitated also by the utilization of crêches and kindergartens.

37. Finally, we should also mention the certitude of the work place ensured to women by the Family Code (art. 146), during their pregnancy and maternity leaves and while they nurse their babies or look after their ill children under 3 years of age ; likewise, as long as their husbands serve in the army.

The labour contract of the woman who finds herself in any of the above categories, cannot be annulled on the initiative of the social organization, except in absolutely uncommon cases enumerated limitatively by the law, when the contract cannot be maintained any longer because of objective and legal circumstances, as for instance, the change of the seat of the organization to another locality or the conviction of the woman for a penal offence which entails interdiction of working in the same post.

§ 7. *Pensions*

38. *General observations.* The aid granted to families to help them meet household expenses consists, in the first place, of the contribution of the state, in various forms, to the support of children, of those members of the family who, owing to their age, are not yet able to earn their living, so that their existence has to be assured by their parents or by other persons. In the second place, in a similar situation are also the older members of the family who, due to the same cause, their age — cosidered

inversely — are no longer in a condition to earn by their own labour the pecuniary means allowing them to live.

Regarding this last category, the aid and, at the same time, the reward of the society, assume the juridical aspect of pensions of the state social insurance bodies granted to the wage earners and that of the military pensions accorded to the members of the armed forces (Decree No. 141/1967).

In the Socialist Republic of Romania, the right of the working people to their material security — when they are old or disabled — is considered as one of their fundamental rights, warranted as such by the Constitution (art. 20).

The permanent development, at a constant rate, of our national economy — and as a result, the year by year increase of our national revenue — make it possible to continuously raise the welfare of the working people, regardless of their age.

The social insurance system for persons carrying on their activity in state socialist units — and the aid of every kind accorded within their framework — are organized by the state (Law No. 27/1966).

As regards the pension system, we should particularly point out that besides the principal pension — granted under conditions of a general character, provided by the rules concerning social insurance — the persons working in production also benefit by a "supplementary pension". The difference between the two categories of the right to pensions is founded upon the distinct source of the funds from which the respective pensions are paid.

The funds necessary for the payment of the principal pensions, of social assistance and of other rights due to the pensioners or to the members of their families, are realized exclusively, on the one hand, from the contributions of those who utilize remunerated personnel — by virtue of a labour contract — and, on the other hand, from the sums assigned for this purpose from the state budget and which represent over 30 per cent of total annual expenses. The working people do not contribute, therefore, in any way, to the constitution of such funds by sums withheld from their wages.

According to the dispositions of the Decree No. 389/1972, with regard to the contribution to state social insurance, the state socialist organizations, public organizations ,and also other categories of corporate bodies or natural persons are obliged to pay to the state social insurance budget a contribution, generally, of 15 per cent of the gross revenue realized by their remunerated personnel or by the persons who qualify themselves at their work

place or who attend courses of professional improvement, also of the sums received by apprentices; in some special situations, the contribution rises to 25 per cent and in case of natural persons, is only of 7 per cent.

Socialist organizations and the natural persons belonging to sectors of activity which have their own social insurance system are obliged to pay their contribution to the social insurance funds of the respective systems to the amount established by special dispositions.

The fact of not having paid the contribution entails the increase in the owed sums, but has no influence as regards the payment of the aids and pensions due to the persons entitled to them.

By contrast with the common law pension which is paid from the funds realized as has been stated above, the supplementary pension is paid from a fund especially formed by the exclusive contribution of the working people, by application, between them, of the mutuality system (art. 150 L.C.).

The contribution of the working people to the formation of this fund is of 2 per cent of the monthly tariff wage; the sums thus withheld are deposited with the National Bank of the Socialist Republic of Romania and are completed with the annual interest of 1,5 per cent which the National Bank owes.

We are, therefore in the presence of two absolutely distinct juridical relations of insurance. In the first case, the relation is established between the wage-earner — in the capacity of insured — and the competent social insurance body, in the capacity of insurer, on the basis of the common contribution of socialist organizations and of the state; in the second case, the insurance relation is established between the same persons — having as an object the insurance of the same risks — but based on the exclusive contribution of the insured.

39. Besides this distinction, according to the manner in which the pension funds are constituted, the pensions are divided into several categories, in connection with the nature of the juridical cause which justifies them or the way in which they are to be paid to the pensioners themselves or to their successors.

In respect of these criteria, there are pensions for disability, accorded to those who have lost their working capacity, distinct from the pensions which are paid when the wage earners have reached retiring age; lastly, the category of pensions which, in case of death of the wage-earner or of the pensioner, are paid to their successors.

40. Apart from these pensions — which represent the patrimonial means whereby society rewards the work previously accomplished for its benefit by the persons entitled to them — there is also a "social aid" paid from social insurance funds to those who do not satisfy the legal conditions required for receiving a pension, and which is designed to provide them with means of livelihood in default of any other personal means of support.

41. Under the state social insurance system, pensions and the social aid are granted to the staff of state organizations who represent the main category of working people. Similar rights are enjoyed, however, by other categories of persons working in civic organizations, especially co-operative organizations in the capacity of members of the respective socialist organizations. The pensions due to them are established and paid on the basis of a special system, similar but distinct from that of state social insurance. The social insurance mechanism is organized within the framework of the social insurance system of the different sectors of activity. Pensions are paid from the funds created by the contribution of the socialist organizations belonging to the respective system.

This organizational system comprises the pensions payable through the Pension Fund of the members of agricultural co-operatives and of handicraft co-operatives, while the category of the other civic organizations includes the pensions paid by the Lawyers' Insurance Fund (Decree No. 61/1951) and by the Fund of the associations of various religious cults.

From among these different systems, we shall deal in the following paragraphs, especially with the organization of the right to pension of the members of agricultural co-operatives of production.

42. We should show, however,that the sums paid under the title of pension or social aid are not the only support accorded by the state to those entitled to them. Both they and their families are entitled to medical assistance, medicines, sanitary materials, social assistance and aid, in case of death, identically with the wage earners. They have also the right to buy merchandise payable by instalments (Decree of the Council of Ministers No. 1042/1968). And the pensioners and those entitled to social aid for disability of the Ist degree, have the right to a number of railway tickets free of charge (D.C.M. No. 1060/1968).

43. We should point out, at the same time, in order to give a full picture of the juridical system applicable to pensions and to the social aid, that the corresponding rights are imprescriptible, that they cannot be ceded either totally, or partially, and that the sums due under such a title are tax free.

44. The rules governing pensions and the social aid due to minors, for disability or in the capacity of successors, has been set forth above, in the 3rd. paragraph of the Chapter IV. It is only necessary, therefore, to revert to disability pensions and those for successors in order to complete the picture in so far as the respective pensions are accorded under different conditions than those required in case of minors.

45. *Rules governing old age pensions.* The right to an integral pension of this category, is recognized by Law No. 27/1966 as follows: to men, when they reach the age of 60 provided they have worked for 25 years at last; to women at the age of 55 provided they have worked for at least 20 years.

It is only when men have reached the age of 62 and women the age of 57 that a socialist organization can pension a worker without the latter having applied for a pension; as regards certain categories of wage earners — for example, the teaching staff of higher educational establishments — they cannot be put on the retired list, as pensioners, at the request of the respective institutions before the age of 65 for men and 60 for women.

It is, consequently a system which takes into account the sex of the parties, but the differences thus created are established exclusively in favour of women.

This system, of general application, allows numerous exceptions — with regard to the conditions of pensioning — depending on how harmful for the health the place of work is and on the nature of the work. Thus, the retiring age is reduced by 3 months for every year efectively served in working places which the decision of the Council of Ministers places in the IInd group, because of harmful, difficult or dangerous working conditions; likewise, the retiring age is reduced by 6 months for every year effectively served in working places of the Ist group, owing to very noxious, very difficult or very dangerous working conditions: nevertheless, in all these cases the pensioner must not be under 50.

Along the guiding line of the growth of birth-rate, we should add that women's pensioning age is diminished by another year, if they have given birth to 3 children, and by 2 or 3 years if they have given birth to 4 or 5 children; the reduction is, however, conditional, in all these cases, upon the mother having brought up her children until the age of 10.

On reaching the age specified above, the women entitled to a pension — and they alone — may ask to retire.

Special reductions of the pensioning age are granted in keeping with the work performed to the professional navigating personnel of civil aviation and the artistic staff of artistic institutions.

The disabled of the Ist degree who have the necessary length of service for getting an old-age pension are entitled to it even though they have not reached pensioning age.

Complex reductions — both as regards age and the duration of work — are made in favour of the blinds, who are pensioned as follows : men, after 15 years length of service, at the age of 50, and women after 10 years, at the age of 45.

The right to a pension assumes specific forms for writers, artists and composers, who are members of the respective professional unions.

46. The integral old-age pension is established when the minimum length of service is reached in accordance with the tariff salary and with the group (I, II or III) to which the working place of the respective person belongs. The amount of the pension is a percentage of the tariff remuneration, the percentage being the higher as the remuneration is lower ; the percentage is also higher if the working place is not included in the IIIrd group — common law — but in the II-nd group, and still higher when it belangs to the Ist group.

According to these criteria the percentage at which the amount of the pension is fixed may vary between 60 per cent — for a remuneration higher than 2,500 lei — and 95 per cent for one which does not exceed 800 lei. It should be noted that at present, the smallest remuneration throughout the economy has reached the figure of 1,000 lei (D.C.M. No. 904/1972).

The law specifies that the tariff wage adopted as a calculating basis for the establishment of the pension, is the average monthly tariff wage of 5 successive years, chosen by the interested person from the last 10 years prior to the date when the person ceased working ; if during those last 10 years the wage earner has worked less then 5 years, the basis for the establishment of the pension is the average monthly tariff wages during the period when he (or she) has worked.

The law also specifies the manner in which the average wages must be established when the workers have not been paid by the month, but by the hour, or by proportional quotas, or when they have carried out their work under contracts concluded with natural persons ; explanations are also given about the situation of wage earners who have exercised two functions or have been appointed to half-time posts or have worked in places

belonging, according to legal dispositions, to the IInd or the Ist group.

It is certainly interesting to point out that by virtue of the generous criteria taken into consideration at the establishment of the pension, its amount may sometimes exceed the tariff wages to which the pensioner was entitled before the end of his (or her) activity.

To the amount thus fixed, a supplementary 5 per cent is added to the tariff wages for each year served exceeding the shortest length of service necessary for the full pension. Length of service, according to the legal definition, is understood to mean the time during which a person has worked as a wage earner, regardless of the sort of labour contract or of the way in which the work has been remunerated, and also the time during which the wage-earner was hindered from working owing to causes impossible to avoid, and which, for this reason, is assimilated with the time effectively served as it is stipulated by the dispositions of the laws in force. The law also adds that for those wage earners who do not work full time, the length of service is calculated proportionally with full time and that for those who do overtime work only the time corersponding to standards is considered as length of service. Finally, pursuant to the law, an increase in the time of service is accorded for each year during which the wage earners have worked effectively in labour places comprised in the IInd or Ist group, based on the conditions of the respective work.

The wage earners who do not fulfil the length of service conditions provided by the law for a full pension, but have worked for 10 years at least, may be pensioned off at the age of 62 in case of men and 55 in case of women. The pension is established according to the number of years worked.

47. *Rules governing the right to disability pensions.* It has been previously explained, when dealing with pensions for minors, what are the principles generally applicable to all categories of persons in the granting of disability pensions, in pursuance of the dispositions of the law in force (No. 27/1966, art. 15—29). It was thus shown that the amount of the pension is established according to the degree of disability and that the conditions which have to be satisfied differ according to the nature of the cause which induced disability.

We wish to add here only some considerations concerning these conditions.

The main condition is disablement, the total impossibility to work or, at least, to work for a long and constant period.

48. In fact, in case of a temporary incapacity to work, determined by a disease or an accident, the wage-earner is entitled to another category of pecuniary assistance, accorded from the first day of incapacity up to the date of recovery, during a period which, in case of certain maladies, may last 18 months (D.C.M. No. 880/1965). The amount and the conditions of the pecuniary aids differ, depending on whether the labour contract is or not concluded for an undertermined period of time.

In case of permanent wage-earners, the aid amounts to 50 per cent of the tariff wages — when the length of service is below 2 years — and rises progressively to 90 per cent for those whose length of service is above 8 years ; for the first 3 days of the sick leave, the aid is only half of what is due in conformity with the aforementioned percentages.

The amount of the aid is always — from the first day of incapacity — of 90 per cent of the tariff wages — regardless of the nature of the labour contract and of the length of service — when the temporary disability results from a labour accident, from an occupational disease or from consumption.

The disability aid is accorded equally, under the same conditions, to the disabled pensioners of the IIIrd degree, and to employees who are successor-pensioners ; superannuated pensioners who still work, do not benefit by such aid ; instead, their pension is paid in full.

Beside the aid due for recovery, the law gives wage-earners pecuniary assistance for prevention of disease, for restoration and strengthening of their health ; this aid is accorded either in case of a temporary change of work, or of a reduction of the standard programme of activity owing to a disease or to an accident, or in case of treatment in a bathing or health resort ; likewise, when going to work is forbidden because of a contagious disease; finally, wage earners are entitled to prosthetic appliances.

49. The disability pension is accorded at the request of the person entitled to it, or of the guardian or trustee.

The amount of the pension, in case of disablement of the Ist degree caused by a labour accident or by an occupational disease is a percentage of tariff wages which is established proportionally to the amount of the wages, and to the group in which is included the place of work ; the percentage may vary, acording to these conditions, if the place of work belongs to the Ist or the 2nd group between 65 per cent for wages exceeding 3,000 lei and 95 per cent for those which do not exceed 1,000 lei ; if the place of work

is in the 3rd group, the percentage varies between 60 per cent for wages over 2,500 lei and 95 per cent for those up to 800 lei.

When the disability caused by a labour accident or by an occupational disease is of the 2nd or 3rd degree, the pension amounts to 85 per cent in the first case and 60 per cent in the second case of the pension which would have been granted if the disability had been included in the 1st degree.

If the disability results from an accident without any connection with work, or from a common disease, the pension is calculated according to the time of service of the wage earners. The minimum length of service necessary is established by the law depending on the sex and age of the person ; according to these two elements the minimum length of service, which is of one year for those who are not yet 20 years old, rises progressively up to 22 years for men over 60 years of age.

The pension for the 1st degree of disability is established for wage earners who satisfy the condition of the minimum length of service, by application of a certain percentage to the amount of tariff wages. The percentage differs according to the amount of the wages, between 35 per cent for wages exceeding 2,500 lei and 60 per cent for those up to 800 lei per month. Apart from this basic percentage, a supplementary one of up to 1 per cent of the tariff wages is accorded for each year served besides the minimum length of service provided by the law.

When the disablement is of the 2nd or the 3rd degree, the pension amounts to 85 per cent in the first case and to 60 per cent in the second one of the pension due if the disablement had been of the 1st degree.

We should here make an observation of a general nature which holds good in all the cases of disability — and this is an important aspect of pensioning legislation showing as it does the humanitarian spirit which has inspired its authors ; disability pensions are granted even though the accident which has produced the incapacity to work is due to the faullt of the person in question ; therefore, even when the "insured" is responsible for the materialization of the "risk" which has given birth to his right ; and this regardless of the nature of the accident, whether it belongs to the category of labour accidents or it occurred outside the scheduled activity of the wage earner.

50. *Rules governing the right of successor pensions.* With regard to this category of pensions — as in the case of the previous one — it is only necessary to add some particular aspects to those already given in Chapter IV with reference to the right of the child to a successor pension.

Those entitled to such a pension are not only the children, but also the spouse, parents, brothers and sisters of the deceased, if they had been supported by him ; the spouse is considered to have been supported by the deceased, if the latter provided the means of livelihood or if they had the same domicile.

The members of the family are entitled to successor pension if, on the date of his death, the person who supported them was a pensioner or if he satisfied the legal conditions for getting a pension. Nevertheless, if the deceased, without being a pensioner, fulfilled the condition of the minimum length of service necessary for an old-age pension, the members of the family are entitled to a successor pension, regardless of the date of the death of their supporter.

A successor pension is granted at the request of the person entitled to it, or of the parent, guardian or trustee, if the conditions provided by the law for each category of members of the family are fulfilled.

51. As for the surviving spouse, the duration for which the right to a successor pension is admitted may vary, according to the law, from "throughout the life" or throughout the period of disablement to the date when his (or her) children reach the age of 16 or when they finish their studies.

Finally, the pension is accorded to the surviving spouse up to the date of appointment to a post, if at the moment of the death of the other spouse he (or she) was not yet a wage earner ; in such a case, however, the pension cannot be paid for more than 6 months from the date of the death of the other spouse.

The term of this right is different according to the sex and age of the spouse entitled to it, to the length of time of their marriage, to the nature of the cause which has induced the death and to the number of children, if it is the wife who has survived.

52. The right of the parents to such a pension may also vary. as to the period of its exercise from "throughout the life", if they have reached the age demanded for an old age pension, to the time during which the beneficiary is disabled or only for as long as he (or she) has not started working.

53. The brothers and sisters are entitled to a successor pension until they are 16 or until the end of studies previously begun, without exceeding, in the latter case, the age of 25. Their right is extended, however, throughout the period of disability, if disablement occurred before the above-mentioned age, and the cessation of the right.

The right to a successor pension is enjoyed by brothers and sisters if their parents are dead or if alive they do not work and do

not receive any pension ; and only for as long as they do not earn anything.

54. Parents as well as brothers and sisters, who solicit a successor pension must prove they had been supported by the deceased, by means of evidence issued by the executive committee of the people's council in whose district they live.

For the establishment of the amount of the successor pension, the basis is the pension of the deceased, or the old-age pension or the pension for the 1st degree of disability to which the deceased would have been entitled ; in case of several pensions, the most advantageous of them is taken into account.

When there are 3 or more successors, their pension will correspond entirely to the sum which has served as a calculation basis ; when there are 2 successors, the pension will amount to 75 per cent of the respective sum and in case of a single successor, to 50 per cent of the same sum.

The successors are also entitled to the supplementary pension, if such a pension was due to the deceased. For the establishment of the successors' right, in such a case, the supplementary pension owed to the supporters is taken as a calculation basis to which are applied the above percentages determined in keeping with the number of successors.

We must also mention as a final observation, that the successors of a person who died in prison on account of a labour accident or of an occupational disease while serving his time for a penal offence, are entitled to receive — under the title of a "monthly aid" — a sum of money whose amount is established under the conditions and in the percentages provided by the law as regards successors' pensions (Law No. 23/1969, art. 14).

55. *The right to social assistance.* The wage earners who do not satisfy the conditions for getting a pension and who, at the same time, do not possess personal means of livelihood, are also given some means of support by the socialist state in their old age.

It is in their favour that under the social insurance system, the right to a "social aid" was created, which is enjoyed in the first place by men aged 62 and women who have reached the age of 57, if they have effectively worked for at least 5 years.

In the second place, this right is enjoyed by the disabled of any degree — regardless of the cause which has induced the labour incapacity — if they have worked effectively or at least a fourth part of the time of service demanded by the law for disability pensions.

Finally, the surviving spouse and the children of the person who was allowed social aid enjoy in their turn, right to social aid as successors, if they satisfy the conditions stipulated for successor pensions and if they do not possess personal means of livelihood.

The amount of the social aid is established by Decision of the Council of Ministers (No. 252/1967, art 27—28) and is different according as the domicile of the beneficiary is situated in rural or urban settings.

It follows from the above explanations that the social aid is subject to the fulfilment of some legal conditions. The dispositions of the law stipulate, however, that by Decision of the Council of Ministers, the aid may be granted also to other persons — or categories of persons — who are not included in the provisions of the law.

56. In the present paragraph, we will mention also the "monthly aid" to which is entitled, after his release, the convict who, during the term of his imprisonment, became totally unable to work, as a result of a labour accident or of an occupational disease ; the amount of the aid is fixed according to the legal dispositions governing, under the state social insurance system, the granting of disability pensions to those who had not previously been wage earners (Law No. 25/1969, art. 14).

The right to a monthly aid is enjoyed also by the convict who, on the date of his discharge from prison, is an invalid of Ist or IInd degree, owing to an accident without any connection with work, if before serving time, he had carried on a remunerated activity of any kind for 3 years at least ; in such a case, the amount of the aid cannot be less than a half of, and cannot exceed the corresponding social aid, as it is established by the legal dispositions under the state social insurance system.

In both cases, the monthly aid is accorded only if the discharged convict does not satisfy the conditions for getting a pension or social aid from the state social insurance bodies — or from other sectors of activity with their own social insurance system — and only if he does not possess any personal material means.

57. *Supplementary pensions.* A supplementary pension is paid, besides the social insurance pension or the state social aid, and regardless of their amount.

The supplementary pension is due to the pensioners and to those entitled to social aid under the state social insurance system, only in so far as they have contributed, during their remunerated work, to the creation of the funds especially provided for the payment of these categories of pensions.

The supplementary pension due to those who have paid their contribution for 20 years or more, amounts to 16 per cent of the tariff wages utilized for the calculation of the principal social insurance pension.

For those who have contributed for less than 20 years — but for 1 year at least — the supplementary pension is established by application to the tariff wages, as above said, of a percentage which rises gradually from 5 — for a contribution of 1 to 2 years — to 14, when the time during which the wage earner has contributed to the pension funds is of 10 years at least.

For those who have no right to social aid, the supplementary pension is etablished by taking into account — for the application of the above percentages — the average monthly tariff wages by the contributions of the wage earners, if the latters are not entitled to receive such a pension — for the reason that they have worked less than 5 years ,the supplementary pension is established by taking as a calculation basis the average monthly tariff wages of the period of activity.

As the supplementary pension is paid from the funds formed by the contributions of the wage earners, if the latter are not entitled to receive such a pension — for the reason that they have contributed for less than 1 year — the sums withheld under the title of contribution, are returned to them in full.

It is worth underlining, in our opinion, the fact that by the combination of these two pensions a principal one to which the supplementary pension is added, the amount of the two pensions may exceed, in some cases, the gross wages to which the pensioner was entitled before retiring.

58. *The right to pensions of the members of agricultural co-operatives of production.* Besides the state social insurance system we shall deal in the present paragraph, with the rules governing the right to pensions — and also to other social rights — of the members of agricultural co-operatives of production for they are an important category of working people.

By Decree No. 535/1967 the right to old-age and disability pensions was acknowledged to the members of co-operative organizations and to their children the right to a successor pension, if bereft of both parents. By the dispositions of the same Decree the members enjoy the right to an aid in case of temporary disablement, to a paid maternity leave and to aid for large families.

Finally, by Decree No. 246/1958 — modified by Decree No. 254/1971 — it was stipulated that the pensioners members of agricultural co-operatives of production and the members of their families, enjoy the right to gratuitous medical assistance as re-

gards support, medicines and health-restoring material during their hospitalization ; also the right to medical assistance to the ill at their domicile.

59. The pensions and the other social rights due to co-operators are established by the office of pensions for the members of co-operatives, under the conditions and in keeping with the dispositions of the statute of the Office of pensions and of its functioning rules. The application of these criteria, with regard to the establishment of the degree of disablement, is carried out by special bodies in keeping with the procedure provided by the legal rules concerning pensions granted for disability under the state social insurance systems.

Old-age pensions are accorded to men at the age of 65 and to women at the age of 60. The amount is established according to the number of years worked effectively in the co-operative, this amount being higher for men who have reached the age of 70 and for women of over 65.

We must also mention that from January 1, 1971, the pensions of the co-operators and of their children — if bereft of both parents — have been increased by the Decision of the Council of Ministers No. 1877/1970 (art. 9).

60. Payment of the pensions and of the aids due to the members of agricultural co-operatives of production may be claimed within the terms of extinctive prescription established under the state social insurance systems.

Payment of the sums owed according to these rights is effectuated from the funds of the Office of Pensions, formed by the contribution of the co-operatives and by the personal contribution of their members.

The pensions of co-operators cannot be ceded ; they may be pursued under the same condition in which the creditors of other co-operative members are entitled to pursue the incomes collected by them for the activity carried out within the framework of the co-operative.

The pensions of co-operators are not taxable. Moreover, the capacity of pensioner entitles the co-operator, under certain conditions, to benefit by a 50 per cent reduction of the tax upon annual incomes of up to 1,000 lei, collected in keeping with the work days performed in the co-operative.

61. *Social assistance granted to old people.* A pension does not always provide a sufficient means of livelihood to old people. In exceptional situations, the pensioners — and especially old men and women who are not entitled to a pension — are in need of

particular care, of special measure of protection. Such situations are common among those afflicted by chronic diseases whose condition necesitates permanent nursing by other persons, and among aged persons deprived of means of livelihood or who have an insufficient pension and no kinsfolk obliged, according to the Family Code, to support and nurse them.

Assistance to these categories of old people is achieved, in our country, by means of hostels specially organized for pensioners and for those without pensions, by workshop hostels, hospital-hostels, bathing and health sanatoriums, canteens and, occasionally, by pecuniary aid (D.C.M. No. 454/1957, modified by D.C.M. No. 1210/1970).

The old people living in hostels are in the care of the state, and benefit integrally by support, medical assistance, treatment in health and bathing resorts ; besides, there are working conditions in accordance with the capacity of each one of them ; a special method called "ergotherapy", is used for the recovery of chronic patients and also to prevent and retard the degenerative processes which affect old people.

The expenses are supported by the state budget, but the pensioners are obliged to contribute half their pension to these expenses, and in case the sum spent on them is lesser than that half, to contribute the entire sum.

Those who are not pensioners, but have personal incomes of a permanent nature or the right to be supported and looked after by other persons, are obliged to contribute a monthly sum established by the body which authorizes the admission to these institutions, in keeping with the amount of the income and the possible obligations devolving, by virtue of the law, upon the boarder towards other persons. On no account is the contribution to exceed the cost of the upkeep.

Canteens, created as an aid for needy people, provide midday and evening meals to old people who are not lodged in hostels as well as to all persons temporarily disabled and without personal means of livelihood.

§ 8. *Legal Facilities Concerning the Housing Problem*

62. *General observations.* The problem of providing each person with a home is the most important among those raised by the existence of a family and the satisfaction of its essential needs. Consequently, the solving of the problem could not be left to hazard under the organizational system of our country.

In this respect, when the socialist system was established, there proved to be necessary to give legal rules for reglementation of that matter because, as a consequence of the damages resulting from the war, the number of the dwellings that could still be used became altogether insufficient compared with the legitimate needs of the entire population. The initial deficiency in urban lodgings was necessarily and continuously aggravated by the process of the industrialization of the national economy, which involved a constant flow of the labour forces from rural localities to the industrial centres.

Under such conditions, the housing problem could not be totally solved otherwise than by the implementation of an ample programme of housing construction liable to satisfy integrally the needs of the working people. A building drive of such vast proportions requires, however, a long period of time and enormous investments. National economy plans have considered housing construction as an important chapter from the very first. But the impressive number of buildings erected in compliance with them is not yet able to cover all the needs.

The first legislative measures taken in this field were not able to fully solve the housing problem but only to ensure a more equitable distribution of lodgings between those equally entitled to use them. In order to achieve a just distribution Decree No. 78/1952 was issued whereby a "housing norm" was established. This juridical notion must be understood to mean the floor space to which each person is entitled and which is generally of 8 sq. m., taking into account the ratio between the number of the population and that of the lodgings existing in urban localities.

Under this system, no family was allowed to utilize more floor space than provided by the law; the space was calculated by multiplying the figure corresponding to the housing norm with the number of persons of the respective family no matter whether the members of the family were authorized to utilize the dwelling in the capacity of tenants or of proprietors.

As a consequence of these rules, all that exceeded the legal floor space due according, to the "norm", to a person or to a family was considered as "vacant" space and as such susceptible of being distributed — by the juridical instrument of the lease — in order to satisfy the needs of those entitled to a dwelling; the socialist organizations which have in their administration or in their patrimony vacant dwellings, or the individual owners of such dwellings, have the legal obligation to proceed to the conclusion of leases.

The application of the legal system was facilitated by the census of buildings of December 1948 — by which an exact inventory of the existing housing fund was drawn up — and by the dispositions of Decree No. 92/1950 for the nationalization of certain buildings whereby the state patrimony incorporated an important part of those belonging to private persons in towns.

63. Broadly speaking, the system of the first rules is still in effect at present, since the housing fund being insufficient, the materialization of the principle of a just distribution of the existing dwellings is still the aim pursued by the housing law. It is no less true that the recent laws No. 4 and 5/1973 reflect from a juridical standpoint — along the ascending line of socialist construction — the successes scored by the implementation of the plans of housing construction; they make clear the evolution of this right and the rules governing it which steadfastly pursue the solving of the arduous housing problem in the spirit of socialist equity and of the satisfaction of the housing needs of all working people, as far as the limits of the material basis of the national housing fund allow it.

64. An examination of the structure of these laws plainly shows that their dispositions are intended to ensure to families the right to the use of a home by distinct juridical means ; on the one hand, by the rules on the juridical relations of leasing in the spirit of a just distribution of the existing housing fund, which has increased very much under the socialist system and, on the other hand, by stimulating families which live as tenants, to become owners of the respective dwellings in case they belong to the state —by the conclusion of a purchasing contract — or of other dwellings built or having to be built by the socialist enterprises, by the conclusion of special contracts for the purchase of the construction of dwellings.

The different juridical means whereby the laws in force seek to make dwellings available to families, surely necesitate a particular study.

65. *Aid granted concerning the leasing of dwellings.* The system of lease, created by Law No. 5/1973 "regarding the administration of the housing fund and the rules governing the relations between proprietors and tenants", is applied :

a) in the first place, to dwellings belonging to the state socialist property which are leased to any person entitled to them by state enterprises especially created with a view to administer the respective dwellings ;

b) in the second place, to dwellings belonging to the state which, being administered by state enterprises or economic organizations other than those above mentioned are leased by the management of these organizations only to their personnel;

c) in the third place, to the dwellings which being the property of co-operative organizations, or of other civic organizations, are leased by the management of the respective organizations to their personnel or to their members;

d) finally, the legal system is applicable, in its totality, to the private dwellings if their owners live elsewhere or only to those rooms which exceed the floor space ascribed to their owners, when they live in their own houses.

Therefore, the structure of the law concerning the leasing system, has no unitary character because, as we have shown above, as regards some of the dwellings, only the wage earners or the members of the socialist organizations which administer the respective buildings are entitled to rent them. In such a case, the lease is subject to a different juridical condition since it is considered as an accessory to the main labour contract concluded between the tenant and the leasing organization.

In all cases, the dispositions of the law as regards the limits of the floor spaces are applicable. At present, the unit of measure of a just distribution, is the right of each person to the use of a floor space of 10 sq. m., as against 8 sq. m. formerly.

We should, however, specify that the rule on the established floor space has never been applied mechanically, whether in the past or under the present law. Its dispositions allow supplementary floor space to the categories of persons who, owing to their occupations or to a certain disease, need an additional space (art. 7); the respective categories are enumerated within certain limits in annex No. 1 of the D.C.M. No. 860/1973.

The rule concerning a floor space of 10 sq. m. is applicable only when it comes to establishing the right of a family to occupy a dwelling by virtue of a lease. At present, when the problem arises of the right of a proprietor living in his own house, the floor space to which the proprietor and his family are entitled is no longer determined by the limits established by the above—mentioned law but only in keeping with the number of rooms, regardless of their surface. In such a case, "each member of the family is allowed a room for himself and above that two more rooms at most". The proprietor has the obligation to rent to other persons the rooms which exceed the number so determined, and if he does not fulfil this obligation of his own free will, the executive com-

mittee of the people's council is authorized by the law to lease the respective rooms to the entitled persons.

This limitation of the exercise of the right of property, applicable to urban dwellings, is wholly justified by the principles of socialist ethics and equity, seeing that by such a measure the owner finds it impossible to exercise improperly his right or to use it against the rules of life in socialist society, namely in all cases when his floor space is obviously out of proportion with his real needs and the legal floor space attributed to tenants under the legal system.

The establishment of the floor space corresponding to necessities, is not left only at the subjective discretion of the proprietor. The limitation of the exercise of the right of property corresponds to a principle generally established in socialist society (Decree No. 31/1954) (art. 1), according to which the subjective rights are acknowledged in so far as the satisfaction of the private interests is in keeping with the requirements of public interest. In the present case, the accord between personal and public interests — represented by the just distribution of the whole housing fund available — requires such regulation of the exercise by the proprietor of the main attribute of his right of property, to wit the usage of the dwelling.

In spite of this system, which limits to his justified needs — but in keeping with another unit of measure — the space which the proprietor is authorized to use as a dwelling, the situation of the proprietor, from the standpoint of the use of the dwelling is undoubtedly more advantageous than that of the tenant who is allowed 10 sq. m. for each person.

The quantitative difference between the extent of the proprietor's right and that of the tenant as to the use of the dwelling is meant by the law as a stimulus to the latter to change his juridical title and become a proprietor.

66. As for the system of obligatory leasing of the vacant space in buildings which are socialist or individual property, the law provides an order of priority in leasing by taking into account, in the spirit of socialist equity and of the aid given to large families, both the amount of the income and the number of children of the respective famliies ; these criteria apply in all leasing cases when there is question of establishing the order of preference between categories of claimants entitled to it.

The law establishes, under a general system, the order of priority which the enterprises specialized in the administration of the state housing fund have to take into consideration when called upon to lease vacant dwellings. It is a complex order schedule

with priority criteria that take into consideration both the interest of the organization of work and the protection accorded to families. After the category of "skilled workers", "employees transferred in the interest of service", "special personnel", and of "graduates appointed in production", the order of preference established by the law lists the category of "large families". Furthermore, in each of the respective categories of priority, preference is given, as provided expressly by the text of the law (art. 8) to "those who have difficult living conditions, particularly those with many children".

Likewise, the dispositions of Law No. 14/1973 (art. 12) list among the categories which are given priority in leasing dwellings that are state property, the "wage earners with a small income" and the "young married people".

Along the same line of protecting large families, an order of priority is established also in the special case when several tenants have the right to "extension". Such a problem arises in a flat when part of it becomes vacant, by a change of lodgings or by any motive whatsoever and the other tenants of the flat do not have at their disposal the entire dwelling space to which they are entitled to according to the law. In such a case, the tenants have an equal right to extension, namely the right of occupying the vacated space in order to supplement their floor space. In such situations, the law provides that priority is to be given to the family "with the smallest income and the largest number of children" (art. 7).

67. The number of members of a family — and particularly of large families — does not only constitute a criterion of priority in leasing. The collective interest of all the family members determines the content of the right to use recognized by the law by virtue of the lease. The contract is concluded with a single member of the family. Nevertheles, the leased dwelling, as the law specifies (art. 15), "is made available to the lessee and to the members of his family, who are nominally mentioned in the lease contract".

The members of the tenant's family — whose name is put down in the lease contract — do not thereby become contracing parties. Nevertheless, they acquire, each separately, according to the law, an equal personal right to the use of the dwelling, provided they continue to live together with the signer of the contract.

Such a condition is not especially provided concerning the members of the family, since it is a general rule, applying to housing space. The principle according to which the right to floor space ceases by default of exercise, if non- use is not due to uncommon circumstances, especially established by the law (D.C.M.

No. 860/1973, art. 12) is indeed a truly specific aspect of the socialist system in such matters.

Under this system, the very existence of the right to use the space being conditional upon actual exercise of it by the possessor of the right — whether the tenant himself or one of the members of his family; otherwise, the right to use the space is abolished therefore, it only enjoys the protection of the law in so far as it is exercised according to its economic and social purpose. It is a natural rule in socialist legislation, which pursues the just distribution of housing space still insufficient quantitatively compared with the needs of all those entitled to it, that the non use of a dwelling for 6 months signifies that the attribution of the housing space does no longer serve the purpose pursued by the law. Maximum usage of the unique social fund of housing surface, which is the main task of the legal system, cannot be conciliated with the non use of the dwelling.

68. The co-existence of the rights of the members of the family is only the natural consequence of the structure of the right to use the floor space as it results from the purpose of its legal regulation and from the manner in which it is carried out by the establishment of the limited space system. The extent of the right to use the space is determined in keeping with the number of the members of the family and the space allowed for each. By equally determining the conclusion of the lease, and the extent of the leased space, the members of the family are fully qualified to avail themselves of the benefices of the lease. The right to use the space must necessarily be enjoyed also by the members of the family, since only their existence and their number determine the extent of the right, and this not only on the conclusion of the contract, but all the time the right of use is exercised. The diminution of the members of the family is indeed liable to cause a restriction of the extent of the previous object of the right. The reduction of the number does not result in part of the leased floor space becoming vacant. Such a reduction represents juridicaly the loss of some of the rights that previously existed in favour of the members who no longer belong to the family group.

69. The members of the tenant's family do not acquire personal rights under all the leases concluded under the limited floor space system. They do not acquire such rights when the lease is an accessory to the labour contract, seeing that, in that case, the existence of the right of using a dwelling is conditional upon the existence of a labour contract and this condition is not fulfilled by the members of the family.

70. The structure of the rights belonging to the members of the tenant's family has not been specified in the legal regulations; it cannot therefore be determined but in the light of the aim pursued by their admission, that is to say the protection of the common interests of the family, considered as a real unity. The rights recognized to family members are created in order to defend their interests against any abuse on the part of the lessee who might disregard their interests.

The rights of the members co-exist and are on an equal footing with the right of the lessee, and may be exercised together with him and not only in his absence.

It might be asserted that, under certain aspects, the legal regulation creates inequality between the rights to use a dwelling, but this is not against the interests of the members of the family, but on the contrary, to their advantage. Equality of rights should determine a common and indivisible obligation for all members of the family as regards both payment of the rent and the fulfilment of other obligations, corresponding to the respective rights; for, otherwise, there would be inequality between these rights, for example if the obligation to pay the rent devolved only on the lessee, which signifies that the rights of the other members would be exercised gratuitously. The right recognized by the law to a member of the family, who did not sign the lease contract, — cannot be separated — from a logical standpoint — from the obligations resulting from this right. For the fulfilment of these obligations he ought to be responsible together with the lessee. However, as the dispositions of the law did not expressly assign a joint character to the obligation of paying the rent, the existence of the principle of joint responsibility cannot be deduced by interpretation.

But the inequality has a formal aspect only, since in the economy of the law in force payment of the rent is really obligatory for all the members of the family of the lessee being imposed by indirect, but no less efficient, means than the principle of joint responsibility, namely, by the sanction of eviction from the lodgings, which — as will be shown hereunder — is applicable to all members of the family and not only to lessee if he does not pay rent, which signifies that the distinct rights of the members of the family are not opposable, from this point of view, to the owner of the leased dwelling.

71. The distinct and equal nature of the rights granted to the members of the family means that, juridically speaking, the deeds of sale concluded by the lessee, without their consent, cannot be opposable to them except if such a solution might be supported

by express legal provisions or if there has been a tacit legal mandate ; a mandate which does not result from the express texts of the law, but whose existence may be assumed, in the system of legal rules, as representing a necessary manner of organization of the exercise of the indivisible rights of family members, in order to avoid the impossibility of utilizing them. The assumed existence of the mandate could not, therefore, be considered as a qualitative difference in favour of the right of use of the lessee and against the equality of rights that should be enjoyed by the members of his family.

If this lessee gives up the contract or determines the termination or abolition by any other means of his right, such juridical acts cannot affect the rights of the members of his family, who are entitled to apply for a new contract concluded with one of them by the socialist organization.

A different juridical solution is, however, adopted when the abolition of the right of the lessee is not the effect of a juridical act, but of the sanction for non fulfilment of the obligations resulting from the lease contract or from the law, or for the violation of the rules of social life. The sanction is applicable equally to the members of the family, even though in the hypothesis of obligations — from a juridical point of view — the signer is alone responsible for the execution and even if, in the latter hypothesis, the blame for the guilty deed attaches to him alone.

The collective feature of the sanction is however justified in the case of obligations, because there is nothing to prevent the members of the family from fulfilling the obligation, in place of the lessee ; and, in case of transgression of the rules of social life by the lessee, the extension of the sanction to the members of the family is to be accounted for by the predominant interest in the observance of such rules under the socialist system.

72. Personal rights of using the leased dwelling are enjoyed only by those members of the family who satisfy the definition established by the law concerning the meaning of the notion : "those belonging to the family are the husband and wife and the children, as well as the parents of the husband and wife supported by the them" (art. 15) ; those members alone are to be mentioned nominally in the lease contract. It is a definition whose restrictive nature is designed to ensure control over the application of the limited space system and of the observance of the order of priority in leasing dwellings.

73. The plurality of juridical relations created by the personal rights of the members of the tenant's family, necessarily im-

plies indivisibility in the exercise of the rights of use ; this indivisibility ceases in accordance with the provisions of the law in one case only, viz. divoce : "In case of divorce, unless the parties have agreed otherwise, the benefit of the contract concerning the dwelling belongs to the spouse to whom the children have been entrusted and, if there are no children, to the spouse who has won the divorce case". In all other situations, the court which admits the divorce, decides which of the two spouses will enjoy the benefit of the housing contract (art. 22). It is a regulation which makes it its concern to protect the interests of the children. In pursuance of the same end, the interpretation of judiciary practice has sought to constructively cover the deficiency of the legal dispositions.

In the first place it was decided that the right acknowledged to husband and wife of establishing, by common agreement, which of the two will use the dwelling, cannot have an absolute character. The contracting liberty of the spouses is limited, on the one hand, because their convention could not be at variance with the legal disposition of a peremptory nature and, on the other hand, by the prejudices that might be caused to the rights of other persons by such an agreement ; the control over the validity of the convention concluded by the spouses is exercised by the court on the occasion of the divorce suit.

Thus, it has been ruled that such a convention cannot be admitted by the court if it is detrimental to the children issued from the marriage of the parties.

In the second place, the text of the law does not refer to the division of the common dwelling, but only to the benefit of the lease. It is also true that the text has been interpreted to mean that whenever it is possible to divide the floor space, the court delivering the divorce sentence is obliged to decide on the division ; because the right of using the floor space belongs not only to the party who has concluded the lease, but equally to the spouse who have asked for a divorce.

Only if the division is not possible, the judge must decide which of the two spouses shall have the benefit of the lease, taking into consideration the conditions stipulated by the law. The problem whether the dwelling may be divided cannot be solved exclusively by appreciating the facts. It presents some juridical aspects as well. Thus, it has been ruled — along the line of protecting the childern's interests — that the dwelling cannot be divided if such a measure is prejudicial to the rights of the children or when one of the divorced spouses marries again.

Likewise, the dwelling cannot be divided if the lease is an accessory to the labour contract; because, as a result, part of the dwelling could not be leased to a person who is not on the staff of the respective socialist organization. In case of such a lease, its benefit could only be assigned entirely to the employed spouse, even though the conditions stipulated by the law were militating in favour of the other spouse.

In judiciary practice, the solution adopted by the text of the law has been interpreted as representing a principle of general application, in any situations whatsoever for whose solution there is no express regulation to the contrary. On the basis of this general character, it has been ruled that although the text of the law expressly refers only to the hypothesis that the spouses are beneficiaries of a lease, its application has to be made, by analogy, even in case they occupy the lodgings in the capacity of subtenant or by permission of the person who is entitled to the use of the flat; naturally, in such a case the attribution of the dwelling to one of the spouses by the divorce judgement cannot induce the modification of a juridical position.

Along the same line of application by analogy the lawcourts have ruled that the dwelling is to be divided or attributed in pursuance of legal dispositions, even if the dwelling belongs to the two spouses, as joint owners, or exclusively to one of them; in such situations, the division or the attribution is temporary, lasting only until the final and complete solution of the patrimonial relations between the parties by a separate law suit concerning the division of their common property.

It has also been ruled that if in the divorce suit the division of the common property has been applied for, and the dwelling, which is joint property cannot be divided, no objection can be raised if it is assigned to the spouse entitled to a dwelling, according to the legal criteria: certainly only in so far as the attribution may be compensated pecuniarily by the goods which are the share of the other spouse, or, perhaps, by the obligation of paying a corresponding difference.

Even if the dwelling belongs exclusively to one of the spouses, it was suggested that it be divided — upon the same line of analogical interpretation, this time, with the texts of the Family Code (art. 41—42), which lay down that the court is entitled to establish, in case of a divorce, the obligation for one of the parties to support the other or the children.

The obligation of material aid, which characterizes family relations, subsists even after the dissolution of the marriage, in

the form of a support obligation. But, such an obligation implies providing means of livelihood, including a dwelling, and pursuant to the Family Code, the obligation may be carried out also in kind, the court being authorized to appreciate and establish the manner and the modalities of execution, according to circumstances. "In the light of the aforementioned legal provisions, it was decided that, on request, the court, appreciating the circumstances of the case, be authorized to oblige the spouse who owns the dwelling to provide the other and also the children under age entrusted to the latter for upbringing and education, with a suitable floor space, either in his (or her) apartment, or in another lodging."

As part of this directive, given by the Supreme Court to all law courts (Decision No. 5/1969), the recommended solution lays stress mainly on the solicitude to be shown for the protection of the family, of the spouse and children, since, as it is specified in the very motives of the aforementioned guiding decision in its interpretation of legal dispositions, "the right to a dwelling of the spouse and of the children must be assured also in other situations" ; in any situation whatsoever in which such a necessity is of a peremptory nature ; even though, as in the present case, the recognizance of the right is at variance with the exercise of the attributes of ownership.

74. The text of the law refers exclusively to the hypothesis when the marriage is dissolved by divorce. If the marriage is declared null or is annulled, by virtute of the retroactive effect of the nullities the benefit of the lease belongs to its signer, seeing that the cancelled marriage — considered to have been from the first without any legal existence — cannot constitute a manner of valid acquisition of the right to use floor space for the person having concluded such a marriage. The application area of the principle of retroactivity has not an absolute character in this matter. As it will be stated in the paragraph on the dissolution of marriage, the Family Code establishes an important derogation, from the general rule in favour of the spouse — who, because of his (or her) good faith on the conclusion of the dissolved marriage — keeps up to the date when the judgement becomes final, the situation of spouse of a valid marriage, which signifies that "the patrimonial relations between husband and wife are subject, by analogy, to the dispositions relative to divorce" (art. 24 F.C.).

This text is surely applicable also as regards the benefit of the lease, which is undeniably a patrimonial relation. As part of this application, it is obvious that the spouse of good faith, who was not the signer of the lease, has acquired, as a result of the

dissolved marriage, the right to use the other's dwelling just as if the right had been acquired by the effect of a marriage validly concluded. Consequently, with regard to this patrimonial relation, the court is called upon to apply by analogy the rules referring to divorce in case of dissolution of the marriage. It signifies that unless those who have concluded the dissolved marriage have agreed otherwise, the benefit of the lease contract will be assigned to the parent to whom the children have been entrusted.

By virtue of the same principle, the division of the dwelling is to be made in keeping with the rules applicable, in this respect, to cases of divorce.

75. The concern of the law to provide a dwelling to families with a small income is shown not only by the priority order established in the leasing of the available floor space, but also by the conditions for determining the amount of the rent.

The basic tariff, which is taken into consideration for the establishment of the monthly rent, is fixed mainly in keeping with the amount of the tenant's income. Thus, pursuant to this criterion, the tariff is of 1.80 lei per sq.m. of floor space when wages do not exceed the sum of 800 lei, and rises gradually to 2.70 lei, if the income is higher than 1,600 lei. It should be noticed that, at present the minimum wages have risen to 1,000 lei (D.C.M. No. 904/1972). As for the surface of the annexes, the tariff varies with the amount of the income, as indicated above, between 0.72 and 1 leu, or between 0.36 and 0.50 per sq.m. according to the legal category of the annexes.

Along the same line of protecting tenants with modest means, the law specifies that those who receive a social aid, the persons unable to work because of old age or maladies, and who, at the same time are destitute of living means, and also the students who live on their own, without any other income than a scholarship, are all assimilated to the wage earners who receive a salary of up to 800 lei per month, as regards the basic tariff applicable to the calculation of the rent.

We must also recall the disposition of the present law (art. 6), whereby the standard floor space allowed has increased from 8 to 10 sq.m. — an increase which has implicitly determined a general reduction of the rent, since the basic tariff serving to calculate the rent increases progressively for the floor space which exceeds the surface corresponding to the housing norm.

76. Finally, as part of the regulations governing the juridical relations resulting from the lease, we must particularly point out the legal disposition (art. 24) which provides the application of

the sanction of eviction of the tenant and of his family for not having paid the rent, only when failure to carry out the obligation is due to bad faith. This departure from common law rules reflects the human spirit in this matter also.

According to the Civil Code, the right to cancel the contract for non-execution of the obligations is expressly stipulated : „In case one of the parties does not fulfil the principal obligations, the other party may ask for the termination of the contract" (art. 1439). In the application of this disposition, the tenant can only object, in his defence, to the application for the termination of the lease, the fault of the owner — in case the latter refuses the rent — or the existence of „force majeure" within the meaning assigned by the common law to that notion, namely, an objective circumstance, which has hindered him from carrying out his obligation and which he could neither foresee nor stave off.

According to the derogatory disposition mentioned above, if the obligation refers to the payment of the rent, the fact of its non-execution does not incur, by itself, the sanction of the termination of the contract — with eviction as a natural consequence — except when non- payment is an act of bad faith, that is a „fault" on the part of the tenant, which is not assumed, but has to be proved before the court, during the suit. Thus, as ruled by the Supreme Court (Decision No. 906/1956), „mala fide" cannot be inferred from mere non payment of the rent, but, as a determining element of an eviction judgement, „it must be established, especially and concretely, to which end the law court shall ask for proofs, either at the request of the parties, or directly, ex officio, because non-payment may also be in good faith, namely due to an error in calculation, or for lack of material means or other similar motives, independent of the will of the tenant, excluding the idea of bad faith on his part in the nonpayment of the rent."

But for ensuring a dwelling to the family even the condition of bad faith has not been considered sufficient. Only nonpayment of the rent for three successive months or of the quota due towards the expenses incurred in the interest of all the tenants can bring about the termination of the contract.

In pursuance of this legal disposition, non-payment of the due sums in bad faith for a term shorter than 3 months or even for a longer term, if the outstanding settling dates are not consecutive, gives rise only to the right of suing the tenant and not to the right of terminating the contract. Furthermore, even though the condition of non-payment of the rent during three consecutive months is fulfilled, the court is entitled to reject the demand for

eviction — obliging the defendant to the payment of legal costs — if the rent owing has been paid after the action was brought against the tenant, on condition that no final judgement should have been previously delivered obliging him to the payment of the rent — or of the quota of the common expenses — or to the payment of legal costs.

77. Finally, we should particularly underline the juridical certainty as regards the continuity of the right to use the dwellings, which has been ensured to the tenants and to the members of their families, by the legal dispositions that extended the existing leases in the past and also extend them at the present time.

Expiration has never invalidated a lease concluded by virtue of the dispositions of the special law, and this regardless of the nature of ownership, of the fact that the dwelling which is the object of the lease, is socialist or private property.

The stability of the tenant's right to use the dwelling is thus completely ensured by consistent intervention of legal extensions. At present, the contracts of lease are prolonged until 1 January 1978 (Decree No. 554/1972).

78. *Aid granted to become owner of a dwelling.* The successes obtained in housing construction — which have been and still are a principal element of the economic plans — have made it possible to adopt principles providing a new solution to the housing problem in the legal rules recently come into force. What is specific and innovating in the new housing rules is the fact that the law does not confine itself to organizing, according to the principles of socialist ethics and equity, the relations between owners and tenants ; the law mainly aims at the very abolition of such relations — in as large a measure as possible — by changing the title of the present-day tenants of the dwellings belonging to the state, so that the right to the use of a dwelling should be exercised not under the title of tenant, but as an attribute of individual ownership.

This end is pursued, in the first place, by the option granted to the tenants — an option they are encouraged and even stimulated to exercise — to become owners of the apartments where they live or of newly built ones, facilities being offered them for that purpose.

Such a legislative policy became possible not only by the enormous increase in the national housing fund, but especially by the constant growth of the earnings of the population — a considerable growth especially when compared with the expenses required by the way of life in a socialist society, which is altogether alien as to the spirit of waste ; a growth which must needs bring about the creation under the title of savings of important pecuniary reserves among the working people.

It is consequently the aim of these legislative measures to channel the savings towards the acquisition of ownership of the lodgings which are now state socialist property. It is not therefore, a legal obligation for the tenants to purchase the apartments in which they live or to build new ones ; it is a right accorded to them ; non-exercise is indirectly sanctioned by an increase in the level of the rent which rises by 50—75 per cent or even 100 per cent according as the income which is the calculation basis is under 1,500 lei, between 1,500 and 2,000 lei, or over the latter sum.

On no account is the rent thus increased to account for more than 20 per cent of the tenant's income (art. 10, 35 of Law No. 5/1973 ; art. 15 of Law No. 4/1973).

The increase is not applicable to all categories of tenants, but only to those whose average income is of over 1,100 lei per month, for each member of the family.

79. We should specify that even though "all citizens, regardless of their monthly income, are entitled to build for themselves or to purchase a dwelling (Law No. 4/1973, art. 9), they may only possess, under such a title, one dwelling and one rest-home for themselves and their families (Law No. 4/1973, art. 5). By the term "dwelling" is understood — according to the legal definition (art. 8) — the floor space of one or several rooms with the respective annexes, forming an independent unit.

In the application of this principle, the law provided that "the members of a family may possess as a joint property or as a property belonging to one of them, one dwelling and one rest-home" and that "the dispositions concerning the members of the family refer only to the husband, wife and children under age. In case the above-mentioned "acquire a second dwelling by succes-

sion, donation, as a result of marriage or in any other way", they "are obliged to sell one of them within the term of a year". And if the obligation of sale is not carried out within the established term, "one of the two dwellings is to be transferred to the state, by decision of the executive committee of the district people's council or that of the Bucharest Municipality, with payment of a compensation, according to the rules established by decision of the Council of Ministers". As long as the decision has not been issued, the members of the family are entitled to choose the dwelling which is to be left to them. The law also specifies that the above dispositions "are applicable also to those persons who, on the date of its publication, own several dwellings, the term of a year starting from that date" (art. 56).

The aid accorded by the state to those who wish to own a dwelling differs, in the first place, according as the dwelling is still to be built or if it is already existing in the state's patrimony.

Firstly, this aid may consist in the attribution of the land necessary for construction in exchange for an annual tax, in the granting of long-term credits, in supplies of building materials and also in the working out of projects and their execution ; finally, in exemption from the tax on the dwellings purchased or built with the aid of the state (art. 10, 53).

Even in case of a dwelling that is to be built, the aid of the state is different, depending on the manner in which it is to be constructed and, of course, on the means of the future owner.

Thus, a dwelling may be erected entirely or partially by personal means with the credits accorded by the state, upon land that is individual property or state property and which is assigned for that purpose by the executive committee of the people's council for the time the respective building stands there (art. 4).

In exchange for the right to use the ground assigned for the construction, the beneficiary is obliged to pay an annual tax of 1 leu for each square metre of the area (art. 49).

The dwellings built with the aid of the state are planned and executed by state or co-operative organizations, under contracts concluded at firm estimate prices or by the owners themselves under their supervision.

The wage earners and the pensioners residing in towns who

build with their own means — though not a villa type home — may get for that purpose credits of up to 25,000 lei, repayable over 20 years at most.

The working people living in rural localities may obtain, like the above mentioned beneficiaries, credits to the same amount and on the same terms, for building a home with their own means, particularly those who work in large cities and live in their proximity (art. 25).

Dwellings may also be built by cooperation associations, created for that purpose, with the contribution of their members and with the credits granted by the state; cooperation associations build the dwellings in the form of many-storied apartment houses, either by concluding building contracts with the socialist organizations qualified to do such work, or under their own administration (art. 70). The dwellings may be built according to skeleton designs, put at the disposal of the future proprietors in exchange for their cost by the state organizations, the respective designs being adapted to the nature of the ground by co-operative organizations or by those servicing the population (art. 39).

Co-operation associations may also be created for building on land belonging to one of the associates. In such a case, with the consent of the proprietor, the land is used jointly by the members of the association, while the building stands there. The members of the association are to pay to the proprietor an annual tax of 1 leu per square metre (art. 62).

The aid of the state, as regards the cost of the building materials, is not accorded when the dwellings are built by the proprietor on his own or by service enterprises. In that case, and also when the dwellings are built by co-operation organizations, in the form of small houses or of villa type, the building materials are obtained at the ordinary selling prices.

Only for dwellings built by state organizations or even by co-operative organizations — but, in such a case, only when the dwellings come under the category of buildings of the block type — the building materials are supplied at production prices (art. 40).

The aid of the state may also be accorded in as far as designs are concerned. The state draws up skeleton designs for dwellings

situated in great many-storeyed edifices. For the other categories of buildings, the designs are worked out by co-operative organizations or by other specialized enterprises (art. 39).

80. The principal aid of the state is that of the credits accorded to would be proprietors.

The state assists by credits and by executing the construction of private homes only if the homes do not exceed as to floor space endowment and finishing the highest norms approved by the Council of Ministers for such dwellings (art. 20), under Decision No. 1621/1972. The annex attached to the said decision establishes 5 types of apartments, formed of 1—5 rooms with the corresponding endowment and finishing.

The construction price is formed of two distinct parts : the sum which represents the minimum advance on the estimate price — which the owner has to pay initially, from his personal savings or out of the credit obtained especially for this purpose —, and the rest of the price which is to be paid afterwards.

Both, the sum of the minimum advance and the pay term for the price still owing are established in keeping with the amount of the tariff wages or of the monthly pension, namely : if it does not exceed 1,500 lei, the advance amounts to 20 per cent of the estimate and the term of settlement of the loan may be up to 25 years at most ; if the income does not exceed 2,000 lei, the advance is of 25 per cent and the term 20 years ; when the income exceeds 2,000 lei, the value of the advance is of 30 per cent and the maximum term 15 years (art. 22).

The interest on the loans is established in accordance with the tariff wages and the monthly pension, and also with the amount of the loan. It is between 2—5 per cent annually (art. 29).

The credits granted for the construction of dwellings cannot exceed :

— 35,000 lei for one-room dwellings
— 55,000 lei for 2-rooms dwellings
— 70,000 lei for 3-room dwellings
— 80,000 lei for 4-room dwellings
— 90,000 lei for 5-room dwellings

Generally, the state accords credits — within the above mentioned limits — only for the difference between the price stipula-

ted in the building contract, according to the estimate, and the initial advance deposited by the proprietor with the Savings Bank (art. 28). The Savings and Deposit Bank is authorized, however, to accord loans — for a term of 5 years at most — even in order to make up the minimum advance, also to complete the sum necessary for covering the integral cost of the dwelling, for a 10 year term at most. Such a loan carries an interest of 8 per cent annually (art. 33).

The loans for the construction of dwellings are accorded in pursuance of a priority order established by taking into account complex social interests, among which is, naturally, the attribution of a dwelling to "large families" and to "young couples".

Within each category preferential criteria have been established, namely for those who find themselves in a difficult housing situation, particularly for families with many children ; those who do not have an average monthly income of over 1100 lei for each member of the family ; those who have deposited a larger advance — and for a longer time — with the Savings and Deposit Bank (CEC) (art. 17).

The members of co-operative organizations and of other public organizations of an economic or social nature (art. 63) are entitled to loans for the construction of dwellings under the same conditions.

81. In the second case, when the problem is not to build a dwelling, but to become its proprietor by purchasing it from the state, the state helps by granting the credits necessary to pay the price.

The dwellings of the state's housing fund are sold gradually, according to the provisions of the state plan ; and in the first place, to the wage earners with large incomes liable to induce an increase in the rent of the dwellings they occupy (art. 16). The leased dwellings are only sold to the respective tenants (art. 42).

The estimation of the buildings designed to be sold is made by commissions established by the executive committees of the district people's councils and by that of the Bucharest Municipality. The lists with the fixed prices are posted up, the interested persons being authorized to lodge an appeal against the amount of the prices (art. 43).

Those who wish to buy a dwelling on sale, have to deposit an initial advance and will benefit by loans offered by the state under the conditions established for those who want to build a new dwelling with the aid of the state; the legal dispositions applicable in this matter have to be equally observed in every respect (art. 44).

We should also point out that the members of co-operative organizations and of other categories of civic organizations of an economic or social nature are also entitled to receive aid from the state for the purchase of a dwelling.

The aid of the state can only be granted to Romanian citizens. Foreigners, who reside or wish to establish their domicile in our country, are, however, entitled to build or to purchase, with their own pecuniary means, dwellings from the state housing fund. (art. 57).

Chapter VI

JURIDICAL STATUS OF CHILDREN

§ 1. *Legal Situation of Children Born in Wedlock and of Those Born out of It*

1. In the Romanian socialist law there is no discrimination, from the point of view of their legal status, between the children born or conceived in wedlock and those out of it. The disadvantageous status, which the previous Romanian law alloted to descendents born out of wedlock — either by limiting the kinship link to that between such a child and its parents only, or even by denying the juridical existence of any kinship link between the child and its father — has been completely eliminated in the system adopted by the Family Code which came into force on February 1, 1954.

Although in the present Romanian law the family is founded on "the marriage freely consented between spouses" (The Family Code, Art. 1) a child born out of wedlock has, in relation to its parents — as well as to their kinsfolk — the same legal status as a child born in wedlock (The Family Code, Art. 63). Therefore, by legalizing the obvious agreement between consanguinity and its legal protection, the Romanian law has granted kinship identical juridical effects, whether consanguinity on which kinship is based results from wedlock or not.

2. But, regardless of the character of consanguinity, its effects cannot be quoted unless the existence of such a legal kinship link — between the child and both its parents — has been proved according to the corresponding rules. And, as regards the way in which consanguinity is established the law could not draw a unitary system. However, the legal dissimilarities which differentiate the manner in which the respective types of consanguinity are established do not result in the creation of a disadvantageous status of children born out of wedlock ; they necessarily result from the absolutely different nature of the legal conditions in which the child is conceived and born.

3. We must also specify that the differences in legal regulation exclusively refer to the manner in which consanguinity bet-

ween child and father can be established. Whether the child is born in or out of wedlock has no bearing on the way maternity is established ; as in such a case only the material fact of the child's birth has to be produced. Whether the mother was married or not on the date of the birth of the child or of its conception can have no effect on the probative means accepted in establishing maternity and neither can it have any effect on their conclusive power, regardless of the nature of the proofs which have been produced.

§ 2. *Proof of Maternity*

4. The very fact of birth — on which maternity is based — is established, in the overwhelming majority of cases on the basis of a certificate testifying to such a fact, the certificate being the proof laid down by the law as a general rule for the establishment of the fact. And once maternity has been proved in this way, it enjoys absolute probative power when the proof of consanguinity resulting from the certificate is reinforced by the child having civil status in conformity with the respective certificate ; in such a case, no one, not even the child itself, can deny the reality of the certificate.

5. However, maternity cannot always be established on the basis of the certificate testifying to the child's birth. This situation may appear when the birth has not been recorded in the register of births and the failure to record the birth may be due either to the fact that there did not exist a register of births, or, in case such a register existed, to the fact one has overlooked the drawing up of the act. Likewise, the certificate testifying to the child's birth cannot serve as legal proof of consanguinity when the child has been registered as born of unknown parents. In such cases, and only then, the mother may recognize the child as being hers, either by a declaration made before any registrar, or by an authentic script, or, eventually, putting it into her will ; on the ground of this juridical act, the acknowledgement will produce its effects, whenever it is possible, beginning with the date of the testament up-drawing and not on the date of the mother's death as it is the case with all the other wishes of the deceased.

As the acknowledgement signifies, in the first place, the admission of a former fact, — i.e. the child's birth — the only condition required for its validity is that the mother be in the capacity of making such a confession. Moreover, this juridical act based on the mother's avowal has both an irrevocable character and a retroactive effect up to the date of the child's conception. But the fact that the mother cannot withdraw her confession does not imply that an untruthful recognition cannot be contested at any

time both by the child or by any other person interested in establishing its real filiation.

6. Finally, the child — without distinction as regards the character of its filiation : born in or out marriage — is authorized to establish by evidence in a lawsuit its filiation upon its mother. The law permits such proceedings when maternity cannot be proved by the birth certificate and also in case of legal dispute about the contents of the existing certificate.

§ 3. *The Establishment of the Paternity of Children Born in Marriage*

7. Unlike the filiation towards the mother, the establishing of the paternity — this very doubtful proof of the child's conception — implies necessarily an evidence which differs according to the child being born in or out of marriage.

Because the conception is a fact which cannot be proved either directly, or irrefutably, the law (art. 53 of the Family Code) exonerates — in the case of marriage filiation — the interested parties from the task of demonstrating this proof on the ground of paternity assumption which reads as follows : "The child born in marriage has as a father its mother's husband. The child born after dissolution, declaration of nullity or annulment of the marriage has as a father the former husband of its mother if it was conceived during the marriage and its birth took place before a new marriage of its mother."

Thus, in the very terms of the law, the fatherhood assumption is founded on the birth or on the conception of the child during marriage ; the same law (art. 61 of the Family Code) states in a subsequent assumption, that the legal time of conception is the period between 300—180 days before the child's birth ; as a matter of fact, without the provision of the last assumption — destined to exonerate the interested parties from the obligation of proving directly the date of the conception — the application of the assumption of paternity to children conceived during marriage would have been impossible.

By means of this double legal assumption, the common law establishes the filiation inside marriage upon the father by the simple proof of the date of the child's birth and of the marriage of its parents ; the assumption of paternity has the same force even if the mother's husband is not indicated as the child's father in the birth certificate or if the respective certificate indicates another person as father ; this is valid also if the child's father was registered as unknown.

8. One must also underline the fact that the legal assumption is applicable to the child born or conceived during the marriage of its parents, even if the marriage be invalidated or annuled ; even though the marriage, according to the declarative effect of annulment, is considered as if it did never exist from a juridical point of view.

As it is stipulated in the Family Code (art. 23), "the declaration of the nullity of the marriage has no effect on children, who maintain their status of children born in marriage." Thus, for the protection of children, the dissolution of their parents' marriage has no influence on the civil status of children born in it ; and this is valid even if the parents had not been of good faith and had known, on the date of the marriage conclusion, the vices causing its subsequent dissolution. At first sight, the legal disposition mentioned above seems to be useless, seeing that it has no influence on the effects of the filiation towards children ; the children resulted from the dissolved marriage need not preserve their status of "in-marriage born children" because in the equalitarian régime existant in Romania this status does not differ in any way from that of out-of-marriage children. The principle of this disposition is applicable but to the establishment of the filiation of the respective children ; because — as it will be further shown — the only difference between the in-and-out-of-marriage filiation refers exclusively to the manner in which the paternity of the child has to be established according to the quality of the assumed filiation.

9. Difficulties in the application of the legal assumption of paternity are encountered only in case of the mother's remarriage regardless of the new matrimony being concluded after the cessation, the dissolution or the annulment of the first one or the first marriage being dissolved or annuled before. In both cases, literal application of the assumption of paternity would lead to a double paternity — of both successive husbands of the mother — because the legal assumption has a double basis ; it is founded not only on the fact of the child's birth during the marriage, but also on its conception during this same period. In such cases, the legal assumption creates, if applied, a plurality of paternities : that of the first husband, resulting from the child's conception during the period he was married to its mother and that of the second one, resulting from the child's birth after the conclusion of the latter marriage.

The conflicting paternity of both husbands could not lead however to mutual annihilation of these legal assumptions, that is to the solving of this double assumption of paternity to the prejudice of the child's interests, not allowing it to call upon one of these paternities and leaving it with the civil status of an out-of-marriage child whose father is unknown.

The law (art. 53 of the Family Code) explicitely provides a solution applicable only for the first hypothesis, to wit when the first marriage of the mother ceased or was dissolved or annuled before the conclusion of the latter one. Between the two reasons which may authorize the application of the assumption of paternity, the text grants legal priority to birth. The child's father is the former husband only if "its birth took place before its mother concluded a new matrimony". Which means that if it is born after the conclusion of the second marriage of the mother, this second husband is the child's father despite of its being conceived during the first marriage.

10. The law does not expressly provide what happens in case the paternity resulting from the second marriage of the mother is warded off by way of a denial lawsuit. It was asserted in the juridical literature that in such cases one must admit the revival "ipso jure" of the first assumption concerning the paternity of the first mother's husband ; for the verdict for the plaintiff in a denial lawsuit eliminates, retroactively, the respective assumption of paternity as if it never existed and applied. This solution is primarily meant to protect the interests of the child ; in case of a double paternity assumption it avoids the danger of the child not being allowed to call upon one of these two paternities, restricting it thus to the status of an out-of-marriage child.

11. The law makes no provisions for the civil status of a child born in bigamy when the mother has concluded a second marriage before the cessation or the dissolution or the annulment of the former one. The latter marriage is undoubtedly nul — according to art. 19 of the Family Code — but the declaration of nullity has no consequence upon the situation of children who are preserving the status of inside-marriage children. It means that the second marriage — although nul — is able to fix, just as the former one, the assumption of paternity upon the new husband of the mother. The child is born, therefore, during two marriages, — equally valid concerning the application of the assumption of paternity. Thus, each of the two husbands of its mother is father of the child. In the juridical literature, it was with good reason considered that the family-code settlement of the case of a mother concluding a second valid marriage is also the obligatory solution for the problem of paternity raised by the hypothesis of bigamy. The formal criterion of the validity of the first marriage must not prevail upon the reality of the facts. Although the second marriage is nul for bigamy cause the assumption of paternity based upon it tallies undeniably in greater measure with the truth, since it is difficult to imagine that, after the conclusion of her second marriage, the mother had relations with her former husband or that she would have concluded a new matrimony knowing, at that

time, that she was pregnant. It was, therefore, asserted that in such a case — just as in the case of a valid re-marriage — the new matrimony must be preferred to the former one with regard to the assumption of paternity.

§ 4. *Establishment of the Paternity of out-of-Marriage Children*

12. The assumption of paternity, acting as a paternity proof, cannot be applied, because of its own structure, but to children born in marriage. In this sense it was not possible to draw an assimilation between children born out of and in marriage.

The legal assumption of paternity being not applicable to the filiation of children conceived and born from out-of-marriage relations, the filiation of this category of children to their father is established by recognizance or judgement (art. 56 of the Family Code).

13. The law provides that the first manner of establishing paternity be, just as in the case of maternity, the acknowledgement under the form either of a declaration before a registrar — at the moment of birth inscription or later — or by means of an authentic script or testament ; the child may be recognized either before its birth or after coming of age or even after its death, in case it has descendents. Just as in the case of maternity, the recognizance being, in the first place, the admission of a fact, the father is entitled to accomplish this juridical act even though he is underage or put under interdiction by a judgement ; it is sufficient that he be in the capacity of making a confession in full knowledge of the facts. Likewise, the recognizance of such a filiation may be contested by any interested person, authorized to establish that the confession does not tally with the truth. But contrary to the case when the reality of the filiation by the mother is debated, — the claimant being obliged to prove the seriousness of his action — when the dispute concerns the acknowledgement of paternity — raised by the mother or by the recognizee or its descendents — the law (art. 58 of the Family Code) provides an important derogation to the dispositions of common law in matters of evidence. The claimant is not obliged to administer any proof in support of his action ; the very contestation is sufficient to compel the author of the recognizance — or his successors — to administer the proof of the contested paternity. This derogation does not represent a legal discrimination against the child born out-of marriage, but, on the contrary, a measure of special protection of its interests — in keeping with the public ones — that aims at facilitating the

proving of the real filiation. It is indeed indisputable that the reverting of the "probandi onus" by putting the proof in the charge of the contesting party does represent a legal disposition instituted in favour of the child, because without such a derogation the child were in danger of not being able to avert, by default of proofs, a civil status which does not correspond to reality.

Unlike maternity acknowledgement, however, which, as it was shown above, may occur only in case when the child's birth was not inscribed or when the child has been registered as born from unknown parents, the exercise of the father's right to recognize his child is submitted to no restrictions. On the other hand, we must specify that in the Romanian law, the incestuous or adulterine character of the filiation does not constitute an obstacle against its establishment, either by acknowledgement or by judicial proceeding; for the guilty facts of the parents must never bear unjust and harmful juridical consequences upon the interests of the child.

It is not admitted, however, the acknowledgement of a child who, according to the assumption of paternity, enjoys the legal situation of an inside-marriage child ; similarly, an out-of-marriage child whose paternity has been established either by acknowledgement or by judgement can no longer be recognized by another person. The existence of such an obstacle does not stand in need to be justified ; as it is evident from their wording, these restrictions are not detrimental for the child, but, on the contrary, are meant to protect its civil status by avoiding the concurrence of a double paternity.

14. Lastly, in case when the father does not recognize voluntarily his child conceived out-of marriage, the child's filiation may be established by judicial proceeding, by an action brought in the child's name by its mother — even though she is under age — or by the legal representative of the child against the father. Although the text of the law (art. 59 of the Family Code) refers in its contents only to the mother's or to the legal representative's right to bring the action for the establishment of paternity, the child has been granted the same right since, as the legal disposition expressly provides it, the "action belongs to it". The child is therefore entitled to bring personally such an action when coming of age being, thus, in its full exercise capacity, but also when having a restricted exercise capacity, at the age of 14. Moreover, the child's right to this action is, in such cases, imprescriptible, while the same right, when exercised in the child's name, during its under age time, by its mother or its legal representative, is submitted to the rules of extinctive prescription ; the right to action is extinct after a short term of a year, which begins to run from

the date of the birth of the child and exclusively in cases when the mother has cohabited with the would-be father or if the latter has supported the child the term of prescription is calculated from the cessation of the cohabitation or of the material support received by the child.

The prescription of the right to action for the establishment of the paternity of an out-of-marriage child — when the action is brought forward by the mother or its legal representative — is certainly a derogatory rule as regards the imprescriptible character of the same action entered by the child itself or in respect of the imprescriptibility of the right to action for the establishment of the maternity. This derogation does not represent a juridical discrimination able to be detrimental to the legal status of the child born out-of marriage in comparison with that of the child born inside marriage. It is a norm which, on the contrary, demonstrates only a special protection for the interests of the under age child, because the prescriptibility of the right to action is called to determine its immediate exercise, within a short term, by those entitled to start the action in its name. As a matter of fact, we must not forget that in the Romanian law, the term of prescription has not always an extinctive irreversible effect; when the necessity of exceeding prescription limitation is thoroughly demostrated and justified, the lawcourt is authorized to order, even "ex officio", the entering of the respective action (decree nr. 167/1958, art. 19). At last, as it was previously shown, the child's interests can, on no account, be prejudiced by the prescription of the right to action, during its under age time, since the law maintains intact and without any time limit, the child's right to the establishment of paternity, running from the moment of its coming of age.

15. As out-of-marriage paternity cannot result from the application of a legal assumption, the existence of a filiation relation must be proved before the judges. For establishing the kinship it is not necessary, however, the direct proof of the fact of the conception; the filiation is established only indirectly by means of evidence authorizing the lawcourt to ascertain a relation of filiation between the child and the would -be father. More often than not, the ascertainment is based on the proof of the child's mother having had relations with the would-be father during the legal period of the child's conception, that is within the 120 days comprised between the 300—180 day prior to the date of the child's birth. This legal proof of paternity ascertainment may consist of any probative means, without any restriction or condition. Moreover, the administration of the respective proofs may be guided and facilitated by the lawcourt since, in Socialist Romania, the judges are obliged to permanently exercise an active role in the

ascertaining of truth ; especially, when the protection of the under age child's interests and the reality of its civil status are at stake.

Therefore, the establishment of filiation is no longer restricted nowadays ; formerly, the right to action was limited to certain special cases, expressly provided by the law, i.e. : abduct, violation, seduction. Likewise, such an action can no longer be rejected under the alleging of the mother having had relations with another man, too, during the legal period of conception. At present, the only motive for dismissal of an action for establishing an out-of-marriage paternity is the legal situation of a child conceived or born during marriage, enjoying, thus, a legal assumption of paternity, which might not be averted by the establishment of an out-of-marriage paternity. Such a provision only aims at protecting the certainty of the civil status of an in-marriage child against the establishment of its out-of-marriage paternity.

16. We must mention however that, according to the law, the child born or conceived during marriage may, sometimes, be granted the civil status of an out-of-marriage child ; this case arises when the mother's husband denies before the judges the paternity which the law assumes on his charge, and he succeeds to avert the effects of the assumption of paternity by the administration of a contrary proof which demonstrates the impossibility for him to be the father of the child. Such an impossibility will result from the establishment, by whatever means he disposes of, of circumstances demonstrating the existence of facts inconsistent with the paternity of the mother's husband.

By the effect of the judgment admitting paternity's disavowal, the respective child loses its quality of a child by marriage, becoming, retroactively from the date of its conception, a child born out of it. In this situation, the child is susceptible to get a new paternity — an out-of-marriage one — either by a voluntary recognizance act, or by the admission of its illegitimate filiation by a judicial sentence.

17. We must specify also that the civil status of the child resulting from the legal admittance of paternity desavowal, is totally different from the juridical situation of a child which may result when the reality of its filiation by marriage being contested before the judges, it is proved its apparent character only ; namely, in the absence of legal conditions for the assumption of paternity. This occurs when it is possible to prove that the child's parents were not married or that it was not born, or at the least conceived, during their marriage ; for example, when the child was born before the marriage of the parents or after 300 days from the date of the cessation, dissolution or annulment of such a marriage. In such cases, it is not, therefore, necessary to over-

throw the assumption of paternity, but it is sufficient to prove that the assumption finds no application ; in other words, to ward off a lien of filiation which does not result from the well-founded application of the legal assumption of paternity. Against an action of filiation-contesting, it cannot be opposed the paternity indicated in the birth certificate, even if the husband would recognize the child as being his own offspring or when the child enjoys a civil status in accordance with that of the certificate.

Unlike the effects, always the same, of the action in denial of paternity, the action by which is contested the filiation does not invariably lead to the non-existence of any relation of filiation between the would-be father and the child, either inside or out-of marriage ; because by this action it may be averted only the filiation by marriage and be established an out-of-marriage filiation when the recognizance of the child by its father derives, implicitly and necessarily, from the fact that the birth certificate has been drawn up according to the declaration made by the person mentioned in the act, at his own demand, as father of the child. In such a case, the contesting action leads only to the elimination of the appearance of the quality of an in marriage child transposing its former civil status into that of an out-of-marriage one.

§ 5. *The Legal Situation of out-of-Marriage Children*

18. Regardless of the manner in which the civil status of the child born out-of-marriage was established as soon as its filiation is ascertained, the child has, as regards its parent and near relatives "the same legal situation as an in marriage child" (art. 63 of the Family Code). The adoption of this principle of equality between the juridcal conditions of inside-and-out-of-marriage children — including in the latter category even adulterine or incestuous cases — which constitutes a main principle of the family code, has determined numerous consequences of a legislative nature.

19. *The suppression of legitimacy.* First, on the ground of this principle, the institution of "legitimacy" has been eliminated, as being absolutely useless ; this legal norm existant in the former law system, set up legal discriminations between inside and out of marriage children. According to it, children became "legitimate" by the subsequent marriage of their parents ; it was only this category of out of marriage children that enjoyed "the same rights as if they were born in marriage". The privilege of legi-

timacy was directly bestowed upon children, **ipso jure,** as a legal effect of the marriage of their parents if they recognized voluntarily the existence of the relation of filiation at the latest by their marriage act.

20. *Succession rights.* A main characteristic of the family code is that — putting an end to a long legislative process — it has eliminated any inheritance discrimination between children born in or out of marriage and by entirely abolishing former discriminations — so specific to a revolute legislative time — according to which the child born out of marriage was entitled to the succession of its mother and of her kindred only. At present, without distinction with regard to the source of filiation — or to the way in which it was established — children have the same succession rights to both their parents and even to all other relatives, in so far as the law admits the existence of the right to succession.

Although the text of the law (art. 63 of the Family Code) has an one-sided character specifying only from the standpoint of the child the absolute assimilation of rights between these two categories of children without any reference to the rights which the parents and other relatives have towards the child, it has been constantly admitted, in every interpretation of the legal disposition the mutual character of the succession calling. The juridical notion "the same situation" — which signifies the full assimilation of the sources of kinship — eliminates any legal anterior derogation from the general rule of the reciprocal vocation to succession. So that not only the child born out of marriage is called to the succession of its parents and other relatives, but, similarly, they have the same calling to the succession of the child ; their right is not at all dependent on the manner in which the filiation of the deceased child has been established. That signifies that such a right is recognized to the father even if the paternity of the child has been established by voluntary recognizance, the relation of filiation appearing thus exclusively as an effect of a unilateral juridical act accomplished by a person entitled to avail oneself of it by his own and sole declaration of will. The voluntary character of the act upon which is founded, in such a case, the right to succession cannot be, however, considered as able to eliminate the principle of the reciprocal succession in such matters because the recognizance is not analysed only as a juridical act ; the recognizance is mainly the confession of a precedent fact — the conception of the child, in the present case — which determines the coming into force of the effects granted by the law retroactively from the date when the fact has been committed. The recognizance is not a simple juridical act called to

produce its effects as soon as it is legally committed, even if such effects would represent the establishment of an imaginary paternity. Being, in the first place, a confession — as it was specified above — the law admits, by way of contest, the administration of a contrary proof for the establishment of the reality of filiation. The recognizance of the paternity is called therefore to produce its hereditary effects only under the condition of full agreement with the truth; so that it could not be asserted that the hereditary vocation of the father is the effect of a simple interested manifestation of will. The reality of paternity founded on the recognizance is undoubtedly incontestable in so far as it was not contested; this natural assumption of a full concordance between the child's recognizance and the reality of the filiation is not inferior to the assumption of paternity resulting with adjudicated case power, from the establishment of filiation by judicial proceeding. Besides, in support to the recognizance of the father's right to the succession of the child born out of marriage, but not in favour of the hereditary vocation of other relatives, it may be quoted the text of the art. 106 of the Family Code, which — without distinction as to the way in which the relation of filiation was established — provides expressly that "the parent has no right to the property of the child and neither has the child to the property of the parent, except the rights to succession and subsistence". The text of this legal disposition which, denying the existence of any other patrimonial rights, specifies in the most evident manner the existence of the hereditary vocation or reciprocal obligation of subsistence between father and child — falls unquestionably under the category of legal disposition called to confirm, in matters of succession, the constitutional principle of equality of rights between man and woman, which neither allows with good reason that the woman has rights inferior to those of the man, nor permits that the man, in quality of father, be deprived of the hereditary rights which the law grants always to the mother with regard to the succession of her child without distinction whether the respective filiation results from marriage or has been established out of it.

21. As regards succession, one must also specify that a hereditary vocation does exist reciprocally between the child and its parents even if its filiation results from a marriage declared nul or annuled. In such a case, the annulment of the marriage has no effect upon the civil status of the child — "who keeps its situation of a child born in marriage" — (art. 23 of the Family Code) — nor does it bring about any diminution of the vocation of the parents to the succession of their children, even though they had acted in bad faith — mala fide —, or had known, on

the date of their marriage, the existence of the obstacles which had determined its subsequent annulment. The criterion of "bona fide" conditions only the existence of patrimonial relations between spouses. Its application can in no way be extended upon the existence of inheritance rights between parents and children; it could not be invoked in order to justify the abolition of the principle of reciprocity in the establishment of hereditary rights of parents or relatives. Just as in the hypothesis of children born out of marriage, in the case of children resulted from an annuled marriage, "the maintaining" of the former situation assumes the fullness and reciprocity of the hereditary vocations, since one cannot create by way of interpretation derogations from the dispositions of the common law which the law itself omitted to provide expressly.

22. *The ogligation of subsistence.* The above mentioned principles concerning the recongnizance of the right to succession of children born out of marriage or from an annuled marriage — also referring to the reciprocity of hereditary vocation between these categories of children and their parents or other relatives with succession calling — are equally valid — mutatis mutandis — for the establishment of the subsistence obligation between children and their kinship. In a precedent chapter the relatives from whom the child is entitled to claim its subsistence have been indicated together with the conditions and extension of the respective obligation. It is sufficient to state that the rules concerning the obligation of support are permanently applicable to the relations between children and their kinsfolk without any discrimination as regards the manner in which the filiation of the respective children has been established; the children born out of marriage and those resulting from an annuled marriage may ask — without any restriction — their right to support in conditions of absolute equality with the children born in marriage.

23. *The elements for the identification of the child.* Amongst the attributes of personality, called to individualize, within relations created by life in society, the identity of each person in comparison with other persons the followings come foremost: name, domicile, and citizenship. It is, therefore, necessary to investigate to what extent the juridical situation of the child born out of marriage differs — in this respect — from that of a child born in marriage. We shall begin by specifying that possible differentiations which might arise in the dispositions in force do not have the significance of discriminations to the detriment of the out-of-marriage filiation, but only represent the juridical consequences necessarily imposed by the cir-

cumstances of the child being born and brought up out of marriage which, of course, differ from those of a child born in marriage.

24. *Name.* As for name, — notion which in the Romanian law refers, generally, both to the family name (surname) and to the first name (Christian name) — a special law (Decree nr. 975/1968) specifies that the family name is acquired by the effect of filiation and that it may be modified consequently to a change in the civil status under conditions stipulated in the Family Code. As regards the foundling, born from unknown parents, — referring to whom the Family Code stipulates nothing — another special law (art. 2) states that the family name and first name of such a child is established by the decision of the Executive Committee of the People's Council of the commune, town, city or sector of Bucharest, on whose territory it was found.

25. The conditions which the Family Code (art. 62, 64) stipulates for the child's acquisition of a name — as a legal effect of filiation — differ as the filiation results from marriage or is established out of it. In the first case, the child acquires the family name of its parents if they bear the same name, without distinction whether the common name is that of one of them or their combined names. And if the parents bear different names — because each of them has preserved the name borne before marriage — the child will acquire the name of one of his parents or their combined names ; the problem is solved by the parents' agreement or, if they do not agree, by the tutelary authority.

In case of the out-of-marriage filiation the child acquires the family name of the parent upon whom the filiation has been firstly fixed, generally its mother, without distinction as to the manner in which the respective filiation has been established. If, afterwards the child's filiation is fixed upon the other parent, too, the child keeps the name firstly acquired, except when, upon its demand — presented personally, with the authorization of its protector, or entered by its legal representative — the law-court considers that it is in the child's interest that it should bear the name of the parent upon whom its filiation has been subsequently fixed. Finally, the law had to make provisions for the hypothesis the child's filiation be established at the same time towards both its parents. In such a situation, the child shall acquire the family name of one of its parents or their combined names ; the choice between these family names has to be made by the parent's agreement, or, in default of such an agreement, by the tutelary authority.

26. As it follows from the above-mentioned considerations, the manner in which the child acquires its family name as a

result of an out-of-marriage filiation differs undoubtedly from the manner of name acquiring specific to the other category of filiation. In the first case, when the child establishes subsequently and gradually the filiation towards its parents, its family name may differ in keeping with each of its three situations of civil status ; not to mention the case in which the establishment of filiation by recognizance is contested and the admission of the action brings about a new change in the family name.

In contrast with this juridical system, the child born in marriage does not change its family name, acquired by filiation, except in cases when the paternity is denied by the mother's husband or it is contested the very character of filiation by marriage ; but even in such cases the change of the family name does not always intervene.

However, those manifest distinctions do not represent in any way legal "discriminations" to the detriment of the child born out of marriage ; they are justified by the particular nature of the juridical situations in which the respective filiations have to be established. The family name of the out-of-marriage child is by no means susceptible to point out the character of its filiation ; for children born in marriage may also acquire the family name of one of the parents or their combined names.

27. *Domicile.* Domicile, another element of individualization, is defined by the law (Decree nr. 31/1954, art. 13) as being the place where the physical person has his stable and principal abode; however, as a measure of protecting the interests of those enjoying no or a restricted capacity, the law peremptorily stipulates that the child's domicile always be at its parent's or at its tutor's place. It is not necessary to examine the various problems raised by the determination of the legal domicile in cases when the parents do not live together or the parental rights concerning the person of the child born in marriage are exercised only by one of them or by none ; in the domain of the legal domicile, the respective legal dispostion makes no distinction whatever between the different character of a child's filiation resulting or not from marriage.

The application of the legal system is based upon the analysis of the relationships, obviously different, between parents and children. The child born out of marriage cannot have its legal domicile but at the parent's place towards whom its filiation is established. Only if its filiation is established towards both parents, the determination of its legal domicile is questionable ; but the problem is solved as a necessary consequence of the

child being entrusted to one of them. The child always has the domicile at the parent's place to whom the exercise of the parental rights was entrusted; this applies even if both parents live together.

28. *Citizenship.* Romanian citizenship — which does represent the expression of the social, economic, political, and juridical relations between the physical person and the Romanian socialist state — is, primarily, acquired by birth as a manifestation of the filiation lien between parents and children (Law nr. 24/1971). The dispositions of the law stipulate no distinction as regards the character of the respective filiation. Regardless of birth place — the territory of the Romanian Socialist Republic or abroad — children acquire Romanian citizenship if both their parents — or only one of them — enjoys the Romanian citizenship.

The only differences in the applications of this legal disposition as regards the character of the child's filiation — in or out marriage — are exclusively determined by the different manner in which the relation of filiation is established. The filiation in marriage is always established simultaneously, with regard to both parents; in such a case, it is sufficient to prove the quality of Romanian citizen of any of the parents. In the hypothesis of an out-of-marriage filiation the problem of citizenship is similar to the previous case if the filiation has been established at the same time in respect with both parents. In the situation in which the filiation is established by recognizance or juridical proceeding towards only one of them the child will acquire the Romanian citizenship only if the respective parent has such a quality. The child will preserve the citizenship thus acquired even if the parent upon whom the filiation is subsequently established were a foreigner. In the contrary case when the parent is not a Romanian citizen, the child will acquire the Romanian citizenship under the condition its second parent — upon whom the filiation was fixed later — enjoys such a quality.

29. We must also specify that it is considered to be Romanian citizen the child who was found on the Romanian state's territory and whose parents are unknown. In such a case, the Romanian citizenship, thus acquired may be lost if, before the age of 18, the filiation of the child is established and both its parents are foreigners and if, according to their national law, the child is considered as having the same citizenship as its parents or at least the citizenship of one of them. The same effects — under the same conditions — are brought about by the establishment of the filiation

towards only one of the parents, in case one of them is a foreigner. It stands to reason however that the Romanian citizenship shall be re-acquired by the child in case its filiation with regard to the other parent, who enjoys the quality of Romanian citizen is established. Anyway, so as the law specifies, the foundling does not lose the Romanian citizenship — as a result of the establishment of its filiation — but on the date when the filiation was established.

30. The general character of the settlement of the equalitarian system. Finally, we must affirm that the principle stated in the art. 63 of the Family Code stipulating a full equality between the legal situation of a child born out of marriage and the one of a child born in marriage is a disposition of public interest and of public order acting with an imperious character not only within the system of the Family Code, but also within the general structure of the Romanian Law. It is therefore an absolute norm applicable nowadays to all cases in which the legal regulation is founded on the existence of filiation as a source of the kinship, even if the respective texts were formerly applicable only to the legitimate children. Thus, for instance, the liberalities granted in favour of an incapable person, by the mediation, as interposed persons, of his children and descendents, are nul regardless of the nature of the respective filiation (art. 812 of the Civil Code). Moreover, even if the dispositions of the Code refer "expresis verbis" to a distinction created in the detriment of the children born out of marriage, the respective texts are interpreted as though they have been modified implicitly in the spirit of the equalitarian system which prevails upon the whole legal organization. Such a modification indirectly results from the incompatibility of the previous dispositions with the principles on which is founded the present system with its norms and legal institutions, springing from the structural transformation in the social order of our country. Thus, for example, the donations made by persons having no children or descendents existant on the date of these liberalities, are "ipso jure" revoked if the donor, subsequently, has got a child in marriage or out of it, although the respective text of the Civil Code (art. 836) refers exclusively to the case when the donor has acquired "a legitimate child... or when he has legtimated an illegitimate child by subsequent marriage".

§ 6. *Conclusions*

31. In the final part of this work one may therefore affirm that although the Romanian state particularly protects lawful wedlock and the family founded upon it supporting by economic

and social measures its development and consolidation, it also protects the interests of the mother and child without distinction whether the last one is born in or out of marriage. The legal system does not institute any discrimination in the disfavour of the out-of-marriage filiation. The principle of equality between the two categories of filiation — from the point of view of the legal situation — is constantly observed in a great diversity of legal and real situations when existence of filiation ties has to be established. The non-limited legal protection granted to the out-of-marriage filiation agrees evidently with the aim pursued by the legislative policy of the Romanian state as regards the stimulation of the birth rate both in or out of marriage. This policy is meant to ensure the population growth imperatively needed for the multilateral development of the Romanian socialist society. It is indisputable that the protection accorded by the law to the children born out of marriage is able to contribute to the increase of natality in the area of this category of filiation. We must also add, in order to present a complete picture of the situation of children born out of marriage, the fact that, besides considerations of a juridical order, an important role is played in these matters by the norms of social common living, specific to socialist society. Owing to them, no scorn, no diminution of social status does affect nowadays the condition of single mothers and of children born out of marriage, who, in the near past, were designated with the humiliating denomination of "bastards" or "love children".

Chapter VII

MARRIAGE

§ 1. *Principles Which Govern the Matter*

1. Marriage — a central institution of the Family Law — plays, in the population's law, a prominent part, too. Considering the family as an institution founded on the freely agreed marriage, as it is stated in the first article of the Family Code, and accepting the dissolution of the marriage by divorce as an exception difficultly realized, and without admitting the judicial separation, the Romanian socialist law creates by marriage the principal juridical network leading to the population growth.

That is why the basic and formal conditions stipulated by the law for the conclusion of marriage, the nullity of marriage, the divorce and the obligation of support between husband and wife have important meanings for the population's law, too.

2. The text of the first article of the Family Code emphasizes the moral idea guiding the Romanian legislator who has considered marriage the support of the family relations and their moral justification.

a) Expressing the fundamental principle of the Family and Constitutional Law, i.e. the full equality of the sexes before the law and equality between children born in or out of marriage, the code places however at the basis of family relations the freely consented marriage.

The foundation of the family relations represents "the necessary and decisive cause" of marriage [1]).

The procedure used by the 1954 Family Code can be understood only in comparison with the precedent system. The 1864 Romanian Civil Code which — for some matters is still in force — did not define, according to its French model, the marriage by its purpose, that is the founding of a family. The juridical literature of that epoch theorized this fact, pointing out that not only

---

[1]) See : Tudor Popescu, Legea Familiei, Bucureşti, Ed. didactică şi pedagogică, vol. I, p. 86. See also : Căsătoria în Legea Republicii Populare Române, Bucureşti, Ed. Academiei R.P.R., 1964.

the creation of a family, but also other considerations of a different nature, as, for example, interest, ambition, reason, etc., might determine a marriage.

The change of conception marked by the 1954 code expressed therefore the ethical principles which have incited the socialist legislator and which have been consistently followed by the whole system.

b) Further on, the legislator has proclaimed the principle of the voluntary consent for the conclusion of a marriage. It was eliminated thus the necessity of parents' or other ancestors' consent to the marriage. Conceiving the institution as an union between man and woman beyond any material interests and, consequently, as a profoundly and eminently personal act answering the mutual liking of the parties, the code is consistent with this principle when it does not submit the agreement of the partners to the will of other persons.

c) Another fundamental principle of marriage is the total equality of rights between husband and wife.

The Civil Code made important discriminations between sexes. It regulated the marital power which created an inferior condition for the wife, both in the spouses' personal relations (name, domicile, citizenship, faith, relations and correspondence of the woman) and also in the patrimonial ones or vis-à-vis the children born in marriage. Although by the 1932 law the civil incapacity of the married woman had been formally abolished, it did however persist because of the incomplete character of this law. It was only by the Constitution of 1948 which proclaimed the principle of the full equality between sexes that all these discriminations have been abrogated.

The Family Code provides that marriage be contracted before the registrar. When abroad, Romanian citizens are authorized to marry before the diplomatic or consular agents of Romania or before the competent authorities of the respective country with the respect of formal conditions established by the local legislation.

In the Socialist Republic of Romania the marriage has an exclusively civil character. The religious celebration of marriage has no bearing upon the juridical effects of marriage. That is why the priest or the minister of any other cult cannot celebrate the marriage unless the marrying people give the proof of their preceding civil marriage.

The marriage is considered a solemn act. It is publically performed at a certain place — the registrar's office of the people's council — before a representative of the state authority, on a day established in advance and in the effective and simultaneous presence of future spouses.

§ 2. *Basic Conditions*

3. In the juridical literature, the basic conditions of marriage are divided into three groups : a) conditions relating to the physical capability of founding a family ; b) conditions aiming at the assurance of a freely agreed matrimony ; c) conditions regarding moral considerations especially [2]).

Among the conditions of the first category, one must primarily examine the one concerning the *matrimonial age.* According to the art. 4 of the Family Code, the man may get married only at the age of 18 and the woman at 16. The law provides, however, that for serious motives the marriage may be authorized if the woman has attained the age of 15. The permission is granted, in such a case, by the executive committee of the district people's council or by that of Bucharest, depending on the woman's residence, on the ground of a certificate issued by an official medical man.

One should notice that the law, in order to protect volition observance in matters of marriage, does not ask that the woman under 16 produce a consentment to marriage — to wit that of her parents — but stipulates the adducing of an adminitrative authorization, i.e. a licence granted by an official physician, with the aim to protect the health and physical development of the girl.

The juridical practice has shown that the condition stated as "serious motives" which justify the granting of the authorization consists mainly in the fact that the under age woman gave birth to a child or is pregnant.

A second condition of the same category is the *sex difference.* Being concluded in view of the foundation of a family, therefore, of procreation, the marriage cannot be performed under the Romanian law, but only between persons of different sex.

The *health* conditions also belong to the first category. In this matter the law provides that the marriage cannot be concluded unless the future spouses declare that they have communicated their respective health condition to one another.

In other words, the law does not ask for the absence of any malady, that is for the absolute health of the parties, but stipulates that they should know about their reciprocal health condition so that they should be able to decide whether the marriage may take place or not.

However, there are, as an exception — admitted by the Code — certain diseases which render impossible the contracting of a marriage, such as : venereal diseases under a transmissible form.

---

[2]) See : Tudor Popescu, op. cit., p. 110.

The Code in the art. 9 also forbids the marriage of the lunatic, of the mentally defective and of any person temporarily deprived of the mental capacities, as long as this disablement persists. The law has thus taken into account, on the one hand, the principle of personal liberty and, on the other hand, certain considerations of a social nature, in such cases eugenic and prophylactic ones with the purpose to avoid unhealthy progeny.

Some authors sustained that the above texts would prevent the mentally alienated or the mentally defective from marrying during a lucid interval. This point of view is, however, repelled by a majority of voices on the consideration that the social value protected by the law, that is the conclusion of a durable and healthy matrimony would be otherwise menaced.

4. The *assurance of the free consent* in matters of marriage is the second category of basic conditions.

The art. 16 of the Code provides that the marriage be concluded by the agreement of future spouses. The legal pledge of the free manifestations of the consent is the condition established by the law for the expression of this consent. The transgression of such conditions incurs both the sanctions stipulated by the Family Law — the marriage performed against the dispositions related to the liberty of consent being affected by nullity — and those provided by the Penal Law.

For a valid celebration of a marriage to take place, the consent — as it is unanimously admitted — must be actual, personal and simultaneous.

By *actuality* one must understand the fact that the utterance of the consent has to be made just in the moment of the marriage celebration. Hence, previous engagements or promises — as, for example, the betrothal, which is sometimes practised in fact, does not produce juridical consequences — cannot oblige in any way to the conclusion of a marriage.

From this fact it also results the character of the consent as *personal* and *simultaneous*. The two parties must be present together before the authority, marriage by proxy is not admitted. In this respect, the Romanian Law reflects the dispositions of the international convention about consent, marriage, minimal marital age and registration of marriage, adopted on the XVII-th session of the General Assembly of U.N.O., which establishes that the norm regarding the presence of the parties at the moment of the conclusion of marriage is compulsory, save for certain extraordinary circumstances.

5. The problem of the liberty of consent brings into discussion the nature of the *vices of the will*. The institutional character of marriage and its social importance have enforced in

this matter a regulation derogatory to the common law. The legislator has been permamently preoccupied by the restriction of nullity causes in order to give marriage a greater stability.

According to such a restrictive conception, the three vices of consent : error, fraud and violence, form the object of specific regulations.

THE ERROR. In the socialist Romanian law, marriage is not conceived as a contract, but as an union freely consented. Thus, the institutional and personal — non-patrimonial — character of marriage is put into evidence. In this respect, the error which might affect the marriage may be of two kinds only : *in negotium* — the false representation about the objective consent of the will declaration, which exceeding the idea of the vice of the will incurs an absolute nullity and *in personam* — the wrong representation as regards the partner's person. In this matter, the error about the person may be conceived in three different manners : a) referring to the physical identity of the person ; b) with regard to the civil identity, considered from the juridical point of view and c) about the essential qualities of the person.

One may easily observe that every one of these conceptions is more comprehensive than the precedent ones.

Wanting to ensure a greater stability to marriage, the Romanian legislator did admit as a vice of consent — only one, i.e. the most restrictive of them — the error about the physical identity (art. 21, paragraph 1 of the Family Code). The juridical literature, starting from the text of the art. 1 of the above mentioned Code and of the art. 16 which provides that the conclusion of marriage is achieved by the parties' consent, admits, besides the former motive, the error about the objective contents of the declaration of will as being implicitly provided by the law. The ignorance of the fact that one is married is equivalent with the absence of consent. Such a matrimony is subject to an absolute nullity and not to a relative one [3]). The cases when the error is accepted remain thus mostly in the domain of study cases. Owing to the fact, as it will be shown later, that the marriage may be annulled for error with regard to the essential qualities of the person if caused by fraudulent means, the field of nullity application appears to be considerably extended.

---

[3]) See : Căsătoria în Legea Republicii Populare Române, București Ed. Academiei R.P.R., 1964, p. 38.

THE FRAUD — The Romanian socialist law repels the principle that "en matière de mariage, trompe qui peut". Unlike the Civil Code of 1864, which did not admit the fraud as a vice of consent to marriage, the Family Code establishes it in the art. 21 under the term of "slyness" which in the Romanian language is synonymous to that of "fraud". The aforementioned authors admit the idea that the legislator having not restricted the term, he wanted to make an integral reference to the common law. As a matter of fact, it exists a very strong reason in this sense : as long as the area of the error's action is very narrow, a large admission of the fraud, which is , in fact, an integrated error,is capable to considerably extend the protection area of the liberty of consent. At the same time, one must take into account the fact that by imposing the proof of the objective element of the fraudulent schemes the law eliminates the excessive danger which exists in the unconditional acceptance of the error as a purely subjective element.

On the other hand, the principal fraud only — which creates an error in whose absence the victim would not have concluded the marriage — but not the incident fraud — which presumes that under different conditions the victim would have accepted the marriage — may lead to the annulment of marriage.

In connection with this fact, we shall also have to examine the extent of the notion of "essential qualities". The conception admitted by doctrine and jurisprudence has a restrictive character. What must be taken into consideration in the annulment of marriage is not only the subjective element — the qualities considered by the partner as being decisive — but an objective element, too — the other partner must possess the qualities regarded as necessary for the conclusion of marriage in the socialist order.

According to this conception, the annulment of marriage for error about the welfare standard of the partner is refused, as marriage is conceived as an institution beyond material interests.

However the error regarding the condition of health caused by fraudulent manoeuvres may lead to annulment. We mention the judgement of a Bucharest lawcourt that has annulled a marriage concluded by a person suffering of a serious lasting illness, on the ground of a medical pre-nuptial certificate issued by a physician who did examine in fact not the married person, but a relation of his or hers.

The doctrine admits even the annulment of the marriage in case of a fraud by reticence, starting from an idea reflected in the art. 2 of the Code that the family relations are founded on friend-

ship and mutual affection between its members who are obliged to grant one another moral and material support. [4])

The Supreme Court has confirmed this point of view by annulling a marriage in which one of the spouses has hidden from the other that he (or she) suffered from a grave psychical malady (Decision no. 64/1971 of the Civil College).

Another fraud by reticence leading to the annulment of marriage which is recognized by the judicial practice is the wife's deed to hide from her husband, before the marriage, that she is pregnant with another man.

THE VIOLENCE. As for the violence, it is generally admitted that pressure of any kind destined to falsify the contents of the will lead to the annulment of mariage. Having to solve such an action, the judges have to weigh the degree of gravity of the facts characterizing the violence, not as objective deeds, but in relation with the psychical condition of the person whose will had been affected. Among the acts which objectively imposes the idea of a vice of will, we shall quote the abduction. The seduction alone without being corroborated with other material facts, cannot constitute by itself a vice able to justify an annulment of marriage. It is however admitted that a marriage being actuated by violent deeds, as, for example, blows and wounds, a strong compulsion, a menace with death, might be annulled as resulted from violence [5]). It is nevertheless evident that such a situation occurs very rarely in a modern society.

6. The third group of basic conditions comprises *moral conditions.*

The principle of monogamy forbids another marriage if the respective person is already married. The violation of this principle is sanctioned both by the Family Law, the act being affected by an absolute nullity, and also by the Penal Law which punishes the bigamy (art. 303 of the Penal Code).

The Supreme Court has stated in an important case that when the defendant's purpose was to elude the penal responsibility for rape by marrying the victim without any design to establish normal conjugal relations with her the marriage has to be annulled (Decision of the civil section no. 843/20 June 1970).

In order to avoid bigamy the art. 22 of the Family Code provides that when the spouse of a person declared dead marry again and afterwards the judgement ascertaining the death is annulled,

---

[4]) See : Căsătoria în Legea Republicii Populare Române, București, Ed. Academiei R.P.R., 1964, p. 41.

[5]) Ibidem, p. 91.

the new matrimony preserves its validity. The first marriage is considered, according to this text, dissolved from the date of the conclusion of the new marriage.

The second condition belonging to this group refers to the non-existence of kinship relations of a certain degree between the parties. Consequently, the law forbids the marriage between kinsfolk in direct line and also between those in collateral line up to the fourth degree, including.

The obstacle resulted from kinship is also applicable in case of kinship resulted from an out of marriage filiation and in case of adoption between the adoptee and his or her natural relations. The Romanian doctrine traditionally admits that the out of marriage kindred is an obstacle to marriage even if the relationship is not established by recognizance or by judicial proceeding, at least in cases when it is of common knowledge.

The law makes only one exception from the degree-of-kinship rule, namely the art. 6, paragraph 2 of the Family Code, which states that for serious motives — the same which lead to the admission of the marriage of a woman younger than 16 years — the marriage between collateral relations of the fourth degree may be permitted by the Executive Committee of either the district or Bucharest People's Council, depending on the place of residence of the petitioner.

The third condition of this group refers to the obstacle resulting from adoption. According to the art. 7 of the Family Code the marriage is forbidden between :

a) adopter and adoptee ;

b) adopter and the adoptee's descendants ;

c) ascendants of the adopter and adoptee ;

d) ascendant of the adopter and adoptee's descendant ;

e) children of the adopter and adoptee ;

f) children of the adopter and of the adoptee ;

g) those adopted by the same person.

However, it is stated that the Executive Committee of People's Council may authorize, for serious reasons, the marriage between the persons mentioned at the last two items.

The non-existence of *tutelary* relations represents the fourth condition of the group. The obstacle provided by art. 8 is reduced, finally, to the marriage of the tutor with the underaged girl put under his guardianship, because only women can marry before coming of age.

Among other basic conditions of marriage, we shall mention the disposition of the art. 134 of the Civil Code pursuant to which

"a Romanian citizen cannot marry a foreign without the authorization of the State Council of the Socialist Republic of Romania"[6]).

In the application of this text, the Supreme Court has decided — starting from the idea of protecting the marriage — that the action to nullity, founded on the absence of the authorization issued by the President of the Republic, must be repelled in case when such an authorization has been acquired afterwards. (Decision no. 1104/1969).

§ 3. *Formal Conditions*

7. Among formal conditions prescribed by the law with the purpose of founding a durable marriage, one must point out two categories : formalities preceding the marriage and marriage procedure.

The first of *precursory formalities* is the declaration of marriage. As it expresses the will of both future spouses the declaration is made personally, orally or in writing, before the registrar.

The declaration of marriage must be accompanied by certain papers establishing the identity of the affiants and the fulfilment of the conditions provided by the law for the conclusion of marriage. The declaration once received the registrar checks the parties' identity and asks for the proofs provided by the law. He gives lecture to the texts of the Family Code concerning the basic conditions and obstacles to marriage, mentioning also the parties' right to choose their name. Then the registration of the declaration is done. The law prescribes a term of 8 days running from the day of the declaration registration until the date of marriage. This interval represents not only "a term for deliberation" for those who are on the point to contract a lifetime union, but also a sufficient time for the drawing up of oppositions to the marriage.

The law does not specify who is entitled to such oppositions, neither makes it any mention about the interest of the opponent. The text of the art. 14 of the Family Code states that "any person may introduce oppositions to marriage if there exists a legal obstacle, or if other requirements of the law are not satisfied." The opposition shall indicate the reasons of the opposition and the

---

[6]) The text has been inserted in the Civil Code by the Decree no. 80 of March 31, 1950 and it is the only text of this Code — from art. 6 to art. 460 — which has not been abrogated by the Decree no. 32/1954 for the application of the Family Code.

opponent shall choose a domicile in the district of the lawcourt on whose area is situated the people's council where the marriage is going to take place. The opposition must always be forwarded in writing and accompanied by the necessary proofs.

The effect of the opposition is to acquaint the registrar about the impediments to marriage. The registrar must check and weigh the motives indicated in the opposition. The opposition, nonobstante its source, is not obligatory for him ; the registrar must only take into account the motives which are asserted by the opponent.

§ 4. *The Procedure for the Conclusion of Marriage*

8. Pursuant to art. 11 of the Family Code, the marriage is performed before the registrar at the people's council of the municipium, town, sector or village in whose area is situated the domicile, or the residence, of one of the future spouses.

The law is therefore very large, granting the future spouses the virtual possibility of choosing between four different localities in case each of them has the residence and the domicile in various places. The conclusion takes place at the registry office, but in special cases, it may be performed with the authorization of the executive committee of the people's council in other places. On the day of marriage, the registrar asks the consent of both parties and, if they agree, declares the marriage concluded after having previously checked the observance of all the conditions provided by the law and the absence of any oppositions or legal impediments.

The solemn character of marriage — one should mention the fact that in Romania the great majority of marriages are confined to the civil form, the only legal, as a matter of fact — is also emphasized by its being publically performed. The public has the possibility of assisting at this ceremony in all the cases and wherever it is performed. No measure can be taken to forbid the access of the public.

The solemnity of the marriage is also enhanced by the appropriate milieu in which it is performed. In the great majority of registry offices there are special buildings for this solemnity. Many a time the young people wear special garb, the registrar is in full dress and the music underlines in an adequate manner the festivity.

The law provides that the registrar, after taking the consent of the future husband and wife, draw up immediately the marriage

certificate in the register of marriages which will be signed by the parties and the registrar. The marriage cannot be proved in other way than by the respective certificate issued according to the act drawn up in the mentioned register.

§ 5. *The Nullity of Marriage*

9. On the civil plan, the nullity of marriage represents undeniably the most rigorous sanction in matters of marriage. The reglementation adopted by the Romanian Family Code concerning the nullity of the marriage reflects the general conception of the socialist law about the nullity of juridical acts.

Refusing the structural theory of nullity which leads to the idea that an act null does not produce any sort of effects — *quod nullum est, nullum producit effectum* — the Romanian socialist law and the whole juridical literature conceive the nullity as a sanction directed only against such effects of the juridical act which are contrary to the purpose pursued by the legislator when he had established the disposition of the law that had been infringed by the conclusion of the act, preserving the other effects unaffected. By such a system, the nullity appears to be a sanction which strikes only those effects which come in conflict with the intention of the law.

The family code expressly provides a number of nine nullities:

1 — The default of the age prescribed by the law for the marriage (impuberty) — art. 4, F.C.

2 — The existence of another marriage (bigamy) — art. 5, F.C.

3 — The existence of a certain degree of consanguinity for which the law forbids the marriage (incest) — art. 6, F.C.

4 — The existence of a consanguinity resulted from adoption — art. 7, letter a, F.C.

5 — The alienation and the mental deficiency or the temporary default of the mental capacity of one of the spouses — art. 9, F.C.

6 — The default of consent of the parties — art. 16, F.C.

7 — The absence of the registrar — art. 16, F.C.

8 — The default of publicity (clandestinity) — art. 16, F.C.

9 — The vices of consent — art. 21, F.C.

Besides these cases, the extrinsical legislation provides also the following causes of nullity of marriage :

— The marriage of a Romanian citizen with a person of another citizenship, without the authorization of the State Council (art. 134 of the Civil Code);

— The drawing up of the act by a non qualified registrar (art. 7 of the Decree no. 278/1960).

In the Romanian juridical literature it is oftenly debated the problem whether one should admit, in matters of marriage, starting from the principle of the ancient French law "en matière de mariage, pas de nullité sans texte", other virtual nullities, besides the nullities expressly provided by the law.

The doctrine which seems to prevail is that, in the conception of the socialist law, this principle is inapplicable; in other words the nullity works in matters of matrimony in cases of fraudulently performed marriage or of failure of an essential element.

Likewise a marriage is considered null in case of simulation, even though there is no legal text providing its nullity, in the same way in which a marriage between two persons of the same sex is absolutely null, although there is no stating that the spouses must be of different sex [7]).

One must notice that all the above mentioned impediments have an *invalidating* character, bringing about the *nullity* or the annulment of marriage. Besides, the code establishes a number of impediments called *prohibitive* which do not lead to the retroactive abolition of marriage concluded by their violation but to the inflicting of certain administrative sanctions upon the registrar.

The prohibitive impediments are the following:

a) the transgression of the formalities provided in the art. 11 and 12 of the Family Code concerning the competency *ratione materiae* and of those in connection with the declarations of marriage and also the violation of the dispositions of the art. 13 about the acts which must be presented on the occasion of marriage;

b) the neglect of an opposition regularly brought forward pursuant to the art. 14 of the Family Code. Obviously, if the opposition was founded, its motives will justify an action in nullity of the marriage. The action will be based upon these motives and not upon the fact that the opposition was not taken into account;

c) the transgression of the interdiction of marriage — provided in the art. 7 letter b and c of the Family Code — between the chil-

---

[7]) See: Căsătoria în Legea Republicii Populare Române, București, Ed. Academiei R.P.R., 1964, p. 77.

dren of the adopter and the adoptee or the adoptee's children or between children adopted by the same person ;

d) the quality of guardian of one of the partners towards the other, impediment provided by the art. 8 of the Family Code ;

e) the fact that the future partners have not communicated to each other their health condition before the conclusion of the marriage and have not presented the medical certificates required by the law testifying that none of them is affected by certain diseases, impediment established by the art. 10 of the Family Code.

10. *The differences between absolute and relative nullities* are, in matters of marriage, somehow attenuated owing to the legislator's concern that, on the one hand, the marriage link should not cease except in cases when its continuation is on no account possible and, on the other hand, that the interests and rights of the guiltless spouse and of the children born in this marriage be not damaged by the effect of retroactivity. That is why it is accepted, by derogation from the common law, the confirmation in matters of marriage even with regard to absolute nullities. We shall mention in this sense the dispositions of the art. 20 of the Family Code, in pursuance of which the marriage contracted by an impubescent — which normally is affected by an absolute nullity — may be confirmed if, in the interval, the underaged husband has attained the age prescribed by the law for the marriage or the wife has given birth to a child or is pregnant. Also, in conformity with the art. 22 of the same code, the marriage contracted by the spouse of a dead-declared person — which, according to the Civil Code, has to be annulled in case the spouse considered dead was found to be living — is implicitly confirmed by the fact that the law considers the first marriage dissolved on the date of the conclusion of the new one.

Finally, according to the Decree no. 273/1960, concerning the acts of civil status, the marriage performed before a nonqualified registrar and which would have been affected by an absolute nullity for incompetency, may be confirmed if the respective registrar has performed attributions which were not his in public creating an invincible error in accordance with the principle : "error communis facit jus".

Among the impediments above indicated, the following situations represent cases of absolute nullity : impuberty, bigamy, incest, adoption (in case of marriage between adopter or the adopter's ascendants and the adoptee or the adoptee's descendants) ; the default of will determined by pathological or accidental causes ; default of consent ; absence of registrar ; the conclusion of marriage with a foreigner without the authorization of the State Council.

One must point out that the action for absolute nullity of marriage is imprescriptible.

11. The annulment of marriage is not of a particular interest for the Romanian law of the population. The institution of marriage annulment, in countries where the divorce is not admitted, plays the role of its substitute. Comparative law establishes that where the divorce is difficult the abolition of marriage is relatively easy.

This is not valid for Romania. The divorce restrictive policy starts from the idea that marriage is a life-long union which only death may dissolve. That is why — as it will be shown later on — the basic and procedural modifications of the divorce system, brought about in 1966, are more than a modification of the legal text ; they represent a real change into the divorce judiciary policy and confirm the idea that the divorce is only an exceptional means of marriage dissolution. To admit therefore without difficulty the annulment of marriage, it would have meant a stimulation to the fraud of the law. This is why the judiciary practice is exceedingly cautious in such matters. Besides, the annulment of marriage did never enter into Romanian customs, the few number of such actions is a proof.

In the chapter where we have mentined the basic conditions of marriage and analysed the vices of the will, we have also shown their specific reglementations in matters of marriage.

Considered as a strictly personal act, the action for annulment of the marriage may be exclusively introduced by the spouse whose consent has been vitiated. That is why neither the spouse's creditors, nor his (or her) guardian or the state attorney are entitled to enter such an action ; neither can heirs carry it out, once started.

According to the principles of common law, a marriage affected by error, fraud or violence may be confirmed. The confirmation, which may be express or tacit, being inferred in the latter case from any unequivocal attitude or action, must spring from the spouse whose consent was affected by one of these vices.

After the confirmation, he (or she) can no more invoke the vice which entitled the action. The judiciary practice seems nevertheless to have a tendency to interpret in a very large manner the confirmation, which evidently starts from the desire to put an obstacle against the dissolution of the family. Thus, for example, the Supreme Court has deduced the renunciation of pleading the annulment of marriage in case of a fraud by reticence from the fact that the parties have resumed their conjugal life after starting the action for annulment (Decision of the civil section no. 658/1971).

Pursuant to the Decree no. 167/1958 concerning the extinctive prescription, the party whose consent was vitiated is permitted to bring forward the action in annulment within a term of 6 months. In case of violence, the term starts from its cessation and as to error or fraud, from the date when the victim became aware of them.

The Family Code starting from the idea that a marriage is not a mere contract but an institution which involves important social and family interests has reduced, by the art. 21, paragraph 2, the term of prescription for the action in annulment to 6 months. In case when the vice referred to is violence, the above mentioned term will begin on the date of its cessation. If the annulment is invoked for fraud or error, the term starts from the moment when the victim has taken knowledge of them.

12. The nullity has as a principal *effect* its *retroactivity*. In this sense, the Romanian law, in an effort towards consistency of solutions, differs from that of other countries where the annulment produces only effects *ex nunc* nearly abolishing the limit between annulment and divorce. Admitting retroactivity, the Family Code fully agrees with the idea that a matrimony contracted in the disdain of the law cannot produce any effect. That is why, regardless of the absolute or relative character of the nullity, the marriage is abolished retroactively as if it never existed.

Thus, in matter of divorce, the conception of nullity differs from that of the common law, particularly by the admission of the *putative* idea.

Putativity — institutions which is of great interest for the population's law — implies a restriction, perhaps the most serious, of the retroactive character of nullity, with a view to avert the consequences, sometimes of an uncommon gravity, striking the persons who have concluded a marriage affected, in a way or another, by nullity.

In the juridical literature, it is considered that putativity is a result of good faith, *bona fide*. The party — reads art. 23 of the Family Code — who was of good faith at the conclusion of the marriage declared null or annulled, preserves the status of a lawful spouse up to the date of the final decision of the court.

What does the law mean by *good faith* in the case of a putative marriage?

The law considers that good faith is the error of fact or of law as to the circumstances leading to nullity. We mention, as an example, the ignorance of consanguinity. As a basic principle of the Romanian law the *bona fide* is always presumptive. In a nullity action the proof of *mala fide* is devolved upon the

claimant, the spouses having not to prove their *bona fide*. We must also specify that the principle : "mala fide superveniens, non nocet" is constantly applied. It follows that if, after the marriage, one of the parties finds out the cause of nullity affecting their union, he or she does not become a mala fide who might not benefit by the assumption of putativity.

Obviously the area of good faith is limited by the evident character of certain circumstances leading to nullity, as for instance a marriage which is concluded otherwise than in the presence of a registrar. In this situation the parties cannot plead the ignorance of the law to benefit by putativity.

There is a situation in which putativity produces consequences similar to those of the divorce, namely when both spouses are of good faith ; simiarly to the divorce, its effects will come into force *ex nunc*, the possibility of retroactivity being excluded.

On the contrary, if only one of the parties has been of good faith, he (or she) will enjoy the treatment similar to the divorce, whilst for the other the effects will operate *ex tunc*.

Besides putativity, another important derogation in marriage nullity concerns the absolute effect of the judgement which has admitted it.

If, in the common law, a judgement produces as a rule, effects upon the parties of the suit, in matters of marriage nullity its effects operate *ergo omnes*. Otherwise, an impossible situation would arise, namely the parties would be towards one another in the position of unmarried persons, whilst towards a third party they would appear as husband and wife. The reason of this absolute effect is shown in the Decree no. 278/1960 concerning certificates of civil status.

§ 6. *The Divorce*

13. The separation of the juridical reglementation of family relations from the Civil Code realized by the adoption of the 1954 Family Code has not only meant a modification of legislative technics. This new Family Law started from principles that were completely different from those of the Civil Code of 1864, which was a close translation of the Napoleon Code.

In matters of divorce, for instance, the novelty consisted, on the one hand, of the elimination of any inequality in rights between sexes and, on the other, of an original conception about motives of divorce.

The principle of the equality of sexes has abolished any discrimination concerning the right to action or the administration of proofs in a divorce suit. That is why dispositions frequent in the great Romano-Germanic law system as, for example, the interdiction for the wife to divorce for adultery of the husband or the recognition of her right to sue an action only when the adultery constitutes a public scandal or incurs the contempt for the wife, shall never be met with in the Romanian law.

It its initial form, art. 37 of the Code provided: "The marriage is dissolved by the death of one of the spouses or by judiciary declaration of the death of one of the spouses or by divorce". Unlike the system of the Civil Code which required certain determinate motives for divorce, art. 38 of the Family Code specified that, at the demand of one of the parties, the marriage may be dissolved by a judiciary decision if, owing to *serious motives,* the marriage has become intolerable to the party who asks for divorce. The text immediately adds that the gravity of the motives will be judged in connection with the interests of children if underaged.

The courts were thus acquiring a large appreciation capacity with regard to motives for the dissolution of marriage. The element on which the law insisted was the *necessity* of dissolving the marriage and the *impossibility* of its continuation.

The claimant must therefore prove that, due to the defendant's behaviour, a common life is no longer possible.

We must mention the particular stress the code puts upon the protection of the interests of underaged children. The gravity of the motives capable to lead to the dissolution of marriage must not be judged in connection with the interests of the conflicting parties only, but also from the perspective of the influence of the divorce upon the interests of the children born in that marriage. Among other things the adoption of the new system had the advantage of abolishing the divorce by mutual consent. The judgement which admits the divorce must be supported by motives in accordance with the elements provided by the law.

14. We have described the initial system of the Family Code in order to afford a better understanding of the significance of the important legislative modifications adopted in 1966.

That year, as we have already shown, was an important moment for the demographic policy of Romania. It meant the adoption of some legislative measures destined to contribute, on the one hand, to the population growth and, on the other hand, to the consolidation of family : the fundamental cell of society affording the moral increase of population. Demographic policy is thus in accordance with the requirements of social and economic development of our country.

Perhaps the most important normative act adopted on that occasion was the Decree no. 779 of October 7, 1966 which modified certain dispositions of the Family Code and of the Civil Procedure Code relating to divorce. Nothing may render the sense of this Decree better than the modifications of the art. 1 and 37 of the Family Code.

The first article of the Code, being a text of principle, defines the foundations of marriage. The modification brought to it has the purpose to emphasize the role of the state in the support of the family in the conditions of a pronatality policy. This is the sense of the additional specification that the state supports the development and consolidation of the family by economic and social measures. It was also specified that the state protects the interest of the mother and child and is particularly concerned with the education and training of the younger generation [8]).

Of a particular significance for the conception underlying the Decree is the text of the art. 7. The first paragraph of the new text establishes, in principle, that the cessation of marriage takes place by the death of one of the parties or by the judiciary declaration of the death of one of them. It is thus sanctioned a fundamental principle, namely that marriage is concluded *for ever,* which was absent or at least not so clearly defined in the initial form of the Code.

In the light of this principle the divorce represents, as it is shown expressly in the second paragraph of the above mentioned article, an uncommon modality of marriage dissolution.

In order to stress the exceptional character of the divorce, the art. 38 specifies, in a text which might be compared with the anterior text, that the judiciary authority cannot dissolve the marriage — we should notice the prohibitive formula — but in cases when owing to serious motives, *the relations between the married parties are so gravely and irremediably hurt that the continuation of the marriage is obviously impossible for the party who asks for its dissolution.*

In order to make more rigorous the exception, the second paragraph of the text adds that the court shall examine with a particular attention the grounds of the divorce suit and the impossibility to carry on the marriage by taking into account two elements which, in the legislator's opinion, appear as decisive : a)

---

[8]) See : Victor Dan Zlătescu. Pentru îmbogățirea conceptului de lege a familiei. Rolul statului în Legea pentru protecția casătoriei, mamei și copilului ca instrument al formației, dezvoltării și protecției personalității umane. București, Ed. Academiei R.S.R., 1973, p. 165 "Pour l'enrichissement du concept du droit de famille" presented by the same author at the Society of Comparative Law in Paris, November 1972.

the marriage's length of time and b) the interests of underaged children.

The practice of lawcourts evolved according to the sense of the adopted modification, fully contributing to the effort for the consolidation of family.

15. How did interpret the courts these dispositions of principle? An investigation among jurisprudence collections permits the discovery of some constant tendencies and groups of motives leading to the dissolution of marriage.

a) A first category which might be outlined is that of *causes in which the law does not ask for the procedure of preliminary conciliation*. By the Decree no. 680/1969, the procedure of divorce was modified — as it will be shown later on — in the sense that it exempted from the obligation of deliberation terms actions founded on mental chronic disease or on mental chronic debility, and the cases in which the defendant is declared missing by a judiciary decision, or went abroad since a long while, has suffered certain penal convictions, etc.

These circumstances do not constitute, of course, motives of divorce, but causes which justify the adoption of a special procedure. However, the courts have accepted more easily actions on such grounds. The practice was very strongly criticized in juridical literature where it was underlined that the above mentioned text does not at all abolish the liberty — we should say, the obligation even — of the court to examine the gravity of the alleged motives [9]).

b) Another frequent motive in the judiciary practice is *the abandonment of the conjugal domicile*. It is indisputable that according to the Family Code in force, the common dwelling of the spouses is not an essential element of marriage. The spouses may have, exceptionally, separate domicile as in the case of one of them working in a different place or completing his or her studies, etc. The legislation extrinsic to the Family Code, as, by example, the locative one, adopts, under certain aspects, the idea that the spouses possess a common domicile. The Supreme Court (Decision of the Civil College no. 239 on February 26, 1958) has established that although the code had abolished the obligation of the wife to follow her husband *(ubi tu Gajus, ibi ego Gaja)*, the spouses may however live apart for a certain period, but taking into account the purpose of this institution — and its character of an union between two parties, such an exceptional situation must have necessarily an objective justification.

---

[9]) Căsătoria în Legea R. P. Română. București, Ed. Academiei R.P.R., 1964, p. 446 (and the bibliography mentioned there).

The idea which prevails is that the real separation of the spouses does not constitute by itself a motive of divorce. What may justify the dissolution of a marriage is only the unjustified refuse of one of them to live with the other one. There is in this sense a very rich jurisprudence, according to which the court has to analyse seriously the relations between spouses, to establish the real causes which have determined the abandonment of the conjugal domicile, to investigate if the veritable cause was not the claimant's attitude, if under the appearance of the abandonment is not hidden a divorce by mutual agreement, finally to examine if conjugal relations could not be resumed. Thus, the courts have rejected the divorce suit when the abandonment of the domicile by the wife was owed to the cruelties of her husband or to her desire of protecting the child from the brutalities of its father.

c) Under the ethical norms of the socialist society, the mutual fidelity of the parties represents one of the fundamental principles upon which marriage is built. That is why the *infidelity* of one of them, even though it does not present itself under the uncommon grave form of adultery, is considered by the judiciary practice as being a motive of divorce. We shall not insist about the practice followed in such cases because it is similar to nearly all countries.

d) Another motive frequently pleaded before lawcourts is *the inebriety practised* by one of the spouses. The courts have admitted the divorce suits when this vice induces the impossibility to continue the marriage. The collections of jurisprudence refer to cases in which the husband, due to his drunkeness, did not bring home his wages, spent his wife's salary, sold various articles of their household, chased his wife when arrived intoxicated from the pubs, etc. It is equally true that such motives must be considered with a particular rigor, the courts having to investigate about the real possibilities for the vicious spouse to improve his conduct and to carry on their common life in normal conditions.

e) Another motive of divorce oftenly alleged by the parties consists of *insults* uttered by one at the address of the other one. Such an attitude which is incompatible with the relations existing between husband and wife in a socialist society must not lead to the dissolution of the marriage — this is a constant practice — except in cases when the insults have a particular gravity, when they become systematic, when — in other words — they hurt irreversibly the relations between the married partners.

The courts are challenged by the important problem of family destruction because of *differences in the cultural level of the spouses.*

The courts have firmly rejected actions founded on differences of cultural level, considering that such differences cannot justify the marriage dissolution, the man being under the obligation not to repudiate his wife on ground she is intellectually inferior to him but, on the contrary, to help her reach his intellectual level.

Similarly the courts have constantly rejected the divorce suits founded upon material considerations. We quote in this sense a judgement in which the fact that the parents-in-law did not give to their son-in-law the promised dowry was not considered as a motive of divorce. Suits based upon material disagreements between spouses are generally rejected on ground that the patrimonial aspect is not essential in marriage.

The conclusion which might result from analysing the judiciary practice of the last years is that the Romanian law-courts, abiding by the meaning of the 1966 legislative measures, examine very carefully actions for marriage dissolution and do not admit the divorce but in special cases when, as the law states it, the relations between the spouses are so gravely and irremediably damaged, that the claimant — husband or wife — cannot carry on an evidently impossible marriage.

16. The modifications adopted in matters of divorce at the material-law level would have been quite insufficient if the *procedure of the divorce* itself had not been modified.

The above mentioned Decree substantially interferes with the Code of Civil Procedure by introducing new texts totally devoid of ambiguity. The procedure of divorce becomes slow, difficult and expensive, in order to discourage those who had no serious motives of divorce. This procedure is rich in all sorts of dispositions which permit the reconciliation of the parties during any stage of the proceedings.

It was specified in this sense that the application for divorce together with the documentary evidence shall be presented personally by the claimant to the president of the court. After receiving the application, the president must advise the parties to reconciliate. If he fails, he will appoint a day when both parties have to be present.

It is provided that, if on this first term the claimant is not present, the suit be suspended. If he (or she) is present, the president is obliged, pursuant to the law, to insist again for a reconciliation and in case of refusal or if the defendant makes default, although legally summoned, a reflection term will be fixed. If the parties have no children, the term, according to the law, will

be of 6 months and if they have underaged children, it shall be of a year.

After the expiration of the term for reflection, the president shall issue new summons for the parties. On that occasion, the president may choose between two possibilities : either to appoint a term for the divorce suit, or, in case when a reconciliation seems to be still possible — or as the law couches it : "if he considers it useful, taking into account the circumstances", he may fix a new term of reflection of 6 month at the most. It is, therefore, a maximum term which the president may reduce if he thinks appropriate.

In conformity with the modifications of the Code of Civil Procedure, adopted by the Decree no. 680/1969, the dispositions concerning the term of reflection are not valid in case one of the following motives applies to the defendant :

a) suffers of chronic mental disease or of chronic mental debility ;

b) is declared missing by a definitive judiciary decision ;

c) is abroad since 2 years at least, abandoning the family ;

d) has been convicted for attempt of murder or complicity to such criminal offences perpetrated against the claimant, instigation to his or her murder, non-denuntiation of these facts or facilities accorded to the perpetrators ; or have been convicted for sexual relations with a person of the same sex ;

e) was condemned to an imprisonment of at least 3 years or has suffered several convictions which totalize 3 years, at least, for penal offences against the security of the state or against peace and mankind, for murder, infanticide, prostitution, theft, robbery, fraud, speculation, forgery.

The exemption from the term of reflection is not working, however, in cases when the claimant has been convicted for participation in the accomplishment of one of the penal offences mentioned at the letter e) or has to respond for the benefits realized by one of the offences committed by the defendant.

Owing to these exceptions, the procedure of divorce has gained indisputably in realism having to be applied integrally only in cases in which the legislator has assumed that a reconciliation is still possible or that, in any case, it deserves to be tested.

Going back to the procedure of common law, we shall state that the second term of reflection is the last one. If after the interval elapsed from the date when the divorce application was brought forward the parties are not reconciled, the reconciliation

is considered to be practically impossible. This is why after the expiration of this term, the president appoints a day for the solution of the suit.

It is important to notice that even in such cases the legislator avoids to urge the parties to carry on the divorce. For this reason, the president does not act in this case "ex officio", but will appoint the term for the examination of the action *only on the claimant's request.*

Important provisions have also been adopted by the same normative act as regards the so-called procedure for solving the divorce suit. As a rule, in pursuance of the art. 615 of the Code of Civil Procedure, the divorce suit is examined in public séance. The judges may decide that the proceedings should take place in the council chamber if they consider that by such a measure a better examination and administration of the proofs be assured. Even in such a case the judgement will be read in public séance.

The idea of not encouraging the parties to carry on the divorce suit and of trying by all means their reconciliation governs the future development of the suit.

If on the day appointed for trial only the defendant is present, the law stipulates that the demand be rejected as nondefended. If the claimant is present the proceeding begins by the judges insisting for a reconciliation.

When the parties, despite this insistence, refuse the reconciliation, the court assigns a new term in order to examine the proofs offered by the claimant in the divorce application and other subsequent facts which the claimant calls forth in support of his or her request. In the same sitting, the court has to decide also about the proofs offered by the defendant party.

With the purpose to delay the solution of the cause, the law states that the proofs shall not be administered on the appointed terms.

A new text provides, in support of the same principle, that the divorce suit will be extinguished by the reconciliation of the parties in any stage of the proceeding, even though it takes place in appeal or by the party's failure to satisfy the fiscal requirements of the law. One must notice that the judiciary procedure in Romania does not know the so-called "appeal", as a second degree jurisdiction ; the decisions of the courts of law can as a rule be submitted to a sort of appeal in which there are examined both the legality of the judgement put into discussion and its justification as regards the facts of the cause.

With the view to assure all the conditions for an effective reconciliation, the above mentioned Decree has introduced in the Code of Civil Procedure a text in accordance with which, if on the appointed terms for reconciliation or on these established for the solution of the suit, the procedure of term-notification to the defendant being accomplished by publicity and the defendant were, though, missing, the court be obliged to ask for proofs or to order investigations with the purpose to verify whether the defendant lives at the domicile indicated in the action and, in the negative, to decide to be summoned before the court. Such a procedure is accomplished at the defendant's domicile and — as a supplementary pledge — when it is necessary, also at his working place.

A system somehow derogatory from the common law has been also adopted with regard to the so-called appeal. It was thus provided that the parties are not permitted to renounce the term of appeal — which is of 30 days — in order that the judgement should become final immediately after its public lecture.

There was also provided that the claimant's appeal against the judgement by which the divorce suit was rejected be itself rejected if the claimant makes default on the respective term. On the contrary, the defendant's appeal will be examined and solved even though only the claimant is present. It is obvious, therefore, that both solutions have in view the continuation of the marriage.

As a special aspect, the judgement rendered in matters of divorce is not submitted to revision.

As concerning the effects of the divorce it is important to point out the moment when the marriage is considered as dissolved. In the initial form of the Family Code, art. 39 provided that the marriage be dissolved from the day of the final judgement of divorce. With regard to a third person, the patrimonial effects of the marriage were stopped from the date when the final judgement of divorce was mentioned on the margin of the marriage act or from the date when the third person was informed by other means about the divorce. By the Decree no. 779/1966, the above text has been modified in the sense that the dissolution of marriage takes place not from the day when the judgement became final, but from the very day when the mention was made. A new possibility for the reconciliation of the parties is thus created. The mention must be made within 2 months from the date when the divorce was finalized at the request of the party who has obtained the divorce.

This is a categorical disposition because the law states that if the mention about the divorce is not made within the legal term, the judgement which has admitted it loses its effect. In such a situation a new action must be founded upon new facts ; however the law adds that the claimant may also use the facts established by the judgement remained without effect.

17. The ensemble of the measures adopted by the Decree no. 779/1966 is completed by dispositions concerning the fiscal fee for divorce. Such a tax varies between 3000—6000 lei and is established by the president of the court in connection with the monthly net revenue of the claimant.

The Decree no. 680/1969, which modified the procedure of the divorce, provides that in case when the application for divorce is founded on the dispositions of the art. 613 (1) of the Code of Civil Procedure — by which the claimant is exempt from the term of reflection — the divorce tax is of 200 lei.

The same normative act also stipulates that the appeal brought forward against the judgement of divorce is exempt from fiscal duties if by the appeal it is requested the continuation of the marriage.

The law provides that, in case of reconciliation or of withdrawal of the divorce suit or in case the spouse who has gained the divorce does not ask for the mention to be inscribed on the marriage act, — mention which, according to the art. 39, marks the moment of the marriage dissolution — it will be returned a half of the fiscal tax at the demand of the party who paid it. It is also provided that after a year the tax is no longer returned.

The spouse by whose fault the marriage was dissolved, will be obliged — states the law — to return to the other party, besides the fiscal tax, all the expenses occasioned by the divorce suit.

§ 7. *The Obligation of Support between Spouses*

18. The meaning of the art. 2 of the Family Code refers to the marital obligation of the parties to give one another moral and material support, including also the obligation of maintenance between them. This obligation arises from the moment the marriage is concluded and ceases only with the dissolution of the marriage in the conditions of the art. 39, on the day when the mention about the final judgement of divorce is inscribed on the marriage act.

The spouses having a common domicile and the relations between them developing normally, the obligation of support is realized in accordance with the art. 29 by the fact that the spouses are obliged to contribute by their respective means to the expenses of the family ; the mutual obligation of support is also enforced by the existence of a common patrimony functioning by virtue of the legal matrimonial regime of the community of goods upon which either party has an equal right of administration, use, and disposition [10]).

When one of them does not respect the obligations devolved upon him or her, the other party may bring forward an action before the judges for getting the support provided by the law. Such a fact may at the same time incur a penal sanction for family abandonment.

A similar situation arises in case the parties live separately. Sometimes such a separation leads to the divison of the common goods. Even though no division of the common goods exists or if the goods attributed by division to one of the parties are not sufficient, the spouse in need may solicit to the court that the other party should be obliged to fulfil his or her legal duty seeing that the union between them is not yet dissolved.

The alimentary obligation subsists also during the divorce suit until the moment when the marriage is dissolved.

A problem oftenly debated upon in the juridical literature is whether it is or not necessary for the spouse who brings in an action for support during divorce proceedings to prove the validity of the claim — as it is stipulated in the common law as to the obligation of support — by her or his invalidity. In our opinion the question at issue must be solved in the sense that the alimentary obligation during the divorce should not present an aspect derogatory from the common law without a text authorizing it.

The most important aspect in this matter seems to be that of the obligation of support between ex-spouses after the dissolution of the marriage. It is obvious that in such a case the basis of the obligation is another one. This obligation is no longer based upon the affection existing or assumed to exist between spouses but on the working incapacity of one of them which had appeared before the marriage or during it, or in certain situations and terms limitedly established by the law.

---

[10]) See : Tudor Popescu, op. cit., vol. I, p. 227.

In conformity with the art. 41 of the Family Code, in its form modified by the Decree no. 779/1966, the divorced spouse is entitled to support :

a) if he or she is in need because of an invalidity or in other words if unable to gain by work the means for a living ;

b) if this invalidity happened before the marriage, during it or within a year from its dissolution, but, in the last case, only if the incapacity is due to a circumstance in connection with the marriage.

The above modification introduces a specification which was absent from the initial form of the Family Code, that under the above mentioned conditions the support may be fixed up to a third part of the net revenue of the spouse obliged to the payment according with the necessities of the claimant and the financial possibilities of the paying party. The law establishes thus a highest limit up to which the judges may concretely determine the amount of the obligation.

The same text provides a second limit within which the support may be established. Thus, this obligation, together with that due to children, cannot exceed a half of the net revenue of the spouse obliged to payment.

The differentations made by the law are going even further. When the divorce is admitted by the fault of one of the parties, he or she — states the law — shall not profit by the alimony more than a year from the dissolution of the marriage. Obviously when "per a contrario" the divorce is imputable either to a common fault of the spouses, or to the debtor, the obligation is not limited as for the time. In all these cases, though, the title for support ceases by the remarriage of the creditor spouse. The relations of support and mutual aid created by a new marriage are of a kind to exclude the obligation of support between former spouses.

§ 8. *Conclusions*

19. The present chapter does not exhaust the whole matter of marriage and divorce. As this is not a work about the family law, but an endeavour to set forth only those aspects of the legal system in direct and necessary connection with the problem of population, we have deliberately omitted certain chapters of great interest for the family law — as for example the matrimonial system — but which do not present a particular interest for us.

The idea resulting from the problems reviewed in this chapter seems to be that, in the conception of the Romanian legislator, the marriage represents the best and most desirable act by which the state strives to realize the population growth.

The constantly observed equality between children born in or out of marriage, which is an illustration of the humanism that characterizes the Romanian socialist law, must not lead us to the idea that for the state and for the socialist society in general, the fact that the population growth is realized within or out of family is of little importance.

It would mean to deny the basic theses of marxist philosophy and the fundamental principles of our order if we considered the large network of institutions — crèche, nurseries, schools, etc. — created to help parents occupied in production and, in the first place, to help mothers whom the political and social equality is drawing more and more to public life and production, may wholly substitute the education received by the child within family.

This is, in a large analysis, the very sense of the correlation of measures taken in 1966 with regard to the interruption of the normal course of pregnancy and, in general to the stimulation of natality, with those concerning the divorce that becomes an uncommonly exceptional and difficult modality of marriage dissolution.

The essential idea resulting from this chapter is the legislator's effort to consolidate marriage so that it should be considered as a life-long union.

Chapter VIII

THE LEGAL REGULATION OF HEALTH PROTECTION

1. In the introductory chapter we have tried to explain the reasons for which we consider that the legal regulation of health protection represents a central chapter of the population right.

As a matter of fact, the measures aiming at the growth of natality are only one side of a policy pursuing the speeding-up of population growth, the second one, no less important, being the diminution of mortality.

As we have already shown, what is specific to measures for the protection of population's health, is their polyvalent character, in other words, the social values which are protected are very complex. The diminution of mortality is but their result. First of all, however, these measures aim at the protection of the working capacity of all the citizens, the constant increase of the active population, its general health which is one of the essential conditions of the society welfare.

The last two decades have witnessed a continuous progress in this direction. The enormous increase in the number of hospitals, polyclinics, medical personnel and the improvement of the medical assistance in the rural milieu, together with the policy of extending the gratuitousness of social assistance and medicines led to a considerable diminution of the morbidity and mortality rate.

In comparison with this outstanding progress the legislation concerning health protection has been, under certain aspects, outdistanced by the stage of sanitar organization. That is why a new legal regulation is to be expected which should adequately reflect the manner in which it is realized the health protection under the conditions of the up-building of the multilaterally developed socialist society.

2. The subject-matter is theoretically to be found in a not-yet-abrogated law from 1930. This law, however, has been so much outdistanced by the modifications occurred in the Romanian society and by the way in which the organization of health protection is conceived nowadays that it would be rather risky to affirm that any text of this law is still in force.

The regulation of the medical profession represents, on its turn, the object of the 1953 Decree. During these two decades many of its dispositions have become outdated.

Likewise, the organization of medical assistance and medicine usage constitutes the object of the 1958 Decree, modified several times later on.

The only recent normative act is that of 1969 concerning narcotics and obnoxious drugs whose text is in keeping with the international conventions concluded during the last years.

That is why most of the dispositions still in force in the field of health protection should be taken into account to the extent to which they are corresponding to the present stage of health organization in Romania.

3. The regulation regarding the practising of the medical profession is provided in the 212/1953 Decree. According to this normative act the right of medicine practising is granted to higher-medical-school graduates who had taken their degree in Romania or in case their degree was granted by a university from a foreign country it must be accreditated in Romania. The document on which the right to practise is based is the diploma or its legalized copy.

These acts are absolutely necessary for job appointment. The law stipulates a penal responsibility for those who have appointed physicians who have not presented the above mentioned acts.

The graduates who had not practised medicine during a period of 5 years may resume their profession after a time of practice and after passing an examination.

The same thing applies to those physicians who during their activity have demonstrated a quite unsatisfactory level of professional knowledge. The local sanitary organs are obliged to inform about such cases which will be verified by a commission appointed by the Ministry of Health. The respective physician may even lose the right to practise the medical profession if the tests give manifest proof of his or her incapacity and insufficient knowledge.

The law, according to the instructions of the Ministry of Health, obliges any physician to give, in case of urgent need, the first medical aid.

An important disposition of the law stipulates that physicians must, within 24 hours, inform the sanitary section about any known case of contagious disease, poisoning, murder or manslaughter, serious bodily injuries, suicide. Excepting the cases of infectious diseases, the other situations must be also notified,

within 24 hours, to the public prosecutor and to the militia. The cases of bodily injuries have to be examined by the medical men as accurately and minutely as possible.

The physicians who are in the service of the state and are working in particularly hard conditions against epidemics, are entitled to an aid from the state together with their families, in case of illness, of loss of the working capacity or of death, by the infection caused by this work.

Physicians are authorized to occupy functions as organizers of public health, sanitary-epidemic or any other special functions in the medical-sanitary network, being entitled to perform all the surgical interventions and to apply remedy allowed by the medical practice and appropriate to each disease, such as hypnosis, narcosis, anaesthesias, inoculations and the medicinal therapeutics. Physicians may apply hypnosis only within the medical or scientific institutions of the state and, in exceptional cases, at the domicile of the ill person upon the basis of a written special authorization issued by the Ministry of Health with the consent of the Ministry of Justice.

The law establishes that the surgical operations which cannot be performed but in a state curative institution, may be practised only with the patient's agreement or in case of persons under 18 years or alienated (the law does not require in the latter case a judgement for laying under interdiction, the ascertainment of the fact being sufficient), with the consent of the parents or of the person who supports them. The necessary and urgent operation for saving a life or an important organ may be performed by the medical man after a cross-consultation with a colleague even without the consent of the person who has under his care the minor or the madman, if that person cannot be consulted without the risk of a delay and also without the approval of the patient if he or she be in a state of unconsciousness. If this cross-consultation requires too much time, the respective physician may decide by himself about the operation with the obligation to notify it to the sanitary section within 24 hours.

A series of dispositions referring to private practising have lost their object owing to the fact that nowadays the whole medical assistance is granted in institutions of the socialist sector.

4. A normative act of particular interest is the Decree no. 256/1958 "for regulation of the medical assistance and the granting of medicines".

According to its dispositions, the medical assistance, medicines and all the sanitary equipment necessary for the display of actions

with a *prophylactic* character are gratuitously accorded to the entire population.

Likewise, the medical assistance in hospitals and polyclinics, the subsistance, medicines and sanitary materials necessary during the period of hospitalization are granted *gratuitously* to the following categories of patients :

a) persons appointed to jobs according to the labour code ;

b) pensioners ;

c) family members of the above two categories ;

d) children under 16 years, including ;

e) pupils of secondary or professional schools ;

f) pupils, students and candidates to a doctorate degree ;

g) pupils, during their practice ;

h) students ;

i) pregnant and childbed woman ;

j) mothers and nurses who attend the children up to two years of age including, during their hospitalization ;

k) permanent blood donors ;

l) members of the Association of the Former Political Antifascist Prisoners ;

m) socially dependent of the sanitary and social security institutions or at their domicile ;

n) sportsmen in their training camps ;

o) recruits temporarily disabled for conscription by the treatment of maladies afflicting them, and also patients with chronic diseases caused during the time of their military service.

The text provides that the above mentioned patients for whom places in hospitals fail shall be hospitalized at their domicile 7 days at most, enjoying a gratuitous treatment, medical assistance, medicines, use of sanitary equipment, etc. If after this period the hospitalization is still necessary the patient will be hospitalized.

At the same time, the persons included in the system of the social insurance of the co-operative handicraft organizations and their family members, receive — pursuant to the law — gratuitous medical assistance, maintenance, medicines and use of sanitary equipment during the whole period of their hospitalization and they are also granted medical assistance in polyclinics ; the repayment to the state of these expenses is made by the Central Office of Social Insurance of the Handicraft Co-operation.

Members of co-operative farms and their family members benefit by a gratuitous medical assistance, too.

To the above said categories the Decree no. 1032/1966 added women having at least three living children.

The Decree no. 246/1958 also provides that in the balneary sanatoriums the following categories of patients gratuitously receive medical assistance, medicines, use of sanitary equipment and maintenance during the period of hospitalization, up-and-down transport charges, including :

a) children up to 16 years including, for certain categories of diseases ;

b) pensioners, invalids, war orphans and widows and military pensioners ;

c) members of the Association of the Former Political Antifascist Prisoners.

The law also provides that in balneary sanatoriums children of the working people under 16 years, including, and the pensioners with modest monthly pensions may gratuitously benefit from medical assistance, medicines, use of sanitary equipment, etc. during the whole period of their hospitalization.

Other categories of persons as, for example, the working people and members of their families and other categories of citizens included within the system of the social insurance benefit from all the above mentioned facilities by paying a portion of the taxes established in keeping with their income.

The same gratuitous regime applies to patients who represent a social danger or to those afflicted by chronic transmissible diseases, regardless of the category to which they belong.

The decree situpulates that, among patients of other categories an exemption of taxes will be granted to people having a low income and a reduction 25 to 75% of the average cost of medical assistance and maintenance will be allowed in the cases established by the Ministry of Health with the advice of the Ministry of Finances.

The law also provides that within productive enterprises any kind of medicines and the use of sanitary equipment necessary in cases of first aid are free of any charge.

5. Besides the gratuitous medical assistance granted under the above mentioned conditions, the Decision of the Council of Ministers no. 560/1970 establishes the conditions for paid medical assistance.

Pursuant to this normative act, the paid assistance is organized by the Ministry of Health through polyclinics or dispensaries with paid services provided with consulting rooms and medical facilities for diagnosis and treatment.

It is expressly provided that sanitary units offering chargeless medical assistance must not comprise consulting or surgery rooms and medical services with paid assistance.

At the domicile of the patients, the paid assistance is granted only by the agency of the medical-sanitary institutions with paid services.

Laboratory analyses, radiological examination and other investigations and medical treatment indicated by domiciliary consultations are made only in medical-sanitary institutions with paid services.

An important disposition provides that the medical-sanitary personnel may accord paid medical assistance only when their respective working hours are over.

The income realized by paid assistance belongs entirely to those according it after payment of the respective income tax. The consultations and treatments fees are established by the law; sanctions are stipulated for those who receive or claim for higher fees.

The idea pervading the entire regulations is that the paid medical assistance of population is not meant to replace, in any way, the gratuitous medical assistance; it is only a possibility offered to population of addressing themselves to the desired specialists having no bearing upon their right to gratuitous medical assistance.

6. An important regulation concerns the prevention and struggle against venereal diseases. According to the Decree no. 141/1953, it is compulsory that a declaration be made within 24 hours from the discovery of persons affected by certain venereal maladies. This obligation devolves upon the medical-sanitary personnel.

At the same time, any person suffering from a venereal malady is obliged to undergo a medical treatment from the moment the disease was discovered until complete recovery. In case of minors suffering from such diseases their parents, guardians or the persons where they live are obliged to see that they undergo the treatment. For those living in boarding schools, orphan asylums, preventoriums, children homes, etc., the institution's doctor is obliged to assure the full treatment and the respective directors or headmasters are obliged to see that they regularly go for the treatment.

The compulsion of declaring the venereal diseases does not apply to military units of any kind which are only under the obligation of communicating, to the sanitary section, data con-

cerning the infectious source and the contacted persons of the civil population available from the epidemiological investigation.

The law provides that the treatment and the laboratory examinations for the diagnosis and the observation of the venereal disease evolution be chargeless.

The law provides that persons afflicted with syphilis with floral lesions be under the obligation of hospitalization until the end of the first series of treatment ; in its latent stage the pacient will undergo an ambulatory treatment.

It is also provided the obligatory hospitalization up to the end of the first series of treatment of syphilitic patients with clinically recurrent lesions and of the latent diseased who are neglecting the treatment.

It is equally stipulated that in case of finding a venereal disease, the sanitary organs are obliged to immediately proceed to an epidemiological inquiry in order to identify the contagious source and the contactees.

With this end in view obligations are established both for the patient and for the contagious sources or contactees. The patients must give all the necessary indications for the discovery and the examination of the contaminating source and also about all the contacted persons to whom they might have transmitted the malady. The latter are obliged to undergo the medical, clinical and serological examination as long as it is necessary.

In order to prevent the spreading of venereal diseases, the persons who are handling alimentary products in institutions, enterprises and in any economic organizations, the staff of the hotels, bathing houses, workers' or students' homes, etc., and also barbers ,hairdressers, the staff running institutions in which children are cared after, are obliged to undergo an antivenereal clinic control once a month and a serological one every six months. The law authorizes the Ministry of Health to establish also other categories of persons having to undergo antivenereal control.

It is also provided — as we have already shown in the chapter about marriage — that registrars must not formalize the marriage as long as the future spouses do not produce a legal medical certificate testifying to the absence of a venereal malady in a transmissible form.

The decree also provides that the pregnant women be under the compulsion of undergoing a medical examination.

A disposition of principle establishes that no person can be dismissed on ground of venereal disease. In matters of appoint-

ment the decree stipulates that the syphilitic with floral lesions cannot perform any job until the ending of the first series of treatment drawing the disease to a latent stage.

7. The adoption, in December 1969, of the law no. 73 concerning drugs and narcotic products and substances is explained, on the one hand, by the desire of improving an outdated system which, however, does not present a serious gravity, seeing that toxicomania is almost inexistent in Romania — and, on the other hand, by necessity of affiliating our country to international conventions and settlements.

In present Romania is affiliated to several international conventions among which : the Convention of Geneva of February 19, 1925, referring to the struggle against the opium, with the annexed proceedings ratified by a 1928 law ; the Convention of Geneva for the limitation of narcotics production and the system of their distribution of July 12, 1931, ratified by a 1933 law ; the proceedings of December 11, 1946, and November 1948, which modify the above said conventions by putting some drugs under control and by establishing restrictions as to the production and distribution of these obnoxious substances, proceedings accepted by the Decision of the Council of Ministers No. 1626/1960.

One must point out that Romania is affiliated to the 1961 drugs' convention adopted by the Organization of the United Nations which has replaced all other former treaties concerning drugs.

The dispositions of all these acts are reflected by the above mentioned law.

This law forbids the production, conservation and any other operation concerning drugs circulation, the culture of plants containing stupefying substances with the purpose of extracting them, the unnecessary prescription of drugs by a physician, the organization or the permission of their utilization in certain places. It is equally forbidden to experiment drugs, to administer them under any form without medical indication and to harvest or to conserve in view of processing plants containing stupefying substances.

Some dispositions of the law refer to the manner in which drugs have to be produced and processed ; these operations are

subjected to certain authorizations and registrations. The law also contains regulations regarding the importation and circulation of drugs.

The law stipulates that the medical utilization of drugs is to be made on a prescription issued by a physician or a veterinary surgeon. The prescription must be written on special formats with raised seal, or in registers of medical prescriptions or special books destined excluusively to the prescription of drugs, which are kept by the sanitary, medical and veterinary institutions.

The organs and organizations which carry on activities with such products or substances are obliged to daily record their usage.

If cases of toxicomania or drug addiction are found out, the law obliges the medico-sanitary personnel or any person administering drugs to immediately inform the sanitary direction in view of legal measures. If it is found out that the persons belonging to the above mentioned categories are drug addicts they cannot any longer prescribe and administer these products.

The law stipulates that sanitary organs are under the obligation to immediately inform penal authorities about cases of toxicomania.

The preoccupation of the legislator to prevent the spreading of drugs results also from the fact that he provides the compulsory restitution of the drugs non-utilized by deceased patients within 10 days from their death. With the same purpose, the medical man and the chemist who deliver drugs are obliged to inform the person who receives them about the obligation of returning the non-used quantities.

An important group of dispositions of the same law refer to the control of drug usage. It is the Ministry of Health that directs, co-ordinates and controls the whole activity relative to drugs.

Attributions of control are also incumbent upon districtual and Bucharest sanitary directions and upon organs of the Ministry of Home Affairs as well.

At the Customs passing places, the control of drugs activity is devolved upon the organs of the Ministry of Home Affairs together with the organs of the Ministry for Foreign Trade and the

Ministry of the Armed Forces. If necessary, the law permits that this control be also made by specialists of the Ministry of Health or of other organs.

Finally, the law establishes that the violation of dispositions concerning the circulation, experimentation and administration of drugs constitutes a penal offence.

The provisions of the law are completed by those of the Decision of the Council of Ministers no. 899/1970 concerning the establishment and sanction of contraventions to the norms relating to drugs which sanction certain transgressions that do not fall under the criminal law.

Chapter IX

THE PROPERTY

§ 1. *The Property Right in Connection with the Construction of the Multilaterally Developed Socialist Society*

1. Within the complex problems raised by the policy of the population's growth the system of property relations holds a particular position.

Obviously a consistent birth-encouraging policy must be based upon the continuous improvement of the living standards.

What characterizes the socialist order is that the whole national economy is founded upon the socialist property upon means of production, as it is stated in the art. 5 of the Constitution of the Socialist Republic of Romania. The socialist order is characterized by the dominance of the socialist property upon means of production, by the abolition of every form of exploitation, by the establishment of social relations of cooperation and mutual aid based on the distribution according to quantity, quality, and the social importance of the work carried out.

The holder of the right of the socialist state property, which is the main form of the property right, is, pursuant to the provisions of the art. 6 of the Constitution, all the people.

The patrimony of the socialist state organizations belonging to the general fund of the socialist state property reflects the double quality of the working people enjoying the usufruct of all the goods constituting this patrimony, namely of owners of means of production and of producers of material values.

The co-operative property right — the second form of the socialist property right — which comprises a very large area, due, in the first place, to the fact that almost the whole agriculture is collectivized, is hold by the co-operative organizations — whether agricultural consumers' societies or handicraft units — representing the interests of the group of associated members.

The personal property right, provided and assured by the Constitution, refers to those properties resulting from the work carried out within the state or co-operative sector as, for example, the income and savings originated from labour, and comprises the dwelling house and husbandry belonging to it, the ground upon

which it is situated and also the goods of personal usage and convenience.

Even the individual property right of peasants who are not members of co-operative farms and non-co-operativized artisans is the result of the titular's and his or her family's own work and it is not used for the exploitation of another people's work.

If one adds to these considerations the fact that the Constitution recognizes the heritage right, then it becomes evident that the knowing of the legal regulations of the property right is essential for the understanding of the economic foundation of the demographic problem. These regulations become therefore an important chapter of the population's right.

§ 2. *The Socialist State Property Right*

2. The socialist state property right is defined in the juridical literature as the right, belonging to the whole people represented by the state to appropriate the means of production and the products realized by these means, to exercise possession, use, and alienation prerogatives by its own power and its own interest according to the attributes granted by the socialist law as an expression of the people's will [1]).

This definition gives the essential element of appropriation. According to Constitution, the titular of the above mentioned right is the whole people represented by the state. The Constitution establishes in the art. 7 that a certain category of goods, which are most important as a matter of fact, are state property, belonging to the whole people. These are riches of any kind of the subsoil, lands of the state fund, forests, waters, sources of natural energy, factories and works, banks, state farms, enterprises of agriculture mechanization, communications and telecomunication means, transport means, buildings and dwellings belonging to the state fund, the material resources of the state social-cultural institutions which, as a rule, cannot be but the object of the socialist state property.

Owing to its huge resources, the socialist state property plays a decisive part in the economic development of the country, in the continuous raising of the living standards of the working people.

Its existence represents the base upon which the Constitution not only declares, but also assures the right to work.

---

[1]) Prof. Dr. Traian Ionaşcu, Salvator Brădeanu. Dreptul de proprietate socialist şi alte drepturi reale principale de tip nou în dreptul Republicii Populare Române, Bucureşti, 1964, p. 135.

3. *The juridical characters* of the socialist state property right are determined by its decisive position within the production relations of the socialist society.

a) Thus, the doctrine defines this right as an absolute right, *even more absolute, as it was mentioned, than other real rights*[2]), in the sense that the state may claim the property of its estate from any possessor, not only from those ill-intentioned, *detentores mala fide,* but also from the *bona fide* ones, who cannot oppose any exception of the common law founded upon the fact of possession as, for example, the usucapio or the instantaneous prescription of movables.

In any litigation the state enjoys an assumption of property which the doctrine and the jurisprudence recognize upon any assets belonging to the category of means of production; it is therefore sufficient for it to prove the identity of the respective goods with the claimed ones and that they have been illegally taken off from its possession [3]).

b) The right of the socialist state property is also defined as an exclusive right, more exclusive than any other property right, because it is not susceptible of the classical dismemberment, to wit: the use, habitation or usufruct. The attributes of the property right — possession, use and alienation (possessio, usus et abusus) — cannot be separated to be transformed in real rights opposable to the state.

As we shall demonstrate later on, the existence of the direct administration right and the other real new type rights granted to central offices and state enterprises, does not lead to the idea of dismemberment of the socialist state property right since no one of these titulars can oppose the rights in discussion to the state. The socialist state property represents a unitary fund.

c) The third characteristic of the socialist state property right is its *inalienability of principle.* Such a thesis must not be understood in an absolute sense. The alienation of certain goods, belonging to the state is sometimes imposed by the normal display of the economic processes, as, for instance, the consumer goods which are precisely produced to be alienated.

Even in that case the alienation must be done according to the modalities provided by the law[4]). Thus, for example, the transfer of land to co-operative farms, the change or transmission of certain goods to public organizations or physical persons are provided by decree. In other cases, of sales of products, for

---

[2]) Prof. Dr. Traian Ionaşcu, Salvator Brădeanu, op. cit., p. 137.

[3]) Constantin Stătescu, Dreptul civil, Bucureşti, Ed. didactică şi pedagogică, 1970, p. 551.

[4]) Prof. dr. C. Stătescu, op. cit., p. 554.

instance, the property passes to another titular according to a contract.

If the transmission does not take place by virtue of the act provided by the law, the respective property may be claimed by the state.

d) The socialist state property right is *imprescriptible* both in its *extinctive* and acquisitive aspect. In other words, neither usucapio, nor the bona fide possession of a personal property (the so-called instantaneous prescription) cannot be opposed against a revendication suit entered by the state.

e) The last characteristic refers to the fact that the state property cannot be pursued by its creditors. The state cannot be but exceptionally a subject of civil law. The possible claims against the state are paid by their inscription in the budget.

The properties entrusted in direct administration to the socialist organizations, juridical persons, may be pursued as a rule by their creditors. We must point out the important exception represented by the fixed means and, in the large majority of cases, by the circulating ones belonging to socialist organizations which are protected against their pursuit by creditors.

§ 3. *The Right of Direct Administration*

4. As we have already shown, according to the Constitution, the right of the socialist state property represents a unique fund whose titular is the whole people represented by the state.

Besides, the socialist state exercises upon these properties two categories of prerogatives, some of them resulting from its quality of proprietor and the other from its quality of titular of the sovereign power.

In its first quality, the state participates to civil relations — or to economic ones — by organizations endowed with juridical personality on a fully equal basis with all the subjects participating to such relations.

In its second quality, the state participates to relations of constitutional, administrative or financial law in which the parties are finding themselves in relations of subordination and not of equality. That is why the endowment and supplying — though sometimes incomplete — of central offices and enterprises, is realized by subsidizing them, therefore by acts of administrative law which also govern the re-distribution of some of their goods and that is why the state, sometimes, influences by means of product distribution upon the contents of the economic contracts, etc.

By taking into account the second quality of the state — of holder of the supreme power — we may explain the nature of the relations created between the state and its economic units.

Only in exceptional situations does the state directly exercise its quality of proprietor through the agency of the Ministry for Finance or, when the law stipulates it, through other agencies.

As a principle, the state entrusts its goods to socialist enterprises or institutions. Some of them such as, for example, the economic units, in other words the industrial central offices or enterprises, are juristic persons and are therefore subjects of the civil law. In this quality, the economic units — we shall call them, with a general term, enterprises — have their own patrimony. According to the art. 37 of the Decree no. 31/1954, neither the state is responsible for the obligations of enterprises, nor are the latter for the obligations of the state.

The patrimony of these enterprises is not governed by a property right, but by another real right called the *right of direct administration* specific to the socialist law (Sometimes, in the older literature, it was designed under the name of "right of direct operative administration").

In their relations with other subjects of the civil and economic law, the state enterprises behave as if they were titulars of a property right. By claiming the goods from a particular person the enterprise is protecting the right of the socialist state property as an authentic state organ, because it does not exercise the attributes of the direct administration right — possession, use, alienation — either by individual power, or in its own interest, but by the power and in the interest of the state.

The difference between the right of property and that of direct administration is underlined by the relations between the titular and the constituent of the respective right. If the property right, once acquired, may be opposed by its titular to the constituent — by refusing, for instance, to give back the thing — the right of direct administration can on no account be opposed to the state which has assigned it and which may withdraw the right whenever it wishes in its capacity of titular of the sovereign power, redistributing the respective property to another enterprise.

§ 4. *The Double Quality of the Working People*

5. In the social-political literature of Romania the concept of the double quality — of proprietors and producers of material goods — of the working people is currently referred to. This formula has well-defined juridical consequences and significance implying

the idea both of the participation of the working people to the management of the enterprise, to increasing of its patrimony and of its members' sharing a joint interest in the results obtained.

In a broad sense all the working people of an enterprise — workmen, engineers, management — are sharing together with the whole people the quality of titulars of the right of the socialist state property. Moreover, the working people from a certain enterprise acquire a specific position in its structure which ascribes to them certain rights and duties.

This position results from the fact that a part of the national wealth is entrusted to them in order to render it productive in keeping with the principles of economic management.

The specific position of the working people may be defined by three different aspects : a) participation to management ; b) sharing of a joint interest in goods production ; c) participation to increasing the enterprise's patrimony.

The participation to the management of the enterprise is discharged through the general assembly of the working people which is "the higher form of the collective management of economic units", sharing in decision-making and being informed about the activity of the enterprise, through reports presented by the committee of the working people which is an organ of collective management partially emanating from the general assembly.

Secondly, it is discharged by the participation of the working people to boards of collective management consisting, besides of some members by right, of representatives elected by the general assembly and of persons appointed by the hierarchically superior organ at the proposal of the general assembly.

The sharing of a joint interest presents two distinct aspects. We shall mention, in the first place, the principle according to which the remuneration of the work is in connection with the realization of the plan tasks or targets and, generally, with the results of the production. Then we shall show that the system of prizes or rewards granted from the profits obtained, increases the degree of co-interesting the collective.

And finally, *the participation to the increasing of the enterprise's patrimony* is regulated by the new finance law. Until recently, the state enterprises were entirely endowed with fixed and circulating means exclusively by the state.

According to the new law, a part of the effort for the constitution of the patrimony devolves upon the working people. Under certain limits, the endowment with circulating means — and sometimes even with fixed ones — is no longer made by financing — therefore by the state allocating an unrepayable fund — but by credits that is by loans granted by the banks to the enterprises. These loans are returned out of the profits realized from the pro-

duction. Therefore a part — if not the largest, at any rate an important one — of the patrimony of the enterprises is directly due to the working people.

Consequently, the foundation of an enterprise and the work relations established within it begin to be regarded in a new light.

The foundation act of the competent organ can no longer be considered as its only basis. It only represents the first act of the foundation of the enterprise which is completed only by the conclusion of the labour contract that settles the participation of the working people to the management and display of the enterprise's activity.

In order to understand the ties uniting the body of workers, one has to investigate beyond the labour contract and approach them from a larger perspective, through the prism of the worker's adaptation to the collective of working people. The concept of "wages" has evolved and the most recent normative acts refer, in the terms of the marxist political economics, not to "salary" and "worker" or "employee", but to the remuneration according to the quantity, quality and social importance of the work done by each member of the collective of the working people that represents the part which is his or her due from the national revenue [5]).

§ 5. *The Real Rights Corresponding to the Right of the Socialist State Property*

6. Besides the right of direct administration, the Romanian legislation provides also other real rights derived from the right of the socialist state property. Thus, in certain cases, some goods belonging to the unique fund of this property may be entrusted for use to co-operative organizations or to other public organizations or even to physical persons.

The purposes for which this permanent use is granted differ widely varying from the necessities of agricultural production to the building of dwellings.

The right of use being granted by an administrative act — just like that of direct administration — is not opposable to the state, and the state is allowed, as a rule, to withdraw it. Some authors are inclined to consider that if the titular of the right of use respects his obligations and the destination of the site, the state should not withdraw *ad nutum* such a right, the more so as the

---

[5]) See Victor Dan Zlătescu, Contribuţii la studiul problemei naturii întreprinderii socialiste de stat, in : Studii şi Cercetări Juridice No. 2/1972, p. 219 and seq.

respective ground becomes an accessory of the building and its titular could not be submitted to the expropriation by a simple administrative act [6]).

7. According to the art. 7 of the Decree no. 409/1955, concerning the transmission of goods from the state's property, certain *agricultural land* belonging to the state may be *gratuitously transferred* for use to co-operative farms.

The basis of granting such a right is the Decision of the Council of Ministers which may establish or not a use term. By utilizing the land, the co-operative farm is owner of the land's fruit.

Besides the titular is permitted under reasonable limits to gather also the products, for instance, to exploit a sand quarry, or to cut down a forest etc., operations by which the titular makes acts of material alienation about the respective property. The co-operative organizations cannot do, as a rule, acts of juridical disposition alienating the land since the state is and remains its owner.

8. Another right of use is guaranteed by the Decree no. 244/1955, pursuant to whose dispositions the executive committees of the district people's councils may transfer without payment to co-operative organizations — other than co-operative farms — sites necessary for buildings.

If the sites are situated on the agricultural field, which is governed by very strict rules regarding disappropriation, the attribution may be only made by a decision of the Council of Ministers after previously completing the legal formalities for drawing out the respective sites from the agricultural circuit.

The law provides that the beneficiaries have, in all cases, to assume in written the obligation to observe all the conditions stipulated in the attributing decision, as well as the terms concerning the beginning and the end of the works. The violation of these conditions and terms authorizes the state to withdraw the right of use.

Apart from sites, other goods may be given in use to co-operative organizations according to the dispositions of the Decree no. 244/1955, and of the Decree no. 409/1955 and in conformity with a decision of the Council of Ministers.

9. One of the most frequent forms of the right of site use is that provided by the law no. 4/1973 "concerning the development of house building, the sale of dwellings from the state fund to the population and the building of rest-houses in personal property". The art. 10 of the law stipulates that the state supports the building of dwellings of personal property by various means among which the attribution of site for use to building.

---

[6]) Prof. Dr. C. Stătescu, op. cit., p. 583.

The same rule applies, pursuant to the law, in case the state sells dwellings of personal property ; the purchaser acquires only a right of use upon the site on which the dwelling is built.

Likewise, in case of building rest-houses of personal property, the art. 46, paragraph 3, provides that the necessary sites be granted upon an annual tax. The law also provides that these sites are established by the executive committee of the people's council of the respective locality in outlying areas which can be used neither for other purposes nor for the building of tourist's complexes or of other objectives of public interest.

The law adds that in case of succession or alienation of the dwelling, the successor, the buyer or the grantee will also acquire the right of property or of the use upon the respective site during the whole period of the dwelling's existence.

The title to use is acquired, as the law stipulates it, by virtue of the attributing decision issued individually or in common by the executive committees of the people's councils.

The right of use, established over sites, acquired under these conditions, may be defined as a real right with an onerous title because the beneficiary — according to the law — pays a tax for it and this right is not affected by a term. It confers to the titular the possession, the right to utilize and — as an accessory of the building — the right of juridical alienation. Although not affected by a term, the right of use is conditioned by the observance of obligations assumed by the beneficiary in connection with the building of the dwelling or of the resthouse, the state being entitled to withdraw the right if these obligations are not observed.

Some authors consider that if such obligations are observed, the state could no longer withdraw the right of use upon the site, since otherwise it would be implicitly disturbed the right of property upon the building. The withdrawal of the right of use could not take place, in their opinion, but by an expropriation justified by public interests [7]).

§ 6. *The Right of Co-operative Property*

10. The right of co-operative property — as it is provided by the Constitution — is a subjective right belonging to each co-operative organization, whether co-operative farms, artisan's or consumer's societies ,which in its quality of juridical person is entitled to appropriate the production means and the products and to exercise upon them the attributes of possession, use and alie-

[7]) Prof. Dr. C. Stătescu, op. cit., p. 593.

nation with personal power and in its own interest within the limits and in conformity with the law. Like the right of the socialist state propetry, it is a form of the socialist property right bringing forth, similarly to the former, certain social relations which assure the direct union of the producers with the production means belonging to them.

The Constitution confirms in the art. 10 the aid granted by the state co-operative farms and guarantees their property protection.

It is also provided that the state supports the other co-operative organizations and defends their property [8]).

The essential difference between the two forms of the socialist property consists of the degree of its socialization : as it was shown above the goods which form the object of the socialist state property belongs to the whole people represented by the socialist state, while the goods of the co-operative units belong to the respective units. The co-operative property also called "group property" must not be understood as a form of co-property, but as an expression of the interests of a body of co-operating members and which creates a collective subject of right — the co-operative organization — that is a socialist form of union between these members

The different degree of socialization of these two forms of socialist property brings forth other dissimilarities between them referring to the subject of the right, its object, the manner of exercising it and the remuneration of the work. Thus, if the *subject* of the right of the socialist state property is the whole people represented by the state, that of the co-operative property right is the co-operative organization.

As regards the *object*, although in the case of the right of the socialist state property there is no restriction, all goods being able to form the object of such a right, in case of co-operative property right, owing to the principle of the speciality of the capacity of use, the object of each organization consists only of those things which correspond to its speciality, therefore to its capacity of use. Even *the exercise* of this right is different : while the right of the socialist state property is exercised through the agency of the socialist units, as juridical persons titulars of the right of direct administration, the right of co-operative property is, as a rule, directly exercised through its titulars. A final distinction concerns the manner of *work remuneration*. Even though the socialist principle of distribution according to the quantity, quality and social importance of the work performed applies to both,

---

[8]) Prof. Dr. Traian Ionaşcu, Salvator Brădeanu, op. cit., p. 296.

the different degree of specialization determines differences as to the way in which this principle is acting in the two sectors.

11. The juridical characteristics of the right of co-operative property define it as an absolute, exclusive, imprescriptible, inalienable right protected against the pursuit of creditors.

Being a real right, opposable *erga omnes,* the right of co-operative property is less absolute than that of the socialist state property because the state is entitled to oppose to a co-operaive organization the acquisition by prescription or "bona fide possessio", of a thing which has belonged to such an organization [9]).

In its turn, the right of co-operative property is more absolute than that of personal property, since a physical person *cannot* acquire a thing belonging to a co-operative organization even by prescription or possession of good faith. It is also affirmed that the prescription and possession of good faith (usucapi et bona fide possessio) could not lead even to the acquisition of the right of property from another co-operative organization [10]).

As an *exclusive* right it entitles the co-operative organization to exercise with personal power and in its own interest the attributes belonging to this right. The right of co-operative property cannot be, as a rule, either dismembered or affected with mortgages and other real charges. If such a situation may undoubtedly arise in the relations between physical persons it is possible, as it is alleged in the juridical literature, that the dismemberment or mortgaging of co-operative property, by instituting, for example, an easement or superfices right, occur in favour of the socialist-state property owing to the latter's higher rank [11]).

The same is valid for *imprescriptibility* too. The revendication suit concerning the goods of a co-operative property entered against a physical person is imprescriptible. It could be paralyzed only by the proof brought about by the state that the respective property has been acquired by prescription or bona fide possession. The *inalienability* of the co-operative property must be analysed in connection with the economic destination of the goods. In principle, the land belonging to co-operative units is inalienable. As for the possibility of alienating fixed and circulating means, this question is solved by the regulations of various co-operative organizations. Characteristically, the transmission of goods cannot take place in a gratuitous form, but it must — at least in principle — take the form of an onerous deed.

---

[9]) See: Prof. Dr. Traian R. Ionaşcu, Salvator Brădeanu, op. cit., pag. 297 and seq ; Prof. Dr. Constantin Stătescu, op. cit., p. 620.

[10]) See : Prof. Dr. Constantin Stătescu, op. cit., p. 620.

[11]) See : Ibidem, p. 621.

Finally, the protection against any pursuit implies that in so far as the property of co-operative units cannot be alienated, neither can it be pursued by creditors. The pursuit instituted against such an organization can affect only the credit balance of the funds connected with the respective debt. Subsidiarily, the creditors are authorized to pursue the products which are not necessary to the fulfilment of the obligations stipulated in the contract concluded by the respective co-operative unit before the beginning of the pursuit, and also the exceeding part of the fixed means.

12. The right of co-operative property may give rise — as in the case of the right of the socialist state property — to some real rights which are not dismemberments of the first one for, as it has been permanently shown in the doctrine, they cannot be opposed to the co-operative organizations which have created them, but exclusively to other subjects of right.

a) We will mention, in the first place, *the right belonging to enterprises or institutions annexed* to co-operative organizations or other public organizations.

The enterprises and institutions which are annexed to co-operative organizations and, generally, to the public organizations are juridical persons created by them according to Decree no. 31/1954 in view of realizing economic objectives and endowed with fixed and circulating means by the above mentioned organizations. As in the case of state enterprises, the co-operative organization does not lose its right of property as regards the goods which go into the patrimony of the annex, because the latter does acquire but a right similar to that of direct administration ,opposable to any organization or institution, except the co-operative organization that has created it.

b) A particular role in the economic life of the state is played by the right of use which the members of co-operative farms acquire upon the lot of auxiliary land received by them from the co-operative to which they belong or granted to the employees of a state agricultural farm who are directly working in production, to machine operators and agricultural mechanics.

In pursuance of the co-operative farms regulations the size of the lot may amount to 15 ares (1500 square meters) according to the category of use of this land and to its soil productivity. There are, of course, exceptional situations, when the size of the lot may be larger or lesser than 15 ares.

The statute provides that the lot shall be used only for the agricultural production and cannot be transmitted in any way to other persons.

The Supreme Court (the Civil College's Decision no. 981/1968) has declared that the right of use is a real right of a new type,

inalienable, imprescriptible and protected against any pursuit, but which cannot be opposed to the co-operative. The Supreme Court has stated that the general assembly, that is the highest organ of the co-operative unit, is entitled to withdraw its previous decision by annulling the right or diminishing the lot without a possible opposition from the titular of the right of use.

§ 7. *The Right of Personal Property*

13. As we have mentioned in a previous chapter, the Constitution of the Socialist Republic of Romania provides that the right of personal property is one of the essential rights of the citizens. The art. 36 declares in this sense : "The right of personal property is protected by the law. The object of personal property right consists of incomes resulted from working, dwelling house, husbandry attached to it and the site upon which they are situated as well as the goods of personal use and convenience."

Another constitutional text, art. 9, paragraph 3, provides in its turn : "The dwelling house and annexed buildings, the site upon which they are situated, and according to co-operative farms regulations, the production livestock and the little agricultural inventory form the object of personal property of the co-operative farmers".

The regulations of co-operative farms limit, in its turn, the object of the personal property right of the co-operative farmers to the following items :

a) the dwelling house and annexed buildings, the site upon which they are situated and the courtyard whose total surface cannot exceed 800 sq. m. ; if that surface is surpassed, the difference is included in the lot attributed for use. We must draw the attention that the lot granted for use, dwelt upon in the preceding paragraph, should not be mistaken for land *property* of the farmers presented in this paragraph ;

b) the production livestock and the little agricultural inventory ;

c) the production obtained from the lot attributed for use.

It is also stated that a family of farmers is authorized to possess in personal property up to three heads of cattle, 15 sheep and goats and an unlimited number of pigs, fowls, rabbits, beehives.

The general assembly may approve depending on the local conditions and possibilities that a family of farmers may possess a greater number of heads of cattle, sheep and goats.

The regulations also provide that the general assembly may sell for personal property, building sites of at most 500 sq. m. from

the property of the co-operative farm situated within the perimeter delimitated by the systematization plan of the respective locality to members of the co-operative farm and to permanent employees who want to build a dwelling and do not have a site in personal property. Likewise, specialists and machine operators who are working in the co-operative unit and wish to establish themselves in the respective locality enjoy the same right.

At the same time, the Constitution provides in the art. 37 the protection of the right to succession.

One must underline that the right of personal property is conceived as a deriving form of the socialist property which represents its source seeing that from an economic point of view it is the result of the repartition of the part of the national income destined to be consumed by the working people.

The subjects of the right of personal property are always physical persons. The entire constitutional system and the common legislation consider that the titulars of the right of personal property — either a single titular or a common title of quota-parts or in indivision — are always physical persons.

The objects of the right of personal property are, exclusively, consumer goods. A production means can never form the object of personal property.

Amongst such goods, a special place is occupied by the dwelling house. The property upon it and the property upon annexes is expressly mentioned, as we have already shown, in the Constitution.

Our state is leading a consistent policy of house building ; the regulations governing the selling of dwellings to the population are treated in the chapter V.

As it was also mentioned, the physical persons may also possess a rest house which they may build with an aid granted by the state.

14. According to a disposition of principle inscribed in the Decree no. 31/1954, the civil rights of the physical persons aim at satisfying the material and cultural personal interests in keeping with the common interest and according to the rules and law governing the socialist life. The same decree provides that the civil rights which are protected by the law may be exercised only in pursuance of their economic and social purpose.

The exercise of the attributes of possession, use and alienation belonging to the right of personal property are carried out in the light of those principles which also help in the understanding of the special regim established by the law concerning : a) the building reparation and demolition of houses; b) the alienations and divisions of sites, with or without buildings (both regulated accor-

ding to the provisions of the Decree no. 144/1950) and c) the sites without any buildings located within the building perimeter of cities and towns.

The first of these dispositions is related to the systematization of localities. It is provided, in this sense, that the works of *building, transformation or reparation and demolition of dwellings* situated in cities, towns, balneary and climatic or health resorts, and also in localities developing into balneary and climatic stations, and industrial centres will be done only by a previous authorization issued by the executive committee of the people's council of the respective area. The sanction incurred by the inobservance of these dispositions is — besides the contravention fine — the demolition of the dwelling erected without the said authorization.

One should notice that this regulation equally applies to buildings belonging to the state, to those of co-operative organizations and private persons.

The second conditions give voice to a policy that pursues not only the systematization but also the elimination of any possibility of speculation, of unjust and unlawful profit in connection with dwellings. This policy concerns *the alienation and the division of sites with or without buildings in personal property,* which cannot be carried out but upon a previous authorization issued by the executive committee of the competent people's council. The documents of alienation or division of sites must be drawn up, pursuant to the law, in authentic form. The sanction for the non-observance of any of these two conditions — consists in the absolute nullity of the contract concerning the said alienation or division.

The demand of a previous authorization in the case of site division applies, as it was stated by the Supreme Court (the Civil College's Decision no. 195/1965) to all cases when a joint possession comes to an end by an "intervivos" division ; this implies that the authorization is requested either in case of a division by common consent, or by judiciary proceedings.

By another decision, the same Court has stated that the previous authorization is also necessary in case the right of property is dismembered.

Finally, the third special situation concerns *the buildingless sites located within the building perimeter of cities and towns.*

In order to help in the systematization and buildings erection and to prevent speculation upon the bare sites situated in the building perimter of cities and towns, the law no. 19/1968 declares these sites as inalienable and expropriable to the extent to which they exceed the areas established by the systematization plans.

This regime prevents only the "intervivos" alienation and establishment of real rights (mortgages, easements) upon these sites; it does not hinder their hereditary transmission.

The proprietor may build a dwelling for him and his family upon such a site, provided the building is finished within two years from the date of building authorization.

It is also provided that in case systematization plans do not allow the use of the site for the building of a single dwelling, the local authority may offer in exchange to the proprietor another adequate site.

15. Among legal dispositions concerning the exercise of the right of personal property we must also mention a series of legal provisions which, in certain situations, may cause the loss of this right.

First we shall name the *expropriation* provided by the law no. 19/1968 above mentioned.

In conformity with the art. 12 of the Constitution, "the sites and buildings are subject to expropriation for works of public interest and with the payment of a compensation". It may be inferred from the constitutional text that : a) the expropriation may apply not only to goods of personal property, but also to those belonging to co-operative organizations or other public organizations since the terms of the law make no distinction in this sense ; b) it is realized by the payment of a compensation to the proprietor whether physical or juridical person. The expropriation of sites bearing or not buildings may be carried out only by virtue of a decree of the State Council.

The expropriation represents one of the modalities by which it is acquired the socialist state property. It takes, therefore, place a qualitative change in the right of property, from a right of lower type — the right of personal property — to one of a higher type — the right of the socialist state property. The juridical consequence of the expropriation is the erasure of all the real charges entailing the expropriated thing that enters the state patrimony free of any charge. All the real charges and accessory rights are transferred — according to the doctrine — upon the sums received by the proprietor as an expropriation compensation, by virtue of a real subrogation with private character [12]).

A special case of loss of the right of personal property is *confiscation*. This is a sanction consisting in a forced gratuitous transfer to the state of certain goods by virtue of a judiciary decision. Thus, pursuant to the dispositions of the criminal code, the goods confiscation is a complementary penal judgement that also

---

[12]) See : Prof. dr. Constantin Stătescu, op. cit., p. 563.

establishes which goods are to be confiscated. In certain penal offences, the confiscation may be only partial. Owing to the personal character of the penal responsibility, its effects cannot cause any prejudice to the interests of alien persons. Consequently, the criminal code provides that the confiscated goods are passing over to the state, "without affection of the real rights attached to them as well as other rights resulted from the convict's obligations".

The criminal code also provides the confiscation as a safety measure. Such a measure may have as an object goods resulting from deeds sanctioned by the criminal law, goods which have served or which were destined to serve to a penal offence, if belonging to the author, or the goods handed over for the accomplishment of a criminal deed, or as a reward for such a deed, etc.

A third special case of loss of the right of personal property which we want to mention, is the *transmission to the state of goods without owner or abandoned* (res amissa, res derelicta). The Decree no. 111/1951 stipulates that the goods without owner and those considered as abandoned by the effect of certain laws and decrees are passing into the patrimony of the state.

This decree considers to be things without proprietor, any kind of goods abandoned by the respective titulars during a year or goods belonging to unknown or absent owners. The jurisprudence has established that the notion of unknown refers to the case when no one knows who is the proprietor of the respective thing and the notion of absent concerns the case when, though known, the titular has left the domicile and nobody knows anything about him. The abandonment of the thing implies — as it was decided — a voluntary act, accomplished with the purpose of abandoning it (the Supreme Court, Civil College's Decision no. 145/1966). The acts of goods administration can be made not only personally, by the proprietor himself, but also by his wife, children or any other person commissioned to take care of it. In case of a joint property, the act of administration made by one of the co-proprietors, is valid for the other one too.

The appropriation by the state of the abandoned property is accomplished by virtue of a judge's sentence. The juridical literature affirms that the state acquires the thing with all the real rights or charges existing upon it [13]).

§ 8. *The Right of Individual Property*

16. It is obvious that within property relations in Romania the right of individual property plays the smallest part. Being a rem-

---

[13]) See : Prof. dr. Traian Ionaşcu, Salvator Brădeanu, op. cit., p. 183. Prof. dr. Constantin Stătescu, op. cit., p. 566.

nant of the small commodity production, it is a form of the right of private property, based on the working result of the proprietor and of the members of his family obtained without the exploitation of paid labour.

The Constitution confirms and protects it. The art. 11 declares that "under the conditions of co-operativized agriculture, the state guarantees to peasants who cannot associate in co-operative farms the property upon the land tilled by them and their families, upon the tools used for this purpose, and upon the working and production stock. Is also guaranteed the property of the artisans upon their own workshops".

Therefore, the subjects of the right of individual property are, on the one hand, the peasants who have not joined into the co-operative farms and, on the other hand, non-cooperativized artisans, and the objects of this right may be the labouring fields, houses, production implements, labour and production stock, etc. Unlike the right of personal property, whose object consists in consuming goods, the object of the right of individual property is the soil and other means of production. Hence the difference of destination between the two categories of rights : the personal property is destined to satisfy the consuming needs of the titular, the other one to assure the carrying-out of a productive process within limits established by the law, preventing the exploitation of another's work.

§ 9. *Some Conditions about the Hereditary System*

17. As we have already pointed out, the Constitution of the Socialist Republic of Romania protects — according to the art. 37 — the right to succession as a corollary of the personal property right.

Taking into account the fact that personal property is the result of labour accomplished in the conditions of socialist society, which excludes the possession of means of production, in other words, eliminates any possibility of exploiting the work of other persons, it is quite natural that the transmission of this property should be protected, not only when it occurs between living persons — inter vivos — but also in case of death — mortis causa.

For the population's right which investigates upon the economic implications of the juridical regulations of problems relating to population, the system adopted in matters of succession cannot be indifferent.

It is obvious, considering the limited extension of our work, that we shall not be able to exhaustively examine the vast intri-

cate matter of the hereditary law. Therefore, we shall content ourselves to point out some of the essential elements for the understanding of the rules in vigour.

The problem of succession is treated in the Civil Code, in the art. 650 and seq., and also in some other dispositions, amongst which the most important is the law nr. 319/1944 "concerning the right to succession of the surviving spouse".

In order to clearly understand the way in which the hereditary transmission acts, it is necessary to give some explanations concerning the *matrimonial regime*.

The 1954 Family Code has established the community of goods as an obligatory matrimonial regime. According to the art. 30 the goods acquired during the marriage by either spouse, are from the date of their acquisition common goods of both spouses ; the law sanctions with nullity any convention contrary to this disposition. The doctrine has admitted that the said nullity affects only the conventions which lead to the diminution of the community, and do not apply to those leading to its increase.

The law provides that, at the dissolution of marriage, the common goods are divided among the spouses, pursuant to their agreement. If they do not agree, the problem of the division will be solved by the court.

The doctrine and the jurisprudence consider that the juridical nature of the community of goods is not that of a property with well determined quota-parts, but that of a co-ownership, in which the size of the parties' rights are not predetermined. In case of a judiciary division, the court will determine the portion of each party in conformity with the contribution of either spouse to the acquisition of the respective goods, taken also into account the housekeeping and nursery work.

In the great majority of cases, the courts, considering an equal contribution of the parties, divide the community in equal parts. This does not exclude the possibility that, in case when the contribution of one of the spouses is predominant, he (or she) may get a greater quota.

The matrimonial regime is in a close relation to the hereditary one, because the inheritance will include only the quota-part due to the deceased from the common property. It is important to note that this situation does not diminish in any way the hereditary rights of the survivor upon the goods left by the deceased spouse.

18. The hereditary devolution of common law is the legal one. The attribution of the deceased's patrimony to his (or her) heirs operates, as a rule, according to the principles established by the law. The testamentary devolution appears, thus, as an exception

which cannot operate otherwise than under the conditions and in the limits provided by the law. Consequently, we shall occupy ourselves firstly with the *legal devolution.*

The principle according to which devolution operates is that the successors are called to inherit pursuant to the classes (or orders) established by the law. The Civil Code provides four classes of heirs :

— Ist class — descendants in direct line ;

— IInd class — privileged ascendants and privileged collaterals (parents, brothers, sisters, also the descendants of the last two);

— IIIrd class — ordinary ascendants (grandparents and great-grandparents) ;

— IVth class — ordinary collaterales (other than brothers and sisters and their descendants) until the IVth degree including.

The 1944 law by improving the code's system calls to succession the survivor spouse in concurrence with each of these classes or alone if there are no other heirs.

Thus, the surviving spouse receives a fourth part when concurring with the first class heirs, a third part if concurring with the second class heirs, a half with the third class heirs, three parts with the fourth class heirs, and by default of other kindred the whole property.

Moreover, the law provides that, besides the respective part due from the succession, the surviving spouse is also entitled to what the doctrine calls the "legal preciput" to all the furniture and articles belonging to the domestic household and to the wedding presents on condition of not coming in competition with the descendants of the deceased. In addition, if the survivor does not possess his or her own dwelling, acquires also a habitation right upon the house in which has lived if it belongs to the succession.

Within the same class of heirs, the next of kin excludes out of the succession more distant relations.

Likewise, within the same class of heirs, relations of the same degree inherit equal parts.

The proximity of kinship, as it is provided by the law, is established by the number of generations : each generation represents a degree.

The law creates some exceptions from these principles which are not important however.

For a better understanding of the order in which takes placc the inheritance calling, it is necessary to mention the institution of *representation.* The legal representation is a benefit of the law by whose virtue a person more distant as to the degree of succession, is rising to the rank and degree of his (or her) parent, if this one is no longer living on the date of the opening of the succession in order to take the part which would have been his due if living yet.

This institution represents, therefore, an exception from the principle of the proximity of kinship degree, because it may cause that certain persons of a more distant degree be called to succession together or even before other relations of a nearer degree.

The persons taking advantage of the representation are the descendants in direct line and the descendants of the brothers and sisters of the deceased. The representation does not apply in case of other categories of heirs as, for example, the privileged ascendants, ordinary ascendants and ordinary collaterals. However, when it is valid, the representation operates : a) in all the cases — that is regardless of any other existing heir — and b) in infinitum, being not limited to a certain degree of descendants.

The most important effect of the representation is the division "per stirpes" of the succession, between the members of a hereditary branch. As a matter of fact, the representative successors are rising to the rank and degree of those represented (the predeceased), acquiring thus their rights. Consequently, they could not lay claim but upon that part which would have been of the deceased if living on the moment of the opening of the succession.

If all legal heirs are missing, and in case of lack of a will, the property of the deceased go, according to the art. 680 of the Civil Code, to the state. It is oftenly debated in the doctrine whether the state appears in quality of successor (jure heredis) or according to an original, primary right (jure domini, jure imperii). The problem is not solved. In our opinion, it is essential that whatever the ground of this right the state will acquire a universality, that is will be called to answer for all the liabilities of the succession.

The testementary devolution has — as we have already shown — an exceptional character. From a formal point of view, testaments are divided in two categories : ordinary and privileged.

The ordinary testaments which are drawn up under normal conditions, with the integral observation of certain formal requirements belong to three categories : a) holograph — entirely written, dated and signed by the testator's hand ; b) authentic — whose authenticity has been confirmed by state notarial offices pursuant to the legal dispositions ; c) mystical (secret) — signed by the testator, folded, sealed and presented to the judge's office for the accomplishment of certain formalities indicated by the law.

As to the privileged testaments, which are real authentic testaments, the fact that they are concluded in exceptional situations justifies the elimination of some of the formalities requested for the authentic testament ; we mention the following : a) military testament ; b) testament drawn up during a contagious disease ; c) maritime testament.

The liberty to make a will is limited. The civil law contains a series of dispositions which establish the conditions requested by the drawing up of a testament. The limitations which define this domain are the folliwing : a) the interdiction of any convention about future successions (pacta corvina) ; b) the interdiction of the fideicommissary substitutions ; c) the institution of the legal reserve.

Of a particular importance is, of course, the last one. The reserve constitutes a part of the legal succession, which the law bestows to certain categories of heirs, even against the liberal wish of the deceased and which is, relatively and partially unalienable. The categories of these favoured heirs, established by the civil code, are the descendants of the deceased (in infinitum) and the privileged ascendants.

The same quality — of a favoured heir, with a hereditary reserve — is granted by the law no. 319/1944 to the surviving spouse whose reserve is equal to a half of the quota due to the relict as a legal successor.

The sanction for the violation of the hereditary reserve is the reduction of excessive liberalities. All donation and other liberal deeds which exceed the available portion are reductible to the limits of this portion. This reduction causes either the caducity of the legacies, or the suppression of excessive donations. The reduction may be claimed only by the interested parties, in other words, by the heirs beneficiary of the reserve, called "portio legitime" in the Roman law.

§ 10. *The System of Taxes and Duties*

19. There exist numerous aspects of the system of taxes and duties which affect the population ; they contribute in a larger or lesser measure to determining the real revenue obtained by the working people, establish financial restrictions upon transmissions of real estate, interfere in the most direct way by increasing the taxes due by childless people and, on the contrary, by diminishing the charges and difficulties of the families having many children.

Of course Romania does not know an excessive fiscal system. In our country taxes and duties never attain the sometimes exorbitant rate existant in other countries. The socialist state which is the titular of all natural riches and the proprietor of the almost entire industry, of large domains and of an enormous dwellings fund, of the greatest part of the commercial network, of transport means — railways, aviation, road and sea transport, etc. — rea-

lizes the most part of its revenues not by the means of taxes and duties, but by socialist accumulation.

The taxes and duties remain therefore simple financial levers by which the state imposes a certain direction to social phenomena. The demographic policy of the state is one of them.

20. *The income tax* is regulated by the Decree 153/1964 which has suffered many modifications during the time.

The Decree taxes the revenues realized by : a) workmen and civil servants ; b) men of letters, art and science ; c) professional people, artisans, carters, merchants, etc.

We must specify that the law considers as revenues realized upon the territory of Romania all sums of money paid under any title by enterprises, institutions, organizations or persons having their premises or domicile in our country, as well as the revenues in kind gathered upon its territory.

Certain categories of persons are exempt from taxes by the law. Among these persons are : those distinguished with the title of hero of the socialist labour, workmen and civil servants with lower revenues, the military men — excepting some rank — for the pay received, pupils and students for their fellowships, the retired people for their old age or, infirmity pensions, etc.

21. The fiscal tax upon the *workmen and civil servants* income is calculated progressively according to their monthly income, which is a fixed sum of money ranging within certain limits of wages, to which it is added a certain percentage for the sums exceeding the upper limit.

For example, for a monthly income between 1401—1700 lei the tax is of 141 lei, with an addition of 22% for the portion exceeding 1400 lei, and for an income greater than 1701 lei the tax is of 207 lei plus 16% for the portion exceeding 1700 lei.

The house attendants are submitted to the same taxes as workmen and civil servants ; their monthly income is determined by the received sums, not by the remuneration in kind (accomodation, food, etc.).

In certain situations, the tax deduced from workers and civil servants is reduced :

a) with 50% if possessing the orders of the Socialist Republic of Romania or titles of "people's" or "honoured artist".

This reduction applies only to persons who received the respective title or order before the first of July 1968.

If the distinction was granted after this date, the tax is reduced as follows :

— with 50% for people honoured with first class orders of the Socialist Republic of Romania and with the titles of "people's artists" or "honoured artist" ;

— with 40% for people honoured with IInd class orders ;
— with 30% for people honoured with IIIrd class orders ;
— with 25% for people honoured with IVth class orders ;
— with 20% for people honoured with Vth class orders ;

b) the tax is reduced with 30% in case of workers and civil servants having a gross tariff wages up to 2500 lei and who are supporting more than 3 persons.

The same tax regulation applies to other categories of income such as doctoral fellowship, barrister's fees received through the agency of the Bar, professionals' wages paid by enterprises, institutions or other organizations of the socialist sector, the gain realized by the members of the handicraft — or —invalids' co-operative units, regardless if they are working on the unit's premises or at home, and a few other categories of income.

22. *The taxes upon the regular income of writers,* artists and scientists and upon the artisans' revenue gained outside their permanent working place are calculated pursuant to a similar system, upon quotas.

Thus, for instance, for an income between 3601—4800 lei, the tax is of 144 lei, plus an additional quota of 7%, and for an income of 6001—7200 lei, the tax is of 336 lei, with an addition of 11%.

It is stipulated that in establishing the taxable revenue of this category of persons, the Ministry of Finance may apply lump quotas of expense which have to be subtracted from the gross income.

The above mentioned tax reduction apply in similar conditions to the men of letters, artists and scientists.

23. *For the professional people, artisans, carters and merchants,* the law establishes quotas which differ both from other categories of people and within this category.

We must mention that formerly the term "professional people" — referred to medical men, veterinary surgeons, sanitary and veterinary agents, assistant surgeons, dentists, professors, architects, engineers, technicians, etc. This category is almost totally reduced in the conditions of the socialist society where professionals are exercising their profession as salaried.

We shall show for exemplification that a person with an income between 3001—5000 lei pays a tax of 240 lei plus 16%, and a person with an income between 5001—8000 lei pays a tax of 560 lei, increased by 23%.

The law provides a different tax system for non-co-operativized artisans and carters who do not utilize paid work with the exception of an apprentice, and for the persons realizing a revenue from the renting of dwellings or other assets, from agricultural sources exempt from the agricultural tax, etc. Since this category

of persons is rather small, its fiscal system does not present a particular interest.

The only numerous category is that consisting of people renting houses or flats, furnished or non-furnished rooms, etc. The system of income tax is similar to the above mentioned one.

24. *The tax deducing from agricultural activities* differs from the population's income tax. The matter is dwelt upon in the law no. 61/1968 "concerning the tax upon the revenues realized from agricultural activities", modified in the sense of tax exemptions granted by the laws no. 6 and 7/1971.

The 61/1968 law regulates, in the first place the revenues realized by the co-operators as a remuneration of their work accomplished in the co-operative farms received both in money and in kind, according to the remuneration norm used by these organizations.

The tax is calculated for each co-operator separately according to the same principle of progressive taxation on the basis of a tariff with fixed sums and percentage rates (the series system is not different from the population's income tax system).

Thus, for an income up to 1500 lei the tax is of 6,50%; between 1501—2000 lei ,the tax consists of a fixed sum of 97,50 lei, plus 7% for the portion exceeding 1500 lei.

The taxable income does not comprise pensions and aids granted to co-operators according to the regulations of the co-operative farm and of the pension house for retired co-operators.

The law exempts from the tax the revenues realized by the co-operators, who are heroine-mothers, or by the head of the family to which they belong and also the revenues realized by co-operator mothers whose husbands are doing their military service.

Likewise, co-operators who are heads of a family having at least 3 children under 15 years, profit by tax reduction according to the number of children as follows :

— 15% for a family with 3 children ;
— 20% for a family with 4 children ;
— 30% for a family with 5 children ;
— 40% for a family with more than 5 children.

Taking into account the large number of people who are working in the agricultural co-operative organization, the fiscal preferential system granted to families with many children represents an important instrument for the realization of the policy of population growth.

25. The law no. 6/1971 regulates the system of taxes deduced from revenues realized from the small individual farm belonging to members of co-operative farms or to individual producers, or to physical and juridical persons other than the state organizations

and co-operative farms, to which the law give the name of "agricultural husbandries".

The law exempts from the tax agricultural farms which are realizing from the soil culture and animal breeding an annual income up to 500 lei.

The portions of taxable income, the fixed and percentage rates and the revenues exceeding 500 lei are established similarly to the already discussed system.

The revenues realized from animal breeding within the small individual farm belonging to members of co-ooperative farms are not taxable. Likewise, the revenues realized by individual producers, by physical or juridical persons, other than the state organizations and cooperative farms, from the breeding of a number of animals not exceeding 5 heads of cattle, 20 sheep and goats and 10 pigs. The farms possessing a number which does not exceed 10 heads of cattle, 200 sheep and goats and an unlimited number of pigs are taxed in conformity with the norms of revenue from animals in so far as they overstep the limits of nontaxable revenues.

26. Besides these taxes, we shall mention *local taxes and duties.*

Local taxes concern buildings and sites.

They are named local taxes due to the fact that they are levied by the people's councils — local organs — to whose budgets they are paid and because they are established by normative acts issued by these organs.

Like local duties, the local taxes are regulated by the Decree no. 18/1952 several times completed and modified.

a) The *tax upon buildings* is deduced for dwelling houses, commercial buildings, theatres and other buildings, together with their annexes, belonging to physical persons, budgetary institutions, enterprises and other socialist organizations.

The tax is annually levied and is calculated according to the respective building value as follows : 0,45% of the value of buildings located in villages and belonging to persons subject to the agricultural tax, 0,75% of the value of buildings belonging to workers, civil servants, etc., and 1,20% of the value of buildings belonging to non-co-operativized artisans and other citizens. In case of physical persons, the tax is calculated on the basis of the insurance value by the effect of the law of the respective building.

b) The tax upon town-sites is levied upon built or nonbuilt sites situated in towns and belonging to physical and juridical persons. The law exempts from this tax the sites affected to buildings which are themselves exempt from this tax, the sites submitted to the tax upon the agricultural revenues of the population, the sites which are improper for building, those used for parks, playing fields, solariums, etc.

The tax is calculated per square meter, in fixed sums between 0,06—0,40 lei, being differentiated according to categories of towns and destination of the ground. The law provides a reduction of 50% if the tax is deduced from workers, co-operativized artisans and members of co-operative farms.

27. As we showed above, these taxes are paid by proprietors. In case of grounds belonging to the unique fund of the socialist state property used by people who are building dwellings or rest houses in personal property, there is no tax to be paid, but a charge stipulated by the law no. 4/1973.

This is an annual charge of 1 leu per sq. m. for the building of dwellings, of 2 lei per sq.m. for the building of rest houses, and of 3 lei per sq. m. for the courtyard.

28. The local taxes refer to transport means, to animals, and to the use of the public sales centres, etc.

The physical persons who possess mechanically drawn vehicles, animal-drawn vehicles and means of water transport, are subject to special taxes. These are annual taxes, and are established : for the mechanically-drawn vehicles according to the cylinder capacity of the engine and the type of vehicle, for the animal-drawn vehicles in relation with the number of drawers, and for the water means transport, according to the manner in which they are used : personal interest, transport of persons, etc.

The persons who live in towns, working centres and balneary or climatic resorts and possess productive and labouring animals — excepting those utilized by cartering — have to pay between 30—50 lei per annum.

The physical and juridical persons who sell products in public sale centers are also owing certain taxes which are established every day in keeping with the object and conditions of sale.

29. If the tax represents as a rule a means which acts only indirectly upon the population's growth, contributing to the establishment of the real revenue of a family, there exists a case of the highest interest for the population right in which this action acquires a direct character. It is the tax created by the Decree no. 1086/1966 which belongs to an ensemble of legislative measures adopted with the purpose of stimulating the population growth.

According to this Decree, both the tax upon the revenues of the population, regulated by the Decree no. 253/1954 and that upon the agricultural revenues of the population *are increased in case of chidless people* as follows :

— the tax deduced from workers and civil servants and from assimilated categories is increased with 10% in case of a monthly

revenue between 801—2000 lei and with 20% for a monthly revenue greater than 2001 lei ;

— the tax deduced from men of letters, artists and scientists, professionals, artisans, carters, proprietors of rented buildings etc., and the tax upon the agricultural revenues are increased with 10% for average monthly revenue, and an annual revenue between 9601—24,000 lei, and with 20% upon the revenue calculated in the same manner, and exceeding an annual sum of 24,000 lei.

This regulation applies both to childless men and women, beginning with the age of 25 and regardless of their status : married or non-married.

The law exempts from this increase persons who had children, but had died, invalids of the Ist and IInd degree for their revenues realized besides their pension (which is tax free), also the childless people who married persons having children born in former marriage or out of marriage.

The analysis of tax regulations brings forth two essential ideas :

a) The evident purpose of this tax system is to stimulate the population growth by establishing a progressively increasing charge upon childless persons ;

b) the tax is greater for persons having higher revenues, for the legislator has tried to thwart the tendency, unanimously admitted in the demographic studies that the higher the living standard of some families, the fewer is the number of their children.

30. The system of the stamp duty is regulated by the Decree no. 199/1955 and by the D.C.M. nr. 911/1955 "concerning the establishment of the list of acts and facts subject to stamp duties, and of the tariff of stamp duties", modified by the D.C.M. nr. 444/1970.

According to these normative acts, among other deeds which are subject to the stamp duties, are the following :

a) actions and requests brought before the courts of law, applications concerning the exercise of procedural means against the judiciary decisions, and delivery on demand to courts of law of copies of documents ;

b) notarized acts, services done by the officies of the State Notary, translations including ;

c) the authentification of acts by the executive committee of the people's councils (the local organs of the state administration) and certificates issued by the executive committees.

The acts which have been charged by consular taxes are no longer taxed with stamp duties, excepting acts authenticated abroad concerning sales, changes or donation of real estate situated in our country. In such cases, the beneficiary, living in Romania, of the act drawn up abroad, is obliged, when entering upon his rights to the payment of possible differences between fiscal duties and consular taxes effectively paid abroad.

The succession opened abroad and liquidated through consular or diplomatic offices are not subjected to stamp duties, even though the heirs are in our country. Stamp duties are not put on acts for which one had paid the taxes provided in the special tariff, on inventions patents, or on the registration of the trademarks.

Besides stamp duties exemptions provided by the law — and which do not concern the matter of real estate transmissions — it is stipulated that the Ministry of Finances may grant other exceptions, reductions, instalments or prorogation of stamp duties.

The stamp duties are of three types : fixed (being expressed in absolute sums), proportional and progressive by instalments (being expressed in percents).

The fixed duties apply to each separate taxable act or operation and the proportional and progressive ones apply to the value of these acts and operations.

In relation with the quantum of stamp duties, established by D.C.M. nr. 911/1955, with the modifications brought about by D.C.M. nr. 444/1970, one must mention that :

The succession tax required from spouse and relative up to the second degree is established according to the value of the succession in the following way :

— up to 25,000 lei	3,5%
— between 25,001—50,000 lei	7,0%
— between 50,001—100,00 lei	10,0%
— between 100,001—300,000 lei	25%
— over 300,000 lei	40%

The heirs who do not belong to the above mentioned categories will pay a stamp duty increased by 100%.

The *authentication of sale, change or donation instruments* having as object a real estate is taxed with a stamp duty established in connection with the value of the object, as follows :

— up to 20,000 lei	— 6%
— up to 40,000 lei	— 8%
— up to 80,000 lei	— 10%
— up to 120,000 lei	— 12%
— up to 160,000 lei	— 14%
— over 160,000 lei	— 16%

We must specify that stamp duties are calculated according to the value declared by the parties, which cannot be lower than the insurance value of the respective thing.

Chapter X

CONDITIONS OF WORK INTEGRATION AND LABOUR PROTECTION

§ 1. *Work Integration*

1. As we have shown in the chapter concerning property, the working people enjoy within socialist state organizations, that is within the predominant sector of the economy, the double quality of owners of the production means and of producers of material goods. This double quality assigns to them a specific position within these organizations incompatible with the concepts of "salaried" or "employees". Although, the labour relations come into being from the moment of the labour contract which is the formal act which sanctions them — the ground of labour participation to the activity of the respective organization is larger as it stems from the integration of the working people with the production tasks of the organization.

That is why we shall constantly refer not to "appointment", but to "integration in work".

2. In the socialist system, the complex use of the population work capacity is the result of its continuous growth. For the first time in the history of Romania there exists the real possibility of the integral and rational use of manpower in keeping with the tasks devolved upon society at a certain stage of its development. Consequently the Labour Code adopted in 1972 lays at the basis of the policy of selection, training and designation of persons able to work the principle of conformity with the provisions of the unitary plan of economic and social development.

With the view to draw new contingents of manpower and to their rational utilization in keeping with the economic growth of Romania, it is provided that for the period between 1976—1980 about 1,200,000—1,300,000 persons will belong to the category of working people.

Every socialist state organization co-ordinates its activity so that the integration of a person in work should be made in relation with the needs of the respective organization, taking also into

account the capacity, professional training and preferences of the respective person.

The joining of the general interests with the personal ones in the policy of choosing and training the personnel integrated in work is also reflected in the dispositions of the law nr. 12 of october 21, 1971 concerning the integration and promotion of the personnel of the socialist state organizations.

The formation of a qualified staff, their training and professional improvement represent a complex process, in which a central place is occupied by the education at all levels. The obligativity of the 10 years general school, the organization of technical and vocational schools, of short-term courses, of evening or without obligatory attendance classes, the organization of higher education and of other educational forms are a means of assuring the Romanian citizens' training in view of their integration in work in accordance with the social needs and their own wishes.

3. The Labour Code stipulates the principle according to which the integration to work is concluded only after the verification of the applicant's aptitude and professional capacity through one of the following forms : a) practical test ; b) examinations; c) contests; d) probation time. The conditions concerning this verification are provided by the law nr. 12 of october 21, 1971 concerning the integration and promotion of the personnel of the socialist state organizations.

The integration and assignment of personnel to a specific job are made in keeping with certain data, such as : educational level, professional training, experience in the respective function, adequate speciality, the manner in which the candidate carried out his or her professional activity in the past, results obtained at the practical test, verification of the professional knowledge, examination or contest's results and behaviour in society.

The examination for contest consists of the verification of professional knowledge and of the performance of some practical tests ; in case of management jobs a particular stress is put upon the verification of the candidate's knowledge in the domain of management and organization of the production and work.

The verification of aptitudes and professional capacity consists in a practical test in case of skilled workers and in an examination in case of people applying for technical, economic, administrative jobs.

The persons transferred in the interest of the enterprise, to an equivalent or an inferior job, are not obliged to pass an examination. Likewise, the staffing of newly created institutions is done without any examination ; the invalid pensioners or the persons which have been prescribed to change their working place may be

reintegrated in another job within the enterprise without examination.

We must also mention that there are several categories of people who are exempt from the examination test, namely people coming from junior engineering colleges and higher education graduates; their integration is done by an order of assignment to vacant posts issued by special commissions.

All other categories of persons to whom the above-mentioned modalities of verification do not apply are integrated upon the basis of an integration test term, which may last from at least 15 days to at most 90 days.

The fact that a person is submitted to one form of verification excludes the other modalities of verification with the exception of management posts for which candidates must undergo, besides the verification, the integration test term, too.

The duration of the integration test term is added to the length of service even though the respective person was not integrated in work.

The health condition of applying persons being a decisive element in work performance, it is necessary for the candidate to pass a medical examination. The same obligation devolves upon persons transferred in working places which may be occupied only if the medical legal requirements are satisfied.

§ 2. *Labour Protection*

4. As we have already stated when dwelling upon the fundamental rights, the art. 18 of the Constitution of the Socialist Republic of Romania, guarantees the right to work to Romanian citizens. The same article, in a separate paragraph, provides that the law must settle measures for labour protection and safety as well as special means for the protection of women and youth work. To the effect of this constitutional text operates the law 5/1965 and a series of other normative acts concerning labour protection.

Labour protection consists in the continuous improvement of working conditions, for the defence of life and health of the working people during the production process, and in the prevention of labour accidents and professional diseases.

Labour protection implies the carrying out of a complex activity and the application of an ensemble of technical, sanitary and organizational measures to which must contribute all the central organs, economic organizations, enterprises and institutions.

The alleviation of the physical effort of workers and the safety of their work are realized by the state allocating important

funds destined to labour protection, to supplying enterprises with modern engines and equipments and to the mechanization and automatization of production processes.

The measures of labour protection refer to persons having concluded a labour contract with state organizations, co-operative and other public organizations, to members of co-operative farms and handicraft co-operative units and also to apprentices, to pupils and students during practical periods or during visits with a didactic character to productive organizations.

5. The measures of labour protection are established by norms concerning labour safety engineering and by norms for labour hygiene.

The norms for labour safety engineering are part of the rules governing the behaviour of the working people during the production process concerning their working tools. These norms aim at raising work productivity as well as at protecting the life and health of the working people during labour process.

The norms of labour hygiene are only a part of the measure of labour protection referring to a specific activity, to wit the hygiene and preventive medicine.

Both types of norms are established in relation to the specific conditions of working places and to types of outfit and technological operations.

The norms of labour protection are of two types : republican and departamental.

The republican norms for labour protection are obligatory for all branches of production and are established by the Ministry of Labour together with the Ministry of Health.

On the basis of the republican norms for labour protection, ministries and other central organs establish, under the direction and control of the Ministry of Labour, departamental norms of protection for working places with specific characteristics.

The departamental norms are compulsory for all the organizations subordinated to the central organ which has elaborated them. In the departamental norms of labour protection are included also the norms of labour hygiene as they have been established by the republican norms.

In case of activities common to several central organs of the state administration, to central co-operative and public organs and to the people's councils, the Ministry of Labour indicates the departamental norm which must be observed and also establishes the necessary modifications.

The executive committees of the district people's councils and of the Bucharest City establish the norms of labour protection for the activities of communal administration which are not specific to the Central organs ; the co-ordination in the establishment of

these local norms devolves upon the Committee for the Problems of the People's Councils.

The managing staff of socialist organizations are entitled to issue instructions concerning labour protection including departamental norms, supplemented by additional measures of labour protection required by the working conditions specific to the sections, sectors, workshops and working places of the respective entreprise.

6. The measures of labour protection are established beginning with the planning and investment stage referring to buildings, installations, equipments, machines, contrivances, devices as well as their emplacement and exploitation and also to introducing new technological products in keeping with the development of science and technics.

When approving technical and economic estimates, the technical-scientific councils of the titulars of investments shall also examine the means of observing the norms of labour protection and of hygiene, analyse measures againt air pollution, and provide the material and financial means corresponding to all these requirements.

Likewise, any new or re-equipped enterprise cannot begin its activity, totally or partially, but with the previous authorization issued by labour protection and sanitary organs.

Before the setting to work of an industrial production a commission must check whether the technological tests are satisfactory and whether there exist normal conditions for the exploitation of the whole capacity of the installation and outfit.

If the conditions of setting into work are not satisfied, owing to some inadequate technological equipments, the commission rejects the reception.

7. The persons integrated in work have the right, in keeping with the working conditions, to a gratuitous protective outfit and to a working outfit, under the conditions provided by the law.

The personnel who are working in conditions which might damage their health have the right to obtain protective outfit against possibilities of accident or disease.

The protective outfit belongs to the enterprise and is freely granted to the persons integrated in work for using it at their working place. The preservation of this outfit is on the charge of the enterprise (cleaning, mending, etc.) the personnel having the right and obligation of using it only during their activity and exclusively for the realization of the tasks for which the outfit is necessary. If the degradation of the outfit is due to the worker, the enterprise will give him for money another one, whose cost will be paid by monthly instalments.

The permanent personnel working in conditions which determine the degradation or the untimely wearing out of the clothes or footwear, receive from the enterprise a working outfit, having to pay half of its price.

The protective and the working outfit are granted for each trade, separately. The supplying with outfit established by a republican normative has a maximum character, the managing staff of the enterprises having to establish according to the proposals of sections, sectors, or workshops, the clothing necessary for the respective trade or working conditions.

When establishing working conditions, one must take into account the fact that the outfit prescribed for certain conditions is accorded exclusively when the technological process requires the performing of the work in these special conditions.

Besides protective and working outfit, it is granted to persons working in obnoxious dangerous conditions a special food for improving their physical condition during work.

This special nourishment does not play the role of a specific protection against the professional disease, it being only a supplementary means for the consolidation of the general resistance of the body.

8. The Labour Code comprises dispositions which assure the organizational framework adequate for the work performance under the best conditions of labour protection.

Consequently it is stipulated that the following obligations devolve upon the managing staff of enterprises :

— to establish together with measures for the realization of the production plan, or of the service tasks, protection measures corresponding to each working place, including measures for the prevention and elimination of the environment pollution ;

— to make sure that the persons integrated in work know the norms concerning the security and hygiene of the labour so that they may observe them in their activity ;

— to periodically analyse together with trade-union and sanitary organs, the causes of labour accidents and of professional diseases and to take measures for the elimination of factors endangering the life and health of the working people.

The activity of labour protection is carried out in socialist organizations pursuant to the dispositions of the law nr. 5/1965 according to a plan of measures which fall into several categories : a) measures referring to labour safety engineering, b) referring to the supplying of hygienic and sanitary materials ; c) concerning protective food ; d) referring to the research, design, education and training for labour protection, etc.

These measures are usually forming the object of certain obligations assumed by the managing staff of the enterprise on the conclusion of the collective labour contract.

9. The regulation of the responsability for the realization of labour protection is a necessity both as regards the prevention of labour accidents and professional diseases and as to the establishment of the compensation right of the injured party.

That is why the Labour Code and the special law concerning labour protection contain categorical dispositions in this respect.

Being a correlative to the obligation of organizing work, the responsibility for taking measures of labour protection lies, pursuant to their attributions, upon the staff who organize, lead and co-ordinate the labour process of the enterprises, as follows :

— at the working place : the chiefs of sections, sectors, workshops, that is engineers, technicians and foremen and also the chiefs of brigades or groups ;

— at the level of enterprise, of state economic organizations, co-operative and other public organizations, and institutions : the director, the manager of the organization or the president of the co-operative or public organization ;

— at the level of general and district directions, of the trust and groups of enterprises : the respective manager or director ;

— at the level of the people's councils : the president of the executive committee ;

— at the level of ministries, of other central organs of the state administration, of central organs of co-operative and public organizations : the minister, the director of the central organ or the president of the co-operative or public organization.

Apart from these persons the responsibility for taking measures of labour protection lies upon persons of the enterprises departments who are assigned attributions in connection with the organization, managing and control of labour processes.

All the measures of labour protection taken by the managing staff of enterprises aim at defending the life, health and bodily integrity of the persons integrated in work ; for that reason, the obligations assumed by those who organize, manage, co-ordinate, and control labour processes do not exempt the beneficiaries of these measures from the obligation of knowing and fully observe the norms of labour safety and hygiene at the place where they are performing their duties and of utilizing and keeping in good conditions the protective means entrusted to them.

The observance of the legal dispositions regarding labour safety and hygiene engineering is ascertained by the organs hierarchically superior, by the organs of the State Inspection for the Labour Protection, by sanitary and trade-union organs.

The violation of these legal dispositions involves, according to the law, the following responsibilities :

— a disciplinary responsibility, in pursuance with the dispositions of the law nr. 1/1970, concerning the organization and discipline of labour in socialist state enterprises (art. 5, letter d) or of the law nr. 11/1971 with regard to the organization and managing of the socialist state enterprises (art. 52, letter v ; art. 54, letter f ; art. 60, letter n ; art. 62, letter c) ;

— an administrative responsibility which incurs the application of the contraventional sanctions provided by the law ;

— a material responsibility which implies the obligation devolving upon the person integrated in work to repair the damage caused to the enterprise which had to pay a compensation for a labour accident or an ocupational disease of which the respective person is guilty ;

— a penal responsibility which may attract against the persons integrated in work the imprisonment from 3 months to 2 years or the payment of a fine under the conditions provided in the art. 21—25 of the law nr. 5/1965 concerning labour protection.

Chapter XI

EDUCATION

§ 1. *General Observations*

1. The principles ruling education in our country are established by the very contents of the constitutional dispositions. The right to education of Romanian citizens is recognized and stated by the Constitution (art. 21) as one of their fundamental rights. Moreover, the exercise of this right is not optional but it acquires gradually in the Romanian legislation an obligatory character to the extent to which the state gets the necessary means for a large organization of education. At present the "general education" (art. 21), whose organization will be explained later on, has become compulsory.

The obligativity of education necessarily implies its gratuitousness. In the Romanian system, the principle of gratuitousness is a generally valid rule, applying to "all forms of education" uncompulsory including.

We must stress along the same line, that the exercise of the right to education is assured not only by the gratuitousness of instruction but also by many other forms of material aid such as, fellowships, students' homes, canteens, handbooks and manuals, transport, medical assistance, campings and trips, etc.

2. The education in the Socialist Republic of Romania is a state education (art. 21). Its exclusively secular character is particularly underlined by the art. 30 of the Constitution in the following terms : "The school is separated from the church. No confession, congregation or religious community may create or maintain other institutions of education, except special schools for the training of the personnel for the respective cults".

3. The state assumes, therefore, the task of developing education at all levels assuring the necessary conditions to the development of youth physical and intellectual aptitudes, in accordance with both the requirements of the social demand for qualified cadres and of individual wishes.

Thus, every person is granted the access to all the degrees of education according to personal aspirations and abilities and to the requirements of the socialist economy and culture.

The fact that the legal dispositions concerning education refer, in the first place to youth does not signify that older person are not granted equal educational possibilities.

The organization of education in our country mainly aims at rising the cultural and professional standard of the whole people, at the systematical improvement of workers, technicians, specialists' formation. In order to attain these goals the educational system is permanently expending and developing alongside the revolutionary transformations occured in our country on the social, economic, political and cultural plan leading to the creation of the multilaterally developed socialist society.

The display of the educational process is assured by the continuous recruitment and selection of an adequate teaching staff. With this end in view, the statute of the didactic personnel (law nr. 6/1969) establishes the professional criteria which are taken into consideration for the promotion of the respective personnel and provides at the same time the periodical attendance of the teaching staff to courses of special scientific information or to other special courses for the improvement of their formation. The organizational structure of educational institutions is established, in an unitary manner, by the collective managing bodies of the respective institutions in virtue of the general norms provided by the law (Decree nr. 278/1973).

In order to attain this purpose, the activity of educational institutions is displayed in close collaboration with the family, public organizations, and also with the state institutions responsible for mass education ; in this sense there are functioning within schools committees of parents as a principal form of co-operation between school and family.

4. The right to education is granted to all Romanian citizens without distinction as regards sex, religion, race, or nationality and with now restriction which might be considered as a discrimination. A single differenciation is admitted namely from the viewpoint of nationality. It is however a difference which guarantees in a practical way the right to education of Romanian citizens belonging to the coinhabiting nationalities. For this purpose, the Constitution (art. 22) grants to these categories of citizens the education at all levels in their own language. It is therefore a measure of special protection of the interests of the coinhabiting nationalities stipulated in order to assure to all citizens of our country a perfect

equality ; it does not have a discriminating character, since the citizens of other nationalities are authorized to attend whenever they wish courses in the Romanian language, too.

The constitutional texts naturally refer to the right to education belonging to Romanian citizens. This does not signify that citizens residing upon the Romanian territory are deprived of this right. In this sense we must particularly stress the fact that the Romanian State has adhered since 1964 (decree nr. 149/1964) to the Convention concerning the struggle against discriminations in the fields of education, adopted in Paris on 14.XII.1960.

The dispositions of the law nr. 11/1968 (art. 227) specify that both the persons without any citizenship with the domicile in SRR and the foreign citizens enjoy the right to education according to the international conventions ; likewise foreign citizens may be admitted in the educational institutions pursuant to the approval of the Ministry of Education without an examination and out of the educational plan. During the school year 1972—1973 a number of 2041 foreign students have studied in Romania.

§ 2. *Pre-School Education*

5. *The assistance in crèches and children homes.* We must point out with an informative title — because their organization is not in direct relation with education — the existence of crèches, of day and seasonal homes for children in which the upbringing of children is assured since their earliest age for a modest pecuniary contribution of parents ; the amount of this contribution is established in keeping with their wages, with the number of children and finally, with the daily sojourn of children in crèches or homes ; the parents with more than 5 children and those having small wages are exempted from any contribution (Decision of the Council of Ministers nr. 586/1951 modified by the D.C.M. nr. 3159/1953).

For the upbringing and education of orphaned or very poor children, there are special homes (for school or pre-school children), playing the role of a parental home (law nr. 11/1968, art. 229).

6. *The pre-school education.* The multilateral development of children between 3—6 years and, at the same time, their instruction in view of the elementary school are assured in kindergardens which are state institutions specially organized for the pre-school education and functioning under the direction of the Ministry of Education.

The pre-school education, which has an optional character, is organized under the form of kindergardens with a normal programme (9—12 hours), with a limited programme (6 hours) or seasonal kindergardens in villages (6—12 hours). Exceptionally, when special circumstances require it, kindergardens may be organized with a weekly programme, in which the children are looked after from Monday morning until Saturday afternoon. Handicapped children attend kindergardens with specific activities. At the request of parents, children's homes may be created which provide the supervision, food and rest of the children.

The contribution of parents to the support of children in kindergardens with normal programme is established in keeping with their monthly income or with the taxable revenue, with the number of the children supported by them and also with the daily time necessary for the nursing of the respective children ; parents are exempted from any contribution if they have over 5 children in their charge or if their wages are very small (D.C.M. nr. 368/1956).

As for children entrusted to seasonal kindergardens or to those with a reduced programme, even since the school year 1966—1967 the parents' obligation to contribute to the management expenses was completely abolished (D.C.M. nr. 2498/1966).

We must point out that during the school-year 1972—1973 the number of kindergardens was more than 11,000, of attending chidren over 591,000 and of the pedagogues over 23.000.

§ 3. *The Compulsory Education of General Culture and the Secondary School Education*

7. *The cumpulsory education of general culture.* At this level of education, the aim pursued is that of assuring "the appropriation by pupils of the bases of general culture", in view to prepare them, according to their aptitudes for attending further studies in educational institutions of a higher level or for the display of certain activities in various working sectors (law nr. 11/1968 art. 25).

This form of education has a duration of 10 years and it is compulsory for the children who have reached the age of 6 years; this obligation may be adjourned with a year, in case of underdeveloped children. The registration of children takes place "ex officio" and their parents or their legal protectors are obliged to assure their attending school, and other obligatory activities organized by the school until school leaving ; the violation of this obli-

gation is sanctioned by a contravention fine provided by the D.C.M. nr. 2595/1968. The same sanction applies to the directors of socialist organizations and to physical persons who have concluded a labour contract with a minor under 16 years who had not graduated the general school.

The pupils who have promoted the VIIIth, the IXth, or the Xth forms of the general schools are admitted to continue their studies in secondary schools of general culture or in special lyceums. On leaving general school children receive a certificate of school-leaving.

The obligatory education is a day education. However it may be organized also under the form of evening or without obligatory attendance courses. It is provided that only children who do not exceed the corresponding school age by more than 3 years are admitted to school. Children past school-age are obliged to continue their studies up to the school-leaving as evening school pupils or without obligatory attendance school pupils.

Handicaped children are attending general schools with special programme for the development of particular aptitudes or talents.

8. *The secondary school (lyceum) education.* This form of education is carried out in lyceum of general culture and special lyceums (art. 24).

The lyceums of the first category may take the form either of day courses, with a duration of 4 years, or of evening or without obligatory attendance courses, with a duration of 5 years. These forms are organized in sections with a scientific or humanistic character.

In view to cultivate certain talents or to develop some evident aptitudes of children, some lyceums may function with special programmes. Likewise, there are lyceums for handicapped children.

The admittance to a lyceum of general culture is based upon an entrance examination to which may participate graduates of the VIIIth form of the general school.

9. The secondary specialized education aims at giving pupils, beside the instruction referring to the general culture and civic duties ,a professional training necessary to the performance of special activities on an average level in keeping with the requirements of the socialist economy and culture.

Special lyceums are day schools in which studies have a duration of 4 or 5 years, depending on the category of speciality ; for certain specialities there are evening classes and without compulsory attendance classes.

The admittance to the special lyceums is based upon entrance examination to which may participate the graduates of the VIIIth form of the general school.

In the context of this education, the practical instruction is realized in the school's workshop upon experimental plots, in laboratories and demonstration halls, in vocational schools or socialist enterprises.

10. The pupils who have promoted at least 2 years of lyceum studies may obtain a certificate of general school leaving. Children who have finished the last year of studies at lyceums, receive a school leaving certificate or they may go in for school leaving examination. Having passed their school leaving examination youth are authorized to go in for higher education.

The graduates from special education schools and who do not want to continue full time studies are distributed in production in keeping with their special training; the state fulfils thus its duty to assure working places to all categories of school-leavers.

11. In order to illustrate the educational development we must point out that during the 1972—1973 school-year, the number of secondary education institutions have exceeded 15,000 and that of registered pupils and teaching staff respectively 3,000,000 and 150,000.

The number of special lyceum is 361 with 8,051 members of the teaching staff and 150,000 pupils.

12. *The material aid granted by the state.* In view of assuring attendance of the obligatory education of general culture and of coming to the aid of pupils of the secondary education schools, the state allocates stipends in keeping both with study performance and the income of parents. These stipends are however not the only form of the aid granted by the state. Within general schools, there exist pupil's homes and school canteens for the pupils in need. During the 1972—1973 school-year the number of the boarders exceeded 268,000 and of those who benefited by the canteens was of 317,000.

The pupils attending studies at lyceums receive gratuitously textbooks which have to be used, generally, by two series of pupils (D.C.M. 1117/1970). As for the education effected in the language of the coinhabiting nationalities, textbooks are drawn up in their respective languages.

Apart from all these advantages, the pupils have the right to medical assistance, to vacations in specially organized camps; they may also participate in the trips or sport activities organized by the respective schools.

§ 4. *Vocational and Technical Education*

13. *Vocational education.* This form of education is mainly realized in vocational school or by apprenticeship at the working place (art. 71).

Vocational schools aim at training — under the form of day or evening courses — skilled workers for the handicrafts necessary to our national economy or for the performance of certain social-cultural activities. The duration of studies is, generally, of 1—2 years in keeping with the complexity of speciality ; there are also vocational schools for the handicapped.

Admittance to vocational schools is conditioned upon the meeting of an entrance examination's requirements by candidates having finished a general school ; persons regardless of their age having equivalent studies and wanting to improve their skills may attend evening courses.

On registration, candidates are obliged to conclude a contract with a socialist organization by which they engage themselves to work in the respective organization a period of 2—3 years after school-leaving.

Vocational school graduates may be admitted to lyceum (or secondary schools) after passing some tests.

14. The training of skilled workers is also realized in the apprenticeship system within productive or administrative units ; in such cases, the theoretical training is realized within vocational evening courses or by full-time studies with a duration of 2—3 month annually.

The admittance to apprenticeship is founded upon an entrance examination. Those who pass this examination have to conclude with the authorization of their parents, or legal representatives, contracts of apprenticeship with the organization where they accomplish the practical training.

At present, the number of vocational schools is of 435, having a pupils'population of 220,000. The number of those who qualify themselves at the working place exceeded during the school-year 1972—1973 the total of 100,000.

15. *The technical education.* The technical education is accomplished, as a rule, through schools assuring the training of master workmen or the specialization at the post secondary level. (art. 80).

The former are training within evening courses the technical staff necessary to the organization and performance of production

process; these special schools may function as day schools, too. The duration of studies is of 2 years for evening courses and of a year for day classes.

The passing of entrance examination is a prerequisite of school admittance. Candidates may be skilled workers, graduates of vocational schools, of other equivalent schools, or of the lyceum of general culture, with the recommandation of the socialist organizations where they are working.

The graduates of schools for master-workmen training who had finished the lyceum, may go in for the school-leaving examination after having completed their studies.

16. The post secundary special schools assure the vocational training of graduates from lyceum of general culture on view of exercising certain technical or social cultural activities on an average level. The duration of studies is of 1—3 years. These school are either day or evening schools; there are also courses without compulsory attendance assuring the training of certain specialities with an economic, financial or administrative character. The entrance examination is obligatory in this case too.

Candidates may be either graduates of lyceums of general culture who have passed school-leaving examination or of other equivalent schools.

17. The candidates are obliged to conclude, at the moment of registration, contracts with socialist organizations by which they engage themselves to work in these organizations a period of 2—3 years after school-leaving.

The workers attending evening post-secondary special courses will be granted the possibility to regularly attend courses by a sensible shift arrangement. They are also entitled to a holiday without pay up to 30 days annually for the respective examinations.

Workers following courses without compulsory attendance have also the right to a holiday without pay with the same duration necessary for passing the examinations; during these examinations they will benefit, as far as possible, by accomodation in students' homes and canteens with payment (D.C.M. nr. 1974/1968).

The post-secondary special schools graduates who have also graduated secondary schools may go to higher education.

During the 1972—1973 school-year the students' population attending technical education schools exceeded 40,000.

18. *The material aid granted by the state.* The students of vocational and technical schools are granted stipends and other forms of material aid provided by the law for each kind of education.

The young people appointed as apprentices receive a material aid established especially for this form of professional training (art. 100).

19. *Courses for the qualification and training improvement of workers and of average specialized personnel.* The vocational and technical education are realized also by on-the-job courses for qualification and formation up-dating established by the socialist state organizations for workers and average specialized personnel (art. 104 and seq). The up-dating courses, having a duration which varies from 1 to 6 months, aim at giving the working people the possibility of keeping abreast of the evolution of science and technique concerning improved equipments and recent technologies introduced in the production process and of improving their training in the restricted area of their trade or speciality.

The courses of qualification are displayed in keeping with the complexity of the work, in one or two series of 3—12 months. These two types of courses are on-the-job forms of education and, in general, attendants are not exempt from the obligation of carrying out their professional work. During these courses, they enjoy a material aid granted according to conditions established by the D.C.M. nr. 2105/1969.

§ 5. *Higher Education*

20. *Organization.* Higher education is organized under the form of universities, institutes, academies and conservatoires (art. 118 and seq). During the school year 1972—1973, the number of registered students at 187 faculties exceeded 143,000.

The institutions of higher education are organized on faculties which may consists of several departments.

The intermediary staff, between engineers and technicians, or masterworkmen are trained either in sections of subengineering education or in institutes of subengineering education subordinated to technical or polytechnical institutes.

Teacher's training is realized in pedagogical institutes either independent of or subordinated to universities.

The management of higher-education institutions follows the principle of the collective management and is carried out through teaching staff councils and departamental boards.

The duration of studies varies from 2 to 6 years. The studies are generally organized under the form of full-time courses. In

case of evening or without compulsory attendance clases the duration of studies is always longer than that of full-time education.

Higher educatin admittance is granted to secondary or equivalent school graduates if they are meeting entrance examination requirements ; admittance to evening courses is limited to those who are working in the speciality of the respective institution. On matriculating, students conclude a contract with the rector of the institution, as the representative of the state, by which they engage themselves to observe the norms of activity and to work for a certain period of time, after graduation, on the jobs in which they will be appointed. (Decree no. 1063/1968).

The verification of students' knowledge is done along the whole period of studies under the form of seminaries, practical works and other forms of activity and also by examinations and colloquies.

The joining of theory with praxis is achieved by compulsory practical training which, according to syllabi, students are obliged to perform within enterprises, workshops, laboratories, etc.

The studies are terminated by a diploma examination which is an integral part of the educational process ; in order to pass it students are allowed three essays within a period of 6 years from the end of their studies (D.C.M. nr. 2740/1968). Students who fail to pass it receive an undergraduate certificate.

21. The full-time higher education graduates are obliged to carry out a stage of 2—3 years, in keeping with their speciality, in the institutions or socialist organizations where they have been appointed. Students may be appointed directly in a higher education institut or in a scientific research institution upon the recommandation of the teaching staff, of councils of the respective faculties or at the request of the scientific research institutions (D.C.M. nr. 1068/1968).

By the designation of graduates in production, the state fulfils its obligation of assuring, in pursuance with the legal dispositions, working places to the young people to whose training it has contributed by a substantial material aid. Designation represents a social act which joins general interests of socialist development with the personal interests of the graduate.

The designation quantum is established according to annual plans approved by the Council of Ministers (Decree nr. 158/197) and the nominal appointment is made by special commissions which receive to this end lists of jobs available in socialist organizations with specification relating to the specialities and to places where the respective jobs are situated ; the commissions also comprise delegates of the students' organizations.

The designation is completed by the candidates choosing between jobs entered upon these lists in keeping with the average mark obtained at the diploma examination. A priority is granted

to graduates asking for a designation in the communes where their spouse or parents are living, or in the neighbouring communes. In case of equal average marks or of a minute difference between them, there are taken into consideration, as preferance criteria, either the need of a particular medical nursing, or the public activity and behaviour of the respective student during studies. The graduates who have received during their studies stipends from certain socialist organizations, will be appointed to these organizations.

After the designation of the candidates who have passed the diploma examination, the distribution of other graduates of the higher education institution takes place in a similar manner.

Graduates are obliged to enter upon the respective job within a month from their designation and, at the same time, to conclude with these enterprises a labour contract for an undermined period of time in pursuance with the legal provisions. Those who, without a serious justification, do not present themselves within the legal term, will be obliged to the payment of a civil penalty ranging from 5,000 to 8,000 lei in keeping with the level of their studies.

In order to assure the observance of the legal dispositions concerning designation, the refusal of a socialist organization to appoint a graduate in one of the jobs entered upon the designation lists at the demand of the same organization is considered a contravention and is penalized as such ; the same is valid for the appointment by a socialist organization of a non-designated graduate or who did not fulfil the compulsory stage in the organization where he or she had been appointed.

22. *The material aid granted by the state.* During studies, the students may receive fellowships in keeping with the results obtained in their learning activity and with the observation of the university discipline and with the revenues of their parents ; the number of the stipended students exceeds, by now, 63% of the total number of students.

Stipended students who do not live in the university centre where they are studying are granted accomodation in student hostels and food in canteens. The same advantages may be enjoyed for money by non-stipended students within the limit of vacant places. During the university year 1972—1973, the number of those admitted in students' home and students' canteens has exceeded 67,000 and 59,000 respectively.

The libraries of these institutions put at students' disposal manuals and also the respective literature. They benefit in addition by gratuitous transport, medical assistance, rest in students' camps, trips, etc.

Those who have obtained exceptional results in their studies may receive meritorious stipends or an aid for carrying on their studies abroad. (art. 173 and seq.).

The Romanian citizens sent in other countries on the expense of the state for studies of a higher level or for obtaining scientific titles benefit, in foreign currency, both by fellowship and by the necessary sums for the acquisition of books and writing materials, also for the drawing up, presentation and upholding of the diploma work or doctorate theses. They also benefit by allowance in lei for the support of their families or for spending holidays at home, for transport costs, for the Romanian special publications, medical assistance, etc. (D.C.M. nr. 56/1970).

§ 6. *Post-University Education*

23. *Organization.* The institutions of higher education are authorized to organize post-university courses, either for the professional up-dating or the thoroughly study of a restricted field, for the appropriation of new research methods and technics, or for the training of the management and organization of production (art. 194 and seq.).

Post-university education may have a duration of at most 12 months and is organized under the form of full-time courses, or of evening or whithout compulsory attendance classes.

Admittance to these courses is granted to graduates of a higher educational institution and upon the recommandation of ministries or interested central organs.

§ 7. *The Improvement of the Professional Training*

24. *Organization.* In the conditions of contemporary technical-scientific revolution, the extension of production automatization, the rise in the complexity of economic process, and the requirements for scientific organization and management of the production and work, the continuous rise of the professional standard of skilled or master workmen, technicians, engineers, managers and of the other specialists in economics, research, teaching and other activity fields becomes an objective necesitty. The formation acquired during school-time is very soon out dated and it must be continuously kept abreast of the new discoveries of science and technics. The dynamism of the scientific changes obliges to a constantly increasing rhythm in the raising of the intellectual standard of the workers called to handle the advanced technics.

1971, the nr. 2/1971 law laid the foundation for the organization of a national system for the up-dating of the professional training of all the workers by the systematic enrichement of their professional knowledge, by the profound study of a certain scientific field and by the appropriation of the new realizations of science, technics, and culture. Within this system, the acquisition of a supplementary qualification may be obtained, or the change of the qualification in case when it does no longer correspond to the requirements of modern technics or to the structure of the economics, or when it can be no longer exercised owing to modifications in the working capacity. It is also pursued the appropriation of modern methods and processes in the field of management and scientific organization of the production and work.

The application of such a system presupposes the display of a continuous and general teaching process, because the improvement of the professional formation of workers has to be accomplished in enterprises, in units with central office statute, in ministries, centres of improvements, institutions of higher education or of any degree whatever. The education is realized under the most efficient forms, such as : on-the-job training under the control of the direct chief, courses organized in the respective enterprise, in other enterprises or improvement centres; personal programmes of improvement, with the periodical verification of the acquired knowledge ; stage of practice and specialization in the respective enterprise or in other enterprises of our own or of a foreign country ; the graduation, after the appointment in a job, of a teaching institution, post-university education and doctorate, including. The whole improvement activity is based upon annual and long-term plans. The law establishes the organs upon which devolves the realization of the professional instruction of workers, according to specialities and professions, establishing the forms of improvement and their duration, as well as the frequency of the retraining for each category.

The programmes of improvement of the professional training of workers, organized in enterprises and institutions, are displayed as a rule without interruption of the professional occupation.

The law provides, in addition, the rights and rewards accorded to workers as a material incentive in their studies. Thus promotion or maintaining in function, wage increase, granting of a new degree of wages or of bonuses will be based upon both the results obtained by the worker in his or her activity and the manner in which the tasks concerning professional training improvement have been performed. When the forms of this professional training require the interruption for one or several periods of the professional activity workers receive during their studies tariff

wages and an additional sum for length of service granted by the socialist enterprise where they are functioning.

The enterprise which sends an employee to attend a course of professional instruction with a duration of at least 3 months with the interruption of the professional activity, conclude with respective person an additional act in which it will be stipulated the obligation of the enterprise to support entirely or only partially the respective expenses and the obligation of the employee to work in the respective enterprise at least 5 years from the end of the improvement course ; in case of violation of this obligation, the person is obliged to repay to the respective enterprise its expenses. A similar contract will be concluded in case when the employee is sent abroad for specialization, regardless of the time necessary for it (law nr. 1/1970, art. 21).

Chapter XII

LEGAL REGULATION OF THE MILITARY SERVICE

1. The aspects of the legal regulation of military service having a direct influence upon population problems are multiple and varied.

In this respect of an equal interest are the compulsory character of the military service, the ages between which this service is carried out, conscription conditions, whether both sexes or only men are summoned to military service and, finally, concentration and mobilization conditions. Each of these aspects exerts an influence on the population growth rate, the more so as the carrying out of the military service occurs generally at a period when the human being enjoys the best conditions for reproduction. That is why the legal regulation of the military service becomes in many respects one of the chapters relating to population right.

In Romania the carrying out of the military service is provided in the Act no. 14/1972 concerning the organization of the national defense in the Socialist Republic of Romania.

The principle underlying the legal regulation is the compulsory character of the military service for all the citizens of the country irrespective of their sex.

In the sense of this principle, the law provides, as a rule, that Romanian citizens may be called up for military service from 20 to 50 years old, as regards men, and between 18 and 45 years old, in the conditions provided by the law, as regards women.

Men having reached the age of 18 may be conscripted on request. Secondary and an equivalent school graduates are conscripted in the very year of graduating the school, even if they have not reached the age of 20. However the conscription summon shall never be launched until entrance examinations for higher education and for specialized post secondary schools take place [1]).

The law provides several categories of persons who are not summoned to military service. These are :

— the mentally alienated and defective ;

---

[1]) See : Ioan Stoica. Îndrumar juridic privind apărarea națională. București, Ed. militară, 1973, p. 34

— the inapt for military service who should be erased from rolls because of permanent disablement or diseases ;

— the convict during punishment execution.

One of the elements which are of a special interest is the length of military service. Pursuant to the law in force, military service lasts 1 year and 4 months for the military in term of all arms, save those who are conscripted for the naval forces and border guard services, the length of service being in these cases of 2 years, and those who carry out limited military service lasting 9 months ; the latter category will be dwell upon later on.

We must notice that the law provides for exceptional cases the possibility of extending the length of military service. Prolongations competences are settled in ratio of the prolongation term and of the categories of service. Thus, for the military in term, the prolongation may be of maximum 8 months, the approval for the first three months being granted by order of the Minister of Defence whilst for the next 5 months by Decision of the Council of Ministers. For military in short term the length of service may be extended with maximum 2 months, for the first month by order of the Minister of Defence and for the second by Decision of the Council of Ministers.

2. *The coscription* is an act with consequences upon population matter. Conscription means the presentation of the recruits at the military centres, their undergoing a medical examination, their sharing out and drafting off into military units and formations in order to carry out the military service.

People, who, for various reasons, have not been recruited (the recruitment is a preliminary operation consisting of entering young people upon the military lists, of establishing their aptitudes for the military service whereupon they are drafted off, taking account of the arms in view of their conscription) but belong to the contingent summoned to military service must answer the conscription call. As the law provides it, they have to present themselves until the end of the month in which they reach the age of 20 at the latest.

According to the law, the utmost limit of age for being conscripted is 26.

Of a peculiar interest are the cases which according to law provisions are *exempted from military service,* and the situations to which conscription does not apply.

The law exempts from military services people who : a) *are the single breadwinners of the family* and b) *actively contribute to the support and maintenance of the family.*

The law defines the term "single breadwinner of the family" as the person who has no brothers or sisters of working age, or if he has some, they have no possibility of contributing to the

maintenance of their parents, because they are attending day schools, or are carrying out their military duty in term or with limited term, or are attending military colleges of any kind, or are disabled of the 1st or 2nd degree.

By active contribution to family maintenance the law means the permanent participation of the recruit in his family's maintenance with an important share of his income, as well as in taking care of the family which make the recruit's presence at home absolutely necessary[2]).

Both situations must be cumulative in order to cause exemption.

Their completion is necessary though not sufficient.

Pursuant to the law, the exemption operates in the following conditions only :

a) the recruit's wife is ill, belonging to a 1st or 2nd degree of disablement ;

b) the recruit has one or more under aged children, his wife being deceased ;

c) his father is older than 62 and his mother is 57 years old at least.

d) both parents are disabled of the 1st or 2nd degree irrespective of their age ;

e) his survivor parent meets the above mentioned conditions;

f) the lawfully separated (through divorce) parent or only in fact (who, if not separated by a divorce sentence does not cohabit any longer with the other spouse) maintained by the recruit is 62 years old (the father) or 57 years old (the mother), or is disabled of the 1st or 2nd degree (this is one of the few cases in which the law makes the mere separation in fact of the spouses entail juridical effects). Even in this situation, in order to avoid fraud the law requests furthermore that the separation (either by divorce or in fact) had taken place at least 2 years before conscription.

Besides these categories the law also exempts from military service recruits who are the sole breadwinners of their under aged sisters and brothers, or if they are disabled of the 1st or 2nd degree provided that the contribution to their maintenance be effective.

The law takes into consideration the situation of the adopted recruits, too. As it makes no distinction whatsoever, we consider that it has in view both the adoption with all effects of the natural filiation, provided in Art. 79 of the Family Code and the filiation with restricted effects, as provided in Art. 77 of the same code. The adopted recruits enjoy the exemption pursuant to the Act of national defense organization in case the parents who had adopted them meet one of the conditions mentioned under the letters e, f,

---

[2]) Ioan Stoica, op. cit., p. 42

and provided the adoption had been performed at least 2 years before the conscription.

Besides the cases to which the exemption is granted, and which have a temporary character by the elimination of above mentioned conditions, the law ascertains the possibility of putting off the conscription in another series of cases.

Thus, the recruit becomes conscriptible as soon as the situation taken into consideration by the law ends and consequently the postponing conditions disappear.

These cases are the following :

a) the recruits found on conscription as suffering from one of the diseases provided by the medical table approved by the National Defense Department ;

b) the recruits attending secondary or equivalent schools as well as specialized post-secondary day schools and evening courses of the industrial secondary schools until graduation ;

c) the recruits faced by uncommon family difficulties such as :

— both parents are ill, being disabled of the IIIrd degree ;

— the parents have at least 2 under aged children, the eldest child being conscripted ;

— the parents meet the conditions of age, so that their son may enjoy the exemption from military service, but they have also a full aged son or daughter belonging to the IIIrd degree of disablement, having at least two under aged children and being therefore unable to contribute to their parents maintenance ;

— one of the parents is dead and the survivor is 50 years old and has to maintain 3 under aged children at least ;

— the recruit has no parents, having been brought up by grand-parents or by other persons since he was 1 year old until the age of 14 years, has not been adopted but living with those who have brought him up, and they are ill now, belonging to the 1st or 2nd degree of disablement, or being 62 years old (the husband) or 57 years old (the wife) ;

— the recruit is married and has 2 children under the age of 7.

The postponing does not operate in any of these cases, with the exception of cases when the monthly average income of those who are in want is inferior to the lowest quantum established for full pension due in the case of age limit or for service pension in the case of a length of service of 25 years, provided by the legal dispositions, excluding children allowance.

Pursuant to the provisions of Art. 14 of the Act. no. 37/1966 with regard to the pensions of social insurance and the additional pensions, with the modifications according to the Decree no. 486/1973, the lowest quantum of pension for age limit amounts to 570 lei.

In case the surviving parent is 40 years old and provides for the maintenance of two under aged children at least, the conditions concerning a certain income limit must not be complied with.

The law provides that certain categories of persons loose the right of postponing having to go to military service. Such persons are :

— those who are expelled for an undetermined period or for more than one year ;

— those who break off their studies with the approval of competent bodies, for more than two years ;

— those who repeat the same form more than one year for learning failure or for grievous infringements.

3. *The limited military service* is the second modality provided by the law for carrying out the military service, which applies to first year undergraduates. Carrying out a limited military service they have the same rights as people attending military schools.

Undergraduates conscription takes place every year on the first of October differing thus from the conscription date for other young people which, as a rule, takes place in February and October and, to a lesser extent in the other months of the year, too[3]. As we have schown, the length of the limited military service is of 9 months.

We have to point out that the sanctions provided by the law for the punishment of the limited military service recruits guilty of laziness or of nonobservance of the military discipline, may entail the carrying out of the military service in term, without taking into account the time served as military in reduced term.

During higher education studies, and after having already carried out the 9 months of military service, the students continue their military training within patriotic guards formed within the respective institutions of higher education.

After graduation from the faculties, those who had been carrying out limited military service, shall answer a military convocation of two weeks for training in military units.

4. After having performed their military duty the citizens are passed in reserve, remaining on military lists until they are 50 years old.

Meanwhile, in order to maintain and improve the degree of professional training the reservists may be called up for *concentration* or may follow some instruction form *without being taken out from jobs*.

---

[3]) Ioan Stoica, op. cit., p. 45—46.

The regulation of these two forms of instructions is based upon the dividing the military into three classes of age.

Thus, the 1st class comprises military up to maximum 35 years including, the 2nd class those between 36 and 45 years including, and the 3rd class those between 46 and 50 years.

The non-comissioned officers, military foremen and officers are also divided in three classes between 40 and 61 years.

In case of concentration, the soldiers in reserve with or without grades (corporals, sergents) may be called up for the time established through the order issued by the Minister of National Defense, but the length of the concentration should not exceed 3 months for those of the 1st and 2nd classes and 3 months for those of the 3rd class.

The non-commissioned officers, military foremen and officers may be called up for concentration also by virtue of the Minister order, namely those of the 1st class, every year for maximum 3 months, those of the 2nd class for two concentrations, each of maximum 3 months, and those of the 3rd class for a single concentration of 3 months.

The law provides that the time of concentration may be extended with 2 months, if necessary, through an order issued by the Minister of National Defence and for prolongation exceeding this term through a Decision of the Council of Ministers.

Chapter XIII

ENVIRONMENT PROTECTION

1. A chapter concerning environment protection in a work dedicated to the right of population finds its justification — as we showed in the introductory chapter — not in relation with the direct action which legal regulation might have upon the evolution tendencies of the population, but in relation with the role which environment plays in the improvement of life conditions.

It is, then, a matter of indirect influence, but which cannot be ignored by the population right seeing that environment protection and diminishing of the ever-increasing pollution rate play a particularly important part in the creation of living conditions for a normal life.

In Romania as in other countries too, this matter forms the object of a special law, which came into force a year ago (the law no. 9/1973).

Starting from the thesis that the meeting of the material and spiritual needs of the entire people requires a multilateral development of the producing capacity — based on the best utilization of the material and human resources of the country and of the newest achievements of the contemporary technical-scientific progress — displayed in the conditions of environment protection, the above mentioned law aims at fulfilling the higher objectives which characterize the multilateral development of Romania and having, thus, important connection with demographic policy.

The general idea resulting from this law is that of the realization of a complex environment protection. The Law no. 9/1973 does not limit itself to the creation of certain forms of environment protection, but tries to preserve the ensemble of natural factors : a) air, b) water, c) soil and subsoil, d) forests and any sort of land and water vegetation, e) land and water fauna, f) reservations and natural monuments. Besides these factors, the protection also includes human settlements and other factors created by human activities. The structure of the law will follow this enumeration.

The idea from which starts the system mentioned in the first article is that in Romania environment protection is a problem

of national interest. The realization of the policy of environment protection becomes, according to the law, a basic and permanent obligation of the state organs and organizations, of co-operative and other public organs and organizations, of all citizens.

Aiming at preserving the ecological equilibrium, at defending and improving the quality of natural factors, at developing natural resources of the country, at creating the best living conditions for present and future generations, the potection of the environment is realized by a rational utilization of the natural resources, by the prevention and fight against pollution and noxious effects of the natural phenomena.

Of a particular interest is the fact that the law gives a proper definition to environment pollution.

According to it, pollution consists in actions causing the breaking off of the ecological equilibrium or which may prejudice the health, the quietness and comfort of people's life, or which may cause damages to the national economy by the modification of the quality of natural factors or of those created by human activities.

2. The first environment factor subject to protection is the *air*. In order to assure its protection the law forbids the atmospheric evacuation of the obnoxious substances under the form of gases, steam, aerosols, solid and other particles, over the limits established by the norms in vigour. It is also forbidden the exploitation of new industries or the development of those in existence, if their activity may be a source of air pollution unless they are provided with equipments and devices which should hold back and neutralize the polluting substances or they take measures for observing the conditions of air protection established by the special organs.

After the enumeration of the obligations devolving upon the state, co-operative, and other public organzations the law establishes an *obligation of pledge* for all the enterprises with internal combustion engines and also for all those which repair or maintain in good working conditions those engines in the sense of assuring their functioning and exploitation by beneficiaries, according to the norms established for environment protection.

The law *forbids* the competent organs to *authorize the running* of technological equipments generating damaging substances in the case when the conditions necessary to the observance of legal dispositions concerning the air protection are not satisfied.

The state organs which exercise the technical control of the means of transport are obliged by the law *to certify* the existence of the technical necessary conditions for their circulation, in the sense of observing the legal norms as regards the composition of the exhausting gases.

Another factor which forms the object of environment protection law is water. Its protection results from the necessity of preserving water for satisfying the needs of the population and other needs of the national economy, on the one hand, and as a milieu of aquatic life, on the other hand.

The protection refers in equal measure to surface and subterranean waters, to the sea internal and territorial waters and also to the river beds, to the vats and river banks, to the sea walls and beaches, to the bottom of the sea internal and territorial waters, to the continental tableland and also to the existing works and to those which are built upon waters or in connection with them.

The law establishes in such cases precise obligations for all the state organs and organisms and for all the inhabitants of the country.

It is forbidden the performance of certain acts, such as the evacuation, throwing and injection of filthy waters, waste materials, residues, etc., which contain substances able to change the characteristics of the water, becoming detrimental for the health of the population, for the flora and fauna or improper to be rationally used ; it is also forbidden the usage, transport, handling, and deposit of any substances or residues in conditions leading to water pollution.

The law forbids the exploitation of new industries or the development of existing ones which by their activity may become sources of water pollution unless they utilize stations and equipments of purification or other devices or measures in order to assure the observance of legal conditions for water protection.

We want to draw the attention upon the disposition which authorizes special organs to oblige the industrial enterprises which utilize water from surface sources to evacuate used and purified waters upstream of their supplying place.

The law provides also the obligation for the industrial enterprises which are indirectly evacuating filthy waters by the draining networks of other enterprises and localities to assure the pre-purification of these waters, in order to avoid the degradation of the canal networks or the perturbation in the working of purification station.

A section of the law deals with the protection of soil and subsoil.

The modalities of *soil* protection consists in the rational utilization of the land and in the prevention, by adequate measures, of its degradation. The rational utilization of the land implies the observance of the systematization plans of the urban and rural localities and the carrying out of works realting to zones of agricultural and forest production depending on the pedoclimatic con-

ditions in keeping with the general priorities of the economic and social development of our country.

The law categorically forbids the change in the orders of usage of the agricultural terrains and of the forest fund under other conditions than those provided by its dispositions.

It is advisable that industrial, agroozotechnical and social-cultural units and housing constructions should be made within the building perimeter of the town or within the precincts of the villages upon those grounds which cannot be utilized for the agricultural production.

The law establishes on the charge of the possessors of terrains the obligation to effect the necessary works for the prevention and control of soil erosion, earth sliding, swamping, moisture excess, flood, saltness and other damaging effects established by specialized organs and to carry out the technical agricultural or forest works with the observation of the dispositions in vigour.

It is also provided that the deposit, throwing away, etc. of any sort of materials, of solid, liquid or gaseous residues, and of radioactive substances should be made only in the zones and perimetres distributed for such a purpose.

As for the uitlization of pesticides and other noxious chemical substances, the law obliges to make use only of those products authorized by competent special organs under their supervision and with the strict observation of their indications.

The law contains also a series of dispositions relating to the *protection of the subsoil and of its natural resources.* With that end in view the law established a series of norms as regards the execution of the geological works and the extraction of mineral substances or the exploitation of such resources.

The law forbids the throwing away, evacuation, diffusion or injection of solid, liquid or gaseous residues and radioactive substances resulting from economic and social activities whose contents and polluting concentration may lead to the pollution of deposits of mineral waters, therapeutic lakes and accumulations of therapeutic mud, which otherwise may become improper to their usage as established by the special organs. Certain dispositions are related to the handling, transport, deposit ,etc., of some matters, residues, radioactive substances, which may determine the pollution of the subsoil or of the continental plateau.

A particular interest is accorded by the law to the *protection of the forests and of other forms of vegetation* and also to the protection of *earth and aquatic fauna.*

A special section, which we shall point out for its novelty in the Romanian legislation is that referring to the protection of the *reservations and natural monuments.*

The law settles as reservations or natural monuments all areas of land or waters and all natural objectives which must be preserved and transmitted to future generations owing to their scientific and esthetic importance.

The reservations and natural monuments may constist of: national parks, natural reservations, scientific reservations, landscape reservations, and natural monuments.

The organs, organizations, or persons having in their administration or possesion reservations or natural monuments have the obligation to preserve and maintain them in good conditions.

A last category of values forming the object of protection law are human settlements and *other environment factors created by human activity*. The purpose pursued by this category of dispositions — as the law itself points out — is of assuring conditions for the work and life of population. In order to attain this goal the law provides certain specific measures against the pollution caused by economic and social activities and by the biological process as regards natural factors and those created by human activities in the area of the human settlements and around them; the law also established in this sense the tasks devolving upon different organs and organizations.

The law also forbids the circulation of transport means which eliminate polluting substances beyond legal limits.

The competent organs are authorized to temporarily or permanently prohibit, pursuant to the law, the access of all the motor-vehicles or only of certain categories of them in crowded zones, and in living, rest, or treatment areas.

Likewise, noises beyond admissible limits established by the legal norms are forbidden. In view of assuring the quietness, and rest of the population the same law prohibits the display of certain noisy activities in the living zones and in spaces with an insufficient phonic isolation.

Organizations and physical persons are obliged to take up necessary measures for reducing bellow admissible limits the intensity of the noise caused by the installations and equipments utilized in industry and constructions, by the transport means and any other sources producing continuous and intermittent noises.

A special disposition obliges local organs to take any measures for diverting away traffic outside the populated areas.

For the co-ordination of the activity in the above mentioned field, the Law no. 9/1973 created the *National Council for Environment Protection.*

Having the position of a central special organ, with a large representative character, the council is subordinated to the Council of Ministers.

At the same time, for the direction and the co-ordination of the activity concerning the environment protection upon the territorial-administrative area of the districts and of the Bucharest City, the same law creates *commissions for the environment protection,* subordinated both to the National Council and to the organs of the state administration of the respective districts.

The violation of the dispositions concerning the environment protection is punished by the law both as a contravention and as criminal offence.

It is worth mentioning that certain deeds may be even considered as *infractions.* The ones provided in the art. 77 consist in the evacuation of the obnoxious substances such as : gases, vapours, aerosols, solid particles, and the production of noises beyond legal limits, thus endangering the health or bodily integrity of people or producing damages to the national economy.

There are, also, considered and punished as penal offenses the deeds provided in the art. 78, namely : the deposit, throwing away, or evacuation of the household or industrial residues, without the observation of the legal norms, if by such actions the health or the bodily integrity of the people and national economy are menaced.

Chapter XIV

PROTECTION OF THE POPULATION GROWTH AND FAMILY CONSOLIDATION BY MEANS OF CRIMINAL LAW

§ 1. *The Part Played by the Criminal Law in the Realization of the Demographic Policy*

1. The criminal law, defending the most important values of the socialist regime plays a prominent part in the realization of the moral-politic, social and economic objectives of society with regard to the development and growth of population. In the building process of the multilaterally developed socialist society, according to the complex targets of the building of the new economic foundation, the subjective factor acquires an ever-greater importance, so that the part played by the superstructure, including the juridical one, in general, and the criminal legislation, especially, is increasing and diversifying its action on multiple levels.

With reference to the criminal law, one must stress that the necessity of consolidating people's achievements in the field of socialist construction, of observing the socialist principle concerning repartition, defense of the socialist property, of observing the new rules of social living together and of strengthening the education of citizens in the spirit of socialism has led to the adoption of a new criminal code in 1968.

The main directions of the influence exerted by the new criminal legislation on the development of population is pointed out with respect to the incrimination, on the one hand, and to the execution of punishment, on the other hand. We shall successively, deal with these two aspects which, in their interconditioning, set forth the conception of the Romanian legislator concerning the fighting against the infractional phenomena in the present stage of our society.

2. In a general vision concerning the incriminations of dangerous deeds from the social point of view, all values defended by the criminal law have a tangency or, more exactly, exert a certain influence on the demographic policy.

Thus, the offences against the personal or socialist property cause injury to the economic foundation of our society, to the socialist repartition system and to the social relations concerning property which, on the whole, determine in a structural manner, the general effort made in order to raise the living level of the population. Moreover, the infringements to the order established for certain economic activities have as general object the circulation of goods between producer and consumer and hence prejudice the justified interests of the working people in their capacity of benefiaciary of the social production and the economic activity, in general.

Therefore, the incrimination of these offences, though it does not especially pursue the protection of some social relations directly related to population, plays a prominent part in the development of population.

In the main, the social values protected by the criminal law form — on the whole — the social-politic, economic, and moral environment in which the demographic factor is developing.

The same mediated influence having a functional character, is also exerted by the incrimination of offences against the person. The development and growth of the population in the socialist society is inseparably connected with the realizations of the necessary conditions for satisfying the material and spiritual needs of each member of the society. For this reason, the incrimination of the offences against the person, defending the life, liberty and dignity of the members of the social community, secures the indispensable spiritual environment for a demographic policy subordinated to the requirements of the social progress.

In general, the criminal law, owing to the educative part played by it and its importance for the consolidation and development of the socialist social relations, exerts a prominent influence with functional character — indirectly in most cases — on the demographic factor. In the case of certain offences, this influence is more conspicuous.

§ 2. *Offences against the Family*

3. In this category, an important place is occupied by the incrimination of offences against the family.

These offences belong to the category called by the Criminal Code "offences which cause prejudicies to the relations of social living". Of course, every offence causes a prejudice to the relations of social living. The offences we are dealing with, refer however to the notion of social relation in a restricted sense, namely to

those relations which presume close, direct and frequent contacts between people and whose infringement causes moral pain. To this category belong relations referring to family, to assistance of people in danger, relations between lodgers, relations in connection with the free exercise of religious cults, and those concerning decency and mutual respect between members of the society. Thus, the offences causing prejudices to such relations are classified in four categories : offences against the family, offences against public health, infringements to the obligations of assistance due to persons in danger, such as putting in danger of a person who is not able to take care of himself, abandon without help and a last category still more heterogenous, comprising — in the order of succession of their seriousness — offences which cause prejudices to the good relations between nationalities, to the liberty of cults, to the respect and living together between members of the social community such as disturbance in the use of dwelling place and scuffle, disturbance in good social conduct, manifested by outrage to ethical norms, disturbance of peaceful public life, spreading of obscene materials, association for the purpose of committing infringements, public instigation and apology of the infractions, as well as offences of social parasitism.

Whe shall deal hereunder with the two first categories of offences as well as with offences of social parasitism because they exert a special influence on the demographic phenomenon.

a) In the socialist society, the family being a social institution and value has a prominent importance for the creation of the moral, economic, and social conditions necessary to the development and growth of population.

This basic cell of the socialist society relies upon ethic foundations whose protection is realized by complex educative means in the spirit of the socialist moral exigences.

The criminal law sanctions some infringements of a peculiarly perilous nature for society, namely the non-observance of the imperatives which configurate the moral and social structure of the socialist family. In this sense it is acting the incrimination of the offence of bigamy and adultery both of them causing prejudices to the principle of monogamy and to that of mutual respect and fidelity between spouses.

4. *The offence of bigamy.* Pursuant to Art. 303 of the Criminal Code the contraction of a second marriage by an already married person is punished with prison from 1 to 5 years.

The non-married person who marries someone in awareness of this person's being already married, is punished with prison from 6 months to 3 years.

The deeds provided in the present article are not punished if the first or second marriage is declared void for another reason than bigamy.

The offence of bigamy refers, in the main, to the infringement of moral and juridical limits of marriage conclusion. Therefore, its incrimination is determined by the fact that, in essence, it represents in the conditions of our society a dangerous situation for the very existence of the family as a juridical and social institution. Consequently, if the anterior marriage, in respect of which the offender spouse appears bigamous, is dissolved for other reason than bigamy the connection which claims the application of the punishment disappears. In such situations — for instance — if the anterior marriage is dissolved due to vice of consent or for other reasons such as incest, mental alienation, want of consent, lack of an authorization of marriage, in case that such authorization conditions the validity of the marriage, etc. no offence of bigamy is considered to be committed even in case the annulment of the marriage occurred after the contraction of the second marriage, or after the conviction to penal sanction, in this last case the execution of the punishment being stopped.

5. *Offence of adultery* produces harm to the unity of the family, because the mutual trust between spouses is put in danger.

Pursuant to Art. 304 of the Criminal Code the deed of a married person of having sexual relations out of wedlock is punished with prison from 1 to 6 months, or with payment of a fine.

The criminal proceeding is put into operation on the previous complaint brought by the unguilty spouse.

The unguilty spouse may claim at any time the cease of the criminal pursuit or of the trial and in case of a final judgement the cease of the execution of the punishment.

Evidence of the adultery may be given only through the official report ascertaining the fact of adultery or through letters emanating from the guilty spouse. The criminal pursuit or the trial is also stopped in case of death of the spouse who has instituted proceedings, or in case the guilty spouse's marriage is annulled.

The criminal pursuit should not be started if the offence has been committed being prompted or encouraged by the other spouse or if the married life was interrupted in fact and the spouses lived separated.

The provisions of Art. 27 of the Criminal Code, referring to the punishment of the accomplices and instigators are not applicable.

From the provisions of Art. 304 of the Criminal Code results that the offence of adultery has as object the family relations concerning the marriage as this offence creates a state of mistrust,

worry, and tension between spouses, with the possibility of engendering doubts as to the paternity of the children and, thus of undermining the moral foundation of the family. If such a perilous state has been created by another fact than adultery, the criminal repression is removed. Pursuant to the law, only two situations may exist in which it is considered that no connection of causality subsists between the existence of some relations out of wedlock and the jeopardizing of the family unity, namely when married life has been interrupted in fact, the spouses living separated and when the deed of adultery has been committed being prompted by the other spouse.

The criminal pursuit in a matter of adultery is started on the previous complaint of the unguilty spouse who may withdraw the complaint at any time, claiming the cease of the pursuit, even in the case that a final sentence of conviction has been passed.

In this last hypothesis the effect of withdrawing the complaint will be that of exemption of the sentenced spouse from the execution of the punishment.

These dispositions aim to avoid the disintegration of the family ; this is a thoroughly justified solution if we take into consideration the childrens' existence, too. For this very reason the criminal pursuit is stopped through the annulment of the guilty spouse's marriage. This carefulness and prudence of the legislator is also manifested as to the probating means concerning the offence of adultery.

In order to prevent the disintegration of the family due to a thoughtless action of the unguilty spouse, entered more by passion that by the wish to consolidate the family, the law provides that the adultery probation may be admitted upon an official report ascertaining the fact or upon letters belonging to the guilty spouse. In connection with this last condition it has been found out in practice that other means of probation as for instance the recognition of a child resulted from out of wedlock relations, or a written statement of a person, etc. are not admissible, because they give no certain evidence of the existence of the offence. The recognition, for instance, may be a disguised adoption. The statement of the witness in this extremely delicate matter should not be considered as pertinent.

Thus the incrimination of adultery, like other legislative constructions concerning the institution of marriage ,is conceived in such a manner as to lead to the consolidation of the family, to the prevention of its disintegration, even if a temporary disturbance emerges in the relations between spouses, the family playing a prominent part in the development of the demographic factor.

6. *The other three categories of offences against the family — the family abandon, the bad treatment aplied to the infant and the non-observance of measures concerning the entrusting of the infant* — have as object the rights resulted from the family relations, such as the right to maintenance and education, to the preservation of physical health, to the training of the infant, etc., hence, in general, the duties and rights between spouses or between parents and children.

7. *The offence of abandon,* provided and punished by Art. 305 of the Criminal Code, causes prejudice to the idea of material and moral solidarity which characterizes the relations between members of the family. This offence materializes in several ways : the abandon, the chasing or failure to the maintenance of a family member ; the ill-intended failure in complying with the obligation of maintenance ; the non-payment during 2 months of the allowance necessary to the maintenance as established by a sentence. In connection with this last modality we must mention that the judicial practice has assimilated the incomplete payment to the nonpayment of the allowance. In connection with the incrimination of the offence of abandon the main condition which justifies the application of the sanction, is dependant on the occurrence, in an objective manner, of lack of means of material or moral support. The care of the legislator to ensure, by all means, the realization of the finality of the obligation referring to the mutual aid between members of the family — their moral and material solidarity exerting a decisive influence on the evolution of the demographic factor, especially with regard to the upbringing and education of children — is also obvious in the fact that criminal proceedings for abandon may be put into operation only on the previous complaint of the victim and the reconciliation of the parties removes the responsibility. Thus, the juridical construction offers to the guilty person the possibility of reconsidering his obligations concerning the maintenance of other persons.

8. *The offences concerning the bad treatment applied to the infant and the non-observance of measures referring to infant entrusting* have as object the obligations devolved upon parents and persons whom infants are entrusted to educate and bring up. The offence of bad treatment applied to the infant, being provided and punished by Art. 306 of the Criminal Code, refers to treatments of any kind, psychical or physical, which put in serious danger the physical, intellectual or moral development of the infant. The non-observance of the measures concerning the entrusting of the infant, provided and punished by Art. 307 of the Criminal Code, refers to the physical isolation of the infant caused by his parents or by only one of them, either by holding back the infant

for the purpose of hindering him to return to the parent whom he had been entrusted, if the deed jeopardizes the upbringing and education of the child, or by repeated prevention from visiting the child by one of the parents, offence committed by the parent or by a person who takes care of the infant, if by so doing — he creates a danger for the normal evolution of the relations between parents and child. The incrimination of these offences is of a nature to prevent deeds which — owing to their seriousness — affect the upbringing and education of the infant, so that they are closely connected with the protection of the moral climate and of the material conditions necessary for the development of the new generations.

§ 3. *Offences against Public Health*

9. The offences against public health have as a generic object the relations of social living which concern the public health, considered as an important social value. In this group of offences are comprised the frustration from fighting against disease, venereal contamination, spreading of disease among animals and plants, water pollution, drugs traffic, food and other products adulteration.

10. *Frustation from fighting against disease,* provided and punished by Art. 308 of the Criminal Code, consists in the deed of having failed to observe the measures taken by the entitled bodies for the prevention and control of some contagious diseases entailing the outspread of such diseases.

11. *Venereal contamination,* provided and punished by Art. 309 of the Criminal Code, consists in the deed of a person, who is suffering from a venereal disease, of transmitting it to another person by sexual contact, irrespective of the kind of this contact, normal or abnormal, agreed to, or violent.

The danger brought about by those two categories of offences to the development of population consists in the fact that they are not only harmful to people's health, but may also entail the increase of the death rate and as to certain disease, especially the venereal, the endangering of the birth rate and the health of the offspring. Likewise, drugs traffic, dangerous from the social point of view, is provided and punished by Art. 312 of the Criminal Code. The object of this offence refers to the social relations concerning public health, whose existence and evolution are protected by the provisions of the Act No 73/1969, with regard to the conditions of dealing with drug products and substances. The incrimination refers to the production, possession and all other deeds regarding the traffic of drug and toxic products and substances, the culti-

vation, for the purpose of processing, of plants which contain such substances. In this case too, the protection of public health is directly connected with the elimination of the causes which may deteriorate the quality of the development of the population and exert at the same time a negative influence on the birth rate or may entail the artificial increase of the death rate.

In exchange, the two other categories of offences against public health — the outspread of disease among animals and plants and water pollution directly harm the national economy. The prevention and fight against the contagious diseases of plants and animals as well as the necessity of ensuring the safety of water resources and drainage pursue the protection of the value of these elements for the national economy. At the same time, the importance of the water quality as well as the health of animals and plants in order to ensure material conditions to people's existence is obvious.

§ 4. *Offences of Social Parasitism*

12. *The offences of social parasitism* — mendicancy, vagrancy, prostitution, panderage and games of chance — are serious infringements to the socialist principle of labour. According to this principle, the means of subsistance of each member of the socialist community must be the result of a useful labour for society. Therefore, these offences cause injury to the public morality which is an essential component of the spiritual terms of development of the population in the conditions of the socialist society.

13. One must mention in a direct connection with population growth the category of offences consisting in prostitution and panderage, through whose incrimination the morality and security of the sexual life are protected.

Pursuant to Art. 328 of the Criminal Code, the offence of prostitution consists in "the deed of a person who provides for his or her means of subsistance or for his or her main means of subsistance by practising sexual relations with different other persons". The sanction provided by the law for the perpetration of the offence is prison from 3 months to 3 years.

Hence, the text incriminates both the female prostitution — that is the practice of a woman to provide for her means of subsistance or for her main means of subsistance through sexual relations with men — and male prostitution, namely the deed of a man who has sexual relations with women for the same purpose. The prostitution as substitute of a labour for earning one's liv-

ing, useful from the social point of view, represents in the socialist society a social parasitic existence, a danger for the normal evolution of the social relations based upon the socialist principle of labour and a source of criminality through the moral decay which it entails. For this reason, the text of the law makes no distinction as to the fact if the offence has been perpetrated by a woman or by a man. Thus, this offence, in the last analysis, causes injury to the public morality which is an essential component of the moral-political climate necessary to the development of population.

From the analysis of the constitutive elements of the offence, it results that, in order to become subject to the criminal sanction, the keeping up of sexual relations with different persons must have in view the providing of means of subsistance or, at least, of the main means of subsistance. Thus, not every advantage obtained entails the qualification of such a deed as offence. Moreover, only the keeping up of sexual relations with several persons characterize the offence of prostitution. Both these conditions are cumulative. The criminal law, taking into consideration the fact that, in general, the constitution of a family is preceeded by a diversity of human relations between the future spouses, provides sanctions for the practice of sexual relations between unmarried persons only if, considering the manner in which they take place, they are not proper to favorize the establishement of a wedlock but, on the contrary, generates a state of immorality and of social unsafety resulting from this way of providing for the means of subsistance, opposite to the bases of social existence.

14. *The offence of panderage* provided and punished by Art. 329 of the Criminal Code, consists in a complex of deeds grouped around the infractional phenomena of prostitution : enticement or constraint to prostitution, facilitating of its practice or recruitment of persons for such practice ,taking advantage of the prostitution practised by another person, traffic of persons for prostitution. The particularly severe sanction — from 1 to 5 years prison and interdiction of some rights and in case that the deed has been committed to the detriment of an under aged person, or if it has another serious character, from 3 to 10 years prison and interdiction of some rights — is justified by the fact that the offence of panderage is considered by the Criminal Code as the most dangerous form of social parasitism because it affords a source of illicit income from the practice of the prostitution by another person. Therefore, being in full contradiction with ethical rules, the panderage is reproved on the international level too, by means of some conventions such as those concluded within the League of Nations in 1921 and 1923 and foremost by the convention

adopted by the UN — General Assembly on December 2,1949 to which the Romanian State adhered through the Decree nr. 482/ 1954.

§ 5. *Offences Concerning Sexual Life*

15. As already said, the protection by penal means of the liberty, physical integrity, dignity of the person and, in general, of all his attributions, is inseparably connected with the necessity to secure the moral-political and social climate propitious to the evolution of the demographic factor. Thus any breach between the individual and the collectivity to which he belongs appears as artificial. Protecting the individual against physical or psychical violence or constraint, the criminal law protects implicitly the social group against the traumatism resulted from the infringement of the individual attributes of one of the collectivity member.

Particularly dangerous for the collectivity as a demographic entity are the offences regarding *sexual life*. In the Criminal Code these offences are provided in chapter III, title II of the special part, entitled "Offences against the person" and systematized in the following species of offences : indecent assault, sexual relations with an infant of female sex, seduction, sexual relations between persons of the same sex, sexual perversity and incest. Further on, we shall insist upon two of the above enumerated offences : indecent assault and incest.

16. *The offence of indecent assault,* pursuant to Art. 197 of the Criminal Code, consists in "sexual relations with a person of female sex by exerting constraint on her or by taking advantage of her impossibility to defend herself or to express her will" and is punished with prison from 2 to 7 years.

The punishment is of 3 to 10 years prison if :

a) the victim is under 14 years ;

b) the deed has been perpetrated by several persons ;

c) the victim has been under the care, protection, education, guardianship or treatment of the perpetrator ;

d) a serious injury has been produced to the victim's corporal integrity or health.

The punishment is increased from 7 to 15 years prison if the offence has entailed the victim's death or suicide.

The criminal proceedings for the perpetration of the offence in its non-aggravating modality is put into operation on the pre-

vious complaint of the injured person and "ex officio" in the other situations.

The deed of indecent assault is not punished if prior to the final judgement a marriage has been contracted between the perpetrator and the victim and in case of participation, between the victim and anyone of the participants.

The object of the offence is given by the infringement of the victim's liberty to choose his partner, by the injury caused to the victim's health and physical integrity owing to the possible consequences which may have on it. That is why the committing of the deed by several persons or against an under aged person who had not yet reached the age of 14, as well as the fact of having produced serious injuries to the victim's integrity or health or of having entailed the victim's death or suicide, are considered aggravating circumstances.

At the same time, another object of the offence, connected with the first one, is the public morality and this is the reason why the fact that the victim was under the care, protection, education, guardianship or treatment of the perpetrator is considered an aggravating circumstance. This side of the infractional object is in connection with the fact that the contraction of a marriage between the victim and the author or anyone of the participants in the deed is a reason of non-punishment. For the same reason the necessity of protecting certain relations which, although begun in unfavourable circumstances, may conduct to the establishment of a family has a priority in comparison with the penal sanction. This measure is justified by reasons of moral order resulting from the respect for the victim's wish to marry the perpetrator, as well as of demographic order, connected with the protection of any form of human relations which conduct to the establishment and consolidation of family relations.

17. The same mixed character — the defence of individual attributes and of public morality — can be also found in the object of the *offence of incest*. According to Art. 203 of the Criminal Code, the sexual relations between relatives in straight line or between brothers and sisters are sentenced with 2—7 years prison. This time the law protects, in the first place, the relations between relatives and, consequently, public morality and also, as a particular element of the complex object of the offence of incest, the descendants' health, being known that children born from such relations often are physically or mentally defective.

The connection between the criminal law and assurance of conditions for the increase of the birth rate is obvious : the cri-

minal law, from this point of view, mainly pursues the prevention of one of the reasons which on the biologic level may be detrimental to the quality of the offspring.

§ 6. *Offences against Peace and Mankind*

18. Approaching the end of this general analysis of the criminal law influence on the demographic factor, we are going to deal with some offences which, though belonging to the category called in title XI of the Criminal Code "Offences against peace and mankind", are closely connected with the defence of the human community, namely the offence of war propaganda and that of genocide.

War propaganda, provided by Art. 356 of the Criminal Code, consists in the spreading out of tendentious or invented news proper to serve to war instigation or to any other manifestations in favour of the outbreak of a war, committed by word, writing, radio, television, cinema or by other similar means. The punishment provided by the law for this offence is prison from 5 to 15 years, interdiction of some rights and confiscation of the estate.

The perpetration of this offence causes injury to the political relations of peaceful collaboration between states, to the principles of foreign policy of our state in his endeavour of defending and consolidating peace and, at the same time, to one of the fundamental elements of population development : peace. The social danger of the offence of war propaganda for people, in general, results from the very danger which a war, in the conditions of the present-day technics, represents for the existence of mankind and of the actual civilization. But even if we do not come to this extreme limit, war propaganda, by the effects it may generate in social psychology, by poisoning the interhuman relations, at the individual or group level, may have deeply baneful consequences on people's life and development.

Somewhat similar, due to its consequences, is the offence of genocide. Moreover, in the case of this offence the extermination of some social groups is unleashed.

19. According to Art. 357 of the Criminal Code, the offences of genocide consists in committing for the purpose of destroying entirely or to a certain extent a collectivity or a national, ethnic, social or religious group ,one of the following deeds :

a) killing of the members of the collectivity or group ;

b) serious injury produced to the physical or mental integrity of the members of the collectivity or group ;

c) submission of the collectivity or group to conditions of existence or treatment leading to physical destruction ;

d) application of measures aiming at the hindrance of births within the collectivity or group ;

e) forced transfer of the children belonging to a collectivity or group to another collectivity or group.

The punishment for the perpetration of the offence of genocide is death penalty and confiscation of the whole estate, or prison from 15 to 20 years, interdiction of some rights and confiscation to a certain extent of the estate and if the offence is committed during the war, death penalty and confiscation of the whole estate.

Furthermore, the criminal law punishes the agreement for the purpose of committing the offence of genocide with prison from 5 to 15 years, interdiction of some rights and confiscation to a certain extent of the estate.

Thus, in the case of this offence, the protected object refers directly to human communities. The perpetration of the offence creates impending danger for the development of the population, being an extreme expression of the degradation of solidarity between social groups. This very aspect, deeply immoral and antisocial, the very danger of this offence for the development of the human community is the foundation of the international reproval of genocide.

Because of the injury produced by genocide to the moral and social foundation of civilization, the penal repression in the case of genocide is the expression of the deep repulsion, at the social conscience level, for this offence which, in the last analysis, has its source in backward, antihuman mentality, in a policy and practices of racialist and fascist type.

§ 7. *The Regime of Punishment Execution*

20. *The conditions established in view of the execution of punishment are subordinated to the aim of re-educating the offender.* According to Art. 5 of the Act nr. 23/1969 concerning execution of penalties, the re-education of the convict is realized *by labour,* the convict being obliged to carry out some useful work. Moreover, the re-education of the convict is realized by his qualification or requalification in a handicraft, by carrying out cultural and educative activities, as well as by stimulating and rewarding of the convicts who are persevering in work and give evidence of improvement.

In Art. 7 and the following of the same law it is ascertained the principle, according to which the work done by the convict at

the place of confinement is carried out under observance of the rules of labour protection and of other rights due to certain categories, taking into consideration their professional qualification, their work being remunerated pursuant to the wage norms and tariffs established for the branch of activity they are employed in and under observance of the specific conditions of their activity at the place of confinement.

During the execution of the punishment in a penitenciary, as provided by Art. 15 and 17 of the mentioned law, the convicts are obliged to comply with the daily program, the indoor discipline and order, the dispositions issued by the staff of the penitenciary, etc. They are entitled to have rest, walk, medical assistance, to make petitions, to receive visits, packets with food, clothing or medicaments, books, newspapers, periodicals and reviews, to receive and send correspondence and money, etc. The convicts who are perservering in work, who are disciplined and give evidence of real improvement, as well as those who can not be employed for work, but give reliable evidence of discipline and improvement may be conditionally released before the full execution of the punishment to which they were sentenced, with application of the provisions of Art. 25 and the following of the law.

The regulation of the manner of executing the punishment privative of liberty is conceived in a way that it may ensure, after the execution of the punishment, the reinstalling of the convict in the social activity for the purpose of preserving and developing the people's creating capacity, which, in the last analysis, depends on the preservation and development of the capacity of each member of the society of carrying out an activity necessary and useful from the social point of view.

21. In the conditions created by the increase of the capacity and degree of participation of the public opinion, of the creating forces and special influence of the masses against those who infringe the law order, *the necessity of amplyfying the educative sides of the criminal law and of the means of punishment execution conducted to the development of the penalty system without privation of the convict's liberty.* In this sense we must point out the important part played in the penalty scale by the *penal fine* and, especially *by the institution of conditional suspending of punishment as well as by correctional labour.*

The penal fine is, generally, provided as a punishment alternative of imprisonment. By not depriving of liberty the convict, he is able, remaining in liberty, to further accomplish his functions within the family and at his work place ; the general and special preventive effect of the penal fine is ensurred by coercing the convict to reduce his personal patrimony.

The replacement of the fine by prison may take place but in case of ill intended evasion from the payment of the fine penalty. In this situation the punishment with prison is passed in the limits provided for the committed offence, so that the possibility of substitution is limited, implicitly, only to the hypothesis in which the fine represents an alternative punishment.

The institution of the conditional suspension of punishment execution corresponds to the same design, namely, to prevent the break off of the convict from family, society and collective of workers, and ensuring at the same time the necessary moral pression for his education. In this case, the direct compulsion consisting in the proper execution of the punishment is replaced by an indirect compulsion ,realized precisely by the effect of suspending the punishment execution because ,during the time of putting to the test, the convict is menaced that he shall execute the suspended punishment if he would again commit an offence. Moreover, in case of suspended punishment execution, or in case of punishment with fine the duration of the test terms is, in the first case, the term of the suspended punishment plus two supplementary years, and, in the latter case, one year ; after the expiration of these terms the convict is considered as rehabilitated.

The correctional labour has a similar finality in connection with the institution of the conditional suspension of punishment with privation of liberty. From the contents of the correctional labour regulation results that this kind of labour appears, from the juridical point of view, as a mode of individualization of the punishment with prison. In the execution of punishment with prison, the Court may dispose, if it appreciates that there are sufficent reasons for attaining the educative design, that the convict be obliged to carry out work during the time of the punishment, without depriving him of liberty. By carrying out correctional work, the reeducative process is going on in the organized frame work of a collectivity of workers without the convict's confinement or isolation from the social life, in special juridical conditions, proper to ensure both the educative and the sanctioning aspect of the punishment.

The conditions to which may apply the correctional labour, as well as the conditional suspension of punishment, though specific for the regulation of each of these two measures, have in common the fact that they concern the punishments corresponding to offences of less social seriousness. Thus, the punishment to be applied must not exceed 2 years, the offender shall be at the first committed offence ; besides some offences are excepted from the possibility of executing the punishment by correctional labour, etc. It is no less true, however, that they concern implicitly, from the

sociologic point of view, the most numerous categories of convicts, that is the most frequent offences. Therefore, in case of such offences, the Court being able to order either the suspension of the execution of punishment, or its execution at a place of confinement, or by carrying out correctional labour, hence without privation of liberty, the influence exerted by the measures of executing the punishment on the social, economic and moral conditions of the population is significant first of all by the possibility of realizing the educative and sanctioning object of the punishment without affecting the continuity of the convict's participation in the life of the social community to which he belongs.

Annex

SYNTHESIS OF THE EVOLUTION OF THE DEMOGRAPHIC PHENOMENA IN ROMANIA

1. *Evolution of the Demographic Phenomena*

The complex economic and social measures which form the contents of the demographic policy of Romania are an integral part of the general economic and social policy of our country. This policy is characterized by the preoccupation of the state to support the formation and consolidation of the family, to permanently raise the living standard of the family, to improve its health and to protect mother and child.

The evolution of the demographic phenomena in Romania takes place in interdependence with, and under the influence of the deep political and economic transformations of the socialist building which had a great influence upon the number and structure of population, upon the proportion between the number of persons occupied in agriculture, which is continuously diminishing, and in other branches of the national economy, upon the weight of the urban population in comparison with the entire number of inhabitants and the contents of the social and professional mutations within population.

1.1. *The Rhythm of Population Growth*

On January 1st, 1974 Romania's population was 20,900,000 inhabitants which ranges Roumania on the 9th place among European states.

During the post-war period, the rhythm of the population growth has registered various values, as a direct consequence of the evolution of two fundamental components of the natural change of population : natality and mortality.

Between 1946—1951, the average annual growth rhythm has been of 0.9% value resulting from a higher level of both natality and mortality. The sensible diminution of mortality during 1951—1956, and an ever increasing birth rate (23—26‰) led to a higher

rhythm (1.3) of population growth. During the following five years (1956—1961) the average annual growth rhythm was maintained at a higher level (1.1%), although the natality manifested decreasing tendencies. The period between 1961—1966 is characterized by the lowest rhythm of population growth after the war (0.6%). The complex measures adopted at the end of 1966, and an increased birth rate determined the rhythm of population growth to register a level of about 1.1% during the whole period between 1966—1973.

1.2. *Population structure.* The analysis of population by age groups shows that the post-war period — and the last-decade especially are characterized by a demographic ageing of the population determined by the lowering of the birth rate during 1956—1966. The modifications of the population structure for the three large age groups refer almost exclusively to modifications with a compensatory character supervened at the two extreme groups : 0—14 years and 60 years or more, whilst the weight of the population aged between 15—59 years shows only little variations. The population of 60 or more years old represents 14.0% of the whole population of our country (on July 1, 1973), as compared to 9.9 in 1956. In this sense, the increase of the birth rate during the last years had some temporary effects upon the evolution of the demographic ageing of the population (in 1973 the weight of the population aged between 0—14 years was of 25% as compared to 28% in 1956).

1.3.1. *The natality* was maintained in Romania after the World War II over the decade 1946—1956 at a higher and approximately constant level (24—26‰ or so). The stability of this phenomenon may be explained by the conclusion of a large number of marriages postponed during war, from which resulted an important number of children contributing thus, directly, to the maintenance of the natality level almost unchanged during this period.

1.3.2. *The period between 1956—1966* is characterized by a permanent tendency of diminution of the natality rate from 24.2‰ at the beginning of the period to 14.3‰ in 1966. In its turn, the reduction of this fecundity has been influenced by the diminution of the proportion of women aged between 20—29 years among the total number of the women belonging to the fecund contingent, from 32.2 per cent in 1956 to 28.8 per cent in 1966.

1.3.3. *Another phase of the natality evolution* takes place after 1966. This period is characterized by a demographic apex in 1967, which maintained itself almost at the same level in 1968 too, afterwards diminishing gradually to 21.1‰ in 1970 and to 18.1‰ in 1973.

In the conditions of this higher level of natality after 1966, we have to point out some modifications in what we should call "demographic demeanour". Thus, for example, the difference between the natality level in the urban and rural milieu, important in 1966 (11,4‰ and respectively 16‰), becomes insignificant in 1967 (26.9‰ and respectively 27.6‰). This rapprochement is explained by the increased natality in the urban milieu, where before 1966 (the year when it was forbidden the interruption of pregnancy by request) women had avoided or postponed the birth of children. The proportion in which the women of the urban milieu gave birth to a second and to a third infant, was, as a rule, larger in 1967 than that of the women belonging to the rural milieu, because the last ones had already given birth to two children at least on the date of the above said interdiction.

The present level of female fecundity assures the reproducting of the population upon a much larger basis than in 1966 : the hypothetical number of children delivered by a woman between 15—49 years, in the conditions of the present fecundity, is of 2.9 as compared to 1.9 and the sheer reproduction index is of 1.4 in comparison with that of 0.9.

1.4. *Mortality* followed after the World War II a general diminishing line : 18.8‰ in 1946 and 9.9‰ in 1970. In between, 1964 represents the lowest level of the mortality in Romania : 8.1‰.

After 1966, an increasing tendency of mortality is observed, under the special influence of the growth of infantile mortality in a certain period. This tendency was however a temporary one, the phenomenon attaining in 1967 a level of 9.3‰, in 1968 of 9.6‰ and in 1969 of 10.1‰, lowering after that, as we have seen, to a normal evolution line.

In the conditions of the diminution of the specific mortality rate established upon age groups, the average life time was continuously raising, reaching 69 years in 1970—1972, being therefore with 5 years longer than in 1956 and with about 3 years longer than in 1961.

1.4.1. *Infantile mortality* represents the demographic phenomenon which has reacted in the most sensible manner to the modifications occurred in the social-economic life of the country after the World War II : from 164.1‰ deceased under 1 year in 1946, the level of infantile mortality diminished to 44.1‰ in 1965. After 1965 and especially between 1968 and 1969, infantile mortality registered an increase under the influence of the demographic apex above mentioned. This increase had, however a temporary character, as results also from statistical data : 59.5‰ in 1968 and 54.9‰ in 1969, followed in 1970 by a new diminution tendency : 49.4‰ and 38.2‰ in 1973.

Studies and special researches in this problem demonstrate that in Romania the level of infantile mortality is to a large extent due to exogenous causes, fact that will allow henceforth, together with the improvement of environment conditions, a substantial reduction of infantile mortality.

1.5. The nuptiality, in Romania, presents in its evolution after the World War II two principal phases, namely : between 1946—1960 the phenomenon is characterized by a higher level, about 10—12‰ as a result, in the first place, of the effects of the principle of compensation, which has acted after the World War II and, in the second place, of the raised divortiality which determined a large number of re-marriages (in 1965, for example about 25 per cent of the number of the married people were divorced persons).

After 1960 and especially after 1966, it may be noticed a diminution tendency in the nuptial evolution : 10.7‰ in 1960 8.9‰ in 1966, 7.0‰ in 1971 and 8.2‰ in 1973

The decrease is due firstly to the reduction of the contribution of the divorced to the conclusion of new marriages. If in 1965 from 100 men who get married ,only 79.9% were bachelors, in 1969 their proportion rises to 90.1%. In the second place, to the decrease of the nuptiality level contributed also the modification of the population structure according to age. As compared to 1963, for example, in 1969 the number of men aged from 20 to 24 years is with 8 per cent less. During the same period the number of women between 20—24 years decreased with 10%. One may also take into consideration another demeanour modification, which determined a diminishing of the proportion of women married at a young age (15—19 years), as a result of their inclusion during the last years in a larger measure in the educational and professional formation process.

1.6. The *divortiality* in Romania maintained between the years 1946—1953 at approximately constant values (about 1.30‰). After 1953 this phenomenon begins to increase, reaching the highest level in 1962 (2.4‰). Until 1966, the divortiality continued to be important (1.53‰ in 1966), and afterwards, due to the modifications adopted in the legislation concerning the dissolution of marriage, the number of divorces decreased considerably reaching a value of 0.69‰ in 1973.

2. *Legislative social-economic measures.* The study of the demographic processes and phenomena and their orientation in keeping with the social-economic development are an important preoccupation of our party and state. The problems concerning the family and the protection of mother and child find expression in the very fundamental law of Romania, in our Constitution, which in the art. 23 states : "The state protects marriage and family and defends the interests of mother and child". This constitutional prin-

ciple is put into practice in the every-day life by a large number of measures with a general character primary referring to the essential problems concerning the reproduction of the population, the conclusion and consolidation of the family. In keeping with the situation and evolution of certain demographic phenomena and in concordance with material possibilities, our state has successively taken various measures which have directly or indirectly influenced the population evolution. Among the most important measures of an economic-social nature, adopted in Romania, are the following :

2.1. *The state allowance for children,* adopted in Romania since 1956 has been improved and generalized later on. The funds assigned for this allowance will amount to over 33 milliard lei between 1971—1975 ; as compared to 4,3 milliard lei spent in 1970 for the payment of the allowance, in 1973 were spent about 6,8 milliard lei, representing an increase of over 58 per cent. Pursuant to the provisions of the Decree no. 285/1960, afterwards improved, the families of the working people benefit by the allowance for their children until the age of 16 years and the highest amount of monthly revenues up to which the wage-earners benefit by such allowance has been raised from 3500 lei to 4000 lei.

In accordance with the categories of revenues, the state allowance for children is granted to the working people thus :

Limits of monthly revenue	Rank of children in family					
	I		II		III and sec.	
	urban	rural	urban	rural	urban	rural
up to 1,500	160	110	170	120	190	140
1,500—2,000 lei	130	90	140	90	160	110
2,001—2,500 lei	110	60	120	70	140	90
2,501—3,000 lei	—	—	110	60	120	70
3,001—4,000 lei	—	—	—	—	110	60
over 4,000 lei	no allowance					

2.2. From the 1st of January 1972, *the allowance for children is accorded also to the families of co-operative farmers.* A family of co-operative farmers where at least one of the spouses is working in the respective farm receives a monthly aid of 50 lei for each child under the age of 16 years.

2.3. *The development of the network of pre-school institutions* with the purpose of including a greater number of children from towns and villages in order to alleviate the charges of families with children. During the last years, the number and capacity of such institutions have increased from 11,500 places in crèches in

1966, to 32,700 in 1972, and to 41,300 in 1973, while the number of children admitted in kindergardens was in 1973 of 704,900.

2.4. *The gratuitousness of the education at all levels* and the gratuitous granting of textbooks contribute in a large measure to the alleviation of the economic charges of families with children.

2.5. *The gratuitousness of the medical assistance for the whole population* and that of medicines prescribed to children under the age of 16 have a particular importance, because these advantages are relieving the family budget from the expenses necessary for health conservation. From a demographic point of view it is also important to mention that beginning with the 1-st of July, 1971, women members of the co-operative farms benefit by a paid maternity leave of 60 working days.

2.6. *The diminution of the pension age of women having several children* with :

— 1 year for those who gave birth to 3 children and brought them up to the age of 10 ;

— 2 years for those who gave birth to 4 children and brought them up to the age of 10 ;

— 3 years for those who gave birth to 5 children and brought them up to the age of 10 ;

Thus, a woman may be pensioned at her demand even at the age of 52, with an integral pension if she satisfies the dispositions of the law.

2.7. *An indemnity of 1000 lei* granted to mothers at the birth of her third child and of the following children, accorded from 1966.

2.8 In order to alleviate the housework burden of women with childern under 6, it was provided the *possibility of their integration in work,* upon their request, with 1/2 norm. In the pensions's law, it is stipulated that for the establishment of the length of service, this half-norm is considered as whole norm.

2.9. The General Assembly of the Trade-Unions of Romania and the Ministry of Education *are sending to rest and treatment the members of families with several children,* granting also priority in the summer camps and colonies to children belonging to those families. Families with three or more children may send gratuitously in the balneo-climatic resorts one or several of their children.

3. In conditions of a continuous diminution of the natality during the period 1956—1966, it became evident that it was necessary to operate, in addition to a rise in material advantages, some change of the legislation concerning *pregnancy interruption and the divorce.*

3.1. It is important to underline the fact that the *prohibition of pregnancy interruption upon demand* do not aim only at the growth of the natality, but at a much larger sphere of problems. In this sense, we must mention the positive influence which children exert upon family stability and also the creation of a favourable climate for the birth of several children in a family, etc. The legislation concerning abortion adopted in 1966 does not oblige the woman to give birth to a certain number of children, but it limits her access to the most dangerous and damaging way for avoiding pregnancy, namely abortion. Likewise, we must show that the present legislation has not, in our country, the character of a total interdiction, the regulations established by the law being correlated with the creation of social-sanitary conditions for pregnant women. Thus the law provides a larger sphere of situations in which the pregnancy may be interrupted in hospital conditions at the woman's demand such as : the pregnancy presents a dangerous situation for the woman which cannot be avoided by other means ; one of the parents is afflicted by a serious disease hereditarily transmissible or which may determine grave congenital malformations ; the pregnant woman presents serious invalidities, either physical, psychical or sensorial ; the woman has reached the age of 40 ; the woman had given birth or has in her charge 4 children ; the pregnancy is the result of an assualt or of an incest.

3.2. The legislative measures adopted with the purpose of improving natality rate are completed by some *normative acts concerning the re-establishment of the tax upon revenues,* in keeping with the fact whether the taxpayer has children or not. For example, to a taxable revenue corresponding to the average wages, the tax in case of a person without children is with 11 per cent higher than in case of a person with children.

3.3 The modification in 1966 of some *legal dispositions concerning the divorce* has realized a substantial improvement of the legal system of family protection and consolidation. Thus, it was provided that the divorce cannot be admitted by the law-court except when the relation between the parties are so gravely and irremediably injured by one of the spouses, that the marriage continuation for the party who had asked for its dissolution is no longer possible.

The same dispositions also modified the procedure of divorce in order to assure a most serious examination of the respective divorce suit and to prevent the easy dissolution of marriage. Thus, it was achieved a unitary regulation which establishes a longer deliberation term in case of families with children. Besides, the fiscal duties for the divorce application have been established to 3,000—6,000 lei in keeping with the material situation of the claim-

ant. It must be also mentioned the fact that in some cases provided by the law, the deliberation terms are no longer necessary and the tax for divorce amounts only to 200 lei.

4. The content of the law no. 3/1971 which provided the creation of the National Commission for Demography as a State Council organ and the establishment, in 1973, of the district and Bucharest demographic commissions are proofs of the importance accorded by the party and the Romanian state to the problems of demography, to the analysis of the interdependence between the social-economic and demographic phenomena and of the urbanization and systematization of the territory, to the best relation between the demographic and economic investments.

4.1. The Commission, as a specialized organ, has as a *basic task* the up-drawing of studies concerning the systematization and urbanization processes and their demographic effects, the evolution of the demographic processes and phenomena, and also long-term studies relative to the implications of population evolution upon the complete and national utilization of the manpower, upon the production of consumption goods and upon other similar problems, related to the living standard of population, in view of a thorough study of the respective phenomena and of adoption of adequate proposals for the State Council — organ of the state power — for the accomplishment of the party's and of the state's policy in the demographic field. By the creation of the National Commission of Demography is assured one of the organizational necessary premises in order that the demographic problems should not be separately, fragmentarily and sporadically, but co-ordinately examined in their ensemble both at the central level and at the local one, in a short or long term. An important contribution is afforded in this sense, by the demographic district commissions and by that of the Bucharest City, which, upon a local plan, organ ize a series of sudies and researches having a precious scientific contribution for the decisions of demographic policy which have to be taken upon the respective territory.

4.2 The National Commission of Demography consists of scientists, teaching staff, and other persons with higher professional capacity, whose activity is related to demographic problems, and also of representatives with leading functions in certain ministries, and other central organs, in co-operative and public organizations.

4.3. One of the most important attributions of the National Commission of Demography is of co-ordinating at the national level the scientific research activity in the demographic field, through the collaboration of scientists and other special research institutions.

SOCIAL-ECONOMIC MEASURES CONCERNING THE ROMANIAN POPULATION

1. *Protection of Maternity*

1.1. According to the D.C.M. no. 880/1965, a maternity paid leave of 112 days is granted from the social insurance funds.

1.2. The daily average aid represents 62% of the daily average wages.

1.3. The rising in the funds utilized for the payment of maternity leaves :

in millions lei

1971	*1972*	*1973*
312,2	345,3	377,6

2. *Leave for the Nursing of the Sick Child*

2.1. If the child is under 3, paid leaves are accorded by virtue of the D.C.M. No. 880/1965.

2.2. The daily average aid represents 55% of the daily average wages.

2.3. According to the provisions of the Labour Code (art. 158), women with children under 6, are authorized to interrupt their activity or to take a half-time job ; their length of service being considered, in the first case, as uninterrupted (art. 9, law no. 1/1970) and as full-time in the second case.

3. *Women Labour* (the Labour Code, art. 153, 154 and 156).

3.1. The pregnant women from the 6-th month of pregnancy and those with sucklings cannot be designated for night work or appointed in working places with obnoxious, hard or dangerous conditions and cannot be called for overtime work.

3.2. The enterprises are obliged to grant to women during the working programme pauses for the feeding and nursing

of the child, namely of 2 hours daily up to the age of 9 months, extended to 12 months in case of premature children. These hours have no influence upon the remuneration or other material rights.

4. *Medical Assistance*

4.1. The medical assistance is gratuitous and has a prophylactic and educational character during ambulatory treatment or hospitalization ; likewise, medicines and the sanitary material necessary to hospitalization and subsistance in these institutions are also gratuitous.

4.2 The rising in the funds allocated by the state for medical assistance :

in millions, in %

1956	*1960*	*1965*	*1970*	*1973*
1,8	3,0	4,8	6,9	8,4

presenting a growing rate of 2., 2.7., 3.8 and 4.7 respectively.

4.3. The amount of the expenses for population health from the total of the social-cultural expenses, has in 1973 represented almost 20%.

5. *State Allowance for Children*

5.1. The dynamics of utilized funds :

in milliards lei, in %

1956	*1960*	*1965*	*1970*	*1971*
223,3	1726,4	2715,2	4232,5	5023,0
100	7,7	12	18	22,5

6. The evolution of the funds concerning other categories of expenses (birth indemnity, aid for the mothers with many children, state family aid, aid for the spouses of military man under arms) amounted in 1973 at approximately 200 million lei.

ROMANIA POPULATION

	(Thousands)			(%)	
	Total	Men	Women	Men	Women
December 20, 1930 [1])	14,281	7,016	7,265	49.1	50.9
January 25, 1948 [1])	15,873	7,672	8,201	48.3	51.7
February 21, 1956 [1])	17,489	8,503	8,986	48.6	51.4
July 1, 1960	18,403	8,982	9,422	48.8	51.2
July 1, 1965	19,027	9,316	9,712	49.0	51.0
March 15, 1966 [1])	19,103	9,351	9,752	49.0	51.0
July 1, 1970	20,253	9,945	10,308	49.1	50.9
July 1, 1971	20,470	10,056	10,413	49.1	50.9
July 1, 1972	20,663	10,156	10,506	49.2	50.8
July 1, 1973	20,828	10,244	10,584	49.2	50.8

[1]) *Census*

ROMANIA POPULATION, AREA AND DENSITY

	(Thousands)			(%)		Inhabitant
	Total	Urban	Rural	Urban	Rural	per sq. m.
December 29, 1930 [1])	14,281	3,051	11,229	21.4	78.6	60.1
January 25, 1948 [1])	15,873	3,713	12,159	23.4	76.6	66.8
February 21, 1956 [1])	17,489	5,474	12,015	31.3	68.7	73.6
July 1, 1960	18,403	5,912	12,491	32.1	67.9	77.4
July 1, 1965	19,027	6,418	12,610	33.7	66.3	80.1
March 15, 1966 [1])	19,103	7,306	11,797	38.2	61.8	80.4
July 1, 1970	20,253	8,258	11,994	40.8	59.2	85.3
July 1, 1971	20,470	8,423	12,047	41.4	58.9	87.0
July 1, 1972	20,663	8,591	12,072	41.6	58.4	87.0
July 1, 1973	20,828	8,761	12,067	42.1	57.9	87.7

[1]) *Census*

NATURAL GROWTH OF ROMANIA POPULATION 1930—1973
(in thousands)

Year	Population on July 1	Live born	Deceased	Natural Growth	Marriages	Divorced	Deceased under one year
1930	14,141	482	273	209	133	6.3	85
1931	14,355	472	294	178	133	6.6	83
1932	14,554	510	307	203	137	6.7	93
1933	14,730	459	272	187	123	7.0	78
1934	14,924	468	296	172	136	7.7	83
1935	15,069	453	303	151	134	8.5	82
1936	15,256	482	295	188	143	9.6	82
1937	15,434	471	292	179	146	10.8	82
1938	15,601	460	298	162	140	11.4	82
1939	15,751	445	287	159	127	9.2	76
1940	15,907	414	301	114	139	8.0	—
1946	15,791	319	296	95	186	21.5	64
1947	15,849	371	349	21	155	19.6	74
1948	15,893	380	248	132	179	17.9	54
1949	16,084	444	220	224	186	21.3	61
1950	16,311	427	202	225	190	23.9	50
1951	16,464	413	210	203	170	20.3	49
1952	16,630	413	195	218	169	23.4	43
1953	16,847	402	195	207	175	21.9	39
1954	17,040	422	195	227	206	28	37
1955	17,325	443	168	275	197	31.1	35
1956	17,583	426	175	251	205	29.1	35
1957	17,829	408	182	226	204	33.1	33
1958	18,056	391	157	234	211	35.4	28
1959	18,226	368	187	181	195	30.9	28
1960	18,403	352	161	192	198	36.9	27
1961	18,567	325	162	163	180	33.4	23
1962	18,681	302	172	130	185	38.1	18
1963	18,813	295	156	139	175	36.2	16
1964	18,927	287	162	135	170	35.1	14
1965	19,027	278	163	115	164	36.9	12.2
1966	19,141	274	157	116	171	25.8	12.7
1967	19,285	528	179	349	154	— [1]	24.6
1968	19,721	526	189	338	147	4.0	3.3
1969	20,010	466	201	265	140	7.0	25.6
1970	20,253	427	193	234	146	7.9	21.1
1971	20,470	400	194	206	150	9.6	17.0
1972	20,663	389	190	199	157	11.3	15.6
1973	20,900	377	204	173	170	14.2	14.4

[1]) *Decree No 779/1966 modifies certain dispositions concerning the divorce.*

Year	(‰)					Deceased under one year (‰)
	Live born	Deceased	Natural Growth	Marriages	Divorced	
1930	34.1	19.3	14.8	9.4	0.45	175.6
1931	32.9	20.5	12.4	9.3	0.46	175.3
1932	35.1	21.1	14.0	9.4	0.46	181.5
1933	31.2	18.5	12.7	8.3	0.47	169.6
1934	31.4	19.9	11.5	9.1	0.52	177.6
1935	30.1	20.1	10.0	8.9	0.56	181.0
1936	31.6	19.3	12.3	9.3	0.63	170.3
1937	30.5	18.9	11.6	9.5	0.70	173.5
1938	29.5	19.1	10.4	9.0	0.73	179.0
1939	38.3	18.2	10.1	8.1	0.59	170.2
1940	26.0	18.9	7.1	8.7	0.50	—
1946	24.8	18.8	6.0	11.8	1.36	164.1
1947	23.4	22.0	1.4	9.8	1.23	198.8
1948	23.9	15.6	8.3	11.2	1.12	142.7
1949	27.6	13.7	13.9	11.6	1.33	136.3
1950	26.2	12.4	13.8	11.7	1.47	116.7
1951	25.1	12.8	12.3	10.3	1.23	118.1
1952	24.8	11.7	13.3	10.2	1.41	104.7
1953	23.8	11.6	12.2	10.4	1.30	96.3
1954	24.8	11.5	13.3	12.1	1.68	88.8
1955	25.6	9.7	15.9	11.4	1.80	78.2
1956	24.2	9.9	14.3	11.7	1.66	81.5
1957	22.9	10.2	12.7	11.4	1.86	80.9
1958	21.6	8.7	12.9	11.7	1.96	69.4
1959	20.2	10.2	10.0	10.7	1.69	75.5
1960	19.1	8.7	10.4	10.7	2.01	74.6
1961	17.5	8.7	8.8	9.7	1.80	69.4
1962	16.2	9.2	7.0	9.9	2.04	58.8
1963	15.7	8.3	7.4	9.03	1.92	55.2
1964	15.2	8.1	7.1	9.0	1.86	48.6
1965	14.6	8.6	6.0	8.6	1.94	44.1
1966	14.3	8.2	6.1	8.9	1.35	46.6
1967	27.4	9.3	11.1	8.0	—	46.6
1968	26.7	9.6	17.1	7.5	0.20	59.5
1969	23.3	10.1	13.2	7.0	0.35	54.9
1970	21.1	9.5	11.6	7.2	0.39	49.4
1971	19.5	9.5	10.0	7.3	0.47	42.4
1972	18.8	9.2	9.6	7.6	0.54	40.0
1973	18.1	9.8	8.3	8.2	0.68	38.2

NATURAL MIGRATION OF ROMANIA POPULATION IN 1973

	No.			(‰)		
	Total	Urban	Rural	Total	Urban	Rural
Live Born	389,153	144,221	244,932	18.8	16.8	20.3
Deceased	189,793	69,459	120,334	9.2	8.1	10.0
Natural Growth	199,360	82,916	124,598	9.6	8.7	10.3
Marriages	157,142	74,762	74,226	7.6	9.7	6.1
Deceased Under 1 year	15,566	5,168	10,398	40.0	35.8	42.5

AVERAGE LIFE DURATION IN ROMANIA

	1932	1956	1961	1964 1967	1970 1972
Total	42.0	63.17	65.96	68.51	68.58
Men	—	61.48	64.19	66.45	66.27
Women	—	64.99	67.70	70.51	70.85

MARRIAGE IN ROMANIA, THE CIVIL STATUS OF SPOUSES BEFORE MARRIAGE

The husband civil status	Total	The Wife Civil Status		
		Unmarried	Widow	Divorced
1960				
Total	197,654	170,777	6,320	20,477
Bachelor	165,030	153,355	1,844	9,789
Widower	7,759	3,089	2,704	1,955
Divorced	24,821	14,312	1,765	8,733
1965				
Total	164,229	135,655	5,429	23,139
Bachelor	131,269	119,708	1,379	10,182
Widower	5,553	2,454	2,378	1,721
Divorced	26,399	13,491	1,672	11,236
1970				
Total	145,531	133,671	4,054	7,795
Bachelor	131.758	127,173	1,049	3,530
Widower	5,462	2,041	2,330	1,091
Divorced	8,300	4,452	674	3,174
1972				
Total	157,142	146,005	3,749	7,380
Bachelor	143,947	139,665	907	3,370
Widower	5,076	1,833	2,155	1,088
Divorced	8,111	4,502	686	2,921