

National prestige in legal and judicial practice in contemporary Romania

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***Abstract:** The image of a state in international relations, its position in various issues concerning the contemporary world, its credibility etc. are all elements that define the concept of national prestige. National prestige is not for granted and does not represent a common feature that may be acquired and may disappear at any time. Because its essence is value, the notion incorporates everything valuable in that nation all along its history, as well as its contribution to world heritage, its level of culture and civilization, its behavioral pattern and even its character. National prestige is promoted and cultivated, because it has great significance not only when it comes to relations between states and international organizations, but also in the life of every citizen, especially when being in another country. However national prestige should also be protected, since it may be the target of various attacks, more or less aggressive and motivated. This supreme value of the Romanian people has always been the target of the most unusual attacks from those who wish for us to lose our identity and alongside our historical right to live in our homeland. That is why national prestige should be protected by any means, including by legal ones.*

***Keywords:** national prestige; patriotism; image of the country; the defamation of the country or the nation; legal and judicial practice.*

Introduction

It has been more than 23 years since the change of the political regime from December 1989 and Romania keeps losing its values in all fields, facing nowadays an increased instability and lack of prediction, which unfortunately means that the standards of living of Romanians is with every day more distant from the long expected level of decency. Since in this geographical area of the Carpathians, Danube and Black Sea, one cannot even see the hope, many leave the country, seeking their fortune in other countries, where they sometimes give away their expertise – acquired at the expense of the Romanian state – under humiliating conditions.

The number of those leaving the country with the intention of remaining abroad forever keeps increasing, which means that the Romanian nation is bereft of the services and persons, whose education and training had been paid by the state. Thousands of physicians, as well as other highly qualified specialists, who had proven their intelligence and skill in international competitions, choose, instead of serving the Romanian country, to serve others, who have thus become unawares masters of this country, which thus resembles a colony. Indeed the sad reality of nowadays is the fact that Romania may adequately be characterized using the humiliating term of colony. Looking at the current position of our country, one may clearly and irrefutably state the fact that certain countries still practice a domination policy towards other countries – even today, in a world we thought to be more civilized, fairer and more humane than all past epochs that had come up with such unjust treatments.

Due to this colonial regime, Romania no longer belongs to Romanians, since they are faced with the reality of having to move to other countries. The phenomenon is constantly increasing, especially among the young generation. More than 70% of these, regardless of their training or education stage, plan their lives and futures abroad.

Being such a serious issue for the Romanian society, it should in our opinion be a priority for all politicians, regardless of the political party they may be part of. The demographic situation, the prognosis on its evolution and the stimulation factors of a balanced development of the population should be a fundamental objective of each government, yet on one condition – that all is based on the national interest.

Starting from this statement, one may consider that the exodus of the young generation from Romania represents an irrefutable argument that the policy of the Romanian government does not consider the national interest. This is not a simple consequence of some failed reforms, but a plan to de-structure the state, this becoming more and more obvious as one notices the effects. One may talk destructure also in case of our nation, which gradually becomes a population without national identity, without personality, completely obedient to the imperial purposes of some foreign powers.

The evidence in this respect is to be seen in many laws recently adopted, as well as in various governmental acts. By occult ways of regulation, our normative system now has provisions, which even though undermine the national, sovereign, independent, unitary and indissoluble character of the state, are being adopted by a docile bureaucratic system, which one might say is purposely programmed to act against the national interest.

Therefore, when we refer to foreign policy, we need to consider the sad reality in which the state, instead of promoting national interests abroad, leads a servile policy towards foreign powers, which are interested not only in destructuring the Romanian state, this being already widely achieved, but also of the Romanian nation.

Obviously, it is firstly the economic reasons that encourage the Romanian exile and nobody may be accused of leaving their country so as to survive, if their country is in all aspects a wreck. Secondly, many people leave their country being disgusted with everything going on in the public area, with the grotesque from the behavior of politicians and especially being disappointed by the fact that the same „robber”-politicians have been ruling the country for more than two decades, thus leaving no hope for a brighter future for Romanians.

Thirdly and not lastly, unfortunately we have to admit that the country and the nation no longer represent supreme values to the young generation, who is no longer attached spiritually to them. The young people nowadays are not characterized by deep feelings of love and attachment, which have always been a trait of our nation throughout its entire history, strengthening its unity in front of so many dangers and perils. Obviously one may accuse the youth of this spiritual lack of feelings towards their country and nation, but one cannot possibly ignore this drama of the Romanian people.

One day, I think, the time for a revision will come and hopefully there will still be someone to do this, so that the traitors and servants of foreign interests can be judged for the crime of having fulfilled the plans to destructure Romania as state and transform it into a colony. Yet, thinking about the future and hoping that justice will once triumph, we should stop being indifferent towards the decomposing process of the Romanian society, which continues even under the current government. Each Romanian citizen, who still has a feeling of patriotism, should one way or another take action against acts of national betrayal, which have now become more and more transparent. Nothing is an excuse for the indifference towards such acts. Quite on the contrary, this indifference becomes under these circumstances an act of complicity, since – as one knows very well – such an attitude has so far encouraged the “robber”-politicians to act freely and even dissimulate their actions under the mask of the so-called “democratic reforms”.

I. Promoting and cultivating the national prestige – a major educational objective

According to the Romanian dictionary, prestige is defined as an assessment somebody or something enjoys due to a wide range of moral values, expertise, talent, social situation, significant specific features etc. Furthermore, the notion of prestige could also be understood as consideration, celebrity, fame etc.

When the entity analyzed under the perspective of prestige is a country, a state or a nation, the concept bears the name of “national prestige”.

So, the image of a state in international relations, its position in various issues concerning the contemporary world, its credibility, are all elements defining the concept of national prestige. National prestige is not for granted and does not represent a common feature that may be acquired and may disappear at any time. Because its essence is value, the notion incorporates everything valuable in that nation all along

its history, as well as its contribution to world heritage, its level of culture and civilization, its behavioral pattern and even its character [1].

The past of a nation, for instance, is extremely important in promoting its national prestige. That is why historical facts should be actualized more skillfully, because if certain aspects are interpreted wrongly or are taken out of their context, the image of that nation as well as its prestige may suffer. Naturally, the scientific spirit should guide any interpretation of historical events. The historians are however human beings, with a certain spiritual structure, which stimulates certain feelings towards events or facts they may be researching. Therefore the historian may not treat these events from a detached position, so as to exclude any subjectivity. It is a more serious situation when the historian chooses to adopt a hostile position towards the nation, whose past is being under consideration. That is why certain historical events or periods are presented so differently and each variant is alleged to be objective, based on so-called scientific arguments. In many situations the past is distorted and under-assessed on purpose, so as to deny that nation the present and even the future – it is a known fact that we, Romanians, have always been the target of such attacks. The danger of these actions becomes more and more obvious and the solution is not ignorance or indifference. We should more boldly value our past, stop admitting the latest denigrations, which have been unfortunately suspiciously promoted by schools and other public institutions. This is the way, by which we may strengthen national unity and improve our prestige and dignity in the world in these troublesome times.

Each nation enhances the acts of glory of the predecessors, so this is not specific only to Romanians. However it is only in our case that “the historical truth” is so vehemently claimed as necessity, but it is not the truth in general, but the truth of the ones who minimize and underestimate us as a nation. Lately one may notice all sort of individuals, who claim to be historians and whose predilect so-called research and propaganda topics seem to be the denigration of the Romanian nation. Their negationism is not scientifically inspired and has nothing to do with historical deontology. Their aggression in media, their mimic and their mean reactions, which cannot be censured when mentioning the glorious deeds of our nation and their emphasis only on the denigration side – are all aspects that somehow explain the fact that we deal not with historians, as they claim to be, but with influence agents, who have turned history into a weapon against the Romanian people.

The moment December 1989, regardless of the way these events will be considered in future, has marked the beginning of a period of historical rebuff for Romania, even from the point of view of the national prestige [2]. In any field the comparison between our country today and our country and what it represented on the international political stage 23 years ago places us, the generation of today, in pre-history. With our national defense system pulverized, the traditional aggressors of Romania disguised as “revolutionary Romanians” have permeated the institutional structure of the state and under the sign of authority have thus acted freely against the nation and the edifice of values our nation had created in all its years of independence.

The school has been one the main targets of anti-Romanian actions, somehow, yet not that skillfully masked into the so-called reforms meant to „free” the education system of all ideological flaws of the old regime. It is only now that many are amazed at the precarious training and education of the young generation, who is estranged from the nation and the country, from our national values. Lured by the “benefits” of the revolution, the teachers and educators have quickly become enthusiastic with the idea of “freedom” and have thus abandoned their authority and prestige, believed to be of Communist essence, being dragged in a spasmodic libertinage and it is only now that their students treat them brutally that they begin to realize this sad reality. How could the young generation still be attached to national values, how could the young still have a solid humanist education when the notions of “country”, “homeland”, “patriotism” and “love of country” have now become obsolete, no longer having been promoted in the school. Unfortunately this zealous abandonment has been encouraged by an aggressive complicity on behalf of many teachers, who betraying their profession, have blindly followed the directives of the central „reformers” and who could now, at least in their inner selves, realize and admit to having betrayed their nation.

The problem of education is now more and more an issue of public attention. Among others, the policy of alternative school-books is now unveiled as being an unjust weapon against the healthy traditions

of the Romanian school, far from our national values. This fact should be encouraging and should be understood as a sign of re-awakening the national awareness. However, more than in any other field, one needs a sound strategy well-thought by patriot Romanians, who would place education on solid national grounds. No specialists, regardless of their professional field, should lack the humanist side of their cultural horizon. This is formed in school and precisely because of that, school should treat humanist subject matters highly seriously. And when talking about humanism, its essence should have a solid national component. We will be able to respect and treasure others only if we manage to know and treasure ourselves, since this is the way to regain our dignity and stop being ashamed of belonging to this nation.

That is why it is absolutely necessary for school, but also for the other components of the Romanian educational system, to set the rehabilitation of the national prestige as priority objective. The power around this stringent necessity, which would introduce in reform projects such an objective, could prove that it is related to the national interest, in other words a Romanian government.

On the other hand, national prestige strongly depends on the international image of the country, as well and from this point of view the major role is played by representation factors, whether this refers to the domestic and foreign policy of the country, to its relations to various states and international bodies, to its position in problems concerning the contemporary world, or to the international performances in science, sports, arts, culture etc.

In the contemporary era, characterized by a large transparency on the entire planet, by the increased interest showed by humanity in perceiving the political acts of leaders, helped a lot by the international mass-media and technical means of communication, by the increased apprehension of the public opinion towards the non-conformist discourse and the misbehaviors of politicians, the prestige of a state in the world comes to depend substantially on its official way of representation. Unfortunately, the experience of Romania lately has not necessarily been an example in this respect. Too many caricatures, including at the highest level of representation, have made it an interest topic for the international press, which has not only brought us a prejudice in image, but has also affected our traditional relations, our position as independent and sovereign state, built with great sacrifice and last but not least, as an indirect consequence our economic and financial interests have also been endangered [3].

If we refer only to the burlesque moment of last summer's suspension of the president, I think it is enough to understand that the level of our political class is under-mediocre and that the national interest and our defining values as a nation lack completely from the preoccupations of the politicians. All diplomatic tools have been excessively exploited not in the interest of Romania, but exclusively in their interests. Brussels has been treated just like in the past the Phanariot rulers behaved towards the Ottoman Empire. It is with public funds that various mechanisms of diversion were used so as to try and present a democratic political act as a "coup d'état" with the sole purpose of turning the attention of the Western world and justifying its interference in supporting the weaker, more docile political class, which unfortunately did happen, once more placing us as a state in a humiliating position. As one already knows, the political regime in Bucharest turned out to be the most docile in implementing the austerity measures imposed by Brussels, which meant that the European Union could not remain indifferent to the risk of having these docile leaders from Romania lose their positions. Furthermore, as a direct consequence of irresponsible attitudes and statements of some of our politicians, the European leaders received a long expected excuse to treat Romania as a vulnerable state and subsequently to preserve the famous Mechanism for Cooperation and Verification. From a technical instrument necessary to reform Romania, this became a sign of shame, which had induced to the Romanian state a huge and unjustified complex of guilt [4].

One failed in two strategic objectives, which were of interest first and foremost to the Romanians abroad, respectively joining the Schengen area and the elimination of restrictions on the European labor market and of the discrimination some EU Member States show towards Romanian workers. Also in this respect it has been proven that the political leaders in Bucharest consider the Romanians abroad a mass to handle in the electoral race, exploiting the frustrations and humiliations they feel in other countries, where they had been pushed by the same corrupt political class. It is because of them that Romanians are not treated as European citizens, but as an ethnic group of criminals.

When talking about the prestige and image of Romania in the world, equally important are the events in the internal administration of the state, as well as its participation to the international political life [5]. Worth mentioning are for instance the inability to absorb European funds, precisely because of a corrupt administration, which has not only once misappropriated the European funds, but also the easiness in estranging the valuables of our nation and in demolishing profitable economic and strategic facilities, the ignorance shown by the same political class towards vital fields, such as education, health system, sports etc. to mention only a few aspects that cannot be overlooked when analyzing our image as a state. To all these one may unfortunately add the poor quality of those who represent us in diplomacy, since it is not few who, by their attitudes and positions towards various issues, have proved themselves to be not only lacking in training and education, but also in patriotism, which should be in fact features of diplomats, who instead adopt hostile positions towards certain defining values of the Romanian nation. For instance, a certain individual, Head of the Presidential Chancellery, stated in November 2010 for a national broadcast television that „the Hungarians, especially the Szekely, had been living in that country for more than a thousand years, practically making it from a political point of view, their country. They are completely entitled to have a republic, a flag, a Parliament with laws, their own currency and an Embassy.” So, for this individual, the first article of the Romanian Constitution, which states that our country is “a national, sovereign, independent, unitary and indivisible state”, is for him as Romanian politician no objective to promote and defend, but rather to undermine. Under these circumstances one simply wonders which position is adopted by the person who, knowing this anti-Romanian attitude, still appoints him in high state functions, since shortly after this shocking public appearance, he was appointed ambassador in a Scandinavian country. Should we still wonder how this person, having this vision towards the Romanian state, promotes its image, prestige and interests in another country?

Though having been cheated every time in electoral procedures so far, the hopes of the Romanian people in a government devoted to the national cause have not vanished. Despite the current acute identity crisis, felt most dramatically by the Romanians living abroad, the people are still confident in the future. Politicians know this, too, but all they do is exploit the frustration of the Romanians, unawares of the fact that it is precisely them, politicians, who by a more or less guided behavior have brought serious image prejudice to their country and the Romanians abroad, the Romanian exodus being in fact nothing else than a consequence of dishonest, adventurous past governments, most probably involving the same politicians.

II. The need to defend the national prestige by legal means

National prestige should not only be promoted, but should also be cultivated through education in the behavior and feeling of every Romanian citizen. It should also be defended, even by legal means. Just like in general a defensive behavior is imposed by the existence of some more or less aggressive risk factors, in this case as well the defense need is, I believe, fully justified, considering the fact that the national prestige – this supreme value of the Romanian nation – has always been the target of the most unusual attacks from those who want us to lose our identity and along with it, the historical right to live in our ancestral homeland.

The Romanian Constitution states in article 30, paragraph (7) that “the law forbids the defamation of the country and the nation, the urge to war of aggression, national, class or religious hate, incitement to discrimination, territorial separatism or public violence, as well as the obscene manifestations against good conduct.” Inspired by the constitutional practice of developed European democracies, but also by Romanian legislative traditions and considering the unfavorable conditions of the state of law in Romania, this constitutional paragraph was introduced in the article concerning “the freedom of speech”, its purpose, as it clearly results from the content, being to counteract the abuse, the freedom of speech, so that this does not take the form of some manifestations meant to harm the national prestige or incite to other deeds mentioned in that text.

By stating that “the law forbids ...” the text imposes first and foremost an attitude of respect towards the nation and the country and secondly, it represents a commandment for the Romanian legislator, who thus has the obligation to create the legal frame necessary so that the respective interdiction becomes operable.

Without a law incriminating and sanctioning the deeds of defamation of the country and the nation, the constitutional interdiction remains without legal force. If on the ratification and enforcement date of the Constitution there had not been a law to sanction the acts of defamation of the country, it should have been adopted on the spot, which should have been the task of the Parliament and of the other institutions involved in the legal process. Obviously one should have imposed a special law considering all the values to defend, and the need of clarity regarding possible harmful deeds, so as to avoid confusions and tendentious interpretations. Nonetheless, even though it has been more than 20 years since the current constitution was enforced, the Romanian legislator has never launched any legal initiative in this respect, practically refusing to meet his constitutional obligation. Not only was such a law never adopted, but the incriminating texts regarding the acts of defamation of the country and the nation were removed from the existent legislation.

Thus by Law no. 278/2006[6] one brings further modifications to the Criminal Code and in what concern us, one abrogated article 236¹, which even by its marginal name, “*the defamation of the country or the nation*”, reflected precisely the requests of the constitutional text invoked. According to the abrogated article, “public manifestations with the intention of defaming the country or the nation are punished with imprisonment from 6 months to 3 years”. The legal practice on this incriminating text, as is invoked in the exposure of reasons, lacks completely, but not because such deeds did not occur, some of them being actually very serious, but because of the lack of interest the responsible persons had when it came to applying and observing the law. Let us only mention here the exhibitions of caricatures from Berlin and New York, organized by the Romanian Cultural Institute, which brought Romania serious image prejudice. However, apart from some press reactions, claiming to sanction the guilty ones, no other actions from the state’s authorities were noticed.

This is however a problem of constitutionality, because according to article 1, paragraph (5) of the Constitution, observing the fundamental law is mandatory. Consequently, the Parliament can exercise its competency of incrimination and disincrimination of certain anti-social acts, only by observing the norms and principles in the Constitution.[7] So, as long as the Constitution forbids “the defamation of the country and of the nation”, article 236¹ should have remained valid or at least, if one considered it obsolete, one should have adopted another incriminating text for such acts. Under these circumstances its abrogation is not constitutional. The Constitutional Court, though a guarantee of the supremacy of the Constitution, could not adopt a position in this issue, since it was not informed about this. Those who should have informed the Court, according to article 146 letter a) of the Constitution, being directly involved in adopting law 278/2006 must be ignorant, whereas others, not few, even hostile towards the Romanian state and nation, must not have been disturbed by the clash between the legal provisions under discussion and the Constitution of Romania. Therefore, the acts of defamation of the Romanian country and nation, even though forbidden by Constitution, can be carried on without a risk, since without being incriminated, result in no consequences for their authors, with the exception of say moral ones.

The lack of constitutionality in the abrogation of Article 236¹ of the Romanian Criminal Code cannot be understood as a mere technical analysis, without also trying to understand the intentions of the legislator in leaving such important values, as the country and the nation, without protection. In the exposure of reasons to Law 278/2006, in which other Criminal Code articles related to the freedom of speech, such as Article 205 incriminating insult and Article 206 on slander, were abrogated, the freedom of speech is treated like an absolute value, being even invested with an aura of sacrality and this is the reason why according to the legislator, any possible impediment should be removed. “The freedom of speech – as is shown in the exposure of reasons – is one of the essential fundamentals of a democratic society and one of the basic conditions of the progress of the society and the individual fulfillment, covering not only the favorable or harmless information and ideas, but also those that *offend, shock or concern the state or a certain segment of the population*. These are the requirements of pluralism, tolerance and open spirit and in their absence there is no democratic society.” So, regardless of the gravity of the effects that might occur and the values that might be harmed, the freedom of speech, according to the initiator of this law, cannot be prevented.

Furthermore, compared to the freedom of speech, the values protected by Article 236¹, i.e. “country” and “nation”, are considered to be “essentially abstract” and thus one fears that opinions regarding these

values may cover a wide range of interpretations, including criminal ones. The same initiators consider that one may reach such an extent, where the criticism addressed to the political power could be regarded as crime. Obviously this is an unjustified fear, since no one has ever been held responsible, so far, not even those who have brought serious damages to the country and the nation, highly serious offenses, felt deep down inside by the true Romanians, which have generated severe consequences even in areas of national importance. So, which reason would there be in this “fear”, so as to abrogate this article?

Even if the judicial practice, based on all the reasons shown above, has not seen breaches of Article 236¹, though these did occur, this cannot be considered a reason for abrogation, especially since the danger around these values did not disappear, but quite on the contrary, constantly increased, as the reaction of the opposition on behalf of the state authorities and the Romanian society in general grew weaker and weaker. It is a well-known fact that the national prestige and the dignity of the Romanians were put on trial following the coup d'état from December 1989. It is precisely why Romanians from the governmental structure should have not ignored the fact that deeds of defaming the country and the nation are no longer regarded as crimes, and should have thus been more vigilant towards such actions.

The lack of motivation in abrogating this article and the really embarrassing justifications given by the initiators still incite one to find explanations, because as we believe, a legal action cannot possibly be that irrational. We are convinced that it is not the risk for someone to be under the incidence of this article for innocent opinions or criticism against the power, that determined the disincrimination of these facts. That is why we dare to state that no other purpose was in view than that to create a more favorable climate for anti-Romanian propagandistic actions. Since the purpose of the criminal law is first of all to prevent and inhibit the temptation to do the incriminated facts, one also understands the fact that when it comes to incriminating and sanctioning deeds of defaming the country and nation the same effect would have been produced, even if not on large areas. But the legislator wanted no obstacle for the freedom of speech, when it takes the form of anti-Romanian manifestations.

As it has been shown above, the Constitutional Court has not yet given a verdict in this issue of unconstitutionality, since according to the procedures, one cannot simply give a verdict, except for the initiatives to revise the Constitution. On the other hand, however, one should mention the fact that having been informed after three exceptions of unconstitutionality, the Constitutional Court decided[8] that the abrogation – by means of Law 278/2006 – of articles 205, 206 and 207 of the Criminal Code was unconstitutional.

Taking into consideration the fact that these texts incriminate insult and slander – facts that affect the honor, dignity and reputation of persons – the Court bases its decision on Article 1, paragraph (3) of the Constitution, according to which “... the dignity of man, the rights and freedoms of the citizens, the free development of the human personality ... are guaranteed”, as well as Article 1, paragraph (5), which stipulates the intangible character of the provisions of the Constitution, based on the fact that the dishonor is by its nature irreversible, and the human dignity cannot be financially evaluated, neither compensated, as it has been decided in the practice of some law courts, which means they cannot be bereft of legal means of protection.

In examining the constitutionality of the abrogation of these articles, the Constitutional Court also had in view the provisions regarding the freedom of speech, mentioned in Article 30 of the Romanian Constitution, Article 10, paragraph 2 of the Convention for the defense of the human rights and the fundamental freedoms, as well as Article 19, paragraph 3 of the international Pact regarding the civil and political rights. According to Article 30, paragraph (1) of the Romanian Constitution, “the freedom of expressing thoughts, opinions or beliefs and the freedom of any sort of creations, be they oral, written, in form of images, sounds or any other means of public communication, are untouchable”. But the same article of the Constitution mentions in paragraph (6) that “the freedom of expression may not harm the dignity, honor and particular life of a person, neither the right to the own image.” Thus, the freedom of expression and speech does not have an absolute character, because beyond the manifestations a person may have as an individual, (s)he should be aware of the fact that there are superior values the state has to protect and the individual has to respect. Usually the one person pretending an absolute freedom of speech does not have the

same attitude when others ignore it to dishonor that person. Worth mentioning here are also the legal and philosophical ideas promoted by democratic societies that admit that the freedom of a person ends where the freedom of another person begins. In this respect Article 57 of the Constitution clearly states the obligation of Romanian citizens, foreign citizens and non-citizens to fulfill all constitutional rights in good will, without harming the rights and freedoms of others.

The arguments invoked when showing that the abrogation of Article 236¹ is unconstitutional, may also be completed by this decision with all its implications. If the honor and dignity of the persons should be defended by means of criminal law, as is stated by this decision, such a protection becomes even more necessary when talking about the prestige of the country and the dignity of the Romanian people. Accepting in the name of the freedom of speech such manifestations that “offend, shock or concern the state or a certain segment of the population”, as one emphasizes in the above-mentioned exposure of reasons, enables us to understand a hostile attitude towards the values that protect and devote themselves to the prestige of Romania and the dignity of the Romanian people.

The constitutionality of the abrogation of Article 236¹ Criminal Code could have still been the object of an analysis conducted by the Constitutional Court, and thus one could have had the possibility to inform the Court also by an exception of unconstitutionality. Therefore, on 19th July 2012, USL filed with the Public Prosecutor’s Office attached to the High Court of Cassation and Justice a criminal complaint against the President of the country (at that time suspended) and another 14 persons, accusing them of “spreading false information”, “defaming the country and the nation” and “endangering the safety of the national economy and the stability of the national currency”. If the spread of false information and the endanger of the national economy are deeds indeed sanctioned by the Criminal Code, Articles 165 and 168¹, respectively, the complaint thus having legal basis, the same thing is not valid in case of the defamation of the country and nation. The provisions of the Constitution that forbid such deeds do not represent a legal basis to initiate the criminal prosecution against the ones being accused, even though the authors of the criminal complaint invoked them in supporting their accusations. *Nullum crimen sine lege* is a principle the author of this action should have known. It would have also been a good opportunity to mention the exception of unconstitutionality on the abrogation of Article 236¹, which out of reasons beyond our power of understanding did not occur.

Another argument supporting our statement is to be found in Law 278/2006, as well. Apart from the changes and amendments to the Criminal Code, the same law also changes and amends the Government Emergency Ordinance no. 31/2002[9] stipulating that fascist, racist or xenophobe organizations and symbols, as well as the promotion of the cult of persons guilty of crimes against peace and humanity are forbidden. Analyzing the new provisions we may notice that the freedom of speech is no longer an absolute value, since one may observe a new regime of extremely harsh censorship in the case of opinions that do not respect certain allegedly intangible positions regarding the Holocaust. Thus, even if in the past form Article 6 of that Ordinance limited the freedom of expression and speech, the new modifications bring about a harsher regime. “Publicly denying, contesting, approving or justifying by any means the Holocaust, the genocide or the crimes against humanity or their effects may be punished with imprisonment from 6 months to 5 years, with the denial of some rights or with a fine”. So, even if for instance someone states publicly that in Romania there was no Holocaust, contrary to the official position of the Romanian state, regardless of the arguments brought to support this statement, that someone risks an imprisonment from 6 months to 5 years.[10] Therefore, the freedom of expression and speech is absolute only when talking about the prestige of Romania and only when in the name of democracy, pluralism, tolerance and free spirit, the country and nation may be denigrated. It is precisely this double standard in the case of the freedom of speech that shows us that the national interest represents for the Romanian legislator not an objective to defend and protect, but a target exposed to the most aggressive attacks possible.

Conclusions

After 23 years of „democratic reforms” in Romania, any person of good-will may realize that what our country had and was before this experiment, is now pretty much gone. Under the false label of so-called „democratic reforms” there occurred the most ferocious economic theft ever known by Romanians so far, as well as a genuine social, cultural, spiritual etc. genocide [11]. If in the past the attackers made use of their physical force, today their tactic is subtler and thus more efficient. Values that the civilized world cannot refuse, such as „democracy”, „freedom”, „human rights” have become the weapons of the new empire, being successfully used also against Romania. For all the evil done these years, if indeed we resent what had happened to us, the only „guilty” part is the Romanian nation. The reason is extremely simple: the theft, the destructions, the demolitions, the submination of the system of national defense and public order, of the health system and of the education, the alteration of the image of the Romanian people, of its traditions and historical legitimacy – all bear the label of „democratic reforms”. Under this image they were „legitimized” by the people, as well, thus acquiring constitutional and legal support. The current Romanian Constitution underwent two procedures of ratification by the electorate: in 1991, when adopted, and respectively in 2003, when revised. That the electorate, in its great majority, did not know what they were voting for, having been prevented on purpose to know or understand the contents of the Constitution, is an issue only of moral or political responsibility, not in the least a legal matter. In its turn, the Constitution has been the basis of the entire legal system, also legitimized by the people, by means of the political programs voted. Therefore, what we call today theft, destruction, submination, sabotage, genocide etc. are no crimes, from a strictly legal point of view, since they have a solid legal support and the law in a democratic system is nothing else but „the expression of the will of the people”. Thus, for all this disaster nobody is contesting, including the serious alteration of the national prestige, the only „guilty” party is the Romanian nation. A new revision of the Constitution is to occur in short time, but unfortunately this is also done by the power factors. I believe it is high time Romanians were more cautious and more vigilant when asked to express an opinion on the new Constitution, as well as on the other political acts or candidates that influence their lives and the following generations.

References

- [1] Niță Nelu, *Premisele dezvoltării sustenabile, armonioase și echilibrate a statului de drept din România*, article published in the journal *Acta Universitatis George Bacovia. Juridica*, Volume 1, Issue 2, Jul-Dec 2012, =ISSN 2285-0171, ISSN-L=2285-0171, p. 36-58;
- [2] In a time when the ban of the ruler A.I.Cuza was considered a revolutionary act, and the day of 11th February, when this event occurred, was celebrated enthusiastically, the national poet Mihai Eminescu would say: ”Ages would pass and there would be no Romanian left, who would not be ashamed by the events occurred on 11th February and the stigmatization of this betrayal would forever grow in the memory of generations, just like year in year out the grass grows near the tomb of the ruler sold”;
- [3] Niță Nelu, *Crima și criminalitatea-amenințare gravă a dezvoltării armonioase și echilibrate a statului român*, article published in the journal *Acta Universitatis George Bacovia. Juridica*, Volume 1, Issue 1, Jan-Jun 2012, =ISSN 2285-0171, ISSN-L=2285-0171, p. 7-25;
- [4] George Bogdan, *Cum a pierdut statul român bani și prestigiu în interiorul UE*, <http://www.cotidianul.ro>, 13th February 2013;
- [5] Niță Nelu, *Amenințările și riscurile corupției la adresa Statului de drept din România*, article published in the journal *Revista de Investigare a Criminalității*, edited by the Police Academy „Alexandru Ioan Cuza”, issue 2/2011, ISSN 1844 – 7945, p. 197-207;
- [6] Published in the Official Gazette issue 601 of 12th July 2006;
- [7] Iona Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice*, 12th edition, vol. II, C.H.Beck Publishing House, Bucharest, 2006, p. 252;
- [8] Decision 62 of 18th January 2007 (Decision 62/2007) regarding the admission of the unconstitutionality exception of the provisions of Article I point 56 on Law 278/2006 for the change and amendment of the Criminal Code, as well as for the change and amendment of other laws, published in the Official Gazette 104 of 12th February 2007;
- [9] Published in the Romanian Official Gazette, Part I, issue 214 of 28th March 2002;

[10] At the conference *Worrying about Europe's historic nations* held on 01st June 2010 at Al. I. Cuza University of Iași, professor Paul Gottfried from the Department of Political Sciences, Elisabethtown College, USA draws the attention upon the censorship of the language considered politically incorrect, emphasizing at the same time the aggressiveness of the multicultural control. Thus one may for instance imprison „those denying the historical version imposed by the state in what regards certain historical events, such as the Holocaust of the massacre of Armenians in Turkey (even though those denying the crimes committed by the Soviet regime are not punished in any way) – up to the persecution of Christians who openly support the biblical moral”(the journal *Lumea*, issue 7/2010, article *România între ciocan și nicovală, Pericolul multiculturalismului European și al omogenizării globale americane*, p. 24-29);

[11] Niță Nelu, *Corupția endemică-cauză principală a subminării democrației din România*, article published in the volume „Marea criminalitate în contextul globalizării”, ISBN 978-606-673-000-6, Universul Juridic Publishing House, Bucharest, 2012, p. 221-235;