SECTION III.

EUROPEAN UNION LAW. INTERNATIONAL LAW

Friday, November 24, 2017

Room 1516 – 5th Floor, Mihai Eminescu Building

Keynote speakers:

Professor **Cornelia Lefter,** *Bucharest University of Economic Studies*

Lecturer **Ovidiu Maican**, *Bucharest University of Economic Studies*

Lecturer **Ovidiu Dumitru,** *Bucharest University of Economic Studies*

! Each paper will be presented within 15 minutes
! Fiecare lucrare va fi prezentată în maxim 15 minute

THE FUNDAMENTAL FREEDOMS OF THE SINGLE MARKET ON THE PATH TOWARDS HORIZONTAL DIRECT EFFECT: THE FREE MOVEMENT OF CAPITAL – LEX LATA AND LEX FERENDA

Associate Professor Vladimir SAVKOVIĆ
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Abstract
The paper examines both possibility and expediency of establishing horizontal direct effect of the TFEU provisions inaugurating the free movement of capital as the "youngest" of the four fundamental freedoms in the Single Market. In doing so, author starts with portraying the status quo regarding horizontal application of other fundamental freedoms and attempts to deduce from some of the cornerstone cases the most important arguments given by the CJEU, i.e. key rationale utilized thus far for establishing horizontal direct effect. After these general analyses, the author examines the current scope of application of the free movement of capital provisions in view of the issue at hand and investigates whether in conjunction with the reasoning of the CJEU in other free movement cases similar approach is likely to be utilized in order to establish the same effect of Article 63 TFEU. Finally, notwithstanding certain opposite opinions, the author establishes that this particular fundamental freedom becoming horizontally applicable is not something likely to happen any time soon and makes an effort to support such standpoint. Moreover, conclusion is put forward that even if it opts for such course of action the CJEU should take certain precautionary, i.e. preliminary measures.

QUEST FOR STATEHOOD: KOSOVO'S PLEA TO JOIN INTERNATIONAL ORGANIZATIONS

PhD. student Ermira MEHMETI
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Abstract
The State represents a central concept and a basic subject of international law. In order to function and engage in treaties and relations with other states in a growing globalized world, the State must be accepted and treated as independent by other states. But independence alone is not enough. Declaring independence is typically a unilateral act undertaken by one entity. Hence, there are states in the world today that are independent; however, their international subjectivity is not recognized. This makes their position and ability to engage in the international sphere more complex. As a result, authorities look into ways of bypassing formal recognition. Joining international organizations becomes one alternative. This article explores the quest of Kosovo to join international organizations as a way to secure recognition and statehood. It begins with the United Nations, and briefly analyses the diplomatic efforts of Kosovar governments to accede. The focus of this article however, will be more specifically on Kosovo's application to join UNESCO, the United Nations' cultural organization, for this process will bring to light several important legal and political aspects of recognition: the application procedure, the political interests of states, the lobbying and securing of states' support in an entity's bid to obtain a seat at the organization. Membership in UNESCO is rightfully seen as a gateway to reach to a seat at the United Nations, while bypassing unilateral recognitions granted by states individually. Kosovo's first attempt to join UNESCO in 2016 fell short of three votes and failed. There is currently an ongoing process of internal and inter-state consultations and lobbying as a preparation for a second attempt to join in during 2018. Meanwhile, the United States have announced their decision to withdraw from the organization, in reprisal for the acceptance of Palestine as a member of the organization. Would this decision make Kosovo's ambitions to become a UNESCO member while not a member of the UN wishful thinking, or would the decision on Kosovo be based solely on its specificities, historical context and current Balkans realities?

CHF DENOMINATED LOANS – A CASE STUDY OF MONTENEGRIN APPROACH

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Abstract
Although Montenegro has, since 2007, harmonized its legislature with a great number of EU consumer protection directives, harmonization in the area of consumer protection in financial services sector came too late. Since the CHF denominated loans were a common problem in the region, the main objective is to present the case study of Montenegrin "solution" to this problem, and all the problems that this "solution" has caused. The reactions of the Montenegrin Parliament, amendments and new legal texts relating to consumer protection, which were the product of the Parliaments frenetic legislative activities, carried on the wings of public's outrage with this case, are analyzed and scrutinized in a more detailed way. In that regard all the problems that have followed are critically analyzed. Most interesting case law before the Montenegrin courts in the cases of CHF denominated loans are analyzed. The last part of this paper is dedicated to the analysis of the Montenegrin media coverage of some of the most interesting media reports regarding the rulings of the Court of Justice of the European Union.

FINANCIAL CRISIS IN EUROPEAN LAW

Teacher Ina BALUKJA
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Abstract
Taking into consideration the significant influence of the financial and economic crisis proclaimed in 2008 to the institutional set-up of the European Union, the proposed paper aims to analyse the question of the creation of tools and procedures in the

European Union which lacking adequate means to tackle a systemic crisis of such dimensions whose implications have been reflected both in the system of sources and in the institutional equilibrium of the European Union. Furthermore, the proposed paper has as purpose to analyse the importance of economic governance reform and governability reform of European Union in the need to introduce tools and procedures suitable for dealing with the crisis, an analysis that, moreover, has as objective to answer the question if the strengthening of the executive power and the weakening of the Parliament is result of the different balance between European institutions and relations with the Member States. In consideration of the results achieved at the conclusion of this analysis the proposed paper has as purpose to identify the reasons for which the changes confirm the pre-eminence of the intergovernmental method to safeguard the financial stability of the European Union and of the Member States.

A PERSPECTIVE ON JOINT VENTURE: AN INTERNATIONAL BUSINESS EXPANSION STRATEGY AND LEGAL IMPLICATIONS WITH SPECIFIC REFERENCE TO INDIA

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Abstract
Collaboration between firms is not a new concept, but the new thing that can be seen is that the collaborations have increased significantly during the past couple of decades, along with the increasing international competition. Moreover, the nature of collaboration has changed, shifting from peripheral interests to the very core functions of the corporation, and from equity to non-equity forms of collaboration. This paper essentially focuses on the legal framework governing the various aspects of a Joint Venture in India in brief, the methods of Joint Ventures, as well as RBI regulations on the topic. The research methodology adopted is largely analytical and descriptive. Reliance has been placed largely on various sources like articles and online articles. Research: Based on caselaws!

INTERMEDIATE CONTRACT IN INTERNATIONAL TRADE

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Abstract
Cooperation is, at the same time, an essential condition of the new international economic order expressed by the international trade lato sensu, which embraces a wide range of economic, technical, financial, banking and other operations. Legal relations between states acting as de jure imperil, among them, and international governmental organizations, as well as organizations that fall within the sphere of regulation of public international law and more precisely of international economic law and international law of development as branches of international public law, where such legal relations concern the field of international economic cooperation. There are also important convergence points between the international trade law and public international law, stemming, first of all, from the element of internationality that characterizes both the legal relationships that are their subject of regulation. Thus, the fundamental principles of public international law also apply in the context of international trade law and, a fortiori, those in which the State participates. The correlation between these two legal issues appears more evident in certain situations, such as, for example, the consequences that inter-state economic agreements produce on international trade contracts.

AVOIDANCE OF INTERNATIONAL DOUBLE TAXATION. TAXATION OF BUSINESS PROFITS IN ROMANIA

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"Vasile Goldiș" Western University of Arad, Romania
Assistant professor Ștefania JIMON, PhD. student
"Vasile Goldiș" Western University of Arad, Romania

Abstract
In this article we wanted to achieve a comprehensive analysis of corporate profit tax for non-residents, from the standpoint of the issues that it creates on the double taxation of income and capital. Taxing the corporate profits of non-residents is a particularly important aspect in terms of revenue growth, encouraging foreign investment, and strengthening cross-border trade. The "source" state will decide the legitimate right to tax the profits of businesses that operate within its jurisdiction. Tax treaties do not impose limits on these types of taxing rights, other than those stemming from the obligation to impose profits, since the issue of taxation is "satisfied". Moreover, the source of tax revenue belongs to the source state. Thus, we can see that it is unlikely that the state of residence of a non-resident taxpayer should want to "share" such tax revenue. It can be observed that the state of residence also has the right to tax the profits, but in general it gives credit in respect of taxes of the source state or deducts them for the purpose of preventing the occurrence of double taxation. If the state of residence provides a credit for taxes paid within the source state, taxes which have not been collected and owed to the source state will constitute a tax transfer to the state of residence, from which the taxpayer will not have any benefit. As regards Romania, in terms of the treatment of enterprises, this article represents a real quid pro quo, as it tackles both the international and national taxation of corporate profits, through the provisions found in the new Fiscal Code and the Code of Fiscal Procedure, as well as the new proposals on the taxation of turnover in companies, all of this extrapolated with the new proposals for turnover tax from IT giants. The article ends with the presentation, comment and analysis of a case of international double taxation, more specifically the taxation of corporate profits, a topic of great importance and current interest regarding jurisprudence in Romania, having the aim to observe, mutadis mutandis, the way in which business profits are taxed in practice. The conclusion of this article is intended as a genuine caveat to meet the needs of taxpayers and tax authorities on the need for such measures, both nationally and internationally, in terms of corporate profits, measures that have to take into account the international framework of the contemporary business environment, which is constantly changing and evolving.

THE LEGAL ORDER OF THE EUROPEAN COMMUNITY – A NEW LEGAL TYPOLOGY

Professor Georgeta MODIGA
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Abstract
In the endeavor to fit on the legal map of the world the new European legal order, through the theme approached, we intend to pay attention to the new legal typology of the European Union. The paper seeks to answer the questions: is the law of the European Union a new type of law with specific qualitative determinations ?, can it be about integration into a supra-nationalized legal order ?, how can national values be interconnected with those of the European Union? We are witnessing great challenges in the European Union - we are talking about integrating into a supra-national legal order, about joining supranational interests. Although it is based on international treaties, the Community legal order has characteristics that are fundamentally different from the international legal order. In this paper we have analyzed how the relations of the Community law interact with the national law. These do not reduce to a single model, but we can distinguish several situations depending on the role assigned to the Community provisions and the consequences on the existence of the content of national law. We appreciate that only insofar as the European Union is founded on an autonomous legal will and on common legal principles and values, both for individuals and for nations, "unity in diversity" is possible.

EUROPEAN CITIZENS' INITIATIVE

Associate professor Ioana Nely MILITARU
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Abstract
The European Citizens' Initiative is the expression of participatory democracy within the European Union, where one million citizens of it, who have their domicile in at least one quarter of the Member States, have the right to invite the Commission, to submit a proposal for a legal act in the application of treaties. The Citizens Initiative has its source in the concept of European Union Citizenship, first governed by the Treaty of Maastricht (Treaty on European Union/TEU). At present, the European Citizens' Initiative has it's legal basis in the TEU, TFEU, Regulation (EU) No. 211/2011 and in the Rules of Procedure of the European Parliament. Regulation (EU) No. 211/2011, establishes detailed procedures and conditions for the Commission to make such an initiative. Since the implementation of the EU Injunction, three initiatives have been submitted to the Commission, which have proved viable.

THE EUROPEAN COMPANY, PERSPECTIVES AFTER BREXIT

Lecturer Ovidiu Ioan DUMITRU
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Abstract
The history of the companies has proven to all of us that this area may have a dunamic similar to the most energetic ones in life. Societies have changed and developed and the companies adapted in order to function and adapt to the times. The creation of the European Union brought probably the biggest changes is these fields and the European countries, now member states, have adapted their judicial system in order to have a more uniform and harmonised system. The degree of this status quo, with the rich and eventful historical, cultural and political background is highly debatable and very subjective. In this desire to harmonize the common market, in order to increase trade and welfare, a creation of the European Union was the European company, SE – societas europea. The European Company Statute is for companies which have considerable capital and operate in more than one member states and the new updates of the European evolution has brought this form under questioning. The purpose of this paper is to analyse the evolution of the European company and present a perspective of it after the new evolutions in EU, mainly BREXIT.

THE ROLE OF ENVIRONMENTAL PROTECTION IN THE CURRENT CONTEXT

PhD. Lidia-Lenuța BĂLAN
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Abstract
In a global world dominated by chaos and conflicts, the maintenance of an applicative framework to enforce and guarantee environmental protection standards is difficult to maintain, although there is a great awareness of the population and decision-makers on the need to promote actions to prevent and repair where appropriate, the degradation of the environment. In terms of an area of freedom, embodied by rights and privileges to the free movement of persons, services, capital and commodities, with the existing modern technologies, there has been created an intensification and extension of the range of action of the environmental degradation soon gaining a cross-border and international character. In order to prevent the degradation of the cross-border and internationalized space, it is necessary to start new concerted actions at global, regional, national level which are required to be translated into a clear constitutional order of reference, to stop the acts of deterioration and limit the possibilities that globalization it generates the environment.

CRIMINAL CARTELS

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Abstract
Cartels are nowadays a global issue, affecting consumers from all over the world. As the consequences of anticompetitive agreements have an impact at extraterritorial level, with implications beyond the market where the cartel operates, cartel investigations have a global dimension. Cartel members, which are global players, should be aware of this aspect, as in some jurisdictions, for example in the United States of America, cartel agreements are a criminal offence, as they harm the consumer. The present paper will analyze the approach to cartels in the United States of America and in the European Union, it will deal with the research question if cartels are seen as criminal in several jurisdictions and it will point out aspects of international cooperation in fighting against cartels, in order to ensure consumer protection. The research questions will be illustrated by case-law and case-studies that will serve as examples. The present paper will use an interdisciplinary comparative research approach, with focus on an international perspective related to cartel enforcement at a global level.

MIFID II (MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE) AND SAVING

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Abstract
The markets in financial instruments directive (MiFID) is a regulation that appeared in 2008 across European Union, as an effect of the crisis, that increases the transparency across the financial markets and standardizes the regulatory disclosures for particular markets. In 2014 MiFID II appeared on Directive 65/EU and will be applied on the markets starting January 2018 all over European Union. It offers increased transparency especially for derivatives and other over-the counter markets. This paper aims to analyze the new directive and savings/investments in the new context as a part of MiFID II strategy for individuals. Higher regulations and higher understanding of the risk could lead to a higher exposure to the saving part in a portfolio vs. investments.

BANGLADESH ACCORD ARBITRATIONS: HOW DO HUMAN RIGHTS CLAIMS STEP INTO INTERNATIONAL ARBITRATION

PhD. student Ramona Elisabeta CIRLIG
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Abstract
The collapse of the Rana Plaza building in Bangladesh in April 2013 brought into the public attention the UN Guiding Principles on Business and Human Rights, and spurred discussions about the lack of a proper dispute resolution forum to deal with claims against multinational enterprises for human rights violations. International arbitration was suggested as a suitable dispute resolution mechanism for business and human rights disputes. Nevertheless, a clear-cut outline about how it could work in practice was lacking. The same tragic event triggered the conclusion of the Accord on Fire and Building Safety in May 2013, also called the Bangladesh Accord, between global fashion brands and trade unions. This Accord provides for arbitration under the UNCITRAL Rules (2010) as a dispute settlement mechanism. The first two arbitrations under the Bangladesh Accord were commenced in 2016 and are currently pending before an ad hoc arbitral tribunal, with the administrative support of the Permanent Court of Arbitration in The Hague. This paper will briefly present the existing legal literature on international arbitration as a suitable dispute resolution mechanism for business and human rights disputes, while focusing on the Bangladesh Accord arbitrations as a starting point in that direction, and drawing some conclusions regarding the future settlement of such disputes.

UNITED STATES COMPETITION LAW

Lecturer Ovidiu – Horia MAICAN
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Abstract
United States antitrust law is a collection of federal and state government laws that regulates the conduct and organization of business corporations, generally to promote fair competition for the benefit of consumers. (the concept is called competition law in other English-speaking countries.) The main statutes are the Sherman Act 1890, the Clayton Act 1914 and the Federal Trade Commission Act 1914. These acts restrict the formation of cartels, the mergers and acquisitions that could substantially harm competition. and the abuse of dominant position.

USA SUPREME COURT OF JUSTICE AND EUROPEAN UNION COURT OF JUSTICE (COMPARISON)

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Abstract
The US Supreme Court and the European Court of Justice coordinate the constitutional review. Although the European Union does not have a constitution, the European Court is often involved in the functioning of the constitutional review, especially with regard to the quasi-federal structure of the EU. Both courts have engaged in the constitutionalization of politics and appear to be in constant danger of politicizing the constitution. The threats to their powers and legitimacy are different. The US Supreme Court is vulnerable to internal forces (the president, the Congress, the national public opinion), while the European Court is vulnerable to external forces (Member States and, in particular, their constitutional courts).

EXPROPRIATION IN INTERNATIONAL ECONOMIC LAW

Assistant professor Laura-Cristiana SPATARU-NEGURA
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Abstract
Property right is a human right and has to be respected in order that, if his property is taken over, he has to receive compensation. The right to control the economic business of the state is one of the rights that the European states have sustained and exercised on a constant basis. This is an aspect of the inherent sovereignty of a state for controlling all people, incidents and objects found on its territory. Between these rights, it appears the situation of indirect expropriation which has been described in the doctrine as being very abstract and hard, leaving a big place for lacunae. The sense of the indirect expropriation and of protection of international foreigners against an indirect expropriation is very ambiguous. Using different methods specific to scientifically examine the legal phenomenon (e.g. the logical method, the comparative method, the historical method and the quantitative methods), I consider that I can reach through the present study results that can present interest for every practitioner or theoretician of law.

LEGAL REFORM OF EU DATA PROTECTION

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Abstract
Achievement of the Digital Single Market, one of the objectives of European Union, needs a specific legal framework. In this regard, it was adopted the General Data Protection Regulation 679/2016/EU (the GDPR) which will come into force on 25 May 2018 and will replace the existing Data Protection Directive 95/46/EC. The main goal of the GDPR is to harmonise data

protection across the EU and to enable individuals to regain control of their personal data, according to Mr. J.-Ph. Albrecht, member of European Parliament. The application of the GDPR will bring significant changes to European data protection law; therefore these rules include data breach notification, coordinated enforcement, strengthened consent, clarify the "right to be forgotten" together with serious financial penalties for non-compliance. The GDPR also expands the territorial and material scope of EU data protection law thus non-EU companies will have to apply the same rules as EU companies when offering services in the EU. In conclusion, the Regulation strengthens fundamental rights in the digital age and facilitates business by simplifying rules for companies in the Digital Single Market.

THE LEGAL NATURE OF THE RELATIONS BETWEEN THE EU AND TURKEY FOLLOWING THE MEMBERSHIP APPLICATIONS

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Abstract
The enlargement of the European Union is a sui generis process, which involves internal preparation of the candidate countries, the European Union and accession negotiations as well. The EU enlargement process is based on the desire to create a close relationship between the European countries in a common economic and political project. Guided by the values of the European Union and subject to strict conditions, the enlargement proved to be one of the most effective tools for promoting political, economic and social reforms and to strengthen peace, stability and democracy across the continent. A controversial topic in the last period is Turkey's accession to the European Union. Turkey's European ambitions date back to the 1963 Ankara Agreements, although it has formally submitted the membership application in 1987. Following the Helsinki European Council of 10-11 December 1999, accession negotiations between the EU and Romania, Latvia, Lithuania, Slovakia, Malta and Bulgaria started on 15 February 2000. Regarding the accession negotiations with Turkey, it was considered that this country does not meet, at this stage, the criteria set by the Copenhagen European Council on the rule of law, democracy and human rights. For Turkey, an Accession Partnership was adopted on 8 March 2001. Currently, Turkey is far from concluding the process of joining the European Union. However, Turkey is a state that can no longer be ignored by anyone in the world politics, being remarked by the infrastructure projects, the developed tourism, the steady economic growth and, last but not least, by the impressive military power, being the second NATO army. Given that, in the framework of the enlargement process, both the candidate states and the old members must be prepared for integration and cohabitation as well as the negative opinion on the Turkish membership of the influential states, such as Germany and France, it remains to be seen whether Turkey will succeed in joining the 28 states.

HOW DO WE QUALIFY PRIMARILY THE CONCEPT OF "RESIDENCE" OF THE INDIVIDUAL IN ROMANIAN PRIVATE INTERNATIONAL LAW?

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Abstract
The provisions of Article 2570 of the Civil Code regulate two types of habitual residences, namely: the habitual residence of the individual (paragraphs 1 and 2) and the habitual residence of legal persons (paragraphs 3 and 4). The Romanian Authority must use pursuant to Article 2570 of the Civil Code the Romanian meaning of the concept of "residence". Therefore, in order to make the primary qualification of the concept of "residence" in Romanian private international law it is necessary to take into account the scope of the concept of residence in Romanian domestic law. This article aims to study and analyze the instrument of the institution of residence of the following legislation: Article 88 Civil Code; Chapter IV (art.26- 41) of the Emergency Ordinance no. 97/2005 on the records, domicile, residence and identity documents of Romanian citizens republished (2011); Government Decision no. 516/2009 amending Government Decision no. 839/2006 regarding the form and content IDs, the sticker on the book of their residence and property. Decision no. 516/2009; the provisions of Emergency Ordinance no. 194/2002 on foreigners in Romania republished (in 2011) and the provisions of Government

Emergency Ordinance no. 102/2005 on the free movement of citizens of member states of the European Union and European Economic Area (republished in 2011) in order to derive the Romanian qualification of the notion "residence of the individual".

THE EUROPEAN DIGITAL LIBRARY, EUROPEANA. CONCERNS RELATED TO INTELLECTUAL PROPERTY RIGHTS

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Associate professor Mina FANEA-IVANOVICI
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Abstract
The current technological revolution has changed all aspects of life, including those related to cultural content consumption, creation, access and distribution. Galleries, libraries, archives and museums will continue to exist and function in a physical form, but the trend is to preserve and provide access to cultural heritage by means of digital libraries. Among the European objectives included in the Europe Strategy 2020 is the digitisation of cultural content and the development of a library that can store and preserve European cultural heritage - Europeana. The main aim of this paper is to present the main stakes of access to digitised cultural content, as it is found in digital libraries, from the perspective of intellectual property rights. The study specifically refers to the case of the European Digital Library, Europeana. The main scientific research method used in the paper is the critical analysis of IP regulations, the discussion of their implications for the process of digitisation, and the identification of the main legal opportunities for and obstacles in the way of cultural content digitisation.

INTERNATIONAL ORGANIZATIONS AND ALBANIA

Migena Shehu
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Abstract
The overthrow of the communist regime in the late 1980s and early 90s brought about fundamental transformations in political, social, economic and other aspects of Albanian society. Albania was divided with a political-social system and entered the path of democracy, which was accompanied by deep repercussions on its developments in domestic politics, but also in its international relations and foreign policy. Focusing on its foreign policy, it should be said that the collapse of powerful political and ideological barriers would encourage important and interesting developments in many ways. Albania's foreign policy would gain new orientations and, consequently, Western inspirations, with clear goals for accelerated integration into Euro-Atlantic structures. In serving this platform, the definition and development of rational relations in the bilateral, but especially multilateral, the plan would become more effective. The elaboration and pursuit of a clear and useful foreign policy in relations with international organizations was a substantial component of the general platform of Albanian governments after the 90s of the century that we left behind.