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The European Citizen and Public Administration

E-participation – a Key Factor in Developing Smart Cities

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Abstract: A main feature of smart cities is the use of ICT in all aspects of city life. In this regard, e-participation is a core element in the process of developing communities "ruled" by socially inclusive governance. **Objectives**: This paper aims to present a framework on how e-participation can be inclusive and how it might bring citizens closer to the idea of living in a smart city, by giving European reality examples regarding this concept. **Prior Work**: It shows the literature that concentrates on e-participation, focusing on citizens' needs and requirements. **Approach**: The main methods employed for this research were some case studies on European examples of e-participation. **Results**: This type of participatory relationship is starting to transform all public institutions, changing their culture – from one control-based to one performance-centered. ICT is starting to play an important role in smart cities' evolution and it brings an improvement in the government-citizens relationship. **Value**: We have identified that although technology is a main e-participation element, there should also be considered the capability and willingness of citizens and public institutions to collaborate, not only by electronic means, but also through traditional ways of participating in the process of taking decisions.

Keywords: e-participation; smart cities; inclusive relationship; public sector; technological development

1. Introduction

A smart city should be understood far beyond the use of ICT, it being more than just a simple city which makes use of modern digital technologies. We should therefore understand that giving citizens the possibility to participate online in the city's managing activities is an important element of what makes a city smart, not only from a technological point of view, but mainly because this type of city listens and tries to meet the needs and requirements of the individuals that are living in that particular place. In this paper, though, we will mainly focus on the technological development which has led, in the last decades, to changes in all aspects of city life. Information and Communication Technologies have transformed even the way individuals understand democracy. Now, we also speak about e-democracy which, through its main pilots, e-participation is also included. This refers to citizen participation and the appropriate technology that supports it. The use of ICT in this context allows more citizens to be participatory actors in the democratic debate, in an online environment, thus the contributions having the possibility to become deeper and wider (Macintosh, 2004, pp. 1-2).

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One of the main European institutions to promote and support initiatives of citizens' electronic political participation is the European Commission which, starting from 2005, has launched The eParticipation Preparatory Action[1] (Website of European Commission). In the period between 2006 and 2008, the EC has been the funder of over 20 projects in this regard, projects that have had as a final scope the e-participation testing at a European level, focusing on different aspects. A part of these projects has ended successfully in 2010/2011, gathering all the aimed information, while other e-participation projects have failed in achieving the data needed (DG Information Society, Website of European Commission). However, all of them have been helpful in achieving a better understanding of the way and the environment in which this new type of participation functions, also making clear the methodology for reaching wanted outcomes (Lacigova, Maizite & Cave, 2012, pp. 72-73).

Using online methods in the development of the relationship between government and citizens can help the public administration better meet the citizens' needs and requirements, creating a more economically efficient bottom-up approach, thus making all the actors involved in the process of taking decisions be a part of an optimized city, that can be considered a smart city. In governing a smart city, public authorities focus on citizens' participation in the civic affairs' co-creation[2]. In its evolution process, this new type of city's primary objective is to integrate in its structure all the dimensions of human, collective and artificial intelligence (Mitchell, 2007, cited by Sherriff, 2015, p. 3).

2. Theoretical Background

The digital era has transformed our society from an industrial one to one based on knowledge (Stoica, 2000, pp. 42-43). Therefore, considering the rapid ways in which information is shared, public administrations must keep up with these changes (Matei, Săvulescu, 2014, pp. 8-9), the link between citizens and businesses leading to updated expectations regarding both public services' quality, efficiency and transparency, and access to public institutions and information (Website of European Commission).

E-participation is considered to be an essential element for the functioning of a good e-democracy (Interreg IVC project). It helps individuals get involved in politics and in the policy-making process, making this type of processes easier to understand and access, by using electronic means (Website of European Commission).

In 2014, the United Nations have conducted a survey aimed at finding out the level at which the member states' governments use electronic means in their relationship with citizens. In its third chapter, this study emphasizes the three fundamental elements of the e-participation framework, namely (Website of UN PADM – DESA):

- **e-information** → enabling participation by providing citizens with public information and access to information without or upon demand;
- **e-consultation** → engaging citizens in contributions to and deliberation on public policies and services;
- **e-decision-making** → empowering citizens through co-design of policy option and co-production of service components and delivery modalities.

[1] Supported by the European Parliament, co-funded 21 pilots promoting the use of ICT in legislative and decision-making processes within parliamentary and government environments.
[2] Co-creation means allowing stakeholders participate in the service design process.

3. Developing Smart Cities through E-Participation. Benefits and Drawbacks

Around the world, citizens of today tend to use the Internet in relation to all of their interactions, including the ones that are taking place with their governments. Therefore, we can easily understand that, thanks to ICT, individuals of geographically spread communities have no longer vulnerabilities regarding their connection, e-participation being able to offer citizens a new method to remain active in their government (Erkul, 2014).

As part of e-democracy, e-participation can lead to the creation and/or development of smart cities, its main advantages being the ones described below (Erkul, 2014):

- **greater government transparency** → through open government initiatives, public authorities offer citizens access to government information that was previously unavailable. Through the tools provided, transparency reaches a higher level, thus the citizens' participation being improved and the democratic processes simplified;
- **more focus on citizen needs** → countries improve their online methods of delivering public services in order to meet the citizens' needs and requirements, thus strengthening their e-information, e-consulting and e-decision-making activities;
- **increased citizen involvement** → social media has become a powerful platform of e-participation. Websites such as Facebook, Twitter, YouTube, LinkedIn and MySpace can be used both by individuals to share their views and opinions, and by government officials to provide systematic information updates, official meetings and/or ask for citizens' involvement in activities regarding the local government;
- **improved government responsiveness** → in order to have successful democratic states, governmental authorities must give responses to citizens. For example, public authorities can create Websites on which citizens can start petitions on various issues of interest or they can vote for specific petitions.

In order to have a smart city, in which democracy is at the base of every governing activity, these four pillars of e-participation must be improved, thus both the government policies and the legislative decision-making process will be developed properly, increased online participation allowing individuals to live and prosper in democratic connected communities (Erkul, 2014), the information being shared with a significant reduced cost and in an easier manner (Matei, Săvulescu, 2014, pp. 8-9).

As all things, e-participation too carries along with it risks which can be linked to particular activities mediated through online technologies. Here, we can give as examples the incidental commitments, the possibility to communicate by using anonymous profiles – which can be made brutally, or even the threat of exclusion regarding those persons that have limited access to the Internet or none at all (Stokluska, 2013). Although participating online has become a standard practice in many developed countries, people still have to learn or to be taught how to use the Internet as an instrument for their benefit. Education is a fundamental element in every aspect of life, therefore even in this context, it can easily be understood that the highly educated individuals will be the ones to use ICT for their personal interests, political communications being unable to reach, through online means, the persons less educated (Born).

In the process of creating initiatives in which citizens are involved, or in the one of creating or developing smart cities, technology plays indeed a fundamental role, but the most important aspect

should be helping governments understand and meet citizens' problems and needs. Along with this process, the role that the citizens have regarding public services' delivery can be changed from one of a passive service beneficiary to one of an active informed partner (Sherriff, 2015, pp. 11-13).

4. European Examples of E-Participation

E-participation initiatives that use a Web platform can bring a huge improvement on traditional tools of participation, by means of offering access, transparency and the possibility to interact in real time (Website of EurActiv). An example of such project is OurSpace, which brings the European Union closer to the young generations by improving their role in the European Commission's democratic system through the use of ICT (Website of OurSpace).

The OurSpace project is based on the success of social media, using it for spreading e-participation into two different important directions. Firstly, its format is one of a site for social networking and it includes features generally used amongst young individuals, such as: user's profile, invitations, recommendations, ratings and statistics. Secondly, it is being promoted on sites of social networking which are very popular amid young audiences, such as Facebook and Twitter, the project having its own Android app, Facebook app and also iGoogle gadget, thus facilitating mobile access to the platform (Lacigova, Maizite & Cave, 2012, pp. 74-75).

By having a social media platform integrated in its design, OurSpace determines youth's participation in debates on social and political issues, being more realistic and preventing its main target users from considering the project "old-fashioned" or not very user friendly. Therefore, the project OurSpace demonstrates the fact that e-participation can take place in a convenient environment for all the actors involved in the process, taking into consideration the leading trends of Web 2.0 (Lacigova, Maizite & Cave, 2012, pp. 74-75).

4.1. E-participation in Germany

Since the year of 2005, Germany is the member state of the European Union that has adopted the possibility for citizens to submit online petitions to the German parliament. This is a very easy method of e-participation, all that must be done is to complete an online form and after that the petition can be submitted. Moreover, citizens can participate in online discussions about already published e-petitions, being also able to co-sign a petition (Born).

The cause of the petitions' existence must be of general public interest, regardless of its local, national or international level. In this context, the Internet is used as a network through which young people that are able to vote can be motivated, if they have low interest in issues of politics, thus growing their enthusiasm in regard to problems of European level (Born).

4.2. The Romanian reality regarding e-participation

In this subsection, we chose to mention a particular case of the Romanian reality, namely the initiative of Brasov's city hall to promote the concept of e-participation, through increased interaction between the public sector and the citizens, interaction possible through the use of ICT. Therefore, by using electronic means, the city hall provides individuals with administrative services, this leading to the creation of benefits for both citizens and businesses – these being the final service users, and for the public administration (Vrabie, 2015, pp. 33-39).

The outcomes of the project entitled "Brasov's city hall at a click away" are the following (Vrabie, 2015, pp. 33-39):

- **a Web portal** → that integrates different software applications of the city hall, giving citizens access to information in a more easy, fast and cheap way;
- **an automatic call center** → which provides citizens with information by phone without being necessary a human intervention, allowing them to be informed in real time by checking the city hall's databases;
- **an electronic payment system** → which offers citizens the possibility to pay off debts to the local budget faster, easier and in a more confortable way, and also gives them access to relevant information on local taxes.

Among the benefits that the project brings with it, we can mention its contribution to growing the efficiency of the city hall's internal activities, through the use of specific ICT means and, more precisely, by implementing a centralized system of routing for the administrative documents, also ensuring the security of transactions in a centralized way. The project also helps with both increasing the satisfaction of citizens through the transparency that occurs in public services and information delivery, and with providing equal access to all users (Vrabie, 2015, pp. 33-39).

5. Conclusions

The youth is an important part of the society, it being the element which uses to a higher extent ICT in all aspects of life, especially regarding activities of personal interest. The younger persons form the society based on performance and information usage, thus they should mainly be the ones that the e-participation initiatives focus on. Nevertheless, no citizen, young or elder, should be put aside from being a beneficiary of this type of initiatives because, in order to conduct a proper e-democracy, the state must involve in the policy and decision-making processes all the citizens with the right to vote, by offering them equal access to public information, giving them the possibility to interact in a faster, easier and cheaper way with public authorities and also to have an impact on their activities.

Through its participation, the information society has a high potential to be an innovative society, with communities more active, better informed and more interconnected. The need to provide opportunities for increased awareness and access to multimedia and online technologies is increasing and must be met in such a manner that no individual is at disadvantage.

To conclude, it must be mentioned that an informed society means a strong society, a society able to participate in the achievement of a true democracy. Through its participation, the society can help authorities to meet the public administration's general objective, namely to respond to citizens' needs and requirements. By e-participating, citizens also offer support to public authorities in order for them to carry out their duties in a more efficient manner, thus creating a closer relationship between all actors involved. This all results in a more uniform and thus more powerful state on a regional, local and national level, a state in whose composition we can encounter smart cities.

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Development of Citizens' Political Participation in Local Administration System

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Abstract: The foundation of modern local governments in Turkey was laid with an imperial edict in 1839. This reform also called Gulhane Hatt-i Hümayunu or Tanzimat Edict, paved the way for local and regional councils. Since the 1850s, the municipalities have been established. However, it is not possible to talk about the functionality of these municipalities in current terms. Since the proclamation of the Turkish Republic, modern laws regulating local governments were issued. Village Law and Municipal Law are the first examples of these reformations. With the 1961 Constitution, modern participatory local government approach was adopted and mayors began to be elected directly by people for the first time. From 1960 to present, many local government reforms were made, but none of them were so fundamental as in 2012. With this reform, local government system has completely changed. Aim of this study is investigation of results of this reform and find out needs for a new wave of reform. New Metropolitan Municipalities Law is problematic in terms of local governance and local participation. Although European Charter of Local Self-Government and the European Urban Charter paying special importance to citizen's participation, last developments in Turkey as a European Union candidate continues in the opposite direction. Therefore, it is necessary to discuss all aspects of the new regulation. So that, field researches will be analyzed and recommendations will be presented in the light of these field studies relevant to the reforms.

Keywords: modern local governments; modern laws; local governance

Political Participation

Two basic indicators for modernization of the societies are healthy urbanization processes and effective political participation processes. Western democracies have experienced the industrial revolution and political revolution concurrently and achieved today's advanced level of democracy. It makes sense for the societies outside the western democracies to aspire to idealize the democracy standards in these democracies and transfer them to their countries. However, the fact that those countries do not take into account the long-lasting course of revolution undergone by the western democracies, the transformation of national and environmental factors, is one of the most important impediments to formation of a political/social structure in those societies at the level of the western democracies (Steinbach, 10982, p. 7).

Political participation is a modern, democratic institution, which is achieved at the end of such a long political and societal run, and has a constitutional foundation in the democracies. Participation either exists or does not exist based on the formation type of the political systems and convention of formation. If the system limits freedom of the administrators in favor of the administered, there is a

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democratic structure, and if it limits freedom of the administered for the administrators, there is an autocratic system (Duverger, 10).

Many political scientists rightfully include this concept as a distinctive characteristic in definition of the modern state. In a modern state organization, the individuals both participate in the actions related to the political sphere and influence the political mechanism; and are influenced by the politics. The most important aspect of political modernization is that it ensures participation of all societal actors in formation of the political decisions in an organized manner, for instance, with emergence of the parties (Huntington, 1958, p. 50).

Political participation is a concept that can be defined by various approaches. In the narrow sense, it may be defined as only participation in the elections; whereas, in the broad sense, it may also be defined as participation in every stage of the bureaucracy and political decision-making process. Participation consists of the legal acts attempted by private persons to influence the political persons and activities. Although this definition is incomplete, it is actually deemed sufficient as it covers the acts aimed at influencing the political institutions. The definition excludes the professional politicians and those who are somehow involved in politics, but considers participation of only the private persons as participation in politics (Verba, Nie & Kim, 1978, pp. 46-47). Whether narrow or broad; whether voluntary or induced, participation manners have a common objective: influencing the political authority. All acts of the individual influencing the employees or decisions of state bodies at both general level and local level; all of the acts which are devised by themselves or by others, legal or illegal, successful or unsuccessful, are included in the concept of political participation (Özbudun, 1975, pp. 4).

Revolution of Political Participation and Local Administration System in Turkey

In the Ottoman administration system, political crises have ensured limitation of the political power with compromise of the padishah and new actors' taking part in the government processes. The first effective development in this regard could be said to be the Charter of Alliance, which was realized in 1808. Introduction of the subject of Political Decentralization into the Ottoman political system has been made a topic of criticism by the historians. There are also those who designate it as the Magna Carta of Turkish history. It may be also made subject of a constitutional document and beginning comment (Gözler, 2000, pp. 3-12).

In the Ottoman administrative/political system, solution of urban problems has not experienced a democratic structuring process, the base of which is public. The Ottoman lacked the convention of local administration in western context. One of the reflections of the thought of establishing municipality and forming local administration units as a result of imitation is naming the Municipality established to provide modern municipal services in Galata and Beyoğlu as “Altıncı Daire-i Belediye” (Sixth Municipal Office) with inspiration from the 6th Municipal Office in Paris. Office correspondences were made in French and the first council members were mostly foreign citizens (Ortaylı, 1978, 19).

In addition, the fact that administrators of the Reorganizations (Tanzimat) period needed local influential persons to meet their increasing requirements is one of the reasons for emergence of the local administration. In this context, local administrations emerged as a result of not a liberal development, but a centralist force. The first local councils were formed as “Council of Tax Collectors” with participation of notables and representatives of the non-Muslim community of each

region for the purpose of solving financial problems. Those councils did not have any local administration function in today's context. Nevertheless, the councils are the first practices of the localization attempts brought by the Reorganizations (Ortaylı, 1974, pp. 13-16).

Following the Edict of Reforms of 1856 (Islahat Fermanı), it was sought to form local councils by virtue of Provincial Regulations (Vilayet Nizamnameleri) in 1861. Lebanon Regulations, the first of these regulations, constituted the first concrete example in the provincial administration of the Ottoman for participation of the local community in the administration. Those who paid taxes over a certain level and who were below the age of 30 could be candidate. The council could only negotiate the municipal services, it could not get involved in the topics of justice and finance.

Emergence of the real municipalities during the Ottoman period took place in the 1st Constitutional Period (Meşrutiyet). Although the parliament was reluctant, the government promulgated two separate laws for Istanbul and other cities. The municipality gained legal entity and duties and legal position of the municipal council were arranged in detail, it was envisaged to form municipal councils based on the size of the town. The council was obliged to negotiate and decide the municipal affairs and to prepare the budget. As in the previous arrangements, council members were elected from among the nobles of the town, and due strengthening of the nationalism movement, it was made compulsory for every member to speak Turkish.

The path for the public to be able to make various demands before the administrators during the Ottoman period was paved by the Reorganizations. Moreover, the public were granted the possibilities of making several demands from the political power without religious discrimination. The changes in the laws and political institutions created new opportunities for the citizens. The public started to become part of political life, which constitutes an important stage of the modernization process in the Ottoman (Kalaycıoğlu, Sarıbay, pp. 33-37).

Along with start of the republic period, innovations were made also in the arrangements regarding local administrations; the arrangements made during the constitutional period administrations were surpassed, and the principles regarding local administrations were defined, legal arrangements to incorporate the duties of the local administrations in detail were made.

The Constitution of 1924 considered that the broad autonomy granted by the Constitution of 1921 would be a reason of “vulnerability” for Turkey, and adopted as a basic principle that the provinces would be administered according to the authority broadness principle and that other administrative units would have legal entities (DDK, 1996, p. 11).

The Village Law dated 1924 and no. 442 made it compulsory for the villagers to participate in the services to be carried out in the villages in both financial and labor terms. Furthermore, according to article 13 of the Law, those villagers who refrain from doing the works prescribed by the Law are punished. In a sense, participation in local services at village level has been made compulsory by the law.

Along with multi-party life, steps that can be deemed important have been taken toward democratization of the municipalism. The Constitution of 1961 redefined the local administrations by its article 116 according to constitutional assurance and a more democratic basis. The Constitution has adopted the principle that decision bodies of local administrations would be elected by the public. Dismissal of the bodies can be only through judicial means. The law dated 27 July 1963 and no. 307 strengthened position of the mayors and stipulated their accession through a one-step election, thus, a remarkable progress was achieved in putting into practice the arrangements contained in the Constitution (Tekeli, 1982, p. 190).

The constitutions of 1961 (article 116) and 1982 (article 127) arranged the local administrations. Both constitutions stipulated that decision bodies of local administrations would be elected by the public. The Constitution of 1982 emphasized the requirement of arranging establishment and duties of the local administrations "in accordance with the principle of decentralization" only by the law, with the aim of strengthening local autonomy. By this rule, it can be ensured that limitation of local autonomy is hindered.

In the period of 1984 and thereafter, which is referred to also as the liberal period, important developments took place which contributed to prominence of the local administrations. One of these is the metropolitan municipalities established by virtue of the law no. 3030. Secondly, the share reserved from the general budget proceeds to the municipalities was increased, and a substantial part of the Estate Tax was left to the municipalities. Grant of powers to the municipalities in the matters like zoning plans and environmental problems, increase of financial possibilities, were developments that need to be received favorably in terms of local autonomy. However, in that period, it was emphasized by the then prime minister that *there should be a limit for the autonomy of the municipalities* (Keleş, 1993, p. 45). In conclusion, whatever the developments were, image of the local administrations was considerably on the rise, and the local administrators started to come into more prominence.

The services provided by the provincial special administrations cover the entire provincial boundaries; no condition such as being urban or non-urban is sought in provision of services. The decision body of the provincial special administration is the Provincial General Council that is set up through participative means, in other words, by election. Members of the General Council are elected by the public through one-step and proportional representation system. Provincial General Council has been endowed with a more democratic structure by virtue of the new law no. 5302. President of Provincial General Council will no more be the governor, who is an appointed officer, but a member to be elected by the council from within itself. Members of the Provincial General Council elect five principal and five members from among themselves for the Provincial Committee.

Village administrations are those administrations which are an ancient societal participation and solidarity model, but which is the one that gives the most place to participation of citizens through the method of *"imece" (collaboration)*, as more applicable today, and where this is stipulated as a legal necessity. This means, in economic terms, exchange of labor between the villagers. The "imece" method surviving in the regions where customary law prevails has extremely weakened at the places where the monetary economy has penetrated in. All kinds of infrastructure works and other services of the village can be solved through the "imece" method. For how many days the "imece" will last is subject to the decision of Village Council.

Municipal Council members and mayors are elected by the public for a period of five years. Municipal council meetings are open to public.

Here, it may be stated that the new Municipal Law prescribes a more participative municipal decision-making process. It may be noted that there are remarkable innovations in regard to participation in the "city council" and "specialized commissions". The new Municipal Law no. 5393 has arranged public disclosure of the council decisions and specialized commission reports and their submission to those who demand in article 24, but it has stipulated that the council decisions may be given in consideration of a certain fee. No such stipulation has been made about the committee decisions. Moreover, there is no stipulation on the requirement of disclosure of the city council decisions to public.

Everyone has been acknowledged as the fellow citizen of town they reside in. Article 13. In order to enable interaction among the fellow citizens for development of social and cultural relations,

participation of the universities, professional organizations, trade unions and experts will be ensured. Non-governmental organizations are entitled to express opinion in specialized commissions (article 24) and in city councils (article 76).

Mukhtars, NGOs, representatives of public agencies, universities, trade unions may express opinion concerning themselves to the specialized commissions (article 24). However, how these practices will be carried out, in which situations and from whom opinion will be taken, have not been arranged clearly.

The city council strives to put into practice the principles of development of city vision and fellow citizenship awareness, protection of the rights and interests of the city, sustainable development, environmental awareness, social aid and solidarity, questioning and accountability, participation and decentralization.

The municipalities provide assistance and support for effective and efficient conduct of the activities of the city council constituted by participation of the representatives of professional organizations qualifying as public agency, trade unions, notaries, universities, if any, relevant non-governmental organizations, political parties, public agencies and institutions, and mukhtars of neighborhoods, and other concerned parties. The opinions created in the city council are put on the agenda and evaluated at the first meeting of the municipal council.

Major Problems Hindering Participation at Local Level in Turkey

When considered in general, sociologic transformation enhances citizenship awareness. However, participation at local and general level takes places too limitedly in the daily life since it is regarded in the narrow sense merely as voting. Although development of social media offers new possibilities, usually manipulative public opinion creation methods turn out more effective.

Transparency

The previous sections addressed the issue of informing the citizens through local events and administrative structure, which is the most important condition for ensuring participation of the public at local level. This issue is one of the most complained problems for local administrations of Turkey.

In order to enable the citizens to become aware of the actions and operations of the local administrations, the citizens and other concerned parties should be granted the right of requesting information and documents regarding the decisions made and events performed from the administration beside the public disclosure efforts (Yalçındağ, 1996, p. 58). Furthermore, public relation offices should be restructured so as to encourage the public to use this right. In other words, an appearance where the citizens would come in fear or avoidance, they would prefer to stay silent rather than communicating any complaint, should be eliminated.

In this context, the most important action needed to be taken for Turkey is to redraw the legal arrangements so that they facilitate information of the public on actions and operations of the administration. The current legal rules are not satisfactory for provision of information to the citizens and non-governmental organizations. This legal barrier is one of the most important factors that hamper participation of the public. Because, as a convention of state and politics, individualization is not a phenomenon that has become widespread in Turkey yet, and unfortunately, the citizens still

perceive the state and public agencies as units to be feared or avoided. Such a thought that these judgments are groundless or are not based on observation would be wrong. In a study on the subject matter, appearance of the public administration was evaluated in a very broad range, the thoughts expressed by different intellectuals in different years received a widespread attention. These evaluations may be summarized as follows: *Public officers and consequently public agencies are far from seeing themselves as individuals and entities providing service to the citizens yet, and the citizens prefer to avoid and stay away from the public officers and agencies (Yalçındağ, 1996, pp. 51-57).*

Lack of Historical Knowledge

The municipalities are administrative units which have been institutionalized by taking example from the west. The socio-economic and political transformations in the Ottoman society has made the municipal organization compulsory. The municipal organization in the west should be regarded as "a unit maintaining the civil society tradition against central state understanding". Emergence of the municipal organization in the west had the aim of protecting the local units against the central power, it had emerged following a class development, and from these aspects, it functioned entirely as a non-governmental organization (Tekeli, 1982, pp. 310-314).

To what extent do the metropolises fit in local democracy? In the metropolises, the councils are the most important mechanism of local democracy. Councils are the main decision-making mechanism of a metropolitan municipality (Gül vd., 2014, p. 187). We made deep interviews with 10 members from Konya Metropolitan Municipal Council in a field study we conducted in 2015 due to the new metropolitan reform. The results obtained are as below (Çukurçayır, 2015a, pp. 241-255):

- It is too limited for the council members to take initiative.
- The council agenda is determined by the mayor and municipal bureaucracy.
- The specialized commissions in the council lack members from the opposition parties.
- Powerful president - weak council model prevails.
- According to a great majority, the new metropolis model is ineffective. Only part of the participants stated that it was effective.
- Council members mostly consist of advocates, architects, engineers and consultants. The rest are tradesmen. Therefore, it can be stated that representation of the public is not so effective.

Moreover, in the study on city councils we conducted in 2011, it was found that the city councils conducted activities in line with the request of the mayors. City councils are not available in many metropolises. City councils are stipulated by article 76 of the new Municipal Law no. 5393. As opposed to the examples in the west, it is a system that lacks the authority of execution and that is prescribed only as a "consulting" mechanism. Participation of mukhtars, representatives of public-private sector agencies and institutions, trade unions, universities and experts in the city council has been prescribed (Çukurçayır, 2015b, pp. 205-206). City councils conform to the clause (3/2) of the European Charter of Local Self Government. They are councils "formed by the citizens". However, they unfortunately could not have become widespread. Meetings of the city councils in which I attend from time to time rather resemble "municipal introductory" meetings. In the first years of their establishment, the mayors were serving as city council presidents (Çukurçayır, 2011, pp. 231-233), which is entirely contrary to the spirit of the participation.

Conclusion

Turkey has achieved remarkable progresses in legal, sociologic, political and administrative terms in respect of the methods of participation in local sphere. While there are significant troubles in practice, enhancing functionality of these mechanisms would create a very convenient environment for development of participative local democracy.

In the current context, the most important problem is the new municipal arrangement. An unnamed regional system has been established by this arrangement made in 2012. This has resulted in a situation that undermines the principle of subsidiarity. Transition of the metropolitan municipalities from urban area administration to the new system covering the cities, towns and villages (neighborhoods) impairs the participative local democracy. Making the municipal councils effective would strengthen the local democracy.

The discussions about unitary structure in Turkey and the issue of "democratic autonomy" are made with in association with the European Charter of Local Self Government, which is wrong. Because the charter envisages change of "systems" of the states (Keleş, 2012, p. 13).

Turkey continues to have the important discussions on participative local policy on its agenda.

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Administrative Capacity Development for the Modernisation of Rural Communities in Romania

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Abstract: The local public administration is one of the key social actors in the sustainable development and transformation of the community, assuming its constant adaptation to new conditions at the economic, political and social level. The present paper aims to analysis the connections between the development of administrative capacity and modernization of local communities in Romania. Assumptions main research are the need to develop the administrative capacity to support the modernization of local communities and the mutual influence between this two processes. It also takes into consideration to use the analyses for improving administrative capacity made by international bodies like the World Bank, International Monetary Fund, Organization for Economic Cooperation and Development and the European Commission. This paper aims to contribute to the development of literature in the field considering the specificity of the modernization process in rural communities in Central and Eastern Europe, which is based on the transformation of public administration and connecting it to the needs of citizens. The target group of readers is represented by researchers, who have the opportunity to develop new mechanisms for the improvement of the administrative capacity but also by practitioners in the field who can implement new development strategies for the local public administration. Quantitative and qualitative tools will be used for the theoretical and practical examination of the way in which Romania can develop by contributing to the general welfare of the citizens. The originality of the paper is the rationale, description and operationalize a framework of reference for highlighting the impact of modernization on local administrative capacity development. To this we add an empirical analysis conducted for a local community in Romania.

Keywords: social change; rural development; smart communities

1. Introduction

Administrative capacity development has a long history in the development aid of third world countries, it built on previous concepts starting from institutional building of the 1950s and it begins to take a macro- reform perspective in the late 1980s -1990s.

The challenges of globalization, increased mobility of people, technology, societal, demographic and climate change, are more than ever a fundamental impact on the role of the public sector and governments. These changes coupled with the importance of administrative capacity increasing require for strong and stable authorities / institutions, which are at the same time agile and flexible, and open to change. The public sector has always been under pressure to develop public services and to deliver citizen-centric service.

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Science, technology and innovative behavior constitute transformation forces for the public administration in the modernization of rural communities. The Europe 2020 Strategy aims to boost smart development by supporting sustainable investments in innovation.

At EU level, the prerequisites for the modernization of public administration and successful reform are often dealt with a great importance the concept of "administrative capacity building".

The present paper is divided into several parts, the first part refers to the regulatory framework and the importance of administrative capacity development, the next one treats the challenges with the public administration are facing in the modernization of rural communities and in the last part there is made an empirical analysis on a local community in Romania, Ciugud village, Alba County.

2. Legal Framework and the Importance of Administrative Capacity Development in the Modernization of Rural Communities.

Although, there were noted improvements in the public administration building, it still reflects a conservative organizational culture focused on more the formal side of administration activity. The concern towards the real impact of its results on society is low, where we can add the insufficient involvement from different partners such as academia, business, relevant social partners and civil society.

Despite the pre-accession funds and later support of the Operational Programme Administrative Capacity Development, professionalization of public administration, such as the efficiency of public expenses remain important objectives for public administration in Romania.

The public administration building strategy for 2014-2020 aims to establish the general framework for public administration reform, which is accompanied by an action plan that includes both short-term goals, time horizon targeting 2016, deadline by which Romania must make changes in public administration field and also, long-term strategic objectives, which will target the 2020 time horizon, correlated time with enrolling of the Operational Programme Administrative Capacity.

Previously Romania's accession to the European Union, considerable efforts have been made to increase reforms in various fields, the public administration being in the center of this process, benefiting from significant investments designed to increase its own capacity.

The government adopted two successive strategy regarding public administration reform: the public administration reform accelerate strategy during 2001-2003 and 2004-2006, which led to the implementation of reforms regarding the public policy, decentralization and civil service.

Both of National Strategic Development of Romania and National Reform Programme took the main role to support the financial programme processes in the absence of related public administration strategy which to achieve administrative capacity development to formulate public policies and which to manage service delivery during the period 2007-2013.

During the period 2007-2013 there were 40 sectorial strategies, where we add different documents without to include in the legal framework.

To achieving the objectives from the Europe 2020 strategy, the public administration plays a fundamental role in the implementation of policies and actions which create the framework for achieving them. The approval of Regional Committee regarding the elimination of innovation disparities (2013 / C 218/03) draws attention to the need for the public sector building, and in

particular, public authorities building in promoting innovation and extending the perspective on the role that it should play in reducing disparities and increasing the accessibility and quality of services.

Through the Partnership for Open Government and National Action Plan for the period 2012-2014, the Government was committed to promote the efficient use of resources and new technologies, to improve government act and dialogue with citizens.

Increasing the efficiency of public administration activities depends on using on a large scale of information technology, both in relation with citizens / users of services and also with other public institutions.

The current structure of administrative territorial organization of Romania exists since 1968, restricting the unitary territory development and improving its potential, with consequences for national economic development.

Thus, the developing and implementing sustainable local and territorial policies is difficult because of limited administrative capacity of local authorities and either because of the lack the regional administrative level.

For modernization of local communities it is necessary to increase the quality of decision making at local public administration level, to meet the needs of local communities by introducing either the extending use of fundamental instruments for decision (decisions of deliberative and executive authorities, programs, projects, strategies) at local level: impact analysis, cost-benefit analysis. Also models of good practice are necessary for public administration, to know other levers and ways of governance in achieving the mission.

A special importance should be given to clarifying the roles and responsibilities associated with each category of staff from the public authorities and institutions, assessing their activities and finding appropriate solutions to boost the quality of work performed.

The public administration need a flexible organizational structure and internal processes to adapt to new situations.

Using the quality management, best practices and innovation are tools and practices that help to modernization of the public authorities which will bring positive effects on citizen satisfaction and modernization of rural communities on long-term.

By establishing of mechanisms for benchmarking, bench doing and bench-learning in the public administration we can compare the obtaining performances in achieving of activities, in the provision of public services, encouraging to make partnerships to identify and implement common solutions regarding the problems which they face and in finding the ways for modernization of the communities.

3. Challenges of Government on Modernizing Rural Communities

According to the Partnership Agreement proposed by Romania for the programming period 2014-2020, among the main objectives of the program it can be found the need of structural reforms for smart, sustainable growth and social and economic inclusive.

Romania continues to face enormous challenges in terms of development, the overall level of economic activity in Romania remain weak due to the considerable decrease of employment in agriculture, decrease entrepreneurial culture businesses in all regions except Bucharest-Ilfov.

In Romania, there are big differences in skills, education, access to health, opportunity, these intensifying at territorial level, with pronounced variations between regions and between urban and rural areas.

In the main, poverty affects rural areas, small towns and isolated communities which they have insufficient access to services, communities that lack basic public services, such as education, culture, medical and social services. In these areas, the poverty is associated with the lack of modernization.

In the context of fiscal austerity, the public authorities services in Romania are limited to the citizen as against those citizens from the most EU countries but the big problem is inequity quality and accessibility of services to which citizens are entitled. Residents of rural areas are particularly disadvantaged because of the lack in digital skills and extension of e-services. Significant differences of capacity at local public administration level have blocked the equal absorption support for improving the administrative frame to mobilize resources and attract investments.

A problem at the public authorities' level is partial fulfillment of tasks arising from the implementation of the open administration principles. For an important change of local communities it is essential to strengthen the role that civil society, academia and other relevant social partners which should play in a modern state, to contribute consistently to the analysis, formulation of alternative policies, to support the public authorities' activities and work for the benefit of citizens. By creating various tools and mechanisms is desirable to building the capacity of these structures to promote reform measures for local level.

Among the challenges which public administration are facing it can be found the issue of well-trained human resources because it is expensive compared with the budget provided for that. In the absence of well-trained human resources, the responsiveness of public administration is diminished. Financial and human resource constraints from the local public authorities level makes it difficult to execute some basic functions for proper functioning of their specialized structure.

To meet the ambitions of economic growth reflected in the overall objective of the Partnership, Romania approach five major challenges for development: competitiveness, people and society, infrastructure, resources, administration and governance. However, the inward actions of Romania will contribute to achieving the Europe 2020 strategy.

Information and communications technology (ICT) is important for countries in process of developing because it creates new patterns of interaction, business and service delivery. By expanding access to ICTs and encouraging its use, the European Union aims to stimulate sustainable economic growth, improve service delivery and promote good governance and social responsibility.

Digital Agenda for Europe, an initiative of the Europe 2020 Strategy highlights the importance of ICT infrastructure as a means of improving the efficiency and effectiveness of governance in the context of the challenges regarding the administration and governance.

Overall, the population has fairly low skills in digital area where disadvantaged groups have fewer digital skills, which are completely insufficient to constitute an effective means of inclusion and participation.

Accord with international efforts, such as those of the United Nations Organization, the European Union and the Organization for Economic Cooperation and Development (OECD), the National Strategy for promoting social responsibility during the period 2011-2016 has developed a framework to define the concept of social responsibility, recognizing that poverty reduction is a matter of ethics and responsibility.

A significant problem that must be resolve to promote social inclusion and local economic development is the infrastructure. In rural areas, local roads have a key role in providing access to national communication routes, and therefore to the main economic, social and cultural centers.

Although, the basic infrastructure in rural areas has been supported in recent years through both national funds and by EU funds, it is still underdeveloped, limiting economic growth and employment of the workforce, and affects negatively the quality of life of rural population.

Sustainable social and economic development of rural areas depends on improving rural infrastructure and basic services available. In the future, rural areas need to be placed in a competitive position for investment, while providing adequate living standards of local people in the community and adequate social services.

The negative effects are reflected in the low mobility of the workforce and therefore in the absence of exploitation, but also in the economy, by reducing access to services, high costs, however hindering competitiveness and efficient operation of industrial sector and agriculture.

Administrative capacity development is essential to develop and implement political reforms and to improve the absorption of European funds. Efforts made by the Romanian authorities to reform and modernize various aspects of public administration have been recognized in the analysis made by international bodies, including the World Bank.

The insufficient administrative and financial capacity at the center and local public administration level for the needs of diverse beneficiaries, such as the provision of public services of high quality is caused by the transfer of powers in the decentralization process (in education, health, records population, basic public services) which was conducted without a proper assessment of the capacity of local authorities.

Because of unclear decentralization, decentralized public services provided by local authorities have been underfunded in most cases, access was limited to public services both because of technical problems (low interconnection of information systems), and because of socio-economic factors.

The Operational Programme Administrative Capacity plays a special role in satisfying public administration reform for the period 2007-2013 and 2014-2020 which were taken into account various interventions.

Through the Spatial Development Strategy of Romania, developed for a time horizon of 20 years, it aims to: ensure balanced and sustainable development, increasing competitiveness in areas of development and capacity. Also, the National Strategy for Regional Development emphasizes the role of regions in promoting growth at national level. Each region has its own economic and development potential which can contribute to national economic growth.

The territory of Romania is predominantly rural (almost 90% of the area belongs to the administrative units rural), thus that financed interventions by the rural development program should ensure acceleration of restructuring and modernization of rural areas for integrated development of economically and sustainable rural areas.

Romania has the largest part of the EU population living in rural areas where the risk of extreme poverty is four times higher in rural areas compared urban areas. Romania's rural development strategy for the coming years is part of the reform and development of the EU and it proposes the Europe 2020 strategy.

Another reference document is the "National strategic framework for sustainable development of the agrifood sector and the countryside during 2014-2020-2030" which aims to establish sustainable development goals of the Romanian agri-food system and rural areas for economic recovery Romania.

4. Analysis Ciugug Commune, Alba County

As administrative unit, Ciugud is a village, with a population of almost 3000 inhabitants and is composed of six villages. It is located at a distance of about 10 km from the Alba Iulia city. Ciugud village absorbed European funds, money that contributed to community development, income representing the proceeds of the City Hall for almost a century. Apart from the investments that were made through local public administration, local citizens were involved and used their entrepreneurial spirit in opening a local business. This village is an example of how to use various measures of integrated rural development program.

Three thousand people benefit from many services, such as, sewer, water and gas, paved roads, bike trail, paved sidewalks, energy independence, children's park, free internet, well-developed industrial area, modern schools.

Also, tourism has gained importance with the opening of pensions due to infrastructure. City Hall has implemented projects on the modernization of farm roads, the road system.

Through the site of Ciugud City Hall, the citizen can access electronic services, consulting their debts and their payment, ensure transparency of decision-making acts and inform citizens about various events. To modernize community was encouraged entrepreneurship, a significant number of companies having activity in areas such as trade, light industry, services, catering, agriculture, forestry and fisheries. City Hall developed documents such as General Urban Plan, City Planning, Spatial Development Strategy and Development Strategy commune.

Ciugud joined the Convention of Mayors for local renewable energy for sustainable development. The Convention of Mayors is a type of movement that mobilizes local and regional actors around EU and achieving the objectives outlined by the European institutions as an important model of multilevel governance.

As local development priorities of the commune are: developing local infrastructure, local government modernization, development and diversification of economic activities in rural areas.

5. Conclusion

From the analysis of Ciucug village, we can draw some conclusions, that to reduce disparities persist between rural and urban areas and to create decent living conditions for the rural population is necessary to continue the renovation of villages and rural infrastructure development. To improve the living conditions have taken measures to increase the involvement of community economic and quality of basic services. At the same time, collaboration with the locals might empower them and could give rise to local action initiatives based on civic engagement and ownership of the common objectives.

Local development strategies for the medium and long term is an essential element of sustainable development in terms of sustainability of investment projects and their correlation with the national strategy.

The administrative territorial units should be encouraged to identify and exploit alternative sources of generating their own income or alternative ways of cutting budget expenditures through grant projects, different mechanisms of collaboration / partnership, calling volunteering, sponsorships etc. Also, models of good practice are needed in public administration, to know other levers and ways of governance in achieving the mission.

Financial autonomy of local authorities is a prerequisite for the provision of quality public services locally to meet the needs of citizens in their geographical area of jurisdiction. But this requires a unified approach, targeting both the legislative framework and the way in which resources are managed.

Develop the skills required of public administration modernization of rural communities is a concern at European and national level as it is the role of facilitator of socio-economic development of which depends on the evolution of Romania and the position it will take to other stakeholders globally.

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The European Regional Development Fund and Romanian Transportation Sector

Erika Georgeta Kuciel[1]

Abstract: Romania, as a Member State of the European Union since 2007, receive financial assistance through EU structural instruments. The goal of regional development policy is to reduce disparities in the level of wealth, income between different regions and Member States of the European Union. In our country, there are 8 development regions that receive non-refundable financial assistance through the European Regional Development Fund. **The aim** of this paper is to present a comparative situation of the projects financed by ERDF, related to the period of financial programming 2007-2013, in two different development regions of Romania: North-West and Central. **The objective** of this article is to analyze the ongoing and implemented projects in transportation sector for the programming period 2007-2013, through ERDF, for the two development regions. The concepts used in this article are the regional policy of the EU, structural funds. The approach is based on several scientific research. According to Iain Begg, the structural funds aim to promote economic development by stimulating growth rate of disadvantaged regions, public investment in infrastructure, training, productivity of businesses in the region. The paper is based on theoretical documentation regarding the structural funds, the concept of the European regional policy, the absorption rate. The main methods employed were the observation, the specialized literature and publications. The conclusion of this study is that the North-West region has managed to attract more European funds through the European Regional Development Fund in the period 2007-2013 for the rehabilitation of streets, county and national roads. The case study can be used in university as a frame of reference in order to compare one of the two analyzed regions with other development regions. Although the North-West region had an absorption rate higher than the Central, through ERDF, in the North-West were upgraded seven county roads while in the Central region they were eight.

Keywords: regional development; region; regional policy; structural funds.

1. Introduction and Theoretical Framework

This article aims to present the comparative situation between 2 Romanian development regions receiving financial assistance through European Regional Development Fund, during the programming period 2007-2013, using the Regional Operational Programme. This case study is based only on the projects of the rehabilitation/modernization county roads in the regions mentioned above.

During the period 2000-2006, Romania, as a candidate country to the European Union, has received non-repayable financial assistance through pre-accession instruments such ISPA, PHARE and SAPARD; once became a Member State in 2007 on January 1, receive Community support in the form of grants post-accession called Structural Instruments. The origins of these EU funds are in the Treaty of Rome in whose preamble is determined commitment of Member States to „ensure their

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harmonious development by reducing disparities between the various regions and the backwardness of the least favored regions".

Structural Instruments are the funds allocated by the European Union for the financial programming period 2007-2013 for structural interventions in the implementation of cohesion policy and consist of two Structural Funds (European Regional Development Fund and European Social Fund) and the Cohesion Fund. Together, these funds represent the EU's regional policy. Each structural instrument contribute adequately to achieve cohesion policy's objectives: Convergence, Regional competitiveness and employment and European territorial cooperation.

Between 2000-2006, under Agenda 2000, have been allocated 213 billion euros, of which 195 billion euros were designated to the European Regional Development Fund and European Social Fund and 18 billion euros for the Cohesion Fund. During 2002-2007, these funds were organized differently, including the European Fisheries Fund (EFF) and the European Agricultural Fund for Rural Development (EAFRD), but since 2007, the latter have their own legal basis and there are no longer part of EU cohesion policy.

2. The Structural Instruments and the Operational Programmes in Romania

2.1. The Romanian Operational Programmes

According to Council Regulation (EC) no. 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) no. 1260/1999, Member State shall submit a National Strategic Reference Framework (NSRF) that ensures the consistency of the funds with the Community Strategic Guidelines on cohesion and identifies the link between Community priorities, on the one hand and the reform program, on the other hand. Each National Strategic Reference Framework is a reference tool for preparing Fund programming. Thus, in order to benefit from funds allocated through EU policies related to the 2007-2013 programming period, Romania, like all other Member State, has drafted the National Strategic Reference Framework (NSRF).

National Strategic Reference Framework is a national strategic document setting out the priorities of intervention of Structural Instruments (European Regional Development Fund, European Social Fund and the Cohesion Fund). It connects the national development priorities set out in the National Development Plan 2007-2013, the priorities at European level - Community Strategic Guidelines on Cohesion 2007-2013 and the revised Lisbon Strategy. NSRF was developed by the Ministry of Economy and Finance through the Authority for Coordination of Structural Instruments in a broad partnership with the structures of the central government, local institutions and NGOs. The document was adopted by the European Commission in 2007 on June 25. Starting from the socio-economic situation and the long-term development needs of Romania, the National Strategic Reference Framework's overall objective is to reduce the disparities between our country and the other EU Member States, through the Structural Instruments.

National Strategic Reference Framework details the priorities set in the National Development Plan 2007-2013, except those relating to development of rural economy and increasing productivity in the agricultural sector. Therefore, it includes only those priorities of the National Development Plan that are covered by Operational Programmes, funded only by Structural Instruments.

The implementation at operational level of the overall objective, thematic priorities and regional priorities of National Strategic Reference Framework are at the level of operational programmes,

according to the objectives „Convergence" and "European Territorial Cooperation", each of them is coordinated by a Managing Authority of the resort ministry. The Operational Programmes are the documents which ensure the implementation of strategic actions set out in the National Strategic Reference Framework and the access of the Structural Instruments. These strategic documents developed in Romania and approved by the European Commission include the multiannual priorities set that can be co-financed by the structural funds of the European Investment Bank and other grants.

In Romania, the operational programmes managed by the Management Authorities of the resort ministries, for the Convergence objective in the programming period 2007-2013 are, as follows:

- Sectoral Operational Programme „Transport";
- Operational Programme „Increase of Economic Competitiveness";
- Sectoral Operational Programme „Environment";
- Sectoral Operational Programme „Human Resources Development";
- „Regional" Operational Programme;
- Operational Programme „Administrative Capacity Development";
- Operational Programme „Technical Assistance".

2.1 The Regional Development in Romania

First, the concept of region occurred in the early twentieth century in geography. The region is a territorial unit lying, a large expanse of land more or less homogeneous, from a country or around the globe who have common features but differs in the social, economic, cultural, geographical, ethnographical, administrative and historical degree. The region is a concept with a broad meaning, representing the cornerstone in regional science and regional economy, being the center of regional development policies. Over time, the regions have evolved differently and at different rates causing discrepancies between them.

The literature on regional science, along with the notion of the region, use the terms of area or zone. The area is part of the territory of a country that shows the space of influence of a city, being rendered „attraction areas". The concept of zone is defined as an area with different characteristics in relation to the surrounding space.

The Council of Europe defines the region as an administrative-territorial unit under state authorities; the European Parliament understands the concept of development region as a territory that forms, geographically, a net unit or a similarly groups of territories where there is continuity, the population has certain common elements and try to retain the specificity in order to develop and stimulate economic, social and cultural progress.

Development regions are the framework of the elaboration, implementation and evaluation of the regional development policies and specific statistical data collection in accordance with European regulations issued by Eurostat for the second level of territorial classification NUTS 2 existing in the European Union. In our country, according to the Law no. 315/2004 on regional development, development regions are not administrative units and have no legal personality, these are areas that comprise the counties in question, respectively Bucharest, constituted on the basis of agreements between representatives of county councils and the General Council of Bucharest. The development regions are the following:

- North-East includes the counties: Bacău, Botoşani, Iaşi, Neamţ, Suceava, Vaslui;

- South-East consists of counties: Brăila, Buzău, Constanţa, Galaţi, Vrancea, Tulcea;
- South-Muntenia includes the counties: Argeş, Călăraşi, Dâmboviţa, Giurgiu, Ialomiţa, Prahova, Teleorman;
- South-West Oltenia consists of counties: Dolj, Gorj, Mehedinţi, Olt, Vâlcea;
- West includes the counties: Arad, Caraş–Severin, Hunedoara, Timiş;
- North-West consists of the counties: Bihor, Bistriţa-Năsăud, Cluj, Sălaj, Satu–Mare, Maramureş;
- Central includes the counties: Alba, Braşov, Covasna, Harghita, Mureş, Sibiu;
- Bucureşti - Ilfov includes Bucureşti City and Ilfov county.

3. The Romanian Development Regions

3.1. North-West Region

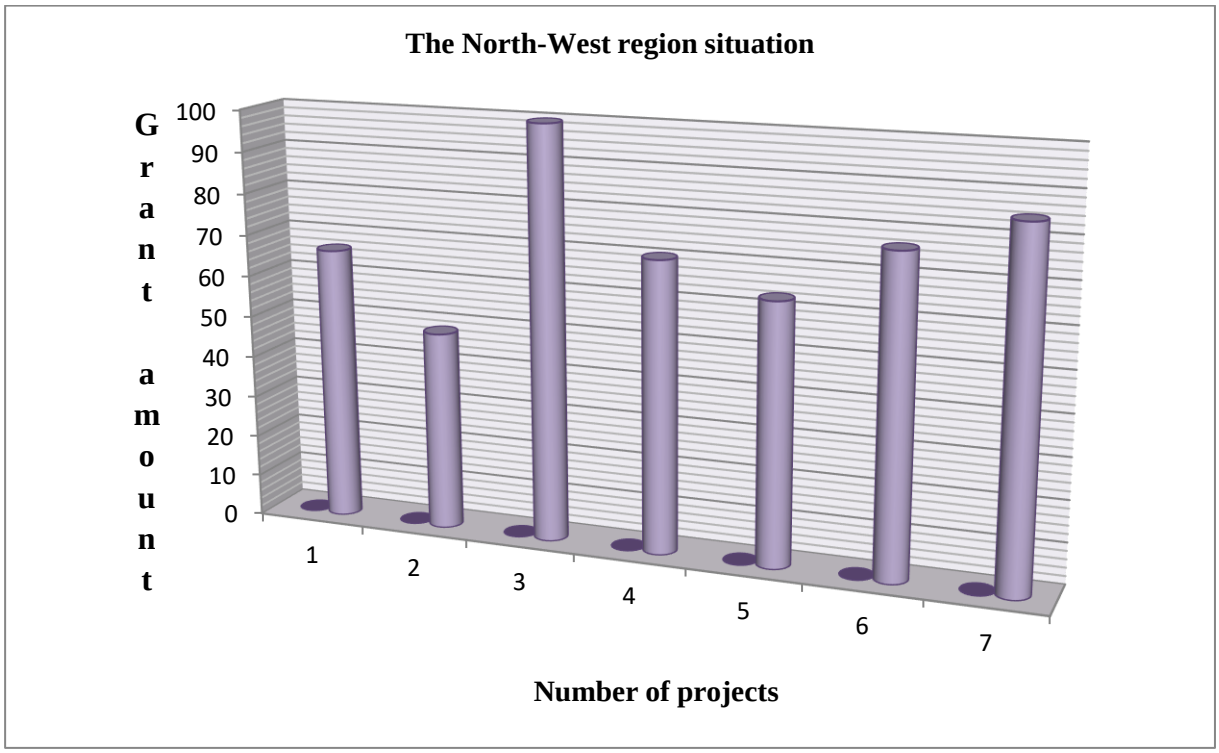
The surface area is 34.159 square kilometers and represents 14,32% of the country with a total population of 2.744.914 citizens. The region consists of 421 administrative-territorial units and has a strategic geographical position, its borders with Hungary and Ukraine and central development regions, west and north-east of Romania. The region is crossed by 7 European roads and the most important are: E60-from Hungary connected with Oradea-Cluj-Brașov and Bucharest E579-Cluj-Napoca-Dej, E81-Satu Mare-Zalău-Cluj-Napoca-Brașov-București, E79-Oradea-Deva, E671-Oradea-Arad-Timișoara, E58-Cluj-Napoca-Dej-Bistrița-Baia Mare-Vatra Dornei. Of the total region's road network 3.222 km are modernized. Through the European Regional Development Fund, for this region, during the period 2007-2013 was allocated financial assistance about 522,19 million euros, 452,17 million euros representing the contribution of the European Union. The projects are implemented by the North-West Regional Development Agency which is the Intermediate Body for Regional Operational Programme (ROP) 2007-2013. The absorption rate was 74,71%. For road transport infrastructure, the regional allocation of the investment projects was about 113 million euros. In the following, will be presented the ongoing and implemented projects in this region of the country.

Table 1. The projects of the Nort-West region

Project name	**Localisation**	**Status**	**Total value**	**Grant amount (lei)**
Modernisation of DJ 191 Marghita-Tășnad	Marghita, Tășnad	implemented	83.890.745	66.327.826
Modernisation of road infrastructure in Satu Mare county – DJ 109L, Negrești Oaș-Turț	Negrești Oaș, Turț	implemented	60.574.586,21	48.297.025,05
Rehabilitation of DJ 151, km 45+810 – km 126+172, border county Mureș-Bistrița Năsăud, Bistrița county	Bistrița, Blăjenii de Jos, Blăjenii de Sus, Brăteni, Budești, Chirales, Lechința, Sânmihaiu de Câmpie, Sieu Odorhei, Sigmir, Sângeorzu Nou, Șintereag, Șirioara, Țagu, Zoreni	implemented	126.610.050	99.660.527
Road rehabilitation Ciucea-Crasna,Virsolt	Ciucea, Crasna, Virsolt	implemented	85.628.384	70.341.627

Rehabilitation and modernisation of DJ 763 Sudrigiu-Pietroasa-Cabana Padiș, km 0+000-km 13+100 and 19+650-km 35+100, L=28,550 km, Bihor county	Padiș, Pietroasa, Sudrigiu	implemented	76.883.313,56	63.126.137,99
Rehabilitation of the county road route Baia Sprie (DN 18)-Cavnic (DJ 184)-Ocna Șugatag (DJ 109F)-Călinești (DJ 185)-Bârsana (DJ 185)	Baia Sprie, Bârsana, Călinești, Cavnic, Ocna Șugatag	ongoing	92.946.366,10	76.514.666,20
Rehabilitation of DJ 108A: DN 1F-Românași-Creaca-Jibou-Benesat	Benesat, Creaca, Jibou, Românași	implemented	102.697.090,61	84.727.812,89

Source: http://www.nord-vest.ro



Source: Own Processing

The total value of these projects is 629.230.535,48 lei and the grant amount: 508.995.622,13 lei.

3.2. Central Region

The surface area is about 34.100 square kilometers, representing 14,3% of Romanian territory. As surface, exceeds some European countries such as Luxembourg, Macedonia, Slovenia. At the beginning of 2010, the number of citizens was 2.524.000. The absorption rate at the end of 2015 for the road infrastructure was 85,17%.

Due to its geographical position, the central region has the advantage that can be made connections with the other development regions of the country, the distance between the central area and the country border being equal. This region is crossed by a network of roads with a total length of 10.714 km which provides access to all parts of the region by giving a good connection with other regions of Romania. There are 5 European roads of 951 km that crossing it, 4 of them forming a large ring road which link the southern, western, northern and eastern region and the fifth European road (E60) runs through the center region in the direction southeast-northwest. The most important roads in the region are DN1 and DN7. European road E60 crosses the region diagonally, linking Brașov and Cluj, Târgu Mureș and central/western European countries.

Southwestern of the region is crossed by Corridor IV Pan-European transport route that will provide a quick link between south-eastern Europe and central Europe (Dresden, Nuremberg).

The total of the railway network is about 1.420 km of which 47,4 % are electrified. In this region there are large isolated areas in terms of rail transport.

The Central Regional Development Agency is the Intermediate Body for Regional Operational Programme 2007-2013. In the period 2007-2013, the financial allocation for this region was about 440,37 million euros. The beneficiaries have managed to attract over 90% of this funding with 290 kilometers streets and county roads rehabilitated. The ongoing and implemented projects concerning the county roads are the following:

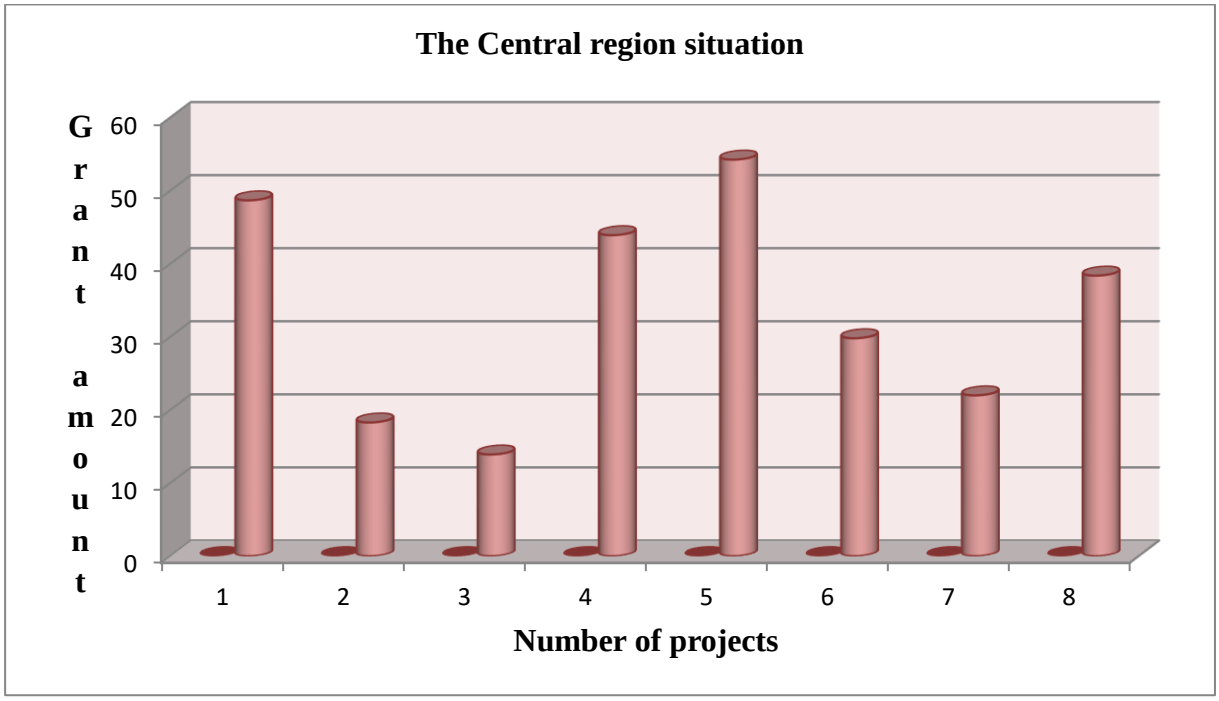
Table 2. The projects of the Central region

Project name	**Localisation**	**Status**	**Total value**	**Grant amount (lei)**
Modernisation of DJ 106 Sibiu-Cornăţel-Alţâna-Barghiş-Agnita	Sibiu, Agnita	implemented	59.224.993,68	48.690.923,68
Rehabilitation and modernisation of DJ 142C	Mureș, Coroisânmărtin, Viișoara	implemented	23.089.675,08	18.289.722,67
Modernisation of DJ 106D Răşinari-Poplaca-Orlat km 14+143-km 31+340	Sibiu, Orlat, Răşinari	implemented	16.885.068,69	13.905.350,68
Rehabilitation and modernisation of DJ 135 Măgherani-Sărăţeni	Mureș, Măgherani	implemented	56.455.216,69	43.919.981,65
Rehabilitation of DJ 132	Harghita, Ocland, Vlăhița	ongoing	66.898.214	54.260.870
Modernisation of DJ 142E Dârlos (intersection DJ 142C)-Alma-Dumbrăveni-	Sibiu, Dârlos, Dumbrăveni	ongoing	34.154.237,30	29.813.856,18

Hoghilag-DN 14, km 0+000 – km 20+130				
Tourism potential and economic exploitation of Aiud Valley through rehabilitation of transport infrastructure of DJ 107M	Alba, Aiud, Rimetea	implemented	27.839.574	21.999.811,26
Rehabilitation of DJ 123A Tuşnad-Sâncrăieni, km 0+000 – km 14+600	Harghita, Tuşnad, Sâncrăieni	implemented	47.239.383,59	38.386.832,26

Source: http://www.adrcentru.ro

The total value of the projects is 331.786.363,03 lei and the grant amount: 269.267.348,38 lei.



Source: own processing.

4. Conclusions

Following the comparative analysis of the data presented above, for each region, we can observe that although the North-West region has developed a smaller number of projects than the Central, the non-refundable value was higher. The absorption rate was 74,71% comparative with 85,17%. Each region has its own specificity but even that, the beneficiaries should choose an adequate portfolio of projects so that can be achieved and implemented using European funds. The development of the regions, the standard of living of the citizens depend on the successful implementation of these funds available to Romania from the EU.

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REALITIES AND PERSPECTIVES

The Importance of the Public Administration Reform in Kosovo

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Abstract: In the former communist countries in general, and in Kosovo in particular, public administration had its problems, and remains part of the past failed system. Responsible and transparent public administration, is not only a prerequisite for proper functioning of the country, but is fundamental whereby the government implements its plans and strategies! Because of this importance, public administration reform and its part that are considered problematic is essential for a functional and efficient relation between the state administration, civil society and the private sector. A well-functioning of these reports has a positive effect for poverty reduction, peace and stability. In development countries and transition economies, the importance of public administration performance is key in strengthening administrative public sector and management capacity building. In this research we are going to use qualitative methods. Analysis of data collection will be done based on scientific publications, research in this field, various international and local reports, field strategies, laws. Conclusion of this paper is that, modern, professional and functional public administration is important for clarity and development of the country.

Keywords: Kosovo; Public Administration; Reform; Development; Precondition

1. Introduction

Functional Public administration is Precondition for development

This is the main thesis of the paper. All the following work argues this thesis. The variables of this thesis are: independent variable 'functional administration', which affects the dependent variable 'precondition for development'. So, a prerequisite for the development of a country is functioning public administration. This is a cause-effect link which will be discussed in this paper.

The paper is divided into two parts. In the first part, we elaborate on theoretical aspect the role of public administration in the context of the precondition for development, focusing on the differences and similarities between public functional administration and good features of the public functional administration. While, in the second part, we elaborate in practical aspect the process of public administration reform in Kosovo, focusing on problems, and chronological aspect, and the role of this administration in strengthening the authority of the state.

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2. Theoretical Framework

For functional public administration in theoretical aspect there are various definitions.

Public administration is the basic element, very important and multiple influential for functioning and through this, the advancement of a country. For this reason, some authors think that, "Maybe the only challenge more important with which governments faced in the 21st century, will be to strengthen the institutional capacity of public, private and civil sector to accomplish citizens' needs and demands of the international economy" (Rondinelli, 2007, p. 13). Therefore, "Institutional Capacity Building is the process through which individuals and organizations in each country strengthen their ability to mobilize the resources needed to overcome economic and social problems and to achieve a standard of living determined as the best for that society" (Rondinelli, 2007, p. 13).

When we talk about the functional public administration we have these things into account. Thus, "At levels of government are not all politicians. The state administration has apolitical people, specializing in various areas, which help the government and Parliament on the processing of proposals and implementation of decisions. Politicians come and go, but the administration stays where it is. In many ways, the administration creates continuity and memory in the political system, as it does not suffer any change from election" (Malnes & Midgaard, 2007, p. 77). Or "The government is not exclusively limited to control how the others solve their problems, but can also perform this work itself. Defence and diplomacy are the areas where the government does this, as well as education is another activity where governments feel they have to be active (In this latter case, however, governments have not seen it necessary to have a monopoly. For example In the United States, there is a significant number of children educated in private or parochial schools)" (Shiveley, 2012, p. 463). In function of this idea is stated that, "If the radio breaks, do not go to the neighbours with screwdriver in hand. Usually you go to the repair-services, which have professional people to repair your radio. Should that even in politics, to let the experts solving problems? With experience and higher education that employees of ministries have, are they able to provide the best solutions to the challenges of society? How do you think?" (Kval, Mellbye & Tranøy, 2006, p. 77).

These statements refer to several things, such as management, administration, policy. In order to explain the functioning of public administration we focus on the studying of the following:

1. Differences and similarities between public administration and functional public administration; and,

2. Good Characteristics of functional public administration.

2.1 Differences and Similarities between Public Functional Administration and Public Administration

Public Administration and public administration in functional meaning are different concepts. Despite this difference administration and administration have many other things in common. Political Dictionary Oxford claims that "public administration should be distinguished from public administration" (Mc Lean, 1996, p. 2). Thus, "Public administration is concerned with the state bureaucracy institutions: the organizational structures that form the basis of making and implementing decisions; as well as the rules under which public services are delivered" (Mc Lean, 1996, p. 2). For example, "In Britain, the centre of public administration is a public service, but it includes all public bodies at regional and local level" (Mc Lean, 1996, p. 2). Problems arise because "…the definition of

the word 'public' has problems arising from the privatization or marketing of the entities that were previously public" (Mc Lean, 1996, p. 2).

Characteristics of public administration based on this definition are:

- Public administration is concerned with the state bureaucracy,
- This refers to the base of the institutions that (1) take decisions and (2) implement decisions, and, the basic rules under which public services are delivered.
- This study of public administration is done through these methods: 1. Institutional description. 2. Analysis and political evaluation. 3. Analysis of intergovernmental relations.
- Based on these characteristics of management and administration, their differences are:
- While public administration has to do with 'state bureaucracy' and is part of the 'administrative science', public administration is' branch of political science'.
- While public administration refers to the "base of institutions (1) take decisions and (2) implement decisions" and "rules under which public services are delivered ', public administration refers to' the study of public administration through methods such as: 1. Institutional description. 2. Analysis and political evaluation. 3. Analysis of intergovernmental relations'.
- While public administration refers to the totality of people and objects in administration, public administration deals with the leadership of these people and objects. These are the main differences between the administration and public administration.

However, public administration and public functional administration have also similarities that are:

- Public administration and public administration dealing with a set of identical. That same entirely is: administration.
- The interest of the public administration and public administration is the same: effective functioning of administration. These are just some of the similarities between public administration and public administration.

2.3. Characteristics of Good Public Functional Administration

Functional public administration has some special features. These good characteristics vary from one author to another. However thoughts in general for characteristics of good public functional administration caught some general ideas.

2.3.1. Relations between Administrator and Administrators

Thus, according to an opinion characteristics of public functional administration are:

1. "An honest translation and accurate of decisions of the political leaders in some rules tailored implementation" (Shiveley, 2012, p. 466). This "addresses the problem mentioned above, safety that political leaders control at least the broad lines of policy". (Shiveley, 2012, p. 466).

2. "Flexibility in special cases at the time of implementation". (Shiveley, 2012, p. 466). Administrators should be "... to obey instructions from above, they should not be terribly strict. If a cop accuses a driver for speeding, and later discovers that the driver is trying to get a child at risk, to lead to hospital, we do not want that the police to fine" (Shiveley, 2012, p. 466).

3. "But this flexibility should not be used over the place". This is because "... an action 'arbitrary' is an action taken by the whims, no matter the circumstances relevant to the case. An arbitrary act is stopping and checking of black people for example. Another example is to allow some students to others who have had the same reasons".

4. "Review the advice of an expert, an active imagination, and a devout research by administrators". Should". Administrators will know more about their areas of work than someone else".

5. "Efficiency". This means that "Hopefully all this can be done without paying so much" (Shiveley, 2012, p. 466).

2.3.2. Other Characteristics of Functional Public Administration

Other characteristics of good administration are:

1. "Legality" (Kval, Mellbye & Tranøy, 2006, p. 81). Legitimacy is, that "It is important to know that state employees treat the issue and make a final decision, outside your assessments. Their job is to see if they are complying with laws and regulations". As a consequence of this, "... there are not important people, but they are laws that regulate the relations between official bodies, such as the state and municipalities. Any decision taken based on law".

2. "Equality". Equality comes to the expression "When an employee who handles the issue, refers to a law, often uses expertise. Therefore, it is very good that all related issues are treated the same. It is easier to accept a negative answer, if it is known that all have received this kind of response to similar issues".

3. "Transparency". Transparency is done "to ensure that the principles of legality and equality are respected, addressing the issue should be open and so 'transparent'. Citizens have the right to know who has treated the issue, where is based the decision and all necessary information regarding to it"(Ibid).

4. According to a second opinion, "... public administration can be improved by focusing on results" (Miller & Fox: 2007, p. 13). So "Government oriented by results means that the budgets and decisions should be based on performance. Therefore, the first administrative task is to develop the performance of indicators to measure results" (Miller & Fox: 2007, p. 13). While "The second task is to establish target goals so that the progress in their direction can be evaluated". (Miller & Fox: 2007, p. 13).

After theoretical explaining of the role of public functional administration, and we continue paper with the practical study focusing on the case of Kosovo.

3. Public Administration Reform in Kosovo

Any change, especially systemic in the sense of changes in laws and policies and the approach action has difficulties of its own. In some countries cope more easily, while some other countries have bigger problems. It depends on the level of development, social context, and especially social relations, as well as the previous regime.

Public administration reform in Kosovo, as in other former communist countries in transition is often followed by problems. Contrary to other countries in Eastern Europe and Southeast which began political changes and through this the economic and administrative in the 90's, the development of this process in Kosovo has its specifics, because the setting at 90's under the regime of Milosevic's. While other countries have advanced at different rates with reforms, Kosovo until 1999 was not able to think

in this direction, literally. During the period 1990-1999, Kosovo was under occupation by the Milosevic regime, following the revocation of autonomy and deployment as part of Serbia. At this time there can be said that the public administration of Serbian regime existed which was not accepted and rejected by about 90 percentage of the Kosovo Albanian population, and were parallel institutions of the Republic of Kosovo, in which took part the majority of the population of Kosovo, despite the difficulties of functioning.

Before the declaration of independence, 1999-2008, Kosovo was under the international military (NATO) and civil (UNMIK) administration. International administration based on "Resolution 1244 (1999) adopted by the Security Council in the meeting of 4011 on 10 June, 1999" (UN Resolution, 1999). Resolution 1244 "put Kosovo under international administration" (Ibid). With the establishment of the International Mission of the United Nations (UNMIK), we can talk about starting a Public administration accepted by all, as well as democratic. International Administration of Kosovo is divided into three phases: "The first stage ... mostly Kosovo actors have the power of consultation"; "The second phase in early 2000 created the structure of the Joint Interim Administrative (Joint Interim Administrative Structure)", and, "The third phase foresaw conditional Self Government, which should be fulfilled under the Constitutional Framework, which was adopted in 2001" (Weller, 2009, pp. 301-302).

During this period, public administration was initially developed by UNMIK and then over time, according to the above mentioned phases are transferred powers, and through this the administrative functions of the International Administration to local institutions in Kosovo. The period of international administration, so rarely have been criticized for a lack of vision and clarity, which has also affected the efficiency and content changes in the functioning of administration. That happened because of legal and political duality in the transfer phase of competencies. This situation has also produced uncertainty or omission in the efficiency of the functioning of public administration in general.

Public administration reform in Kosovo has been a local continuous process, assisted by various organizations and international experts. This process continues to be the object of assessment and demand for reform from reports of the European Commission's progress, even though it is not part of the Acquis. Have been issued the legal acts and under legal (Basic Laws for Public Administration) and strategic actions have been taken (Strategies for Public Administration) for a more comprehensive approach. In various international reports, and good practices, in the process of democratization and the development of the country, one of the requirements is reform and the establishment of a democratic public administration, in terms of structural as well as functional and effective in service delivery, as for citizens and businesses. Modern and functional public administration and in function of development has already been commitment and global concern, including various organizations regional and global such as: EU or the UN through United Nation Development Program and other. This last the reform of public administration linking among other things with development. "Public administration effectively deals with: Participation and transparency in process of decision-making. Participation through the development process is fair and obligates the state and other actors to create a suitable environment for the participation of participants. Non-discrimination, as a basic element for development and poverty reduction. The right of the people to enjoy the human rights through the use of legal and political rights, as well as responsibility of actors, stakeholders and public and private institutions should be accountable to the public, and people, especially the poor ones, by promoting and protection of their rights" (UNDP, 2014:3-4).While, as SIGMA (Support for Improvement in Governance and Management) helps in public administration reform, including Kosovo. SIGMA's

mission is to strengthen the basis for improving public governance and socio-economic support through capacity building in the public sector, the establishment governance of horizontal governance, and improving the design and implementation of public administration reform, including prioritizing policies and budgeting planned (SIGMA, 2014). In light of this, the institutions of Kosovo have undertaken a number of legal and strategic initiatives for a modern public administration, based on the needs of the time. Implementation remains challenging and work in practice according to these mechanisms already established.

Strategic approach of the public administration reform in Kosovo started in March 2007 foreseen for a period of five years. (MAP, web page for Reform). Strategy has covered eight key areas: Human Resources, Institutional Structure, Management in Public Administration, Communication with citizens, E-Governance, Public Financial Management, Combating Corruption, and the Policy and Legislation. (MAP, web page for Reform). With recent political changes, the declaration of independence in February 2008 and the creation of new institutions, has become the new draft of Strategy by me, taking into account the EU integration process in Kosovo.

Public administration reform requires public institutions that operate efficiently, fast, modern, safe, without excessive bureaucracy in the service of citizens and businesses.

Strategy for Public Administration Reform (PAR) from 2010 to 2013 had 15 targets, by which the problem is addressed, and the need for reform in certain areas as a prerequisite for development. With all the delays and the work that still needed to be done, there is some progress in their fulfilling. Among the areas which are addressed through strategy are:

Policy Management in the central level through: planning, setting clear priorities of government, coordination and medium term budget planning. *Drafting of legislation*, in line with EU standards, including mitigating guidelines drafting and drafting standard laws and bylaws. Establishing the legal basis and clear policies for areas such as: *Ethics and Transparency*, based on clear laws and policies. *Budget planning* and budget execution, *Internal auditing*, *public procurement* according to the best international standards. *Public Administration***,** functional, with deployment to work, protective laws for civil servants and non-politicization of administration. As part of the reform and modernization of Public Administration, has an important role setting up the legal and strategic for *E-governance*, through which advance services: marital status, state portal...

Based on the strategic objectives (2010-2013) set for the reform of public administration, according to a comprehensive report of the public administration reform, there are significant advances, especially in setting the legal framework, policies and strategies in function of modernizing and functionality of public administration, according to the best international standard. Their implementation remains challenging despite advances. As a result of the reform of public administration, in order to develop, namely facilitating the procedures for opening businesses and investments in Kosovo in recent years, especially in 2013 and 2014 noted positive progressing. Starting a business has progress for 26 countries, from 126 in 2013 to 100 in 2014. The regional average (Europe and Central Asia) of doing business that is 71, Kosovo ranks 86th of 189 countries in the field of doing business. While Croatia the 89th, Albania the 90th and Bosnia 131st (World Bank report, 2014, 7).

The main current document for addressing reform of the public administration in medium term for Kosovo is the Strategy for Public Administration Reform (2015-2020) and Action Plan. "The Strategy and the Implementation Plan include essential reforms and development activities and avoid inclusion of continuous and daily activities that do not have substantial impact on results of the reform. The Strategy includes three objectives for areas that will be in the focus of reform for the next medium

term period and which are under direct responsibility of the Ministry of Public Administration. Objectives of the Strategy are: Civil Service in Public Administration, Administrative Procedures and Delivery of Public Administration, and Organization of State Administration and Accountability" (Government of Kosovo, 2015). Contributions of the new Strategy implementation is accepted to have direct positive impact in all public administration fields and in the economic development of the country.

4. Conclusions

By analysing what was said above, the main conclusions of the paper are:

I. Reforming and establish a non-bureaucratic public administration, safe and functional, it is essential for development.

II. Establishment and implementation of policies and laws planned and well-coordinated is very important for the functioning and development of a society.

III. Cooperation, communication directly and through the media and to inform the citizens and businesses for the procedures and laws and policies is crucial for the proper functioning of a society.

IV. For the development of a country is important deployment and operation vertical and horizontal of public administration.

V. Determination of clear strategic objectives and policies as well as their correlation with the budget plan is a prerequisite for development and public administration, sustainable and efficient.

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THE 11TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Citizens' Rights and Freedoms in the European Union

Georgeta Modiga[1], Gabriel Avramescu[2]

Abstract: This paper combines elements of general theory of law, elements of comparative law and European Union law. Currently, we are seeing some fascinating challenges for the rights and freedoms in the European Union. Creating a united Europe raises a delicate problem - compatibility of national values and those of the European Union. Unfortunately, the twenty-eight national identities are threatened by this process so that we wonder, on the other hand, if the peoples of Europe are prepared to give up elements of their specificity and embrace unity in diversity. Perhaps European Union law, which is characterized by multilingualism and multijuridism be considered a new type of law, appeared in view the laws of the world? Only to the extent that the European Union is based on a legal will self and the principles and values that are within the eternal law, both the rationale individual and national identity of the Member States, it is possible unity in diversity and hence there is a new family law. The importance of theoretical and applicative value of this study presents practical relevance for specialists in the field, who work in the judiciary or in the national public administration, and more.

Keywords: European identity; Community policies; European law; rights, freedoms, the European Union

1. General Consideration

Being a pillar of the legality of the European Union, the general principles of law impose to the European institutions, being on a higher place of the law in the hierarchy of EU norms.

It should be emphasized that these principles also apply to Member States, when and to the extent that they act in the domain of European law. We also note that in order to speak of a new legal typology, it is needed first of an autonomous will that leads the legal decision-making process of the EU, the will which represents not only a simple arithmetic sum of individual wills of the Member States; thus the States undertake to submit to a separate legal will distinct of their own.

Besides the autonomous will that orders the legal creation, the new typology implies also the existence of general principles that would command the essential directions of constructing and developing the European legal order.

Regarding the consecration of the dimension of rights and fundamental freedoms, at international level in that period it was drafted the Universal Declaration of Human Rights adopted on 10 December 1948, which, however, is a statement of principle, without clear sanctioning provisions that "it is not an international treaty, generating legal rights and obligations"; later, after nearly a decade there were developed two Pacts: the International Covenant on Economic, Social and Cultural Rights (adopted and opened for signature by the Resolution of the General Assembly of the United Nations no. 2200 A

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(XXII) of 16 December 1966 entered into force on 3 January 1976), the international Covenant on civil and politice2 (adopted and opened for signature by resolution of the General Assembly of the United Nations no. 2200 a (XXII) of 16 December 1966, entered into force on March 23, 1976).

The pacts were open to ratification and the European countries which had signed the European Convention on Human Rights, mentioned above. On the European continent, it adopted the Convention (European) for the Protection of Human Rights and Fundamental Freedoms (the "Convention" or "European Convention on Human Rights"), developed by the Council of Europe opened for signature in Rome on November 4, 1950 and entered into force in September 1953 comprising binding rules that strengthen the protection granted to human rights and providing for also institutions with a clear role in this regard.

The Convention also had as objective of taking the first steps meant to insure the collective enforcement of certain rights enumerated in the Universal Declaration of Human Rights of 1948, and thus constitutes the first instrument of international law that has organized the defense of the individual against their own state, guaranteeing its rights and fundamental freedoms.

The Convention enshrines, on the one hand, a number of civil and political rights and freedoms and it establishes, on the other hand, a system aimed at ensuring the compliance of the assumed obligations of the Contracting States. Three institutions shared the responsibility of this control: the European Commission of Human Rights (established in 1954), the European Court of Human Rights (established in 1959) and the Committee of Ministers of Europe's Council (established in 1949).

Thus, we agree with the doctrine according to which, at least, until the entry into force of the Treaty of Maastricht in 1993, the human rights protection in the European Community and in the European Union has developed judicially, the human rights being protected by Community judge as general principles of Community law. The Maastricht Treaty, establishing the European Union, represents an important step in the legal consecration, through a primary source of Community law, of the concept of fundamental rights, a consecration yet to be accomplished, gradually, by the Treaty of Amsterdam, Treaty of Nice, Charter of fundamental rights of the European Union and the Treaty of Lisbon.

The Charter of Fundamental Rights of the European Union has removed definitively, this gap, representing the normative act specifically the European Union, as a subject of international law, to promote and respect human rights, complementing, as we will analyze later the provisions of the Treaty which guarantees, expressly or nuanced other fundamental rights and freedoms and making that at the level of the European continent, to coexist two legally binding instruments in the matter, the Charter of fundamental rights of the European Union and The (European) Convention for the Protection of human fundamental rights and freedoms developed within the Council of Europe.

The adoption of the Charter of Fundamental Rights of the European Union establishes unequivocally a direct reporting to the Convention of the rights which it guarantees, which it does not exclude, however, the identification of a direct relationship between the fundamental rights enshrined in other laws and legal norms of the Union and human rights from the Convention. The decision to draw up a Charter of Fundamental Rights of the European Union was taken at the European Council in Cologne, on 3 to 4 June 1999 in which it was considered that the state of EU development of that period allowed reunion, in a Charter, of the fundamental rights enshrined until then in the EU area, in order to give them greater visibility, in the context of extending the Union's competences by the Maastricht Treaty and the Treaty of Amsterdam and enlargement of the EU and also in order to compensate EU's democratic deficit; in this respect, it was elaborated the decision in Annex IV of the Council

Conclusions, which had to be implemented until the meeting of the European Council at Tampere of 15-16 October 1999.

The seven titles of the Charter, which represent an element of "modernity" by renouncing at the classical distinction in civil, political, economic and social rights, guarantee the protection of fundamental rights.

Moreover, the Preamble was regarded in the doctrine, as a combination of sources, reserves and considerations extremely complex, where the Court of Justice, the Court of First Instance and the special courts referred generically as the Treaty, as the national courts will have to find the grounds for interpreting the Charter and their decision making.

As it was drafted, the content of the Charter reflects the will of the legal order of the Union's autonomy in this matter. The Fundamental Charter's autonomy is highlighted by its content, by its rights recognized and guaranteed, and also by the European Court of Human Rights that invoked it before acquiring, at EU level, a compulsory feature, moreover, it was placed among the international legal sources for establishing the human rights; however, as we will continue to analyze, the same European specialized court, and also part of the doctrine positions the Charter in a place in which it produces an attenuation of its autonomy.

The adoption of the Charter aimed to establish the exceptional importance of the fundamental rights of EU citizens and consolidating its legitimacy and the establishment of a system more transparent and to be a guarantor of legal certainty for EU citizens; moreover, the content of the Charter has been described as part of the acquis communautaire, its adoption was the culmination of Court's contribution (Court of Luxembourg) and its influence on the protection of fundamental rights in the EU.

Article 6, par. (1) of the Treaty on European Union states that "The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union on 7 December 2000, as adapted on 12 December 2007 in Strasbourg, which has the same legal value as the 14 Treaties, receiving compulsory legal value, as law source of EU for all 28 Member States, with certain exceptions, which would not lead by virtue of this judicial force to the change the Union's competences or acquiring new skills in relation to those established by the Treaties.

The Charter is an essential element in European construction not only in relation to the judicial system of the Union, but also in the attributions of the other institutions of the Union. Thus, the European Commission, which holds the virtual quasi-monopoly of the legislative initiative, will have to propose legal acts to come into the application and development of the Charter norms, and the European Council and the Parliament will have to adopt these measures in the ordinary legislative procedure. In terms of respecting the fundamental rights at national level, the Romanian Constitution in 2003, as the supreme rule of the rule of law, guarantees the human rights, as enshrined by the judicial instruments of the international public law.

Thus, first, starting from the general to the particular, the Constitution provides in art. 1176, compliance with the international norms ratified by Parliament, for subsequently to enshrine in art. 20, the human rights protection, ruling that the constitutional rights and liberties shall be interpreted and applied in accordance with the Universal Declaration of Human Rights (it "is not an international treaty generator of legal rights and obligations, as any resolution of the General Assembly of United Nations organizations, it does not have compulsory feature) with the covenants and other treaties to which Romania is a party.

Thus, by the virtue of Supreme Rule, the Law 287/2009 on the Civil Code, republished, has in art. 4 as in the matters governed by Civil Code, "the provisions on human rights and freedoms shall be interpreted and applied in accordance with the Constitution, Universal Declaration of Human Rights, the covenants and other treaties to which Romania is a party, and if there is a conflict between the covenants and treaties on fundamental human rights to which Romania is a party and the present code, the international regulations shall prevail, unless the present code contains more favorable provisions.

In addition, the Romanian Constitution guarantees the compliance of the fundamental rights and the provisions introduced by the accession to the European Union, using monistic theory of public international law, with its primacy over the national law, thereby art. 148, line (2) provides that, under accession, the provisions of the constituent treaties of the European Union and other mandatory community regulations have precedence over the provisions of the national laws, in compliance with the provisions of the Act of Accession.

In the specialized literature (Diaconu, 2011, p. 11; Selejean-Guţan, 2004, p. 5; Bogdan & Selegean, 2005) it is assessed correctly, that the philosophy of human rights, of individual, civil, political, economic, social and cultural rights defeated the collectivist thesis of the primacy of general interest, but also those of extreme liberalism.

In the favor of the individual there are enshrined by international regulations, since the 19th century, numerous rights and freedoms without the individual becoming a subject of international law.

There are considered fundamental human rights, belonging to the first generation the following civil and political rights: the right to life, the right to liberty, the right to safety, with all their valences.

2. Rights and Freedoms for Individuals Established in the International Documents

One of the problems is the philosophy of the law it also the nature of human rights. Iusnaturalism conceives the existence of previous rights of any legal consecration, springing from human nature, which is unique and immutable. The human rights have been recognized gradually, in a long time.

The human rights have a political, social, emotional charge, which particularizes them. They were the subject of fighting, the claims were not easily recognized in all cases. The Human rights have thus made the object of the claims to some broad movements. A number of progressive forces, who understood the direction of human progress, assumed the role of fighter for asserting human rights.

Human rights are enshrined in the constitutions of the states. There are world countries that claim to have democratic constitution, but they do not have a chapter dedicated to fundamental rights and freedoms. Their existence, their number and guarantees ensuring their implementation contribute decisively to assessing the degree of democracy of a constitution and the rule of law.

Human civil and political rights are rights set out in numerous international acts, and they result indirectly in most covenants, international treaties and conventions that relate to people. We will mention some documents, whether national or international, that guaranteed the most important human rights. Although it appears that the human rights history coincides with the history of mankind, following the vicissitudes of the latter, the first documents which outlined some of the elements of legal protection of individual were Libertatum Magna Cana[1]; in 1719 the US Constitution, which enshrined "the people's right of being ensured personal defense, of housing, documents and goods

[1] The document was issued in England in 1215 and devoted mainly privileges for the aristocracy, and in 1776 it was adopted the Bill of Rights.

against unreasonable searches and seizures", freedom of religion, speech, press, the right to peaceful assembly, and in 1776, the Bill of Rights[1] proclaims that "all men are by nature free and independent and have some inherent rights" of which no one can be deprived.

The Declaration of the Rights of Man and of the Citizen, of 1789, is the document which has inscribed the principle according to which "men are born and remain free and equal in rights."

In the 19th century there have been concluded bilateral and multilateral conventions by world states, which have been incited, tangentially, the human rights issues. All these documents using the concept of "human rights", as known today, include especially items of sectorial type, unstructured yet, creator of mentalities and that will be acknowledged over time. Only the documents adopted in the 20th century use this concept, in the proper sense. The 1945 UN Charter affirms the ruling of peoples of the world to proclaim the belief in "human fundamental rights", in the dignity and value of the human person, in the equal rights of men and women and of large and small nations". The principle of the UN Charter enshrines the principle of equality in rights for all, without distinction as to race, gender, language or religion and the obligation of UN member states to execute, in an effective manner, the rights it enshrined.[2]

The corollary of these documents, with direct incidence on human rights, is the International Bill of Human Rights, which includes a set of documents: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and political rights and The Optional Protocol on the international Covenant on civil and political rights.

The Universal Declaration of Human Rights was the first document adopted in this area, by an organized community of nations and it states the main economic, social, cultural, civil and political rights, which they can claim, without any discrimination, the human beings, as they are endowed with reason and conscience and the principles of non-discrimination and equal rights[3]. The United Nations Charter was focused on human rights and fundamental freedoms for all persons, wherever they may be. But the rules of the UN Charter were considered insufficient as it does not specify the nature of the obligations undertaken by the states. Therefore, it has imposed the adoption of another international document, the Universal Declaration of Human Rights, which is a unique mix of civil and political rights and economic, social and cultural rights under the constant symbol of equality and non-discrimination. The International Covenant was adopted by UN General Assembly Resolution no. 2200 A (XXI) of 16 December 1966; the International Convention on the Elimination of All Forms of racial Discrimination was adopted by the UN General Assembly in 1965. Other acts are the 1950 European Convention, the American Convention of 1969, the African Convention of 1981 and many other documents.

3. The Beneficiaries of Civil and Political Rights

According to the International Covenant on Civil and Political Rights, its provisions shall apply to all persons within a State Party and subject to its jurisdiction. It means that there are considered only

[1] This right has been adopted in Virginia.

[2] As for the responsibility of States for violations of human rights enshrined in this document, see Alvarez, L.F.; London, S.J., *Răspunderea pentru violarea drepturilor omului în Carta Națiunilor Unite/*The *Responsibility for human rights violations in the United Nations Charter*, in (Honorem & Dogara, 2005, pp. 537-547)

[3] Severin, A., *Identitate europeană - identitate național statală/European identity – national-state identity*, http://www.mdlp.to/jio-cumente/info_integrare/romania, accessed on 02 March 2015.

individuals, not corporations or other legal entities. The Optional Protocol grants the right to complain only to the victims of violations of established rights. It is the consistent practice of the Human Rights Committee, in the same sense, the American Convention on Human Rights refers to people, adding that this means every human being.

Unlike the Covenant, the European Convention of 1950 refers to "anyone" as the beneficiary of the guaranteed rights and article 25 in its original form and in article 34 as amended by the Protocol no. 11, adopted in 1994, gives the right to petition to "any individual, NGO or group of persons" who claim to be victims of a violation by a State party of rights enunciated in the Convention or its protocols. A similar provision is stated in article 44 of the American Convention.

4. Rights and Freedoms in the European Union

Within the European Union, human rights and fundamental freedoms have currently a particular significance, the European Union currently comprises 28 countries, which has enabled the accomplishment of the wishes of peace, freedom and plenary affirmation of human rights in the European space.

The fundamental human rights are also recognized by the European Union, many documents emanating from the European institutions directly referring to their existence and protection.

Since the establishment of the Council of Europe, the principle of respecting human rights (Rideau, 2012) was one of the cornerstones of the organization, during a meeting in The Hague in 1948, the Hague Congress was a catalyst for the creation of the Council of Europe, by adopting a resolution which has the following content: "The Congress believes that Union or Federation that will arise should remain open to all European nations with a democratic government, which will undertake to respect a Charter of Human Rights. It decides to create a commission to immediately achieve the double task of drafting this Charter and to lay down rules to which a state must comply in order to deserve the name of democracy."

Article 3 of the Statute of the Council of Europe states: "Any member of the Council of Europe recognizes the supremacy process of the rule of law and the principle according to which any person within its jurisdiction must enjoy human rights and fundamental freedoms".

Council of Europe Statute, article 8, states: "Serious violations of human rights and fundamental freedoms justify the suspension or expulsion of a member state of the Council of Europe". The Statute was signed on 5 May 1949, just 18 months after its adoption; the 10 member states signed on 4 November 1950 the European Convention on human rights and fundamental freedoms. The Convention entered into force on September 3, 1953.

Article 1 of the European Convention stipulates that "the High Contracting Parties shall ensure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention." The States that ratify this Convention automatically accept the double obligation arising from Article 1. Firstly they must ensure that their internal law is compatible with the Convention, and secondly, the states that decide to ratify the Convention must remove any non-recognition of the rights and freedoms protected by it.

The Rights and freedoms protected by the Convention are: the right to life; prohibition of torture and inhuman treatment or degrading treatment; prohibition of slavery and forced labor; liberty and security of person; the right to a fair trial; non-retroactivity of the criminal law; the right to privacy, to family

life, of residence and correspondence; right to get married, to form a family and to equality between spouses; freedom of thought, conscience and religion; freedom of expression and information; freedom of assembly and association and the right to form trade unions; property rights; the right to education; right to free elections; recognized rights of foreigners; prohibition of discrimination; right of individual appeal on judgments. (Azoulai, 2015) In case of war or other public emergency, art. 15 of the Convention provides for situations in which exceptions may be made to the rights mentioned above. In the Convention there are mentioned other rights as well.

5. Conclusion

In the light of the above analysis, we believe that it would be impossible to have a process of integration in Europe through which it could reach a European identity replacing the national identities of Member States. It is neither possible nor desirable - it is stated in a study somewhat fair - to level the national identities of the member nations or their melting into a "nation of Europe" or synthesize the current national identities in some areas, a solution which is not free of obstacles.

The attempts to develop a unified Europe of nations, an identity kind based on a common European cultural tradition, are meant to produce a fierce national opposition. However, ultimately, the advanced integration process will lead undoubtedly to a reassessment of national identity or a transformation, a reshaping of national identities, in the sense of narrowing their content and the emergence of a post-national identity that would face the new realities and future training of a European identity; in the process of developing and strengthening the European Union and deepening the gradual integration process, stretching to new areas which occurs in the states, also other changes intervene such as, for example, readapting the State to the new challenges which inevitably entails also the renewal of sovereignty that by attributing a wider and diversified range of core competencies of the European Union, which is also subjected to an intensive rehabilitation process, and such an environment will attract as a magnet in national identity in the transformation crucible. But these are not univocal processes, but they are rather parallel. So, in the interaction of processes occurring in the flow of attributing competences of the Member States of the Union or of their sharing or action to support, coordinate or supplement the actions of states, the Union strengthens its structures, clarifies and acquires new goals and skills, which means progress on the line of identity formation.

In this respect, art. 2 pt. 3 TEU states that the Union shall respect the cultural diversity and linguistic wealth and it ensures the protection and development of European cultural heritage and art. 10, point 2 that the Union defends its values, fundamental interests, security, independence and its integrity.

According to point 3 of article 3, "under the principle of loyal cooperation, the Union and the Member States shall respect, assist each other in carrying out tasks which flow from the Treaties".

It follows that the relations between the European Union and the Member States demonstrate the presence of a continuous connection between the size and scope of development and consolidation of the Union and the peculiarities of the transformation process and rehabilitation or remodeling that States pass as members of the Union in terms of recognition of the right to diversity; it is obvious that the elements of identity, primarily cultural, such as language, historical traditions, personalities, as well as the specifics of artistic creation and others alike should not fall under the European institutional control, although in an tangent area such European policies in education rely on the requirement that other nations (especially neighbors) in the history books it should not appear as enemies.

As for the traditions, the Treaty provides, for example, that the Union shall constitute an area of freedom, security and justice, respecting the fundamental rights and the different legal systems and traditions of the Member States [Art. 61, par. (1)].

In the context of the emergence of an international society that are in a continuous process of globalization and forced to identify solid means of protection of the individual against new forms of prejudice to its rights, the European Union has developed evolutionary its own system for ensuring the compliance of the fundamental rights applicable to both national and international law. In conclusion, we consider that respecting the fundamental rights in the European Union is provided through a range of tools and specific mechanisms that make up a solid structure, which, together with the one specific to the Council of Europe helps to ensure, on the European continent, each human fundamental right separately, which facilitates creating the possibility of promoting human rights globally.

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REALITIES AND PERSPECTIVES

Considerations Relating to the Jurisdiction of the Arbitration Litigation on Solving Public Acquisition Contracts

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Abstract: The current legislation on public procurement, namely Government Emergency Ordinance no. 34/2006 on the public procurement contracts, public works concession contracts and service concession, currently governs the arbitration institution, having the possibility of settling any disputes regarding the execution of contracts. We consider that the contested provisions infringe the principle of predictability, as they are not clear because of the regulation of the two articles, and thus the analysis of the entire chapter entitled "Solving complaints" (Chapter IX of the G.E.O. 34/2006) in conjunction with the title order or with the purpose and principles of the adoption of G.E.O. 34/2006, it appears that it refers only to the procedure for settling disputes arising in attributing public procurement contracts, concession contracts for public works service concession contracts.

Keywords: public procurement; principle of predictability; litigation

The object of contention of this article is the provisions of art. 286, para. 1 sentence II, based on the provisions of art. 288¹ Government Emergency Ordinance no. 34/2006 regarding the awarding of public acquisition contracts, public works concession contracts and service concession contracts published in the Official Gazette of Romania, Part I, no. 418 of 15 May 2006.

The current legislation on public acquisitions, namely Government Emergency Ordinance no. 34/2006 regarding the awarding of public acquisition contracts, public works concession contracts and service concession contracts now regulates the institution of arbitration as a possibility of solving the possible litigation on contracts' execution. According to depositions of art. 288[1] of GEO 34/2006, "parties may agree that all litigations related to the execution of contracts covered by this emergency ordinance shall be settled by arbitration".

According to the provisions of Art. 286 of GEO 34/2006, "trials and applications for compensation to repair damages caused in the award procedure and those on the execution, nullity, annulment, cancellation or unilateral denunciation of public acquisition contracts shall be settled in the first instance by the department of Administrative and Fiscal Contentious tribunal in the district where the headquarters of the contracting authority", but in conjunction with art. 288¹ jurisdiction can be attributed also to arbitration, in the execution of contracts

Administrative intrinsic nature of public acquisition contract is enshrined in the express provisions of GEO no. 34/2006, in accordance with the provisions of Law no. 554/2004, according to which litigations resulting from the execution of such contracts shall be decided by the administrative contentious court that are materially competent to judge, given that the parties have not expressly

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stated, through an arbitration clause, that the dispute is assigned to the jurisdiction of arbitration. Thus, public acquisition contract is classified as being assimilated administrative act and not commercial contract.

Through the modifications made, it was so expressly stated that the courts competent to settle litigations that will arise both within the procedure for awarding Public acquisition contract, and in eventual litigations that will arise between contracting authorities and beneficiaries of acquisition contracts regarding their termination, are the administrative courts, excluding the jurisdiction of common law courts.

In our opinion, the provisions cited in the last sentence, start from the premise of existence into being of a public acquisition contract and do not refer to the previous stage of its award. In other words, these regulations relate to litigations arose after the time of the agreement of the parties contracting on perfecting the contract, implying that the award stage was initiated and completed successfully thus exceed the framework of GEO 34/2006.

In this situation, a litigation described as administrative contentious litigation, attracts the competence to settle it in the first instance to administrative department of the court in the procedure established by Law no. 554/2004.

Indeed, arbitration is an exception from the principle that justice is done through the courts and represents that legal mechanism effectively designed to ensure an impartial judgment, quicker and less formal, confidential, completed by enforceable resolutions (Decision of Constitutional Court no. 8 of 9 January 2007, published in the Official Gazette of Romania, Part I, no. 73 dated 31 January 2007).

However, if we consider the provisions of Law no. 24/2000 on legislative technique rules for drafting laws, the legislature in the manner in which has regulated the litigations settlement provisions, intended to regulate only the procedure for Solving Complaints arising in the award phase.

So the legislature intended to confer a special regulation to stage of awarding public acquisition contracts, meaning that litigation concerning them are within the competence of a particular court, those of contentious administrative and resolution procedure is expressly provided, with shorter trial terms and appeals with shorter term.

The motivation envisaged by the legislator was that of the legal relationship born out of these contracts and their impact on the public interest, which is required to be favored.

However, If the legislator had in mind to protect also the execution phase of public acquisition contract, it would have been regulated in the content of the Ordinance, starting from the title, purpose, principles, rule of provision in accordance with Law no. 24/2000, which can be considered in the exercise of constitutional review, by reference to the provisions of art. 1 para. (5) of the Constitution. In this respect it is the Constitutional Court jurisprudence, for example, Decision No. 26 of 18 January 2012, published in the Official Gazette of Romania, Part I, no. 116 of 15 February 2012, where Court ruled that norms of legislative technique have not a constitutional value, but by their regulation the legislator imposed a series of binding criteria for the adoption of any legislation, whose compliance is necessary to ensure systematization, uniformity and coordination of the laws, and the content and appropriate legal form to every normative act. Therefore, respecting those rules contributes to ensure a legislation which complies with the principle of legal relations security, having necessary clarity and predictability. In this sense is stated also in the jurisprudence of European Court of Human Rights concerning the availability and predictability of law.

So, we consider that contested provisions infringe the principle of predictability, as they are not clear because from the way of regulation of the two articles, and thus the analysis of the entire chapter entitled "resolving complaints" (Chapter IX of the GEO 34/2006), in conjunction with the title of the ordinance respectively with the provisions on the purpose and principles of the adoption of GEO 34/2006, it appears that it refers only to a procedure for resolving litigations arising in the stage of award of public acquisition contracts, public works concession contracts and service concession contracts.

According to art. 8 paragraph. (4) first sentence of Law no. 24/2000 on legislative technique rules for drafting normative documents, republished in the Official Gazette of Romania, Part I, no. 260 of 21 April 2010 "legislative text should be made clear, fluent and understandable, without syntactical difficulties and obscure or ambiguous passages", and according to art. 36 para. (1) of the same law, "legislative acts must be written in a legal language and style normatively specific, concise, sober, clear and precise which would exclude any ambiguity in strict compliance with the rules of grammar and spelling".

So from the title, but also from the purpose and principles set out in art. 1 Section 1, Chapter 1 of the Emergency Ordinance no. 34/2006 regarding the awarding of public acquisition contracts, public works concession contracts and service concession contracts, it appears that "this emergency ordinance regulates the legal regime of the public acquisition contract, the public works concession contract and service concession contract, contract awarding procedures and ways of solving the appeals submitted against documents issued in connection with these proceedings".

Further it is defined the purpose of adopting the ordinance and principles of public acquisition contract award, through regulates rules both texts referring to the awarding procedure.

According to Art. 2 para. 1 the purpose of this emergency ordinance is to promote competition between suppliers; guarantee equal treatment and non-discrimination of economic operators; ensure transparency and integrity of the public acquisition process; ensure efficient use of public funds by applying the procedures of award by the contracting authorities.

The principles underlying the public acquisition contract award are: non-discrimination; equal treatment; mutual recognition; transparency; proportionality; efficiency of use of funds; accountability.

Moreover, in the final part of the text of the Ordinance is clearly stressed that the Emergency Ordinance no. 34/2006 transposes certain European directives aiming only the award stage: "this emergency ordinance transposes Directive no. 2004/18 / EC on the coordination of awarding procedures of contracts for works, supplies and services, Directive no. 2004/17 / EC on the coordination of acquisition procedures applied by entities operating in the water, energy, transport and postal services sectors, published in the Official Journal of the European Union (OJEU) no. L134 of 30 April 2004, except art. 41 (3), art. 49 (3) - (5) and art. 53, which are transposed by Government Decision, Directive 1989/665 / EEC on the coordination of laws, regulations and administrative provisions relating to the application of review procedures concerning the award of supply contracts and public works contracts, published in the Official Journal of the European Communities (OJEC) no. L395 of December 30, 1989, and Directive 1992/13 / EEC on the coordination of laws, regulations and administrative provisions relating to the application of Community rules for the acquisition procedures of entities operating in the water, energy, transport and telecommunications sectors,

published in the Official Journal of the European Communities (OJEC) no. L76 of 23 March 1992 except art. 9-11 which transpose by Government Decision".

CHAPTER IX entitled Settlement of complaints regulate entirely the procedure for resolving complaints namely litigations in front of the CNSC or the courts, correctly aiming the award stage. Any other litigations arising between the parties that exceed the award framework of contracts will be settled under the Law 554/2004.

In conclusion, looking from this perspective, we consider that the text contained in the art. 286 of GEO 34/2006, para. 1 sentence II, cannot target the contract execution. So, in the litigations arising in connection with the execution of the mentioned contracts against acts issued in connection with these procedures, they can be resolved only under the Law 554/2004 on administrative contentious.

For the reasons outlined in the contents of above reasons, we consider that the provisions of art. 286, para. 1 sentence II and 288¹ Government Emergency Ordinance no. 34/2006 on the award of public acquisition contracts, public works concession contracts and service concession contracts, are required to be reviewed by an emergency ordinance.

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REALITIES AND PERSPECTIVES

The Settlement of the Exception of Illegality according to the Latest Regulations in the Matter of Administrative Contentious

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Abstract: It has been already held in jurisprudence, that the exceptions of illegality may be invoked within processes of any kind, by judging these incidents by the courts vested with the trial of the main requests. Reason for the amendment of Art. 4 of Law no. 554/2004 was that of relieving the administrative courts by prosecution of exception of illegality raised following the litigations of any kind by transferring their jurisdiction to the courts vested with their main demands.

Keywords: jurisprudence; administrative courts; jurisdiction

One of the fundamental principles of administrative law is the principle of legality of the work carried out by public administration bodies, enshrined in art. 1, para. (5) of revised Romanian Constitution.

According to constitutional provisions, legislation and jurisprudence of the Court of Justice of the European Union, of Law no. 554/2004, of administrative litigation and under the provisions of Emergency Ordinance no. 34/2006 on the award of public acquisition contracts, public works concession contracts and service concession contracts, the non-respect of general principles of administrative law by public authorities draw nullity sanction of administrative acts**.**

In a previous decision, the High Court of Cassation and Justice held that the plea of illegality is a means of defense, an indirect way of controlling the legality of an administrative act, which can only be used in a trial pending, regardless of its nature.

According to recent jurisprudence of the Constitutional Court regarding dispositions of art. 4 of Law no. 554/2004, this regulation "establishes a procedural means by which the interested party may challenge the legality of a unilateral administrative action with individual nature of which the adverse party intends to rely to prove their claims or to defend or assert a right.

The criticized text of law is consistent with the provisions of art. 126 par. (6) of the Basic Law, which guarantees the control of administrative acts within the administrative court as through the plea of illegality even this is done in practice, expanding the possibility of control also over acts whose legality was not contested on the main track.

The Constitutional Court [2] explains that, in the absence of any distinction in art. 126 par. (6) first sentence of the Constitution, this concept refers equally both to the control of legality of administrative

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[2] Constitutional Court Decision no. 267/2014 regarding the reject of plea of unconstitutionality of art. 4 para. (2) and (3) of Administrative Contentious Law no. 554/2004 published in the Official Gazette, Part I no. 538 of 21.07.2014.

acts of public authorities exercised on the main track and the control of their legality exercised incidentally of the plea of illegality.

So now, according to the amended provisions of art. 4 para. 1 of Law no. 554/2004, the legality of an administrative act with individual nature, regardless of the date its issue can be investigated at any time in a trial, by way of exception, ex officio or at the request of the interested party.

The court vested with the substance of the litigation and before which was invoked plea of illegality, noting that the administrative act of individual nature depends on resolving the litigation in substance, is competent to rule on the exception, either through an interlocutory closure, or by decision that will rule in question. In case the court decides on the exception of illegality through interlocutory closure, it can be appealed together with the substance (art. 2 of Law 554/2004).

Consequently, according to par. (3) of art. 4 "if has been found the illegality of the administrative act of individual nature, the court before which was invoked the plea of illegality will settle the case, notwithstanding the act of which illegality has been found".

Regarding the reasons that may cause the conviction of the court that the act is wrongful drafted, these refer to the noncompliance of the administrative act express or assimilated by the imperative text of law namely by the hypothesis, the disposition of the legal standard or the application of a sanction other than that provided for existing legal situation.

For example, an essential condition for legal administrative act to be legally issued is that the issuing authority to follow the procedure foreseen for it. By issuing some administrative acts which infringe the dispositions of the law or principles of law creates an abuse or excess of power, in concreto by violating the limits of competence foreseen by law of the issuer of act or by violating of the legal rights of the addressee.

Legality of administrative acts requires also their compliance with the general principles of administrative law (such as the predictability of legal rules, the legitimate expectations of citizens in administrative bodies, legal certainty, equality, proportionality[1], non-discrimination etc.) created and promoted by the constant jurisprudence of the Court of Justice of the European Union and the one of European Court of Human Rights.

Regarding the insurance of legality of administrative acts, public authorities, in drafting administrative acts, are obliged to respect not only provisions of domestic law with higher legal force, but also main or derivative communitarian documents, as well as general principles of law, some codified in domestic and European legal acts and others imposed by the established practice of the Court in Luxembourg and the Court in Strasbourg. The compliance of principles set out above of illustrative nature, principles which can be invoked in the exception of illegality is rooted in the Constitutional provisions. According to the Romanian Constitution, it is imperative to respect domestic laws, international treaties priority, namely the priority of legislation and jurisprudence of the European Union. This implies that all principles of administrative law of the European Union in material public acquisitions, implicitly jurisprudence of Court of Justice of the European Union, are mandatory for Member States.

[1] This principle designate that the legality of acts issued is subject to the condition that the means used be appropriate to the objective pursued and does not exceed what is necessary to achieve this goal.

One such example may be the act issuer possibility to infringe the principle of priority of satisfying community interests, by issuing with bad faith a notice of termination on a public acquisition contract[1]. If this principle is raised by way of plea of illegality, after considering the plea of illegality raised, the court / arbitral tribunal may find infringement of the public interest[2], noting consequently the illegality of the issued act.

Regarding the noncompliance of the administrative act issued with the substance of the provision of the violated legal norms, in practice we can find the circumstance when the defendant disposes the issuance of an administrative act without respecting the principle of foreseeability[3] ***and legitimate expectations[4].*** Thus, the administrative act is issued prematurely, for example issuing a notice of termination without compliance with the procedural order regulated by the parties by a public works acquisition contract[5]. The European court sanctioned the non-respect of the principle of foreseeability, declaring null the acts issued without respecting it, on the ground that are abusive, depriving their recipients from the opportunity to get acquainted with them in a reasonable time and to adapt their behavior according to the changes made by them. Regarding the principle of legitimate expectations / principle of legitimate trust, it is an element of the principle of legality of administrative acts and establishes on one hand, the obligation of public authorities to protect (through consistent and non-contradictory behavior) legitimate expectations of individuals, and, on the other hand, establishes their right to evolve into a stable and predictable legal framework in who to trust, at shelter from its brutal changes. The Luxembourg court also ruled that the administrative acts issued with violation of their legitimate trust of their recipients are void, those interested being entitled to bring actions for compensation for damages.[6]

Also, failure to comply preliminary procedure of conciliation before issuing an administrative act, may lead both at harming the interests of the addressee of the administrative act issued in the sense that, given the contractual relationships between the parties and the subject of counter provisions to which

[1] *Public works acquisition contract is regulated by GEO no. 34/2006 on the award of public acquisition contracts, public works concession contracts and service concession contracts, fully transposing the provisions of Directive 2004 / 18 / CE in Romanian law on the coordination of procedures for the award of public works, supplies and services acquisition contracts of the Directive 2004/17 / CE on the coordination of procedures for the award of contracts in the water, energy, transport and postal services sectors (JOUE L 134 of 30 April 2004), as amended, and of the Directive 1989/665 / CEE on the coordination of laws and administrative acts related to the application of procedures aiming appeals against the award of supply public acquisitions and works public contracts (JOCE L 395 of 30 December 1989), as amended, namely of the Directive 1992/13 / CEE coordination of the laws and administrative acts concerning the application of Community rules on the public acquisition procedures of entities operating in the water, energy, transport and telecommunications sectors (JOCE L 76 of 23 March 1992), as amended.*

[2] Thus, according to Art. 2 pt. R of Law 554/2004, the interest of legitimate public is the interest aiming at legal order and constitutional democracy, guarantee of rights, freedoms and citizens fundamental duties, community needs satisfaction, achieving competence of public authorities. If it is about an administrative contract that will include an agreement (bilateral) between two parties, for example, the enhancement of public assets and public services delivery, to which the provisions of Art. 1270 par. 1 of the Code. civ. are applicable, it is withheld the regulatory part requiring the priority of public interest in freedom of contract in accordance with art. 8 of Law no. 554/2004.

[3] See Decision of the European Court of Justice in Case C-368/89 Crispoltoni v. Fattoria Tabacchi di Citta di Castello , Reports 1991, p. I-3695.

[4] The principle of legitimate trust is the materialized possibility through which individuals (enjoying some stable normative benchmarks) to carry out certain rights.

[5] *Public works acquisition contract is that contract through which an economic operator designated usually through a procedure that ensures competition (public auction) performs for a contracting authority the execution of some works related to one of the activities listed in Annex. 1 of GEO no. 34/2006 or execution of construction, with or without design*.

[6] In this respect, as an example, the Court in Strasbourg has condemned the activity of state authorities to take legal action in the demolition of buildings after a long time of their seizure, such a practice infringing upon their legitimate expectations of their owners, which created the belief that buildings cannot be abolished, considering that they have been accepted tacitly by the competent bodies. See the Decision of the European Court of Justice in cases reunited 7/56 and 3-7 / 57, Alger c. Common Assembly of CECO, Reports 1957, p. 81.

they were obliged by a contract of public acquisition, may cause higher damages that could have been avoided if this prior procedure had been followed.

From this perspective, we can easily deduce that the need to amend the provisions for settling the plea of illegality in the action where it has been raised, it is also justified in light of the fact that the judge has the possibility to examine the exception in consideration of delivery of a solution with substance of the case analyzing thus exception, where necessary, from the perspective of an ample probatory material.

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