Creating the Legal Framework for Social Enterprises in Romania – Between the Necessity and the Reality of the Approach in the Local Area

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Both before 1990 and after, in Romania there were forms of manifestation of the social economy, which, however, were not necessarily identified with them. The present study seeks to analyze the concept of social economy and its principles of operation in the context in which both before and after the appearance of Law no. 219/2015 of the social economy, the lack of concrete support from the state and local authorities for the promotion of the social economy is an undeniable reality. Using qualitative comparative research, the material analyzes the social economy law in two countries, one with a tradition - Spain, where for the first time in Europe a law on the social economy was presented to Parliament, in March 2010, the other - Romania, at the beginning of the road, with a social economy law adopted only in 2015.

Keywords: the social economy law, the public policies, the non-profit sector.

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1. Introduction

Before and after 1990, in Romania there were forms of manifestation of the social economy, which however were not necessarily identified with it. The attempt to establish an identity of the social economy sector through Law no. 219/2015 created the premises of the transition from the above-mentioned forms to a true social economy that can have a say in the economic and social life.

Using a comparatively qualitative survey - the method of observation, the material analyzes the social economy law in two countries, one with a tradition - Spain, where for the first time in Europe a social economy law was presented to Parliament in March 2010, the other - Romania, road, with a social economy law adopted only in 2015. The study captures, through a detailed radiography, the gaps in the domestic legal framework - such as the lack of impact analysis of the implementation of Law no. 219/2015, the lack of concern for those empowered to introduce social economy modules at different educational levels, lack of adequate public policies, etc.

It is difficult for a beneficiary of various forms of social economy - be it consumer of goods or services - to assimilate these forms to the social economy as long as the leading social entrepreneur does not identify itself as part of the social economy. Since the adoption of Law no. 219/2015 on the social economy and so far the Romanian reality has shown us that the adoption of unhealthy principles, the confusion or the lack of a clear identity of those involved in different forms of social economy have made very good initiatives stagnate or disappear quickly.

The present study argues that the lack of popularization of social economy field in the business environment, the non-involvement of specialists working in the governmental/non-governmental sector in promoting the social economy sector and its non-inclusion in the public agenda represent as many threats in the development of the domain in the Romanian area.

2. Literature review

Lately, in the context of the 2008 economic crisis, there has been a growing interest in the social economy inside EU, highlighting the important and growing role that this sector plays in the market economics, operating jointly with it. Putting economic efficiency at the service of social needs, the social economy creates a real interdependence between the economic and the social aspect, without subordinating one to another. The social economy is another way of doing business, which permanently associates the general interest, economic performance, social aspects and democratic functioning, representing (CNIPMMR source, 2015) approximately 10% of the business environment in the European space, which allowed the integration of over 11 million employees in different forms of organization: 70% of employees work in nonprofit organizations, 26% in cooperatives and only 3% in help homes.

The concept of social economy develops and encourages the promotion of innovative organizational models between the state and the market, the organizations concentrated in this umbrella structure focusing mainly on social objectives, although economic objectives which allows them to benefit from service contracts and participation in the production and marketing of goods and services are not missing. In this social economy dynamic, complex and multidimensional framework are included non-profit organizations (associations and foundations), mutual funds and cooperatives, which, through their essential characteristics [1], [2] – the coexistence of social and economic objectives, the limited distribution of profits, democratic governance and the participation of members in decision-making, – fall into a so-called "third sector" which primarily pursues to meet the needs of society (social, environment), and not profit maximization [3].

Under-represented at European level and known under different names such as "the non-profit sector", "solidarity economy" or "third sector", the social economy is viewed differently by Member States, the degree of acceptance varying [4] from very high (France, Italy, Portugal, Spain, Belgium, Ireland, Sweden) to medium (Cyprus, Denmark, Finland, Greece, Luxembourg, Latvia, Malta, Poland and the UK) reaching to small or even non-recognition (Austria, Czech Republic, Estonia, Germany, Hungary, Lithuania, the Netherlands and Slovenia).

Although at European level there is no unanimously accepted definition of the social economy concept, the definition pillars have, over time, been directly related to the specific forms of organization and the principles promoted. Among the forms of organization under which the social economy can function we can specify [5]: social public structures (incubators), citizen's support groups (approaching new ways of working and social inclusion depending on availability of local resources), voluntary organizations (sometimes bounded to a religious cult), cooperative organizations (structures that promote community-specific interests in groups), new forms of nonprofit organizations (involved in the provision of public services, also carrying out commercial activities to financially support the services provided), charitable foundations, associations and foundations. As economic activities within social economy organizations are meant to materially support social projects, those organizations carry out tailored activities fitted to the specific needs of communities in which they operate. In order to ensure a harmonious blending between economic rigor and social challenges, the social economy sector outlined its own operating principles in the Charter of Social Economy Principles (CEP–CMAF, 2002): a) the prevalence of social and individual objectives rather than capital; b) voluntary and open affiliation; c) democratic control of members (not applicable to foundations as they have no members); d) combining the interests of the members / users and / or the general interest; e) to defend and apply the principle of solidarity and responsibility; f) autonomous management and independence from public authorities; g) the use of surpluses with a predilection for the achievement of sustainable development objectives and the provision of services of interest to the members or the general interest.

Based on the above, a relevant definition of the social economy is given by the International Center for Research and Information on the Public, Social and Cooperative Economy [6] which considers the social economy to be the "set of formally organized private enterprises with autonomy decision-making and freedom of association, set up to meet the needs of its own members through the market, by the production of goods and the provision of services, insurance and financing where the decision-making process and any distribution of profits or surpluses between members is not directly related to the capital contribution or the contributions paid by them, each of them having only one vote. The social economy also includes formally organized private organizations with decision-making autonomy and freedom of association which provides non-commercial services to households and whose surpluses, if any, cannot be appropriated by economic agents that set up, control or finance them."

Long before, in the 1990s, the Walloon Social Economy Council of Belgium undoubtedly provided a robust definition of the social economy, considering that it "consists of the economic activities of societies, especially cooperatives, mutual associations and other associations in which ethics is in accordance with the following principles: the ultimate goal is to serve members or collectivities rather than profit, the autonomy of management, the democratic decision-making process, the priority given in the distribution of income process, people and labor over capital."

Beyond the presentation of the pillars of sector definition, the concept of social economy and its principles, it is necessary to identify whether if the foundations of a real development of this project with poor representation at European level area were laid in the Romanian area.

3. Research methodology

In our approach, on the basis of a comparative qualitative research, we aimed to capture the key aspects of the Spanish social economy law, adopted in 2011, considered a presentation standard in the European area and at the same time we analyzed the elements taken over by the Romanian law in this field, adopted in 2015. Gradually, elements such as the objectives of social economy legislation, social economy entities financing, Council/Compartment for encouraging the social economy, social economy sector promotion, implementation of the social economy law in the two areas impact analysis, Spanish and Romanian, were analyzed.

Table no. 1 Social economy financing in Romania and Spain

The financing of social economy entities in Spain (second additional provision of the law)	The financing of social economy entities in Romania (Section 3)
<p>The activities of promotion, dissemination and formation of the social economy (in accordance with the provisions of art. 8.3 of the law), respectively the functioning of the Council for Encouragement of Social Economy (according to the provisions of Article 9 of the Law) are financed by the budgetary credits allocated to the Ministry of Labor and Immigration.</p> <p>The central authorities may agree with the Autonomous Communities authorities (Local Public Authorities) to encourage certain activities related to the promotion, dissemination and formation of the social</p>	<p>Social insertion companies in Romania can benefit from:</p> <p>a) Funding from national or international public and/or private sources, in accordance with the applicable legal rules (Article 15);</p> <p>b) Free counseling for the establishment and/or development of the business, through specialized departments at the level of the employment agency (Article 18);</p> <p>c) Facilities from the local public administration authorities (Article 19);</p> <p>d) State aid measures approved by specific</p>

economy if available resources are identified.	acts (Article 21). Also, the social insertion companies from Romania benefit from: a) Gratuity for the issuance of the social mark and registration in the Single Register of social enterprises (Article 16); b) The facilities provided by law for young people at risk of social marginalization insertion employers (Article 20).
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Source: *the author's own creation*

Unlike Spain, where the financing of social economy structures is ensured by the Ministry of Labor, by providing clear budget credits in the budget, in Romania the law of the social economy makes general references to possible financing without the actual assumption of financing by the budget. The difference is a significant one with an impact on the future development of the social economy; the lack of concern of the Romanian legislator to ensure the source of funding for the concerned area may lead to the stuttering of the initiative and its retention only at an inapplicable law as so many others in the native area. It is not enough to provide gratuity to social enterprises for social brand issuance, or to provide facilities for employers using young people at risk of social marginalization, but requires an integrated public policy program that genuinely supports social economy. However, this is not possible at this time.

Table no. 2 Tasks of the Compartment/Council for the social economy in Romania and Spain

Council for the Encouragement of Social Economy/Spain (Article 9)	Department of Social Economy/Romania (Chapter IV, Section 1)
The Council is an advisory body for ES activities in Spain; will act as a collaborative and interlocutor body between the SE entities and the State Central Administration. It has the functions: a) Informs/collaborates in the project elaboration of draft normative acts related to SE entities; b) Draws up reports required by the Ministry of Labor and Immigration and other ministerial departments; c) Perform periodic reports to update the catalog of social economy entities; d) Issuing an interim report on the registration status of social economy entities (statistical information); e) Provides information on social economy development /encouragement programs; f) Carries out studies and reports on the SE's pressing issues/questions, but also on the reinvigoration of knowledge, the institutional presence and the international rayonnement of social economy;	The Department of Social Economy within the Ministry of Labor has the following tasks: a) Collaborates, at the request of ANOFM management, with the drafting of normative acts with an incidence in the field of social economy initiated by the Ministry of Labor, other ministries, central public administration bodies or public institutions in the central public administration; b) Formulate observations and proposals on legislative initiatives proposing social economy field related regulations, at ANOFM request; c) Draws up the summary of the quarterly reports on the activity carried out by the social enterprises, respectively the social insertion enterprises; d) Draws up the synthesis of the county annual activity reports, which will be integrated into the annual ANOFM activity report; e) Establishes and manages the Single

g) All other functions and competencies attributed to the Council by legal provisions; h) Ensure the promotion and observance of the principles stipulated by Law no. 5/2011.	<p>Register of social enterprises in Romania; f) Draws up statistical data on the social economy domain, based on the data from the Single Register of social enterprises; g) Submit proposals for measures to improve and develop the field of social economy which are transmitted to the Ministry of Labor h) Elaborates notes, reports in the field of social economy, in accordance to the attributions they hold according to legal provisions; i) Coordinates, monitors and methodologically guides the territorial agencies in the social economy fields; j) Draws up the socio-professional insertion plan at the national level; k) Makes proposals as appropriate to the Ministry of Labor for the updating and use of the Single Register of social enterprises organization elaboration/ improvement procedure l) Proposes to ANOFM as the case may be management measures to improve the specific activity; m) Ensures, at the level of the compartment, the implementation and development of the managerial internal control system, as well as the deriving measures from the implementation of the National Anticorruption Strategy for 2016-2020.</p>
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Source: *the author's own creation*

Romanian law no. 219/2015 takes over, in the Social Economy Department construction, the functions created by the Spanish normalizing Council for the encouragement of the social economy. It can easily be observed that for each function taken from the Spanish law, the Romanian normalizer identifies at least two attributions in the new legislative construction; also proposes specific activities such as those under (i) to (l).

Table no. 3 Promoting the social economy in Spain and Romania

Social economy Promotion in Spain (Article 8)	Social economy promotion in România (section 3)
<p>Central public authorities, in their areas of competence, have at least the following objectives of social economy promotion policies: a) Removing obstacles limiting the economic activities launch/development of the social economy's nature (aims to simplify the</p>	<p>Section 3 of the Law no. 219/2015 The funding of social inclusion enterprises/their support and encouragement mechanisms provides a minimum space for social economy promotion measures. Central and local public administration authorities supports social economy</p>

<p>administrative steps to create social economy entities);</p> <p>b) Facilitating various social economy initiatives;</p> <p>c) Promoting social economy principles and values;</p> <p>d) Promoting vocational social economy fields training/reintegration;</p> <p>e) Facilitating the social economy entrepreneurs access to technological innovation processes;</p> <p>f) Creating an environment that encourages the development of economic and social initiatives within the social economy;</p> <p>g) Involvement of social economy entities in active employment policies, especially in the sectors with the highest level of unemployment - women, young people and long-term unemployed;</p> <p>h) Including social economy referentials in school/university curricula;</p> <p>i) Encouraging social economy development in areas such as rural development, social integration, dependents.</p> <p>The Government, through the Ministry of Labor and Immigration, will include among its objectives the implementation of actions for the promotion, dissemination and training of social economy, without interfering with the responsibilities of the other ministries which carry out economic, employers and social activities.</p> <p>Autonomous Communes/Local Public Authorities also develop SE encouragement/promotion activities.</p>	<p>activities by:</p> <p>a) Recognizing the role of social enterprises by granting the IS certificate;</p> <p>b) Recognizing the role of social insertion enterprises in by granting the social mark;</p> <p>c) Develop mechanisms to support social inclusion enterprises;</p> <p>d) Promoting and supporting the human resources development in the social economy field;</p> <p>e) Participation in social economy activities through collaboration in different forms, according to the law;</p> <p>f) Establishment of information and counseling centers in the social economy field.</p> <p>The central public authorities (Article 21 of the Act) may grant undertakings support for the nature of State aid to the social insertion enterprises, subject to approvals of Community and national provisions by specific acts.</p> <p>Local public authorities (Article 19 of the Act) may:</p> <p>a) Designate spaces/land in the public domain of local authorities, in compliance with the law of Local public administration no. 215/2001;</p> <p>b) Provides support in promoting made and/or supplied products, rendered services or community performed works, as well as in identifying sales outlets;</p> <p>c) Provides support in the promotion of tourism and related activities, by capitalizing on the local historical and cultural heritage;</p> <p>d) Grants other facilities and exemptions from local taxes according to the law (with appropriate budgetary approval).</p> <p>Through the provisions of Law no. 346/2004 (Article 25 paragraph 1), social enterprises and social insertion enterprises may annually benefit from the program of establishment and development stimulation of microenterprises in the sphere of social economy.</p>
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Source: *the author's own creation*

The approach of promoting the social economy in Spain is largely the responsibility of the central public authorities, rather than the local ones. In Romania, although policies social economy promoting seems to be balanced between central and local public authorities, but the

measures do not cover important areas such as the creation of a conducive environment to the development of social economy initiatives, the access of entrepreneurs in the field to technological innovation processes, staff recruitment in high - unemployment sectors etc. The negative impact, in the medium and long term, will be the lack of concern for the inclusion educational policies into the school and university curricula of the reference onto the social economy.

But perhaps the most important "oversight" of the Romanian normalizer is the lack of impact analysis following the implementation of the social economy law in the native area. We read below the additional provisions of Law no. 5/2011 on the social economy in Spain, as follows:

✓ Thus, the additional provision no. 4 of the Law on the integration of social economy enterprises into productivity improvement strategies stipulates that the Government is able to take into account the special characteristics of social economy enterprises in developing strategies to improve employability and competitiveness;

✓ Additional provision no. 5 - Government reporting acknowledges that within two years of the entry into force of the Social Economy Law, the Government shall submit to the Chamber of Deputies a report on the effects and consequences of law enforcement, subsequently analyzed and evaluated accordingly;

✓ Additional provision no. 7 - The program for stimulating the entities belonging to the social economy considers that within six months after the entry into force of Law no. 5/2011 The Government will adopt a program to stimulate social economy entities, with special attention being given to job generating entities in the most disadvantaged sectors. The Program shall at least include the following measures: a) The Government will review the legislation, after prior consultation of the social economy representative bodies, of the Council for Encouragement of the Social Economy and the Autonomous Communities with a view to eliminate the limitations of the social economy entities in sense that they can act/operate in all areas of activity without undue restrictions; b) The Government will update, after prior consultation of the social economy representative bodies, the Council for the Encouragement of the Social Economy and the Autonomous Communities, Law no. 4/1997 of the Labor Code; c) Following consultations, the Government will review Law no. 38/2003 - of the subsidies, in order to simplify it.

All these gaps in the results to be achieved as a result of the implementation of the social economy law can make the Romanian legislator's approach unfinished, only to mark yet another legislative initiative.

4. Findings

Both before the adoption of Law no. 219/2015 and later, the main obstacles to the development of the social economy in Romania are considered to be at least the following:

✓ lack of concrete support from the state as well as local authorities for social enterprises. It is not enough for the local regulator to mention in the body of law the possibility of providing support and other facilities/tax exemptions by the central/local subordination authorities, especially as it is necessary to be actively involved in the sector promotion;

✓ the lack of social economy model promotion by government specialists, although they fall under their remit to promote social economy structures;

✓ the lack of social economy phenomenon understanding in the community generated by the lack of knowledge of the social economy concept in the market. Both local communities, the media, opinion leaders also companies and the general public have a poor knowledge of the social economy concept;

✓ poor communication contributes to the misrepresentation and misuse of the social economy concept. In the attributions of the Central/Local Social Economy Divisions an

important place must be the analysis of the concepts and values of the classical economy versus the social economy in order to educate the population in order to support the social economy. Members of the community may knowingly choose if they understand the similarities and differences between the classical economy and the social economy; considering that there is no relationship between the social economy actors communities and the central/local authorities and members of the community, the concept of social economy is misunderstood and used;

- ✓ lack of preoccupation with the competent authorities in the formation of social economy entrepreneurs;

- ✓ the current social economy actors in Romania are not identified with the social economy, consequence of the negative popularization of the social economy phenomenon

- ✓ qualification and staff retention, identifying problems both in recruiting staff, in terms of fluctuation and lack of specialized staff; Also, the lack of professional training in the social economy entities (trainings, debates, conferences) negatively influences the promotion of the social economy;

- ✓ the lack of human component valorisation from the social economy entities, with incidence in the difficult field popularization;

- ✓ the lack of a constant sales market, which leads to the idea that perhaps a less competitive market is needed

- ✓ funding bureaucracy, as well as lack of financing assistance in the field of social economy;

- ✓ lack of writing capacity for projects with direct incidents in limiting access to finance for social economy enterprises;

- ✓ the lack of facilities in public auctions;

- ✓ inadequate facilities, inappropriate spaces and lack of sales assistance in social economy entities;

- ✓ lack of popularization of the social economy in the business environment and in the Romanian banking system with direct implications in the sector's under-financing/burdensome crediting;

- ✓ lack of public policy in the field.

5. Conclusions

The year 2010 marked in Romania the beginnings of the creation of a legislative framework dedicated to the social economy as a sector, a process completed in July 2015 by the promulgation of Law no. 219/2015 on the social economy. As it stands today, the Social Economy Law does not provide for specific, tax or other benefits for social economy entities. And as it is not enough to promulgate a law for the development of an activity sector, our research has identified a multitude of "shortcomings" of the approach such as: the lack of understanding of the social economy phenomenon in the community, the lack of promotion of the social economy model by government specialists, the lack of preoccupation of the competent authorities in the formation of social economy entrepreneurs, the lack of valorisation of the human component in the social economy entities, the lack of concrete support from the state and local authorities for social enterprises, the lack of public policies in the field, etc.

So, in the current context, when the governmental or local decision-makers' concern for promoting the sector is reduced, the communication is deficient, the social economy actors in Romania do not identify with this phenomenon, how could the sector be helped by promoting public policies which supports social enterprises?

Public policy proposals to support the social economy sector can be at least as a way of example:

- ✓ the creation of marketing mechanisms supporting the social enterprises' products and services market, in other words the realization of a distinctive social marketing for the social economy sector;
- ✓ raising public awareness of what the social economy means;
- ✓ creating a support ecosystem (models from other states - access to consultancy, on-line promotion platforms and partnership development, partial subsidization of activities in disadvantaged communities);
- ✓ promoting case studies on social economy performance and achievements as well as creating competition-based prizes for best social enterprises;
- ✓ support from local authorities, information campaigns initiated by them, support for understanding the legislation etc.;
- ✓ creating funding alternatives from public money/special credit lines for social enterprises;
- ✓ simplifying funding guidelines, having a POCU unitary manual, clear instructions, etc.
- ✓ maximizing waiting times from implementation to concrete results, as the results of the socio-professional reintegration process are visible after a longer period;
- ✓ in order to promote the social economy it is necessary to involve famous people - "ambassadors" of the field as well as to create networks of specialized researchers and social actors;
- ✓ organizing events such as fairs, seminars, conferences, etc.

Only after the implementation of public policies to support and promote the social economy sector governmental/local decision-makers as well as the social entrepreneurs involved can go into the next stage of consolidation and development of sector partnerships.

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