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### The Public Procurements Law and the Romanian research

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The world is full of parrots. The parrots are flying around and rambling. So stupidity is born and spread into the world. From Brussels to Rome, from Paris to Bologna, from Barcelona to Madrid, in various places of various colours-like themselves, birds of feather flock together - ministers and itinerant advisers, lecturers and walking teachers, commissioners and a host of other parrots of similar ilk are flying around and rambling. Bucharest is plagued with this bird epizooty.

One of the pet ramblings of these parrots is the Public Procurement Law.

The Public Procurements Law (Government Emergency Ordinance 34/ April 2006 concerning the award of procurement agreements and of concession agreements for public works and services) is abusively applied in the Romanian scientific research. Consequently, most of the purchases performed by the Romanian research institutes are illegal. Legions of directors, economists, jurists, reviewers, paper researchers, local parrots have lately overrun the research institutes in Romania while protected by some studiously vague and obscure agencies under the Ministry of Finance and other ministries. All these illiterate, obstinate, perfectly obtuse, obnoxious characters who cannot read, talk or write are frenzy in their efforts to hinder the purchases in the scientific research by circumventing and abusing this law.

Their rationale for this illegal action is clear-cut. Their life of unfortunate (meaning without luck) bureaucrats is the life of an asylee in a sanatorium. If they come to their offices, on some days they do that, they are late for two hours and leave earlier with two hours. As soon as they show up they go to the cafeteria where they stuff themselves with beef soup, forcemeat balls and other pestilent dishes. This takes them about two hours. After a few deep and loud belches, a well-deserved digestion while sipping from their coffee on the desk and a sweet snoring nap on the public purse. The glucids are fogging their brain, their liver is sore from the massive overdose of lipids, only the poor stomach is working hard inside the body of the employees in the Romanian scientific research. It's no wonder that they cannot write, speak or read. They do not know the letters or the people. Their life is shrouded in mist, "the whole life of the world is nothing but a sleep of eternal night".

These directors, economists, jurists, reviewers and cardboard scientific researchers are incapable of reading a text of law. The letters are jumping around on page, the words have no echo in their brain burnt by proteins. If you put them to define "purchase" they pout and become nervous. They babble nonsensical, incomplete sentences in their parrot language. They become impertinent and aggressive: "if you don't like it, sue us!". Note that they do not want to be fired but to be "sued". Once on trial, they drag all their bosses and subordinates into the blame game. A long set of characters, both highly and lowly connected are getting down. The justice cannot declare them guilty as this would be a social catastrophe, with a domino effect. By supposing absurdly

that justice were done in Romania, then Romania would vanish from the map, would cease to exist. Therefore these asylees are assured. To them, the research institutes, the public institutions, the administration are tools for robbing the state budget. Under the guise of scientific research carried out in such and such research institute, directors, economists, jurists, reviewers and the cardboard researchers keep drawing their salaries, strangling the scientific research and stuffing themselves.

At night, just for a second, the calories are finally sparking inside the brain of some of them, like a short and dazzling flash of light. A neuron is ablazed. "Eureka!" - says the boss. Do as I tell you or I'll penalize you. The entire beast world sighs happily. They get back their peace. Their stomach eases off a little. "The boss said so" is their happiness formula. He saved us; so reassuring to have someone to obey, to follow in our life. The boss's formula is an illegal, abusive mean to circumvent and abuse the law. "If the scientific researchers do not like this, let them sue us!". We'll stick together. The boss is on our side, we are on the bosses' side. Either we shall all live, either you shall all die. A decayed mass of people is destroying the Romanian scientific research: the mass of the employees and of plastic researchers, the asylees in the scientific research sanatoriums.

The Public Procurement Law has many imperfections, of wording, of reasoning. Nevertheless it is quite simple and articulate. It requires no interpretation whatsoever, particularly as concerns low-cost purchases, for instance, the purchase of two PCs adding up to 100 million ROL (former Romanian currency), made in accordance with well-defined research or financial plans and contracts. The law is not a mysterious text, of arcane philosophy which must be decoded or hermeneutically interpreted and nor is Nostradamus its author.

This law has a few essential oversights, which however do not preclude its carrying into practice. For example, the law does not define "public purchase". Not every purchase made from public funds, viz. from the state budget, is a public purchase. The European legislation, which inspired this law, defines "public purchase" as the purchase made from public funds and having as its object the supplying of goods, viz. goods accessible, more or less, to the general public, eventually in exchange of a fee. Public illumination, a municipal park, a road, a highway, a kindergarten etc. are just a few examples of public purchases. On the other hand, the PC purchased in research it is not a public purchase since not every person on the street can come to work on it, not even in exchange of a fee. If the army purchases cannons, obviously from public funds, these are not public purchases since I am not allowed to go to the regiment to fire the cannon, not even for a proper fee. In essence, this is the meaning of "public purchases"; a meaning that eludes the Public Procurements Law and remain elusive for our armies of bureaucratic parrots. On this ground, from the very beginning, the law must not be applied to many purchases made in research, as is the case in Europe to which we align with. The law actually defines the contracting authorities as public authority or public institution, which are subordinated to various public authorities from juridical point of view. As the research institutes do not have such subordination relationships, they are not entitled to public purchases. But the Romanian parrots have abusively decided to extend the law to all types of purchases made in our scientific research. Hence, according to these bureaucrats, the purchasing of a pencil falls under the incidence of the Public Procurement Law. We submit willy-nilly, although we have no reason in doing so. Since the Romanian law does not provide a definition for the public purchase we are compelled to accept this "interpretation". Unfortunately, as it was expected, an abusive interpretation entails a set of other similarly abusive interpretations and even the bureaucrats put themselves in the impossibility of applying the law. The opening paragraphs of the law put forward a set of trivial definitions and wordings framed in precious words from which we should keep in mind that the specific procedures to be followed for awarding the procurement contract, are: by tender (open or limited), by "competitive dialog", by

negotiation (with or without prior publication of a contact notice), by offer request and selection and by "solution contest". All these procedures are applicable in the case of public purchases, therefore, immediately, the parrot who formulates this law deems necessary to delineate it from other purchases. Consequently, it comes out the Article 19, the main focus of our interest. This article says: "The contracting authority has the right to directly purchase products, services or works, with a value that does not exceed, taking into account the provisions of Section 2 from the present Chapter, the equivalent of 5000 Euro without VAT, for each public procurement of products, services or works. The purchase is performed only on the basis of a proof document, which in this case is the public procurement contract; the obligation to observe the provisions of this law is limited to the stipulations of article 204 (2)."

The "value" estimated by "taking into account the provisions of Section 2" refers to the purchasing cost according to the budget, offer, etc. The ceiling of "5000 Euro" was raised to "10 000 EURO". "...each public procurement of products, services or works" must be probably read "...each public procurement of the same type of products, services or works" in accordance with the "Common Public Procurement Vocabulary (CPV)" which is a numeric code introduced by the EU in order to standardise the classification of goods and services. Article 204, paragraph 2 stipulates the obligation of having a proof document (the contract) in order to perform a purchase. We should notice that the subject matter of this article concerns the "purchase" and not the "public purchase".

This fundamental article is not applied by the Romanian research employees. They add up all the purchases envisaged for a year for the same type of product, whose total cost is often in excess of 10 000 EURO and, accordingly, submit tender or resort to other procedures. If I want to buy today 2 PCs of a total amount of approx. 100 million ROL, my employees peruse the purchase plan and conclude that the institute should make about 100 purchases of PCs for the whole year, a total of about, let's say, 200 PCs whose total cost exceeds the threshold of 10 000 EURO; thus, in order to purchase my two PCs I'm compelled to submit tender. This aberration not only that is in stark contradiction with the said article 19 of the Public Procurement Law but it is also an abuse. The tender documentation is large, the participation in a tender is a time-consuming activity, quite often the tender reaches deadlock (no tenderer is selected) in which case it must be resumed or one has to resort to other procedures, all belonging to the exceptions stipulated by law in the section concerning the "tender" procedure – on no account the article 19. I miss the deadline for spending the allotted purchase funds, I do not make the purchase which I need, I lose the money, I cannot carry out my work and the institute does not fulfil its scientific research mission (if it has one). Professing this illegality requires the employment of an additional number of bureaucrats, increasing overheads and lead to the dictatorship of the sick minds in the Romanian research. The main activity in the Romanian research is performed by legions of arrogant and stuffed bureaucrats producing endless wastepapers, which are endlessly multiplied by xeroxing, printing and faxing, sullied with mysterious signs which they do not understand and not even try to understand. A thick plague, a pestilent ringworm is covering the Romanian research institutes: the plague of bureaucrats and of fake researchers.

Directors with salaries of hundreds of millions are making this time common cause with the reviewers at bottom of the pile with a 10 million salary against the law and the scientific research. What keeps them together? Greed, fear, wretchedness, mutual blackmail, the lack of common sense and education. The parrots are littering the place with their filthy wastes.

In their sad and sick world, "one purchase" is the same as "100 purchases", though the article 19 provides explicitly the singular. The purchase is a sole act of sale-purchase of a good which is definable at the moment of concluding this act, based on a contract with a fixed cost, the value of the purchase. A research institute can conclude annually hundreds of such contracts, for one

type of product, for instance, a PC. All these contracts represent hundreds of purchases not just a single one. The article 19 must not be applied to the total amount of the purchases of the same type, but to each one of the purchases from the total of 100, if the respective purchase is eligible (its value does not exceed the ceiling of 10 000 EURO). This elementary reasoning blocks our bureaucrats, defies their mind foggy with low fats, gets them frightened and ill, on hearing it they start howling helplessly. The Government's bodies are studded with similar idiotic characters, the ministers are far more backwarded, the governments far more ignorant than the most ignorant reviewers; the justice is apathetic, it does not comprehend, it is not interested, it is impossible and blind on top of that .

In their stupid madness, this world of sick employees is often twisting everything so as not to apply the article 19 of the Public Procurement Law. Many research institutes and educational institutions submit one tender, at the beginning of the year, for the same type of goods to be purchased within that year, with payments and delivers spread over the current year and conclude a sole purchase contract. The value of this contract exceeds the ceiling of 10 000 EURO, the tender is allegedly legal, there is a sole purchase and the article 19 is circumvented. This artifice can probably work with regard to certain type of purchasing products, under certain circumstances, but definitely it is not applicable to purchase the PCs used in the scientific research. The criterion for purchasing a PC is its operational performance. Within a year the functional characteristics of the computers available on the market are continuously improved so that at the end of the year you can purchase, at the same cost, a computer more performant than it was at the beginning of the year. Naturally, the researchers apply this economic principle, therefore the foregoing artifice of cumulating the products for a sole tender is not operating in their case since at the moment of concluding the contract- the beginning of the year- the product representing the object of the purchase is not definable. The article 19 is pivotal. The following articles comprise the second part of the Public Procurement Law which describes the tender procedures, notably the exceptions to these procedures, with many irrelevant, inapplicable or even contradictory details. One submits tender or applies other procedures when the total value of the purchases, for each purchase and for each type of product, exceeds the ceiling of 10 000 Euro. But this part of the law is beside the point and of no interest to us here. Our troops of bureaucratic parrots serving the dictatorship of aberration and stupidity should grasp the difference between rule and exception. The rule is obligatory under given conditions. If these conditions are met but, due to a conjectural set of reasons, impossible to fully foresee, the rule cannot be applied, the resulting situation is an exception. Hence, we should keep in mind: the conditions of the rule are met but nevertheless the rule cannot be applied. For instance, if no tenderer is selected and the time does not allow to proceed further, we have the case of an exceptional situation requiring other procedures. Regrettably, the Public Procurement Law, similar to all Romanian laws, has a deficient wording and reasoning. It was also formulated by some solemn stuffed parrots. In essence, it is a "permissive law" which always cause difficulties . The law should be mainly normative not "permissive", it should state what must be done and what is prohibited under the given conditions and should not just list the rights. In principle, everyone is entitled to all rights, the law should just limit them. Everyone has even the right to not exert his rights which may become a dangerous situation, therefore it should be normatively regulated by law. For instance, the aforementioned article 19 should not say "The contracting authority has the right to directly purchase. . . ", because those who should apply it may invoke their right to not exert their right to purchase directly. "Do not oblige me to apply the article 19, I have only the right to apply it not the obligation too." It is true that this right to choose not to exert a right infringes the rights of those who would benefit from exerting their right to purchase directly, hence the dangerous situation: the law allows of the possibility to infringe the rights which it itself recognizes. A possibility created by a faulty wording

which results from the incapacity of these "law-makers" parrots to speak grammatically correct. As the right of the researchers recognized by law is to purchase directly, provided that the value of the purchase does not exceed the ceiling of 10 000 Euro, then those who should apply this law must observe this right. For the case at issue, the article 19 should provide that: "if the purchase value does not exceed the ceiling of 10 000 Euro, the purchase should be performed directly, etc, etc. If the purchase value is in excess of 10 000 Euro, the purchase should be performed by submitting tender, with exceptions to these procedure, or other procedures, etc, etc." The fact that the law does not explicitly stipulate nor this last provision, can render it inoperant. Moreover, the wording of the article 20 is studiously vague, as it says: "The contracting authority has the obligation to award the public procurement contract, as a rule, by applying the open procedure or the restricted procedure", without explicitly define the "rule" of the "obligatory" conditions (*e.g.* less than 10 000 Euro).

But all these imperfections should not hinder the grasp of the Public Procurement Law; it's right to say that they help the stupidity to show off its wickedness, hatred and ugliness. Legions of directors, economists, jurists and project researchers are systematically and methodically destroying the Romanian scientific research by abusively applying the Procurement Law. There is nothing to be done, nothing anyone can do. Romania is doomed to be destroyed by its own people. The parrots bewilder this country.

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