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LEGAL NORM AMID THE VALUES OF THE EUROPEAN UNION AND NATIONALISM

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LEGAL NORM AMID THE VALUES OF THE EUROPEAN UNION AND NATIONALISM

Liviu-Bogdan CIUCĂ[1]
Damian FLOREA[2]

Abstract:

After more than 150 years, in Romania, since 2009 there has been a profound and necessary legislative reform in matters of private law. If we consider the words of Portalis (Portalis (1844):92) which claims that the Civil Code "is a body of law designed to regulate and fix social, family and real relationships, set among the persons belonging to the same citadel," we can easily justify the interest generated by this reform even if this interest was materialized in appreciation or criticism. Starting 1864, continuing with the draft of the Civil Code of the Socialist Republic of Romania in 1979 and ending with the current Civil Code adopted in 2009, each reform time has benefited from the appreciations of those who support the modernization of the legislative framework, but also of the critical remarks of conservative commentators who always brought into question the manner of adopting the draft law on the Civil Code, the moment chose for the reform, the speed of achieving it and not least the source of inspiration of the committee who drafted the initial draft of the Civil Code. In this context we could identify an apparent conflict between the need for modernization of the legislation and the need to preserve the spirit and national legal traditions.

Keywords:

norms; values; European Union; nationalism; cosmopolitism; legislation; civil code.

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1. General Considerations

"The European Union is a living construction, it is not perfect, but it is perfectible. It still has a lot of issues in terms of defining its own identity, values and common norms that should be consonant with the national values and traditions."(D., Juncan (2016):17)

The title of this essay, as well as the subject to be analysed, was inspired to us by the existing concerns and comments within the legal environment regarding the preservation of the Romanian legal spirit and culture in its relation to the influence of the foreign legislation and the European values substantiated in normative acts that have to be applied and imported into the national legal norm.

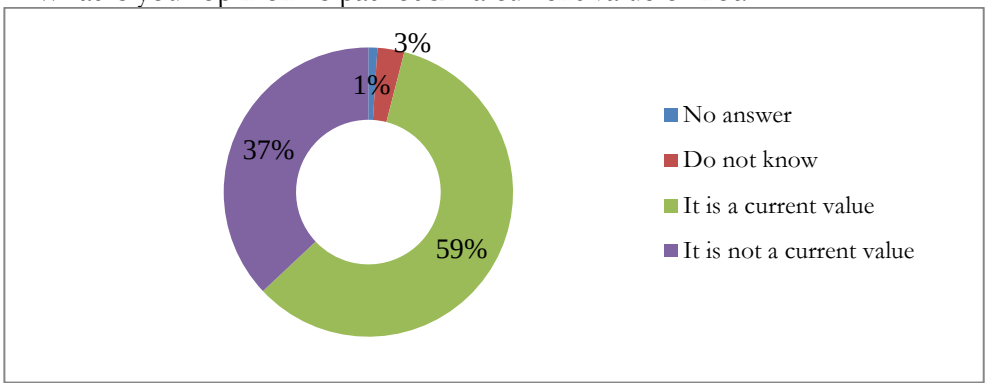
This is not the first time when this concern is present within the Romanian legal environment. As conducting an evaluation of the history of the development of national legislation, we learned that, in the context of the legislative reforms, besides their advocates, there also were critiques regarding the moment chosen for making the reform and, not least, regarding the sources of inspiration encountered in the legislation of other states. By respecting the language of that time as if it were a genuine reproduction, the critiques regarding the foreign legislation have been repeated at the moment of 1864, the date of adoption of the so-called Civil Code of Napoleon, and we encounter them in moments subsequent to that trial moment of modifying the Civil Code, and not least, in 2009, the year of the last thorough reform of the civil legislation and of the adoption of the Romanian Civil Code, implemented by Law no. 287/2009 starting with October 1st, 2011. The Romanian integration into the European Union and the legislative obligations that arise from such an undertaking have, once again, raised the issue of the preservation of the Romanian legal culture, legislative traditions in relation to the objectives of the European Union and the obligation of applying the European Union regulations on a national scale. In order to clarify this subject, we will have to answer the arising question: is the Romanian spirit and legislative culture contradictory to the European spirit and legislation, or not? First, I believe that we can agree that the objectives of the national legislation and the objectives of the European legislation are or should be common. At the same time, it shall be specified that the potential differences clearly target certain topics or procedures and we believe that we cannot discuss on the legislation of a country without discussing about its legislative culture, but most of all about the public perception regarding certain national values, a certain legislative tradition and certain influences that source in the legislation of other states.

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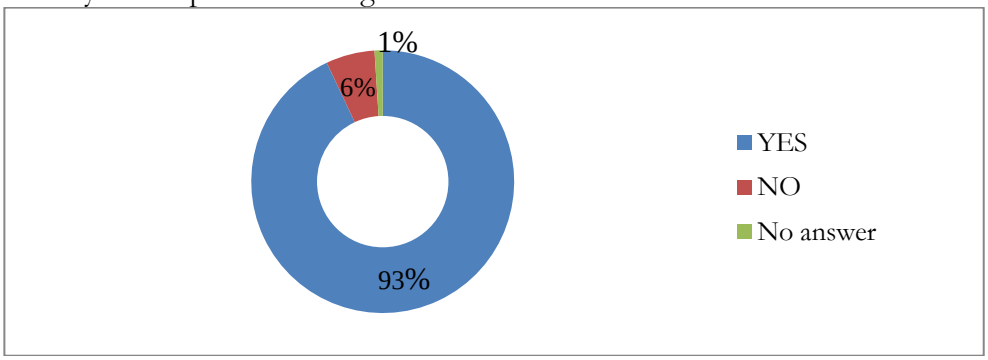
Statistical data

We consider it is relevant that, in relation to the topic uncorked, the presentation of some statistical data obtained as a result of the development of the study "România - Naționalism versus cosmopolitism", a study developed by the Romanian Institute for Evaluation and Strategy - IRES in the period April 27th-28th, 2016, on a total sample of 750 subjects aged over 18, which is representative for the adult population in Romania; the study had a margin of error of +/- 3,6% and it was developed through the method CATI (Computer Assisted Telephone Interviewing).

1. What is your opinion: is patriotism a current value or not?

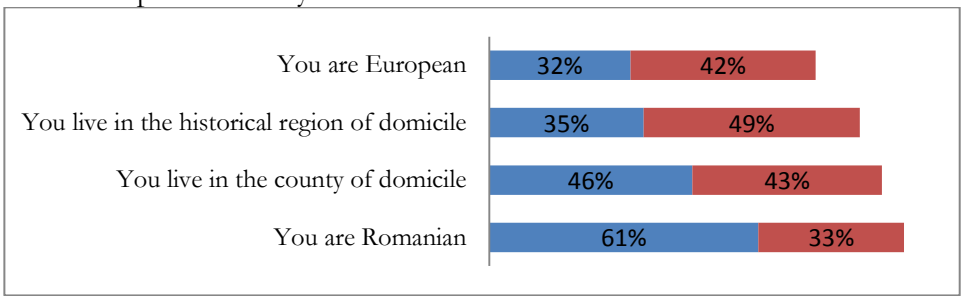


2. Do you feel proud of being Romanian?

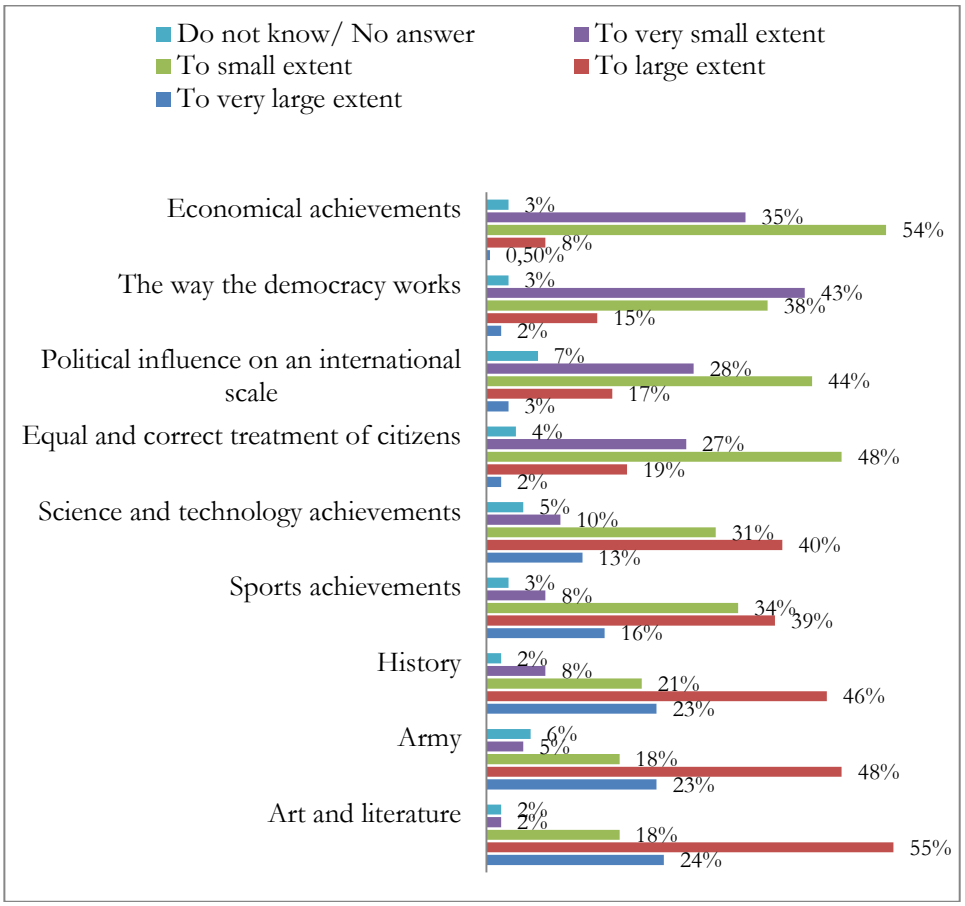


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3. How important is to you the fact that... ?

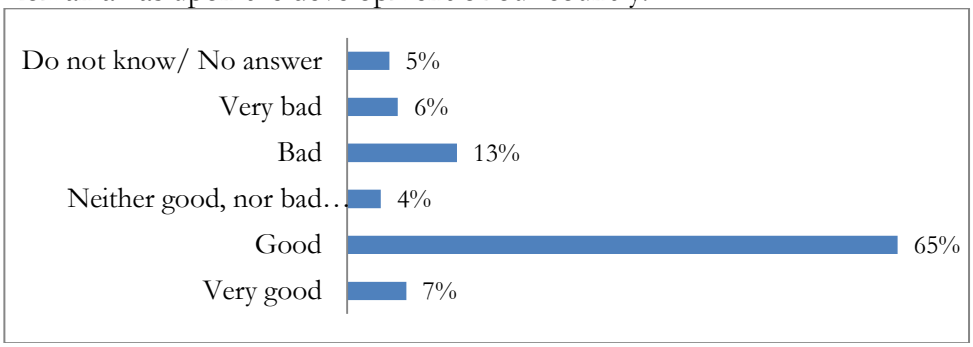


4. To what extent are you proud of the following aspects when you think of Romania?

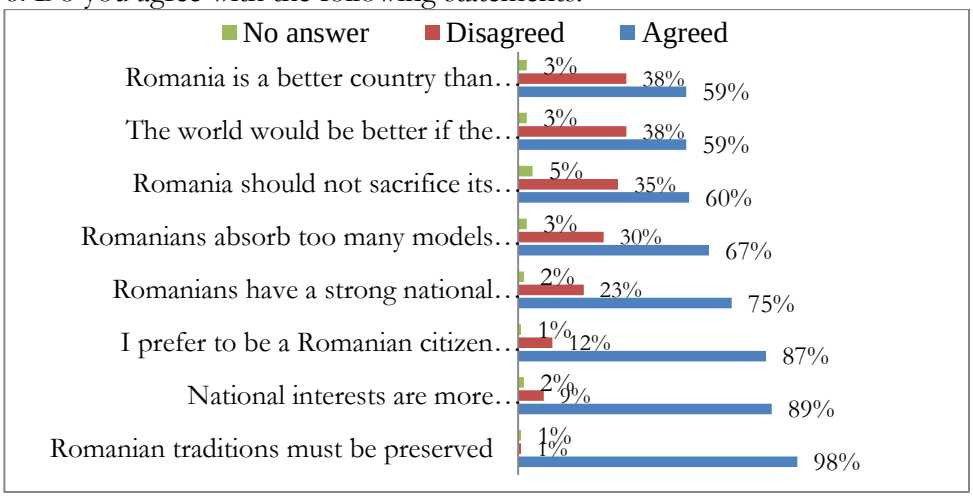


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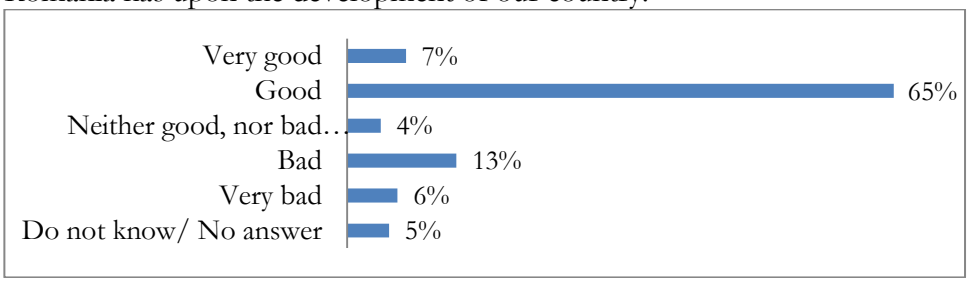
5. What sort of influence do you think the presence of foreigners who live in Romania has upon the development of our country?



6. Do you agree with the following statements?

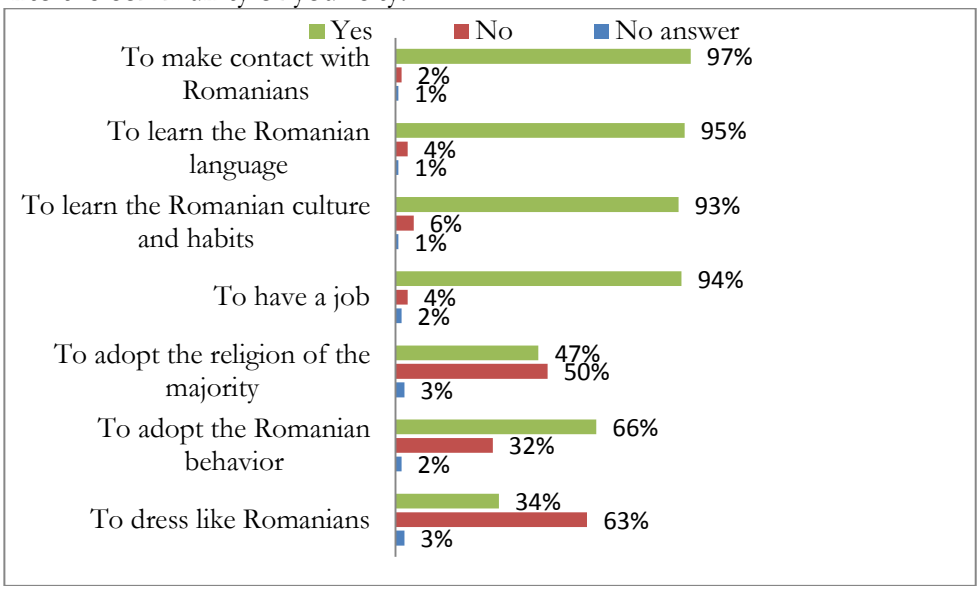


7. What sort of influence do you think the presence of foreigners who live in Romania has upon the development of our country?



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8. What should, in your opinion, a foreign citizen do in order to integrate into the community of your city?

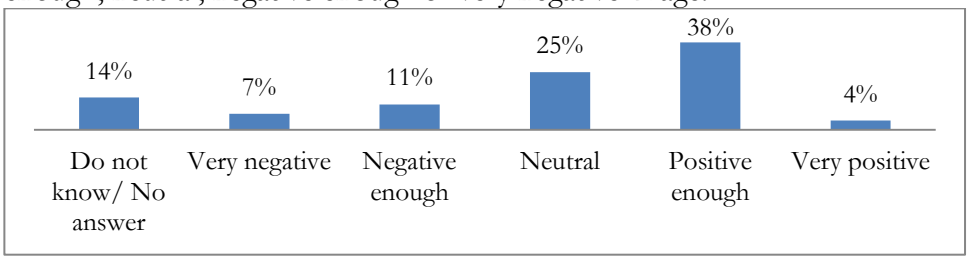


To be observed, in accordance with this study, some data regarding patriotism, as a current value, the desire to preserve the Romanian traditions as well as the opinion regarding the national interests in relation to the international interests. If we conduct a thorough analysis of all data in this study, we find that the existent antagonistic position between the national values and the international ones does exist, in accordance with the public perception, but we believe that is due mainly to certain inaccurate communication and to certain confusions generated by the lack of information. Clearly, within this positioning, we cannot ignore the perceptions that outline in relation to the national legislation and the obligation of implementing certain European normative acts. Actually, we can mainly refer to a wrong perception, in our opinion, regarding a conflict that exists between a traditional legislation and the national culture, and some European regulations that are to be implemented on a national scale. In this context, we consider that the results of the study mentioned above are relevant[3] and, more precise, the results of the block of questions entitled "Romania and the European Union".

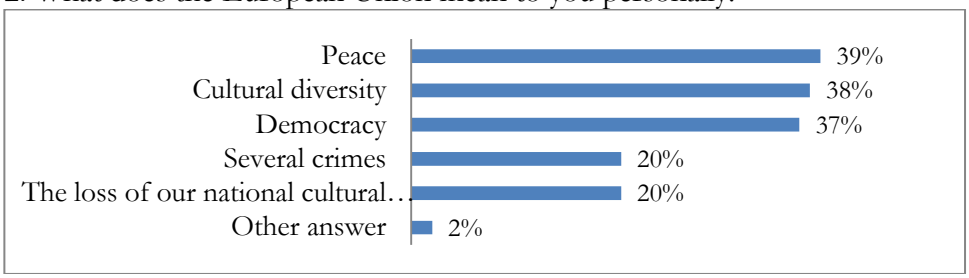
[3] "România - Naţionalism versus cosmopolitism", a study developed by the Romanian Institute for Evaluation and Strategy - IRES through the CATI method (computer assisted telephone interviewing).

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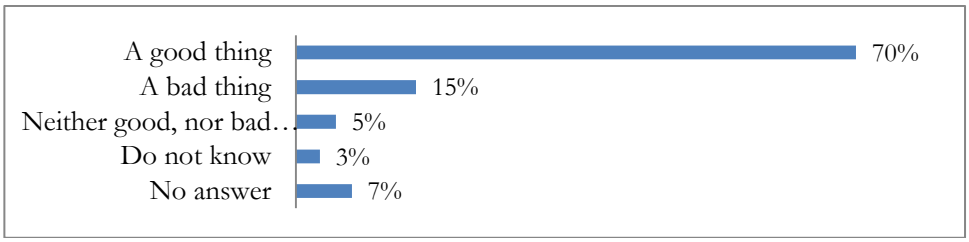
1. Generally, the European Union recalls for a very positive, positive enough, neutral, negative enough or very negative image?



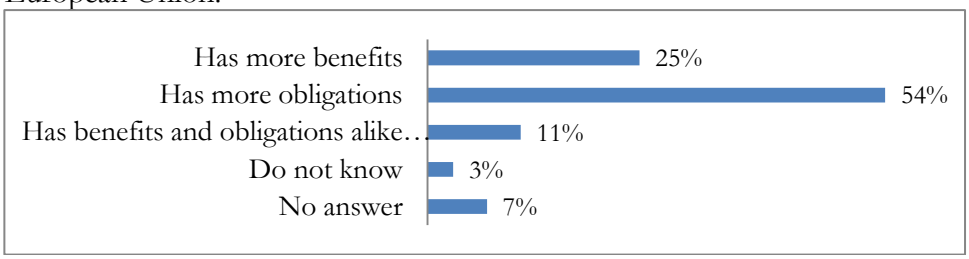
2. What does the European Union mean to you personally?



3. Generally, you believe that the fact that Romania is part of the European Union is...

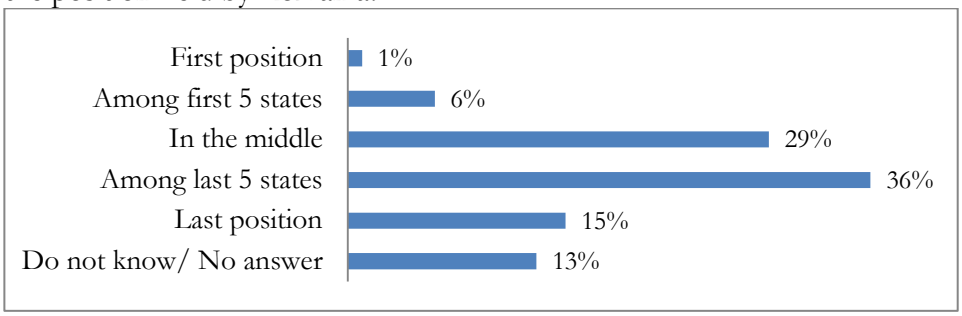


4. By taking everything into account, do you consider that Romania has more benefits or more obligations as a result of being a member of the European Union?

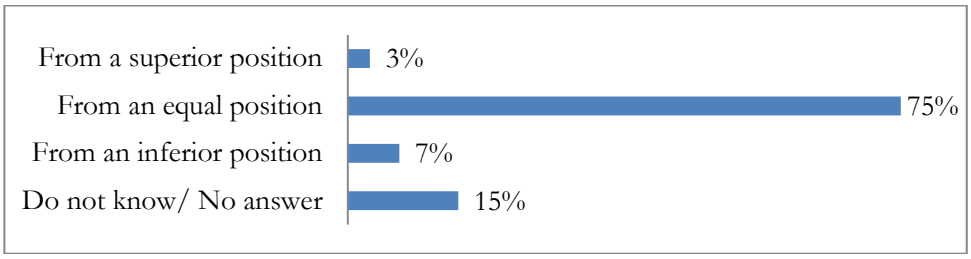


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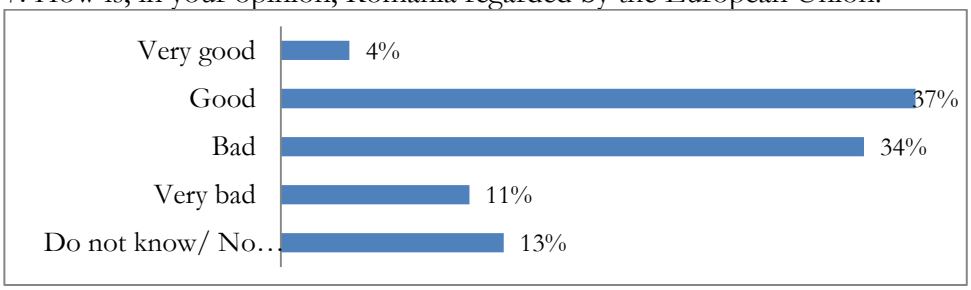
5. According to the influence that it has within the European Union, what is the position held by Romania?



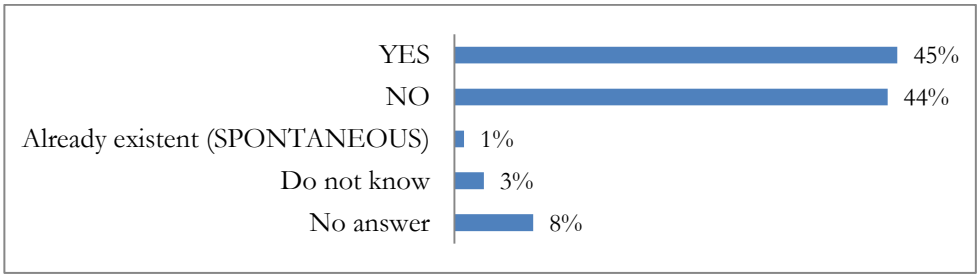
6. How should Romania act in its relation to the other UE member states?



7. How is, in your opinion, Romania regarded by the European Union?

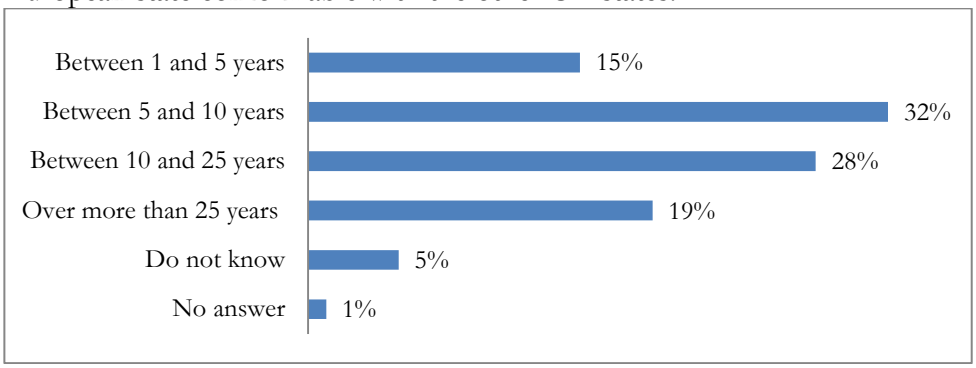


8. Do you believe that Romania will become an European state conformable with the other UE states?



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9. In your opinion, how long will it take for Romania to become an European state conformable with the other UE states?



As a conclusion to the data presented from the survey, we can state that the national pride is a solid feeling among Romanians. Considering that the national pride generates the preservation of the national identity, this conclusion becomes an interesting analysis in relation to the results that show that Romanians consider themselves, at the same time, cosmopolitan citizens, members of the European Union, and the distrust aspects and restraint from the influences that come from outside the boundaries do not create extremist manifestations or rejection of certain values imposed by European normative acts. In this context, we attempt to center our analysis concerning the need to preserve and consolidate the national legal culture in relation to the Romanian attitude towards the European legislation, the European objectives and national values overall.

The reform of the civil legislation. Reason of criticism for drawing inspiration from the legislation of other states

On June 22nd 2009, by undertaking procedure in the Parliament, the Romanian Government undertook the draft bill regarding the Civil Code. On this occasion, as each time when there existed the desire of thorough legislative reform, due to both inaction and conservatism of the legal institutions and law practitioners or theoreticians, there were compiled diverse critiques regarding the influence of the foreign legislation upon the national legislative reform. "The people's codes are created through time and, for that matter, we, the lawmakers, do not create them at all". These words were said by Portalis, who desired to highlight the fact that the law responds to a clear and consequential social need, if the social need exists, the law is created not due to the influence of the foreign legislation, but it is only the solution to the problem that can appear as a result to this influence.

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In order to defend this theory, we mention the claim of scholar Andrei Rădulescu, who stated that the Romanian law is a complex product compound of inland right norms (written or not written), of right norms of other countries that find direct or indirect roots in the Romanian law. If we refer to the extremely tessellated influence upon the new Civil Code, respectively the Civil Code of Quebec, the French Civil Code, the Italian Civil Code, the Spanish Civil Code, the Swiss Civil Code, the German Civil Code and the Brazilian Civil Code, as well as the old Romanian Civil Code, the Civil Code project of 1940 and the Civil Code project of 1971, we estimate that the opinion of the scholar Andrei Rădulescu is extremely topical nowadays. Our Romanian civil right has influences that are common to the civil legislation of all countries that have Romanian legal roots. "No nation has given its Civil code root and branch, a Code compiled without concerns of previous practices." (Portolis (1933):16) "Recodification of the Romanian civil legislation, as it was created, can generate, on a symbolist level, a form of the legal culture of a nation, a symbol of the national (legal) identity." (G., Ignat (2015):273)

Conclusions

In conclusion, we want to specify that the Romanian law is influenced by the Romanian legislative doctrine and culture, as well as by the fortunate legislative experience of other states due to the wisdom of learning from practices regarding the applicability of legal norms from other states, and also to ensure the fulfillment of certain obligations undertaken by international treaties or conventions. We consider that the influence of the foreign legislation is positive, with an arising obligation of keeping a genuine Romanian legislative culture and tradition. We consider that the writings of Vincent Hubert, the famous Swiss jurist, are relevant; they refer to those states that become hermetic in relation to the external legislative influences, and respectively, "the state that does not know how to absorb what is good in the experience and legislation of other states is sentenced to isolation, and, at the same time and in the same regard, they specify that "the law does not have to become a Chinese wall". We as well believe that the law can be a tool of collaboration among the states in relation to the objectives that are commonly undertaken and that it can and it has to become a connection bridge and not a "Chinese wall".

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