THE 6TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

Reforming Public Administration

Dilemmatic Concepts in Social Area

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Abstract: As a rule, in every domain, a pertinent and non-ambiguous definition and employment of concepts is desirable. But, sometimes, certain terms are mistaken for, or identified with, one another, resulting in equivocal contents and interpretations which are more or less valid. For this reason, we will present a series of such dilemmatic notions, hoping that we could at least bring some "light" to their contents and signification.

Keywords: social protection; social security; social insurance; personal insurance

1 Social Security vs. Social Protection

In contemporary society, social protection as a component of state social politics has become the main "weapon" against the current crisis and the almost indispensable instrument of each governmental party which aims to come to rule. The concept of "social protection" is often assimilated with the concept of "social security". Therefore, certain clarifications need to be mentioned.

1.1 Social Security

The concept, used in the European Code of Social Security (ECSS), includes both social insurances and social assistance, and it refers to nine social domains: medical care, sickness benefit, unemployment benefit, old age benefit, employment injury and professional sickness benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. The European Code of Social Security is a judicial instrument adopted by the member states of the European Council, in Strasbourg, on April 16, 1964, entered into force on March 17, 1968 and signed by Romania on May 22, 2002[1]. It was elaborated on the basis of the provisions in Convention no. 102 of the International Labour Organization (ILO), referring to minimal standards of social security, adopted in 1952. For each of the nine domains listed above, the Code establishes the risk covered, protected persons, benefits granted, eligibility criteria, amount of benefit, period of benefit allowance, and duration of waiting periods. The Code also establishes certain percentages of social security benefits which must be granted in proportion to the anterior income of the beneficiary prior to the appearance of the social risk.

[1] Ratified by law no. 116/2009, published in O.M. no. 331/2009.

According to simple definitions, social security designates the corpus of measures, financial benefits or benefits in kind, given with the purpose of protecting the income in case of social risk (http://www.legislatiamuncii.ro/index.php?pag=pages&id=104), or social security represents the total amount of institutional methods aiming at repairing (eliminating or diminishing) the damaging consequences produced by different social risks (Tănăsescu, n.d.). Social risks can include: sickness, maternity, invalidity, old age, employment injury and professional sickness, death, unemployment, family allowances (according to ECSS). The International Labour Organization defined social security as the protection granted by the society to its members by way of a collection of public provisions against economic and social misery, which threaten them in case of loss or significant reduction of their income as a result of disease, maternity, professional injury, unemployment, invalidity, old age or death, as well as by means of granting medical care and allowances to families with children. We can observe that this institution equates the two terms social security – social protection.

More than that, UNO General Assembly qualified the concept of "social security" as an inalienable human right, on the occasion of the adoption and proclamation of the Universal Declaration of Human Rights, on December 10, 1948, which stipulates, in article 22, that "*anyone, as a member of society, has the right to social security*".

Hence, social security can be defined as the collection of institutions and regulations, norms and measures which are activated once the social risks appear (or even for their prevention).

1.2 Social Protection

In Romanian Constitution, article 47, alignment 1 is mentioned that: "*The state shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens*".

An article with a very suggestive title (Odinokaia, 2009) presents an extremely pertinent analysis related to the "connection" between the two notions, resorting to definitions from the judicial area, as well as the national and international theoretical areas. As a conclusion, the author remarks that by using the social protection notion, in a narrow sense, we plead for the synonymy between social "protection" and "security", making reference to the system of social insurance and assistance, and by using this concept in a broad sense, besides social security, we also refer to labour protection, moral, cultural, civic protection, etc. Another opinion (Văcărel, et al., 2007) underlines the fact that the area circumscribing the actions related to social protection exceeds the area of actions undertaken by social security. Among the social protection measures we find the creation of new jobs, the subsidization of products and services given to the population, monetary restitutions for persons with fixed income in case of raising prices for vital goods for the population, fiscal facilities, as well as unemployment aids, social assistance, social insurances, and so on. Hence, for social protection, besides socio-cultural expenses, expenses of an economic nature or some other type are also made.

An interesting connection between the two concepts refers to the fact that social security is the effect of social protection measures (Isac, 2009). These measures comprise: "work place protection, the protection of the employed population, protection for preserving life quality, protection of underprivileged social groups, protection of the entire community". As a result, by means of social protection measures, one of the objectives and desiderates of social protection is achieved: social security. Similarly, the Socio-Economic Program of the European Community contains a series of measures for social protection, whose aim is the improvement of workplace and living conditions in

Europe. These measures are targeted at six interconnected domains: the development of social dialogue and professional relations on the labour market, the restructuring of life and work, the promotion of work health and security, the promotion of environment protection policy measures, the improvement of living conditions and of collective welfare, and the evaluation of future technologies. Therefore, in a narrow sense, social protection or security includes the institutions, regulations, norms and measures referring both to social insurances and to social assistance, incorporated into a national system of social protection. In a broad sense, social security is only a component or a purpose of social protection, the latter comprising other measures aimed at social welfare, too.

For a better understanding of the two concepts, below we present a comparative table:

Table 1 Social security vs. social protection

Comparison criteria	Social security	Social protection
1. Nature	Socio-cultural expenses	+ expenses of an economic character
2. Purpose	Ensuring social welfare	Ensuring social welfare
3. Areas covered	Social insurances and social assistance	+ work protection, moral, cultural, civil, environmental protection etc.
4. Forms of manifestation	Social insurance benefits, social services and benefits	+ benefits of an economic character etc.
5. Financing sources	In general, specially constituted budgets, the state budget and local budgets, funds of civil societies and local communities, and, exceptionally, other collections from various sources	+ other sources (extraordinary funds, non-callable financing etc.)
6. Beneficiaries	Certain categories (unemployed people, retired persons etc.) and underprivileged social groups	The entire community
7. Character	Predominantly unproductive	+ productive
8. Risks covered	Social risks	+ other risks
9. Guarantee method	By the Constitution and other specific laws	By the Constitution and other specific laws
10.Current trends/tendencies	Strategies for improving efficiency	Increased importance

2 Social Insurance vs. Personal Insurance

The present-day uncertainty, of almost every step we take, determines us to resort, voluntarily or involuntarily, to a corresponding solution, which is almost indispensable nowadays: insurances. In general, insurances represent protection instruments while facing risks, which are sometimes inevitable (this entails preventing, removing and repairing their negative consequences), offered by various specialized institutions, in exchange for payment as contribution or insurance premium. Currently, the insurance methods for persons, available in our country, are represented only by the following variants and forms:

2.1 Social Insurance

If the risks are of a social character (involving the state's intervention), then insurances also acquire the same connotation. According to a definition (Văcărel, et al., 2007), social insurances represent those components of financial socio-economic relations which assist – in the process of gross domestic product distribution – in forming, allocating, managing and employing monetary funds necessary for compulsory protection of employees and retired persons, as well as protection of their family members.

In other words (Romanian Academy, 2010), social insurances constitute an economic contract between generations, the management of its development and the supervision of mutual compliance with the contractual provisions being the duty of the sate.

The social insurances can be:

- state social insurances;
- unemployment social insurances;
- health social insurances.

The urgent necessity of social insurances, in a market economy, gives them an objective character. Nevertheless, their existence is strictly dependent on, for the most part, the contributions of those who benefit from them (in exceptional cases they are supplemented by subsidies from the state budget or revenues from various sources). As a result, they are based on a contributory system due to which the various types of beneficiaries take advantage of a range of social insurance benefits if they comply with some criteria. The types of social insurance benefits include: pension (for age limit, early retirement pension, partial early retirement pension, disability pension, survivors' pension), allowance for temporary labour incapacity caused by employment injury and professional sickness (according to some conditions), death grant, quarantine allowance, unemployment allowance[1], medical care, allowances for social health insurances etc. These social insurance benefits are guaranteed by law. The pensions' law, with its subsequent amendments and additions, stipulates that the right to social insurances is guaranteed by the state and it is applied by means of the *public system of pension and other rights of social insurance*, and the updated unemployment law, in article 1, demands that each person is guaranteed the right to *unemployment insurances*. The major system of financing the protection of the population's health is added to this, and it ensures access to a basic services package for the insurants, represented by *health social insurances.*

Most of the social insurance benefits have an unproductive character, representing the so-called "passive benefits", namely a final expenditure from GDP. Nevertheless, lately, the "active benefits" have started to be used on a large scale, whose aim is, for instance, that of creating new jobs, professional retraining, offering facilities for those hiring unemployed people, applying measures to prevent unemployment and sickness etc. This entails a growing effectiveness of funds for social insurance benefits, with a double effect: on the one hand, their pertinent usage and, on the other hand, creating added value (productive character) and, implicitly, economic and social development.

2.2 Personal Insurance

According to Law 32/2000, the insurance represents the operation by means of which an insurer composes, on the basis of mutuality, an insurance fund, due to the contribution of a number of insured persons, exposed to possible risks, and indemnifies those who might be affected by loss by means of the fund made up of insurance rates, and by means of other revenues resulting from the activity performed. Unlike social insurances, personal insurances are optional most of the time (with certain exceptions), depending exclusively on insurance premiums paid by the insured persons, and the insurance

[1] In some works, there is the difference concerning the terms unemployment indemnity, insurance or allowance allocated to those who have previously worked, who have length of service, and have paid contributions and benefits and dole which is given to the newcomers on the labour market

indemnification (damage/loss compensation) is granted in clearly established cases and only after complying with strict conditions.

The value of the insurance premiums is not unitary for all the insured persons, but it varies, mainly depending on the dimension of the accepted risk and on the financial possibilities of each insured person. The insurance is based on an insurance policy in which the contracting of insurance or insured person is liable to pay a premium to the insurer, and the latter he is liable to pay, when the insured risk appears, to the insured person, insurance beneficiary or damaged third party the compensation or insured sum, named indemnification, complying with the agreed limits and terms. Such an activity can only be carried out by insurance or reinsurance companies authorized by the Insurance Supervision Commission or by competent bodies from the EU member states, which operate in Romania according to the freedom of establishment and free movement of services. A comparative view of the two types of insurances described above can be more expounding. With this aim, we present the following table:

Table 2 Social insurance vs. personal insurance

Comparison criteria	Social insurances	Personal insurances
1. Suppliers	The state – the sole insurer	Authorized insurance or reinsurance companies – multiple insurers for the same risk
2. Services	Social insurance benefits: state social insurances, unemployment social insurances, health social insurances	Different types of life insurance and general insurances: survival, death, mixed, against accidents or sickness etc.
3. Financing sources	Social insurance state budget, unemployment insurance budget, national unique fund for health social insurances, constituted on the basis of contributions and, exceptionally, on subsidies from the state budget or other collections from various sources	Funds made up on the basis of collected insurance premiums, as well as on other revenues from the activity performed
4. Beneficiaries	The insured people	The insured people
5. Granting conditions	Meeting the required criteria (due period, age limit, etc.)	Appearance of insured risk or contract expiration
6. Character	Generally compulsory for certain categories of persons (employees, the unemployed, civil servants etc.) but also optional for other categories of persons (lawyers, clergy etc.)	Generally optional, but also compulsory in some cases (for instance, when contracting mortgage credits)
7. Due forms	Monthly contributions, by percentages	Insurance premiums, in absolute value, which vary according to risk and financial power of the insured person.
8. Legal basis	Guaranteed by law	Valid on the basis of insurance contract
9. Purpose	Ensuring social welfare	Obtaining profit
10. Basic principle	Social solidarity and equality	Mutuality

3 Conclusions

Social protection and, implicitly, social security as components of social policy have as a main target to secure social welfare. But this intention entails allocating important sums so as to meet the objective, especially in times of crisis. Even if there are people claiming that social protection in Romania is excessive, we must not leave out the fact that this is often the result of erroneously associating it with social assistance (and, in this case, most of the abuses are made), the latter being, as we have shown above, only one of the directions in which social protection can be built. In more suggestive words,

insurances represent the "ingredient" for a peaceful life without stress, specific to the modern society. But the accomplishment of this goal depends, to a great extent, on the factors involved in guaranteeing such services. Lately, the State, as the main insurer, has lost some of its credibility as a result of the difficulties caused by the global economic crisis. Therefore, in the future, private insurances could gain more ground since they prove to be more stable and efficient, even in times of crisis. Nevertheless, the social insurance sector must remain, to a certain extent, the prerogative of the State, on the condition that it shall be managed more appropriately and more transparently. As a consequence, these conceptual dilemmas had, at their basis, numerous instances of erroneous association or incorrect usage. Hence, we hope that these lines contributed, at least to a small and satisfying degree, to the elucidation and clarification of these inconsistencies while trying to find solutions for them.

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The Need of Politically Descentralization in Romanian Administrative System

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Abstract: The need for decentralization of the administrative system is one of the most discussed and acclaimed topics, in the Romanian governing acts. Decentralization, however, cannot be achieved without political decentralization, a democratization process of democracy, achieved from top to bottom, in which the state supports the evolution of the civil society through partnership, by stimulating local initiative and community development. According to Anthony Giddens' theory, which is even more relevant due to the present economic recession, it states that the civil society represents a third option (neo-liberalism and social democracy being the other two) in achieving social welfare. The welfare type state concept is replaced by the welfare society concept, in which the state and the civil society work together for progress, development and mutual support. Apart from the need for a participant democracy, the objective of this present study is to analyze the stages of the present political decentralization in Romania. We intend to find explanations and solutions regarding the fragile voice of the Romanian participant political culture. What were we lacking: logistics or the collective mentality (a consequence of the emerging democracy…)? What are the distinctive mechanisms for proper governing, by which we can monitor the citizens' involvement in the process of public decision and the ongoing possibility of influencing the governmental authorities' policies and decisions by the people, at a national level by empowering the citizens with more authority? Respecting the existing interests of the society and not only those of the dignitaries, constitutes a condition for representation, something that the Romanian democracy lacks. Monitoring the manner in which the citizens' interests are represented by public decision, constitutes a fundamental element of proper governing. This study's objective is to create certain logistic conditions for the organization of the citizens' public policies debates, regarding the governing programs or the text of certain laws; the mechanisms should not be limited only to collecting and monitoring, but they should encompass the manner in which the citizens', the experts' and the civil society's representatives proposals are existing in the public decision.

Keywords: citizen empowerment; civil society; politically decentralization; politically correct

1. Introduction

Reducing the costs without diminishing the services offered is one of the main concerns of the governing bodies at the present time. In order to answer to the fiscal restraints, the public institutions have implemented the institutional management as a great solution, despite the dysfunctions of the social welfare state. The *Welfare State* represents a form of governing, in which the state is responsible for promoting and protecting the citizens' welfare, by means of social policies, guaranteeing: financial income, medical care, education, support and assistance in case of illness, retirement or the lack of jobs.

The evolution of this type of state, that assures a complex social protection and assistance system, in addition to certain demographic indices (ascending evolution of life expectancy, demographic aging)

have determined the governments' increase of costs for pensions and medical services. The government's cost regarding wages and social spending increased more than work productivity did, which in turn led to an even greater financial crisis. The Neo-liberalism implemented by Margaret Thatcher represented a model for reinventing the governing act(reinventing government), by adopting solutions from the markets' mechanisms and reaffirming the government's efficiency. The public's problems cannot be solved by a single "actor", such as the state, in a world that is in a full state of globalization, with insufficient national budgets of the states, whilst the citizens' expectations are continuously changing. It's a reality that has marked the governing process at the beginning of the 80's, more so during the Reagan administration in the United States and Thatcher's administration in Great Britain. The governments are forced to attract private investments in order to solve the public problems. At this point the public-private guidelines in the governmental sector, profit and non-profit, have been established. Social evolution represents an objective that is assured by this private profit and non-profit partnership with the civil society and the private sector. Anthony Giddens (Giddens, 1999, pp. 1-10) considers that the economic basis of such a partnership is the mixed economy. The democratization of democracy it is attained by a certain governing act that is based on reciprocal partnership and control between the government and the civil society. In the Next Step Program that was implemented in Great Britain (Zamfir & Stănescu, 2007, pp. 539-546) at the beginning of the 80's, the civil society had been considered a self generating mechanism for social solidarity. The need for implementing such a reform program in the public sector has been considered as being a natural effect of globalization. The effects of globalization determined the diminishing of the importance of the nation state. The beginning of the 90's outlined an image of a state that will hold on to the cultural, economic and governmental power over its citizens, but in order to be exerted it had to collaborate with local public administration, with the non-governmental associations and transnational groups. The governing concept does not identify itself anymore with the government, the NGO's and the transnational organizations take part in the governing act.

2. Paper Preparation

Therefore, the state's response to globalization is the implementation of decentralization, especially the decentralization of the political component. The new public management and the public sector reform are implemented with the help of the entrepreneurial government (the governmental institution will employ every resource it has at its disposal in order to maximize productivity and work efficiency). The reform of the national budget sector, in the Next Step Program has the following objectives:

a) Organizational and financial reform.

b) Delegating responsibility from the public services to the private players.

c) Privatization of the public services

The thatcherian neo-liberalism states that social welfare is assured by the market's mechanisms, requiring a minimal involvement on behalf of the state, which has to assure only the legal control. (Marinetto, 2003, pp. 102-120) Returning to Anthony Giddens' concept, the civil society represents a third path, a third solution for achieving social welfare. In neo-liberalism, the role of the state is minimal and the civil society has to evolve spontaneously, whilst in the social democracy, the civil society is rather dysfunctional in providing social welfare, and the democratization of democracy would represent a new concept of public policies, a process from top to bottom in which the state supports the evolution of the civil society through partnership, encouraging local initiative and community development.

(Giddens, 2001, pp. 65-105) The concept of the welfare state is replaced with the welfare society concept, in which the state and the civil society work together for welfare and reciprocal support. When defining the concept of civil society, the Center for a civil society of the London School of Economics states that the civil society is a collective independent set of actions which aims for the same objectives, interests and values, encompassing NGO's, volunteer, informal type organizations, which represent the interests and believes of the socio-professional categories, of the community, women and minorities. In ancient Greece, the civil society was represented by a society led by citizens actively involved in politics. A. Ferguson defines civil society in his paper, "An Essay on the History of Civil Society", as being the opposite of the chaotic condition, in which each one fights with the others, the source for social peace being the involvement of the people in complex relations at a social level. The common interpretation in the 20th century of the civil society is that of a cultural superstructure. Civil society is an unfulfilled reality of the emerging democracies, in which there is a lack of involvement of the citizens in the socio-political life. Revitalizing the civil society determines a revitalization of democracy. In the emerging democracies, the civil society is the state's opponent, be it totalitarian or corrupt. An active civil society is not only a factor in the efficient functioning of democracy, but an indicator of it as well. The outburst of the citizens' involvement, in which a greater deal of importance is expressed towards any citizen, their relevance for the political system goes beyond one's voting choice. The civil society is the guarantor of democracy.

Etzioni (2002) (Apud Giddens, 2001, pp.10-25) considers the concept in older democracies outdated, civil society is only mentioned by western politicians as a propagandistic instrument, in order to renew their speech which in turn will gratify their own need in appealing the masses.

The term, *Community based organization* determined at the beginning of the 90's, the civil society theory as a partner of the state:

- Discussing and elaborating public policies
- Social services' provider
- Compensating for the public policies' deficiencies as a partner of the state.

Recognizing the role of the civil society in the social and economic evolution is pointed out by the international organizations: World Bank, U.N., E.U. In the areas where the institutions of the state don't function properly, the representatives fo the civil society constitute themselves in partners of the international organizations, in order to stimulate from bottom to the top, the citizens' involvement. In the young romanian democracy, (Pop, 2002) the problem of responding to globalization by means of decentralization represents one of the main subjects regarding the public sector reform. The lack of implementing decentralization is before anything else, a lack of political decentralization. This present study takes into consideration the citizens' involvement in the decisional taking process, rising importance of the democratic consultation process and expression of these decisions. When referring to the athenian citizens, in his paper on *The anthenian greatness, Pericles stated that*, "...the athenian people consider that the one that does not interfere in the acropolis' affairs, is not only indolent but is also worthless". (Pavel apud Pollitt, 2004, p. 5) The vision and perception of the athenian democracy is that of a solid democracy, according to which nothing can exist outside a participant political culture. Political decentralization represents the ongoing posibility of influencing the governmental and public authorities' decisions by the people, at a national and especially at a local level, by confering more power to the citizens. In the anglo-saxon thinking, the concept is called citizen empowerment. The political decisions that are taken after consultations at a wider level of the population and higher involvement on its behalf, will reflect more adequatly the interests of the community, which are

monitored at the citizens' level and not only the interests of the political representatives of the population, the interests of the dignitaries, which tend to represent by their public actions an insignificant percentage of the population. The legitimate supervisor of the public policies must be the citizens, and due to the economic recession, an alternative to social democracy which will find difficult to apply the welfare governing model is governing and administering by means of culture and participant democracy. The civil society governing type, represents the best approach in preventing the effects of manipulation of the democratic electoral system, by the political leaders, who take decisions and implement policies that will favor themselves or the ones that they promoted in key positions. Political decentralization dictates the extension of the administrative duties be carried out at the public sector level, in order to create the proper conditions needed for public debating of certain public policies or normative acts, collecting policies from the citizens and civil society and their analysis, as well as creating information centers regarding the citizens' rights. The lack of political decentralization in the country's reality might be determined by the inexistence of a democratic framework regarding:

- The distinction of the state's powers;
- Political pluralism;
- Proper functioning of the state's institutions;
- Informing and educating the citizens to become more involved.

The causality analysis presents a double inadequacy: in the collective mentality and in the institutional logistic to organize citizens' debates. For example, organizing a debate with the civil society's representatives from a certain area of action with regard to a certain political strategy project in that certain area, arises at least a few essential problems. What is the criteria used when selecting which NGO's to take part, what are the designated locations for public debate and how can the public institutions provide these locations (is social determination enough or does a reason has to exist from top to bottom, by subscribing to the institutional objectives)? Logistical problems are the manner in which the collection of proposals and commentaries launched during the public debate regarding a certain text and forwarding these proposals to the group of experts. The conclusions of these specialized groups, technical in nature, must be presented to the deciding political members, who will decide how the strategy is going to be changed after the public debate. It is without a doubt that due to this logistical inadequacy as well as the collective mentality, a bottom to top manner of action, from the communities to the governmental level cannot constitute a stimulating solution of the civil society's reactiv response. The process must take place from top to bottom, by means of public policies included in the governing programs, such that the role of the civil society be a dynamic one. Decentralization is an umbrella type concept, which refers to a transfer of the decisional and implementation authorities of the public system from the central level to the local or/and to organizations which belong to the private system. In brief, decentralization represents a transfer of power which changes a subordinate relationship in a coordinating relationship; it is a relative concept, which is defined in connection to other levels of institutional organizations. The decentralization term can be applied to other organization, except in the public sector; however, in general it is used in connection with providing public service, in the administrative system. Before the neo-liberal speech, decentralization was marginal, in the speech regarding development based on a centralized state. In the 80's, the neo-liberalism promoted by the Reagan administration in the United States and Thatcher in Great Britain considers decentralization as an essential policy for the minimal involvement of the state, by privatizing the public services. In the 90's the acknowledgment of the state's role in development as well as decentralization become key elements in the reform of public administration. The new path, the new public management, refers to the reform of the public system, following the private management

guidelines. The new public management confers decentralization the main role in improving the provided services by the public administration, its objective being the transition from a single unit administration regarding the management of services, to a system that is based on a larger number of players which administer and implement these services. Decentralization as a solution to globalization and as an answer to the informational society it is interpreted by Osborne and Gaebler as follows: *In today's world, things would function much better if the ones that work in the public organizations, schools, housing construction, parks, training programs, would decide in most of the activities they are involved in. The proper governing agenda* promoted by the majority of the development agencies (The World Bank, as an actor in the social development, PNUD) includes decentralization amongst the main components of the new institutional reform.

The endeavors that support decentralization base themselves in general on two traditional arguments:

- Political- the individuals become more involved in the decision taking regarding themselves

- Economic- improving public service efficiency. From this point of view the basic principal is represented by Oates' decentralization theory. Every public service should be provided by the jurisdiction that controls the smallest geographical territory, where the benefits and the costs of this service should be within.

Decentralization of the public services provider sector reflects what federalism represents for the governing systems. It has evolved in the 50's in the U.S. and it is exemplified by the Tiebout Model: since the local public administrations carry out and implement policies themselves, the individuals will be able to choose among them, which in turn will lead to a higher competition and quality. An important difference exists in the cases where decentralization has emerged as a result of a strategy, in comparison to the ones in which it represented the result of the collapsing state due to its impossibility to sustain the public services. In some states, such as the post communist and the ones in Eastern Asia and Africa, decentralization has emerged as a reaction against the authoritarian regimes and the state's inability to provide certain services. At that moment, it represented the only feasible solution, not being the result of a strategic planning. This type of "forced" decentralization generates certain applicability problems, in a sense that the transfer of power is taking place over time. Decentralization is a generic term that encompasses many types of transfers. Depending on the area where is applied, decentralization can be:

- **Political decentralization**- implies the transfer of power to the citizens, by democratically electing the representatives in the administration office and by improving the individuals' ability to control their local representatives' decisions. The extreme form of political decentralization implies that local levels (cities and counties) have absolute independence in deciding and implementing policies.

- **Economic decentralization**- implies the transfer of authority from the public sector to the private sector in providing certain goods and economic services. The deregulation/backing out of the state from imposing certain rules on the market represents a type of an economic decentralization.

- **Fiscal decentralization**- improving the local levels' autonomy in taking decisions regarding the local budget. The local budget resources can be gathered by: taxing the services' users, taxes at a local level, with a certain level of responsibility in spending, with regard to the state's budget.

- **Administrative decentralization**- includes the redistribution of the decisional and implementing authority on different levels of the public system.

Depending on the degree decentralization is carried out, it can have the following forms:

- **Deconcentration** – transferring the implementation role, the decision is still centralized

- **Delegation** – the transfer of the decisional authority as well as the implementing authority, thus the central level is maintaining its authority, which the local administration has to answer to. The city halls' budgets are constructed at the local level; however, they answer with regard to spending to the city councils.

- **Devolution**- the local authority is autonomous and does not answer to the central authority. The devolution of the tertiary education due the university's autonomy represents such an example.

- **Deregulation**- withdrawing of the state in imposing rules in a certain field; dissolution of the legislation regarding public acquisitions at the state's level and transferring it at the local administration level would be an act of deregulation.

Decentralization determines as expected, improved quality of the services offered by the public administrations. The main argument underlines the alignment of the decisional level to the actor's affected by the decision, thus the services offered should answer more to the needs on a local level. Local diversity will influence in good the public services' offer. Another positive effect is efficiency improvement of the public administration authorities. By accepting a higher responsibility, the competence that derives from the transfer of power from the government to the local authorities, the local administrations will implement the efficiency principle, satisfying a greater number of public services' beneficiaries/users. The application of total decentralization implies efficiency through itself, because the administration-citizen relationship will become closer to the firm-client relationship (initiator-agent type relationship). By means of decentralization the level of the state's democracy improves, thus the basis is set for what we call proper governing. Transparency and the responsibility of the decisional players are improved due to the high level of control carried out by the beneficiaries of the local public sector. A major role in the feedback offered to the public administration will be conferred to the citizens and the civil society, which will improve the cohesion and social capital at the local level. As a conclusion to the afore mentioned, decentralization has favoring development role, first by a greater motivation on behalf of the citizens to attract resources for the projects that will influence them directly and second, by focusing more efficiently on the groups that are in vulnerable situations.

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The Impact of the EU Strategy for the Danube Region on the Administrative Capacity

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Abstract: At the initiative of Romania and Austria at the end of 2010, the European Union has finalized the strategy for the Danube Region, a regional development model at European level. Danube strategy is a national strategy of the EU to which they are invited to attend also the third countries of the riverside. It will be implemented starting with the first half of 2011 and it will be structured along three primary axes: connectivity, environmental protection and socio-economic development, patterned after the EU Strategy for Baltic Sea region. The main challenge for Romania has been and it should be its keeping among the main promoters of the initiative of creating and implementing a Strategy and the achievement, according to the Action Plan, of as many priority projects on all three axes aiming at also developing the administrative capacity and better governance.

Keywords: Danube basin; macro-regional strategy; cooperation; sustainable development

1 Macro-Danube Region and the EU Strategy

The regional Policy European Union (EU) is focused on eliminating the economic and social disparities between Member States and the 271 regions thereof, for achieving sustainable development and international competitiveness. The economic and social cohesion is the primary means by which development differences can be eliminated.

The new provisions of the Treaty of Lisbon, the scope of economic and social cohesion concept is extended to the territorial component, so that for the future, and the regional specifics and characteristics are taken into account for budgetary programming and establishing strategic priorities at community level. Starting from this concept it was developed a new vision of regional cooperation, based on identifying and establishing geographical connections between regions, it has been called macro-regional strategy.

During December 2008-June 2009, Romania and Austria have promoted, at the EU Member States level and third countries in the Danube Basin, the idea of a new regional cooperation project, as a EU Strategy for the Danube region, according to the Strategy Model at the Baltic Sea Region. The European Commission was invited by the European Council on 18-19 June 2009 to develop by the end of 2010 an "EU Strategy for the Danube Region" which was done and made public, with the associated Action Plan. The three areas (pillars) proposed by the European Commission which the strategy is focused on

are: connectivity (transport, energy, telecommunications), environmental protection and water management, socio-economic development (culture, education, tourism, rural development).

The necessity of a strategy is emphasized by the regional characteristics. The Danube - the largest river that runs through the EU and second largest river of Europe, both in length (2857 km) as well as debt (about 5600 m3/sec when enters in Romania) is a true axis of Central Europe, which connects the Black Sea and the farther areas of Central Asia (Stanciu, 2002, p. 9). Danube crosses 10 countries: Germany, Austria, Slovakia, Hungary, Croatia, Serbia, Bulgaria, Romania, Moldova and Ukraine and 4 capital capitals: Vienna, Bratislava, Budapest and Belgrade, and the Bucharest is in the next neighbourhood. Its basin is the most "international" river of the world, containing the territories of 19 countries and measures approximately 1 million km^2.

Among the Danube regions, Romania has the largest area in the Danube Basin (approximately 30%), the sector of the longest river (1076 km) and the Danube Delta, the second largest wetland in Europe, a unique ecosystem, of International Importance, declared by UNESCO in 1991 the cultural heritage of humanity.

As regards the course of the Danube in Romania, we must mention that: it crosses five regions, 13 counties in which there are 25 municipalities and 56 cities, growth poles, namely Bucharest, Constanta and Craiova or urban growth poles that is Braila and Galati. There are also seven national parks in the region crossed by the Danube in Romania.

Danube region has an economic growth potential unexploited. Being declared part of the Pan-European Transport Corridor VII of the EU, the Danube is a significant waterway, which connects through the network Rhine-Main-Danube between Constanta port, industrial centres of Western Europe, and the port of Rotterdam. The wider Danube Basin include countries and regions that could benefit in the near future of a direct access to the Black Sea and the importance of connecting EU with the wider region of Caucaz and Central Asia was highlighted by the Black Sea Synergy.

Romania hosted in 9 to 11 June 2010, the final article of the Conference on EU Strategy for the Danube Region.

The conference, held in Constanta, concluded the events with consultation dedicated to the public on the EU Strategy for the Danube Region, organized by the countries of the riverside during 2010:

- Germany (Conference of opening the public consultation process, Ulm, 1-2 February 2010);
- Hungary (Conference on the theme of social and economic development and the Danube Summit, Budapest, 25-26 February 2010);
- Austria - Slovakia (Conference organized in Vienna and Bratislava focusing on the connectivity domain, 20-21 April 2010);
- Bulgaria (Seminar dedicated to the administrative capacity and good governance, Ruse, 10-11 May 2010).

2 Cooperation Instruments Existing in the Danube Region

The idea of a new regional cooperation project, as an EU Strategy for the Danube region, has not appeared on an arid land. More than two centuries ago, at Galati it was born the first international organization in the area, the European Danube Commission, which the powers of that era dedicated it to free shipping on the Danube and the economic interests in the region (Stanciu, 2002, p. 10). Its Successor, the Danube Commission (DC) is an international organization currently composed of

Austria, Bulgaria, Croatia, Germany, Moldova, Romania, Russian Federation, Serbia, Slovakia, Ukraine and Hungary, whose primary task is ensuring the legal requirements to maintain freedom of the river navigation. Under Commission rules, Member States should improve the navigation of the national sectors.

In fact, the mechanisms that have been created for the functioning of the Commission, and the lack of interest of states, led to the lack of involvement in the development of transport on the Danube Commission. Its regulations worth the recommendation and, accordingly, there is an integrated transport development project on the Danube. Review of the Belgrade Convention, which was created by the Commission, the only means by which its activity could be revived. Following the review, states that really want to promote transport on the Danube, may have the means to take in the Danube Commission, concrete measures.

Danube Cooperation Process (DCP) was officially launched in Vienna on 27 May 2002, based on a joint initiative of the Governments of Romania and Austria, the European Commission and the Stability Pact for South Eastern Europe (SP SEE). SCP participants are countries in the Danube basin (Romania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Germany, Moldova, Serbia, Slovakia, Slovenia, Ukraine and Hungary), plus the European Commission and the Regional Cooperation Council (CFR), furthers the Stability Pact there are also a few states with observer status in the process (France, FYROM, Russian Federation and the United States of America).

DCP is a forum of regional cooperation, non-institutionalized, structured on several sectoral dimensions (economic and sustainable development, environmental, cultural, navigation, tourism, sub-regional cooperation), subsumed under a political dimension which is intended to provide guidelines for future cooperation and to identify priority projects that are to be achieved within the sectoral dimensions. Its primary objective is to efficiently harmonize and valorise the various initiatives of cooperation in the Danube region, in light of European values and standards, given that, in the context of EU enlargement, the Danube has virtually become a river inside the Union.

International Commission for the Protection of the Danube River (ICPDR) was created in 1998 and the Member States of the international body are, at the same time, parties to the Danube River Protection Convention, the legal instrument for cross-border cooperation and effective management of water resources: Austria, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Germany, Hungary, Moldova, Montenegro, Serbia, Romania, Slovakia, Slovenia, Ukraine and the European Community. The ICPDR objectives are the conservation of Danube's water resources for future generations, reducing the chemicals that pollute Danube waters and the achievement of an integrated control system for flood risk.

Danube Commission and the Danube Cooperation Process represent the intergovernmental cooperation mechanisms existing in the Danube area. The International Commission for the Protection of the Danube River (ICPDR) is an international body established to implement the Danube River Protection Convention.

ARGE Donauländer was founded in Vienna in 1990, by signing the Joint Declaration, as an association of the Danubian regions, to promote economic, transport, regional development, tourism, culture, science and environmental protection. The members are from 23 regions in 10 countries along the Danube.

In terms of cooperation an important role has the contribution of the European territorial cooperation programs by funding specific common projects between regions or countries in areas crossed by the

Danube, and it targets key areas of intervention, such as: accessibility, environment and emergency situations, socio-economic development. These programs are:

- Romania-Bulgaria Cross-Border Cooperation Programme;
- Joint Operational Programme *"*Black Sea"*;*
- South East Europe Transnational Cooperation Programme*;*
- IPA CBC Programme Romania-Serbia;
- Joint Operational Programme Romania-Ukraine-Republic of Moldova 2007-2013.

The best way to highlight the potential of the Danube region could be the combination of the current forms of institutional cooperation and the partnerships between local communities.

3 Perspectives opened by the EU Strategy for the Danube Region

The objectives that need to be pursued by Romania through participation in the development and implementation of the EU Strategy for the Danube Region are:

- Dynamic, competitive, and prosperous Danube region;
- Creating an integrated transport systems and environmental protection monitoring based on new technologies;
- Cleaner waters, protecting bio-diversity, combating cross-border pollution and reduce flood risk;
- Improvement of administrative capacity, fostering cultural exchanges and contacts "people to people".

A priority in the Romanian Danube region is considered to be the development of tourism and fructification of the natural heritage, but also the historical cultural heritage by developing specific and intensive advertising campaigns. The regional strategy must determine the increase of the attractiveness of the region through economic development and creating new jobs, following the recovery of cultural heritage, natural resources and improve the infrastructure quality of accommodation and leisure. For that there can be considered the following actions:

- Rehabilitation and upgrading the heritage tourism elements that could lead to increase of the tourist interest for the counties along the Danube and their value;
- Development of tourism infrastructure in the counties along the Danube and the Danube counties in general;
- Attracting new "tour operators" for organizing cruises to the Danube Delta and the conviction of those who already operate to increase the number of stopovers on the Romanian bank by diversifying a range of touristic offers;
- Studying the appropriateness and possibilities of reintroduction of regular passenger flights on the Danube, between the Danube ports, in order to allow viewing the most representative and attractive sectors of the Danube.

Modernizing agriculture and diversifying the economic activities other than agriculture, by making use of environmental and natural resources (wealth, fisheries, forestry, biodiversity etc), cultural heritage (traditions and gained professional experience) by building social capital and creating new specialties, also represent important directions of action.

In order to achieve the objectives of economic development and connectivity, we need a new vision, an approach based on new technologies that provide a "green", efficient, and sustainable strategy. It takes investments and rehabilitation of transport infrastructure and efficient solutions to environmental

challenges. At the same time, agricultural land of the Danube Basin is an asset that could be better exploited, especially in the context of the foreshadow agro-alimentary crisis, through research, crop diversification and implementation of innovative technologies.

An important dimension of the Romanian contribution in the development and implementation process of the Strategy is the position of public county and local administrations, which need to be aware of this opportunity and involved in accessing the decentralized services of ministries. Several of the counties bordering the Danube in Southern Romania, are among the least economically developed and therefore the involvement of local authorities in this region could contribute to increased competitiveness and socio-economic revitalization of localities with growth potential.

Achieving some ambitious objectives such as the completion of the canal Bucharest - Danube, two new bridges, the Bechet - Oreahovo and Calarasi - Silistra, between Romania and Bulgaria, building a new hydro-power complex on the Danube and ensuring navigability of the lower Prut and new bridges over the river, cannot be achieved without a simultaneous and continuous modernization of the national, regional and local public administration.

In fact, the strategy must improve the public sector management by *strengthening an effective administrative capacity*. It is necessary for investments to improve policy making and decision making processes in the public management domain, to develop a modern civil service system, flexible and responsive and improve standards of quality and efficiency in delivering public services. To this purpose the actions must pursue, prevalently, those administrative areas where there may be the biggest impact in terms of stimulating the development of socio-economic and business environment and the fight against the Romanian economy deficiencies.

Also, a significant component of Romania's contribution is represented by the contributions of population, civil society organizations, requiring them to engage in the community dialogue, to ensure good governance.

On a careful examination, it appears that the expansion of the EU eastern border, and thus access to third EU countries to the Danube Maritime area, causes a high risk to the security and integrity of the Community's borders.

Danube Strategy must take account these developments and undertake projects such as:

- Replace the current control system on the Danube, based on inspection at the port of destination, with a system that considers the establishment of border control points of entry/exit from/in the future Schengen Area, clearly defined;
- Strengthen cooperation between law enforcement institutions and local authorities, in the Danube riparian countries;
- Acquisition of control structures with fixed and mobile detection equipment, high communication equipments, and efficient means of naval mobility;
- Danube ecosystem protection by implementing a prevention concept of poaching fish and wildlife, stock of wood, and intentional or accidental pollution;
- Ensuring the security of shipments of goods and the goods handled or stored in ports.

All investments that are to be made in the Danube basin must be intelligent systems, based on the latest scientific and technological development, where the environment protection is included from the starting point of the design stage („green knowledge intelligent systems”).

In conclusion, in a stable macro-economic and competitive system, enforcing the institutional capacity and developing the human resource, an efficient use of natural resources and new technologies are necessary conditions to support sustainable growth in the area which should contribute to the development and implementation of EU Strategy for the Danube Region.

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Public Service Motivation

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Abstract: Public Service Motivation concept was developed in North America and focuses on specific motivations of public servants, such as employee satisfaction, organizational commitment, reward preferences, organizational and individual performance. Other types of motivation, as financial consideration, are relevant but have less important influences with regard to this kind of work outcomes. This strengthen the assertion for a diversified motivational strategy, which affect various types of motivation, while not losing sight of the public value that one organization shows and therefore valuing public service motivation as a specific contribution to work outcomes. The concept has been increasingly applied in European public administration. This paper presents Status Quo of international Public Service Motivation research and locates in them empirical evidences from contries that are already working with this concept, like Austria. It also analyses implications for central questions of public management. The main focus of this article is general appropriateness and possible applications for Romanian public management research.

Keywords: motivation; public service; public management

1 Introduction

The concept of Public Service Motivation is focused on specific motivation of civil servants and analyses implications for central issues of public management such es job satisfaction, organizational commitment and individual performance, incentive systems. Originally developed for the Anglo-Saxon context, this concept is increasingly applied in European public administration.

Standing changing conditions, employee insatisfaction, negative feedback from stakeholders and citizens make it difficult for civil servants to identify themselves with the traditional model of public servants. However, a persistence of specific values and orientations manifests, such as preference for common good, in service for citizens, high professionalism, objectivity and political independence of self-image of public service. A specific kind of motivation is associated to public servants. Nonetheless, this approach got up in the debate on New Public Management and public service reforms in the 90s with respect to rational and public choice Theory and its assumptions regarding utilitarian approach and instrumentelle rationality. The new public sector logic results show up that maximizing budgets, power, public reputation and level of remuneration are the main reasons of acting as civil servants together with the alignment of employment conditions and incentive structures to those of the private sector, these all represent a very promising way to modernize the public sector. The institutional-economical approches are criticized to have reached their limits, when it comes to the results of many research on basics of motivated behaviour, such as to explain the specific Ethos of civil servants. Neoinstitutional approaches argue each their own logic with the specific institutional structure, in which members are socialized and guide their behavior to the "logic of appropriateness" from which they set up their social identities.

A similar result is found by James Perry in North America, who developed a different concept composed of four dimensions, "Public Service Motivation" who increased in popularity in recent years. Factors that influence the Public Service Motivation are currently being discussed intensive at international level, in particular the PSM relevance for involvement and commitment, individual and organizational performance as well as other aspects of the Human Resources Management like job satisfaction or reward system.

Functioning cultural values concepts such as that of Public Service Motivation cannot be simply export in other social-historical contexts. Not at least because of the strong conceptual roots in the American culture and the particularities of the American public sector regarding the concept applicability in the European context (even within Europe there are considerable differences).

2 The Concept of Public Service Motivation

Under Public Service Motivation is understood "the individual predisposition to respond to motives grounded primarily or uniquely in public institutions" (Perry/Wise, 1990, p. 368). Perry and Wise differentiate in their approach between rational, norm-based and affective elements of this specific motivation. Public Service Motivation is used throughout the public sector regardless of polics (policy level doesn't play any role). This original definition of Perry and Wise was further developed, so Brewer and Selden see the Public Service Motivation as "the motivational force that induces individuals to perform public service" (Brewer/ Selden, 1998, p. 417). They also proved a basic applicability and validity of the concept outside the public sector. For Europe is important the Vandenabeele work. Regarding to Vandenabeele, the Public Service Motivation is "beliefs, values and attitudes that go beyond self-interest or organizational interest, that concern the interest of a larger political entity and that induce, through public interaction, motivation for targetted action" (Vandenabeele, 2007, p. 547).

3 The 4 Dimensions of the Public Service Motivation

The concept of Public Service Motivation is generally conceptualized as a multidimensional construct. Builded on Knoke and Wright-Isak distiction between three different motivational categories - rational, norm-based and affective - Perry differentiated four dimensions:

a. The first dimension is the appeal of politics and policy advice - this is in the category of rational, on own interest utility maximization and examines the extent to which civil servants are caracterized by a particularly strong interest in politics action and up to what extent are they motivated by the possibilites of Policy co-determination or by the proximity to political process.
b. The second dimension is the norm-based one; here is considered the extent to which acting for common good and social responsibility affects the professional activity in the public administration. The main factors here are the desire to serve the public interest or the loyalty to the state.
c. As the first two dimensions stand for self-interest and state norms and the society as a whole have priority, the third dimension is the social compassion, also norms-based one. This dimension considers the individual perceived obligation to improve the lives of others.
d. The fourth dimension - altruism/unselfishness - is attributed to the affective motives and focuses on the willingness to work selflessly and independent from external standards and expectations from other people.

In the original concept of Perry, these four dimensions are measured with a factor analysis based on 24 items, which however in later studies were barely fully used. Moreover, the relevance of each dimension is challenged also in particular of the items in different public sector "cultures". Therefore many researchers developed their own items or additional dimensions, based on advanced concept definitions or the cultural resonance of the concept in each specific context, while in many other studies on the concept was limited on the measurement of only three dimensions or on fewer items, due to high correlations between each dimension. Thus significant differences make it difficult both in terminology and in the conceptualization and selection of individual dimensions and different items for measuring this dimensions the interpretability of the results and in spite of numerous individual country studies (in UK, USA, Austria, Belgium) the integration of these comparative studies. Moreover, in the comparative research another aspect is discussed, namely the extent to which the four dimensions can be aggregated into a comprehensive PSM score. Although Perry in his studies from 1996 and 1997 pointed out that each of the four dimensions appreciate special aspects of the public service motivation and should be single investigated, the summing up of the individual scores or the determination of an arithmetic means is on major approach, especially in contexts in which each of the four dimensions indicate in different directions or they have different antecedents or effects.

Despite this heterogeneity the studies are mostly based on the assumption that public servants but also the employees from the non-governmental sector indicate far more expression of these four motivational factors' in comparison with to private sector employees, although many authors indicate that a service motivation and an interest for common good is of course relevant in the private sector (in accounting fraud scandals, financial crisis and the rise of the concepts like Corporate Citizenship, Corporate Social Responsibility). Brewer and Seldon argued that a strong focus of public motivation research in the public sector" obscure the universal nature of PSM and led some scholars to believe it promotes a false dichotomy between the harmful sectors"(Brewer/Seldon, 1998, p. 417). Even if clear differences exist between public and private sector, it is open whether people with a higher PSM usually turn more to the public sector or wheather each PSM is the result of professional socialization. So assert the Houston studies (2000) that the civil servants are motivated intrinsically than private sector employees, responsive to extrinsec factors such as income and shorter working hours. The author also emphasizes that both groups of employees describe meaningful work as the main motivator and concludes that the both groups differentiate less by their motivational predisposition but they adapt more to the realities in their respective work contexts. Also the level of the hierarchy, ie the difference between management and non-executives has a stronger influence on the motivational disposition as has the sector (public or private). It is outstanding to what extent the PSM deals with the specific feature of the public sector or to what extent the entire public sector can be treated uniformly.

4 Conclusions

The motivation of employees is a critical variable for the success of an organization and the concern at civil servants motivation is of important interest in the Public Management Research. Although it is well known that it is the premise of a special kind of motivation for public servants of high interest, there were up in the 80s hardly any specific theories and empirical research which dealt explicity with this question. In the past 10 years this fact has changed fundamentally. Based on by Perry developed concept of public service motivation a significant progress was achieved especially in regard to public servants.

The PSM concept focused on the specific reasons and motivations that are characteristic to public servants and provides just in regard to the strongly utilitarian and instrumental rationality of the New

Public Management, an interesting alternative model to better understand the behavior of public servants. The key point of the PSM research is the positive impact of PSM on the public administrations' success important factors like incentive preferences, job satisfaction, individual and organizational performance, integrity, ethical behavior. In terms of administrative practice raise the question of appropriate institutional structure such es recruitment and selection and also socialization of employees or motivating workplace conditions and incentive systems. The means of the available PSM research approaches now a critical dimension that allows more general relationsships between the concept and the variables and build up an important step toward a more evidence-based Public Management Research. A key priority of the current and especially future PSM research is accordingly to Perry and Hondeghem the study of PSM in different contexts.

The general theories of motivation are ample, but the PSM is in his country of origin a primarily empirically based approach. Even many interesting results are already available in a high dynamics of international research on the subject of PSM, it still seems to be a long step up to reliable PSM international comparative research.

5. Appendix: The four dimensions and the 24 items for measuring the PSM (according to Perry 1996)

A. Attraction to Policy Making

- Politics is a dirty word. (Reversed[1]);
- I don't care much for politicians. (Reversed);
- The give and take of public policymaking doesn't appeal to me. (Reversed).

B. Commitment to the Public Interest

- I unselfishly contribute to my community;
- An official's obligation to the public should always come before loyalty to superiors;
- Meaningful public service is very important to me;
- I would prefer seeing public officials do what is best for the community, even if it harmed my interests;
- It is hard for me to give intensely interested in what is going on in my community. (Reversed)

C. Compassion

- I am highly moved by the plight of the underpriviledged;
- To me, patriotism includes seeing to the welfare of others;
- I have little compassion for people in need who are unwilling to take the first step to help themselves. (Reversed);
- I seldom think about the welfare of people whom I don't know personally. (Reversed);
- Most social programs are too vital to do without;
- It is difficult for me to contain my feelings when I see people in distress;
- I am often reminded by daily events how dependent we are on one another;
- There are few public programs that I wholeheartedly support. (Reversed).

[1] Reserved: Questions were deliberately formulated inverse methodological reasons. For interpretation, they have to be seen the other way around, ie Rejection corresponds to high PSM

D. Altruism/ Self-Sacriface

- Making a difference in society means more to me than personal achievements;
- I think people should give back to society more than they get from it;
- I am one of those rare people who would risk personal loss to help someone else;
- Doing well financially is definitely more important to me than doing good deeds; (Reversed)
- Much of what I do is for a cause bigger than myself;
- Serving other citizens would give me a good feeling even if no one paid for it;
- I am prepared to make enormous sacrifices for the good of society;
- I believe in putting duty before self.

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Public Order in the III-rd Millennium, between "Big Brother" and Chaos

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Abstract: *Objective:* The present paper aims at producing a brief account and analysis of some of the general vulnerabilities of the State of Law as an actor of the International System in the context of the Globalization phenomenon. *Prior Work:* The subject is being researched extensively, especially after the emergence of new phenomenon and threats to national security. *Approach:* The paper was put together using a synthesis and analytical approach, taking in account different sources, from theorists of International Relations and Security Studies to other relevant fields. *Results:* The result of this study is a complex view on the challenges and some of the vulnerabilities of the modern state, as a component of the International System in the context of Globalization. *Implications:* The present study does its part in the security studies research area, offering a better view on the dynamics of the challenges raised by the III-rd Millennium. *Value:* Taking in account all the relevant sources, the present paper offers another piece of the puzzle in trying to better understand the threats on the public order of the democratic state and the policies or optimal mix of policies needed to counteract those threats.

Keywords: national security; asymmetric threats; public order; globalization; state of exception

1. The Global Environment and the interactions between its elements

Public order, as a key concept in national security, is intimately inter-woven with the nature of the state it is destined to protect, as well as with the regional properties of its territory. Therefore, its properties are inextricably linked to the environment in which that particular state has emerged, the culture of its people, its expanded surroundings and other relevant parameters of its existence. As a conclusion to this argument, the first order of business in our opinion is to establish a general environment and thusly lay a sturdy foundation for the upcoming arguments of this paper. Using a systemic approach, the International System is the most suitable concept that can aggregate a better and more relevant picture of the general international environment in which state actors coexist.

In this regard, the neorealist theory of International Systems advocated by Kenneth Waltz seemed the best choice for establishing this base line. Therefore, as he acknowledged, the International System can be viewed in relation to two types of elements (hierarchic and anarchic). A structure, therefore, is made up from a mixture of these two types of elements and does not exist in a pure form. However, the structure is not by any means a static one because it is constantly animated by the vivid interactions between those opposing elements. According to Waltz (Waltz, 1979), the framework of a stable structure in which one of these elements is widely dominant will tend to overwhelm any effects generated by the opposing elements which are in minority. Another interesting approach to unraveling the dynamics of a social system is one that aims at balancing methodological individualism and holism,

adopted by Dr. Mohammed Sanduk in his study of the analogy between the fluid dynamics of ionized plasma and social dynamics (Sanduk, 2009).

In an analogy with Physics' problem to cope with the different ways that existence unfolds in the macroscopic universe and in the microscopic one, the International System shares somewhat the same dilemma, mimicking real life. If Waltz's theories offer us a broad picture of how the International System looks and behaves at a systemic level, according to Dr. M.Sanduk's analogy, nature offers a helping hand in trying to understand the more obscure microscopic or individual environment that makes up the building blocks of the tiniest systemic unit (in the interest of celerity we have chosen not to thoroughly integrate the ideas of other International Relations theorists like Singer, Wendt or Morgenthau and we have picked only what we thought to be the most relevant to the subject of this paper). If we were to sum up the conclusions of these two arguments, we would come up with the following characteristics of a structure that represents a common component of the International System:

First of all, we would have a structure which would never reach absolute stability, as that would require its building blocks to be made only from one type of component, hierarchic or anarchic, a fact which Waltz acknowledges to be utopian once his theory leaves the theoretical environment for the challenges of real life. Absolute stability escapes even other species that have a more developed social conscience like ants for example, which exhibit a sometimes constantly ongoing conflict between workers and queens, spawned by the male-female ratio where workers have control over hatched male broods and queens can manipulate the eggs in influencing the ratio (Rosset, 2006).

Secondly, the structure would be itself a dynamic platform for the interactions of the two types of components (hierarchic and anarchic). One way of looking at a structure within a system is one in which the structure remains sterile, without any interaction with its external environment, in which case, as Waltz points out, the vast majority of elements (i.e. Hierarchic) within the stable structure will neutralize the effects of the minority of opposed elements (i.e. Anarchic). Sterile structures, however, have been reduced to a somewhat state of extinction as the effects of Globalization continue to smash barriers between different cultures, bringing them together along with the clashes of the civilizations that Samuel Huntington predicted (Huntington, 1996). Therefore, interactions take place not only between existing elements within the system but envelop a larger dimension which adds factors like the importing or exporting of elements to and from other structures which, in their turn have an internal dynamics of their own and even factors like overlapping structures which influence each other, generating a wide range of beneficial and negative effects for themselves and/or their host/guest structure. In this regard, a good example would be the constant movements of workforce and technology from one structure to another and as overlapping is concerned, we have a whole range of examples in the multinational corporations like Google that are becoming more and more powerful, managing tremendous financial resources that would surpass the joint gross income of many countries.

Thirdly, due to the fact that a given structure of the International System is a dynamic entity, accepting Sanduks' analogy of social and fluid dynamics, one can assume as Sanduk points out, that social systems share some of the properties of fluid dynamics like viscosity, diffusion, compression, confinement or others. In a commonly accepted definition, viscosity for example is the measure of resistance of a fluid which is being deformed or in other words its "thickness". Viscosity can be adapted to social dynamics, as M. Sanduk points out, in terms of social cohesiveness.

A good example which comes to support these arguments is the social movement that is shaking Egypt. The Arabic world is structured around the Arabic family and tightly packed social groups in general, a

fact that is reflected by both the Arabic culture, history and by Islam. This confers an extra viscosity to the populations of Arabic culture, such as those that inhabit the North of Africa and the Arabic Peninsula. The individuals, being more "solidary" and tightly packed together under the authority of a social group being linked by blood, religious or other ties, this kind of structure (like in fluid dynamics, viscose fluids suffer changes at a considerably slower pace than less viscose ones) tends to change very slowly. As some authors have suggested, this might be one of the reasons for some military dictatorships' success in some parts of the world. In Egypt's' case, though, along with the introduction of the Internet and all of its "revolutions" in communication (like Twitter, Facebook, etc), anarchic elements were imported from much more stable hierarchic structures (the Internet, as almost all of its innovations are Western-spawned). As a result, an unprecedented access to information has helped put in motion some of those social structures and in a very short period of time has spawned a social movement that has eventually landslided out of the virtual world into the real one (Stutter, 2011), enveloping people that did not have access to the internet and other ways of communication. This all happened at a very fast pace, and when the internet access was cut-off, it was by far too late to change anything. The problem of the threat the Internet can pose to public order has been also raised in the United States by Senate bill no. 773 that would aim to track and restrict internet access as needed (D'Angelo, 2009).

To sum it up as an argument meant to enforce our view of the previously mentioned Global Environment, our interpretation in the case-study of the Egyptian revolution is that it was practically the result of a mixture of elements, several of which present an interest to the present paper. The introduction of an anarchic element to a structure with a fragile hierarchical majority and fragile equilibrium in terms of public order, determined at one point the rapid spread of critical information within a viscose population, which normally would experience change at a much slower pace. Despite the eventual restrictions on internet, this imported element facilitated the spread of the anarchic component within the Egypt structure, reaching a point-of-no-return that culminated with the demonstrations in Tahrir Square and the overthrowing of the Egyptian Government.

On the other hand, the Asian culture shares similar characteristics with the Arabic one as social cohesiveness is concerned but despite this and its much bigger population, protests fell flat on an unshakable public order (FlorCruz, 2011). This may be, in part, to Chinas' policies in restricting Internet access, thus somewhat limiting the dynamic and unrestricted import of foreign elements and thusly the chance of adopting anarchical elements from other structures.

2. Public Order and the Free Information Flow

All of the interactions within the human psychological universe can be described as "information exchanges", from a gentle touch that sends tactile information to be interpreted by the Central Nervous System to a mass-media news report that criticizes a national policy. In this regard, information psychologically shapes us from well before we are born to the moment in which the last human sense is lost (hearing), 3 to 5 minutes after death. With this in mind, acknowledging the crucial importance of information is a very good premise for attributing the same importance to the sources of the information induced and its purpose. The online "Longman Dictionary of Contemporary English" defines the term "indoctrination" as *training someone to accept a particular set of beliefs, especially political or religious ones, and not consider any others.* Noam Chomsky argues that indoctrination plays a pivotal part in the education and life of an individual through a very discrete and complex process that is strongly interwoven with the social environment we live in (Barsky, 2007). We tend to perceive

normality according to our cultural background, personal experience and values and virtues of our social environment among other factors, so "normality" like beauty one would argue, is in the eyes of the beholder. Taking in account the fact that from an early age we are encouraged to socialize and adapt to social environments accepting their figures of authority and the inflow of information they provide, being judged and evaluated on the grounds of mastering the knowledge and use of the information relayed to us through those channels of authority, Noam Chomsky's arguments on the subject begin to look more in tune with reality than one might hope, at least from our point of view.

In the "Propaganda and Mass Persuasion Encyclopedia" (Nicholas J. Cull, 2003), the authors point out two different types of propaganda: black and white. White propaganda is described as a kind of overt government-run persuasion effort that is characterized by legitimacy, accuracy of the information and the identification of the source, among other traits. This kind of propaganda was usually run by an identifiable government agency like the "Voice of America" or "Radio Moscow" during the Cold War. While this term usually describes an effort that targets an area outside of the territory or area of influence of a given state, taking in account its primary function and objectives, it can be applied to the internal national environment of a state. One of the most eloquent examples of how propaganda can influence public order and even the policies of a country is the United States of Americas' problem with the depicting of the Vietnam War by the mass-media of the time (Nicholas J. Cull, 2003). Because of the images, news reports and information flow that reached the population, most of these sources of information being under state sovereignty (like the Cam Ne massacre, covered by CBS), the U.S faced ample protests that would later transform in a critical electoral factor, directly affecting US policies. As the technologies evolve and the world transforms, the megaphones, projectors and flyers are replaced by blogs, internet sites, RSS feeds and other more accessible sources of information that are literally available at ones' fingertips, at a single press of a button.

The other type of persuasion efforts would be "black propaganda" which by contrast to the white one is not (openly) government-run and does not reveal its source so it does not have to take in account the veracity of the information it employs, seeking to deceive and using any means to do so (Nicholas J. Cull, 2003), although relaying some true information would not be out of the question. In the modern world that we are living in, where the technological advancements have thwarted the states' monopoly to the broadcasting of information and where the average Joe can put together an information channel at a ridiculously cheap price, be it pirate radio or dissident blog, the subject of black propaganda seems to have developed into a day-to-day experience. Unfortunately, black propaganda is extremely hard to identify, so it is usually discovered after it has already met its goals, if it is ever discovered. Taking into account the huge amount of information available on the internet for unlimited use, one can safely assume that at least some of that information shares the same characteristics with the aforementioned types of propaganda, evermore so since the "Wikileaks" phenomenon (Roy, 2010).

The psychological factor that propaganda aims to draw on is a very important part of the equation but it is more of a "force multiplier" than an actual force in its own right. Even the most complex propaganda effort cannot, on its own, destabilize a government but when faced with a barely stable equilibrium between the anarchical and hierarchical components within a system, it can definitely make a difference and either lead the structure in chaos, only to complete the circle by the emergence of a new hierarchical order or help maintain and enforce the "status quo". In whatever case, the control of the information and use of information channels to influence and educate the population will play a major role in maintaining public order, presenting the governments of the III-rd Millennium with yet another challenge that reflects mankind's evolution.

3. The Impact of Economy on Public Order

Although many authors still debate the definition of "Globalization", they all agree that Economy is the engine that spawned it and which continues to drive it forward, despite the economic crisis or the controversy of the fossil fuel problem. The main engine of the "Information Revolution" and the link supporting the inter-dependence of so many systems world-wide is among many other things, a major factor in assuring public order and an ever-present social regulator, a nexus on all aspects of human life.

Given the fact that there have been numerous studies on this subject we will not treat it extensively and only offer some examples in this regard. Public order is influenced through changes in crime levels influenced themselves by a wide range of economical phenomenon, from consumption rate increases (Police Federation of England and Wales, 2009) to labor market trends (Eric D. Gould, 2002). In addition to this, economy can be greatly affected by disasters, both natural (i.e. Hurricane Katrina) or manufactured (The September 11th terrorist attacks on the WTC) and in return it exercises its own influences on the public order of a state.

In this dynamic environment, the state has to choose between interventionism and non-interventionism and even if these two policies have the tendency to coexist rather than rule each other out (Lam, 2000), when a response to a crisis deems it necessary, state protectionism has proved time and again to be the best tool for the job and the recent financial and economic crisis was no exception to this (Zimmermann, 2010). This trend comes, of course, as a natural reaction and assuming we are relating to a capitalist economy, like the "state of exception" it is well justified by the necessities of the moment but the real question is related to its "expiration" date.

All in all, in the supranational environment of tomorrow, if such a term will still exist, the macro-economy will have to be vigilantly supervised in order to avoid the side effects (concerning public order) of the economical phenomenon, as well as balancing the fine act of competition and ensuring a fast response to an impending future crisis, be it one directly affecting the economy or just one with strong reverberations in the economic environment.

4. The Impact of Cultural Differences on Public Order

As the Globalization phenomenon is transforming our societies, cultural diversity becomes an increasingly more important part of social life. People are generally influenced by their cultural background in perceiving reality and making decisions based on the information input they receive and interpret and although we are living in an extremely rich information environment that brings cultures together, it seems that there will always be some incompatibilities between cultures in one way or another. There are a lot of examples in this regard, for instance one of the incompatibilities of the "Western" civilization and the "Islamic" one has spawned the heated debate of the recognizing of the "Universal Declaration of Human Rights" by Muslim countries and the emergence of the "Cairo Declaration of Human Rights in Islam". Although this is a very sensitive up to date and important subject, the incompatibilities between western democratic values and Islam are not the only ones that today and tomorrow's society will have to tackle. Even if the European countries are culturally very similar partly because of Greco-roman philosophy and Christianity, there are still problems like Belgium's Flemish Flanders and French Wallonia inter-cultural clashes that can be somewhat interpreted as an omen of the eventual failure of multi-culturalism.

Although one might say that the modern society is well prepared for homogenizing a complex mix of cultures, cultural inadvertencies appear quite often, from miss-interpretation of language or religious

aspects to more serious incompatibilities that can give birth to incidents that can set the scene for later social uproar. An even more important aspect is the way individuals from other cultures are naturalized in their host country and the way the host countries' culture, laymen and government can harmonize inter-cultural relations (Janicki, 2006).

Another view on the inter-cultural problems a multicultural society would face could be revealed using a criminological approach. In some cases, some social groups place cultural values above civic ones sometimes even ignoring or refusing to accept the justice system or any other form of authority besides their traditional cultural channels. One example of this would be the "honor crimes" that take place within various social groups or another one would be under-aged marriages. Some traditions may even facilitate or directly influence organized crime, like money laundering using *hawala*-type of informal and untraceable money transfer mechanisms that exist in many cultures.

Even if, one way or another, cultural incompatibilities have been and will most likely continue to be (Huntington, The Clash of Civilizations, 1996) a major source of conflict and social uproar, contributing a great deal to the birth of some terrorist organizations ranging from politically motivated ones like ETA or IRA to religious ones like Al Shabaab or Hizballah or to genocides like the one at Srebrenica in 1995 or the Armenian Genocide in 1915, cultural isolation is not and will not be an option in a globalized and dynamically modernizing international society so this is one problem that is here to stay. As national environments become increasingly multicultural, along with its benefits there are serious challenges that have to be overcome in harmonizing the relations between people of different cultures, optimizing communication and facilitating integration in the national society and most importantly, harmonizing cultural values with the necessities and exigencies of the national justice system in promoting indiscriminate justice, equality and peaceful and harmonic cohabitation.

5. Public Order and the Modern "State of Exception"

In the democratic State of Law, the Constitution usually provides the fundamental laws of a state that are meant to ensure a good management, through principles like the separation of power or on the other hand ensure the respecting of the fundamental human rights and liberties. However, in some situations both the separation of powers and the legal safeguards protecting the fundamental human rights as well as other constitutional principles can he serious hindrances in upholding public order and maintaining control over an area. In these kind of situations, chaos threatens to take the place of order and normality and the "usual suspects" are states like civil uprising, revolutions, war or natural disasters. However, the "state of exception", being a juridical fact deriving from a system of authority that benefits from the legitimacy of a state's sovereignty, can be also used as a method of government out of the initial context, becoming a genuine "paradigm of government" (Agamben, 2005). In this regard, the Middle East is a very good example of "Martial Law" becoming the main governing method in states like Syria (since 1963), Israel (West Bank – since 1967) or Egypt (almost continuous state of exception since 1967) to name a few. In theses cases, the conflict zone and the history of violence and instability in the area can somewhat advocate the maintaining of a "state of exception" for several decades, taking in account its initial role as an instrument for times of war and out of the ordinary violence. However "state of exception"-like mechanisms have been extensively used all around the world, for instance economically-related problems compelled post-World War 2 Britain to make use of this attribute of sovereignty, the Government requesting the Parliament to extend its emergency power in relation to the socio-economic field and even extend its purposes of use. This was all happening of course, in the context in which extraordinary powers were already part of the ordinary legislation as a means of

regulating the economy, where "the executive was empowered to legislate on important matters closely affecting the life of the individual" as one student of British governmental emergency power student noted in the early years of the post-World War 2 period (Gross, 2004). However, all of this is not new as diverse authors of specialized literature pointed out to a division of the "state of exception" (Agamben, 2005) into the real state of exception (etat de siege effectif) on one hand and the "fictitious state of exception" (etat de siege fictif) on the other. As the world evolves into an ever-more complicated environment, the "Global civil war" that would justify such an extended version of the initial concept of "state of exception" evolves into new manifestations that demand a swift response in identifying and neutralizing the sources of conflict.

An interesting development in this regard is the United States of America's Military Commission Act of 2006. The act practically allows US Military institutions to become Courts of Justice, to execute the sentences given by the aforementioned courts and to indefinitely maintain the imprisonment of "aliens", defined as "persons that have engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant"(Military Commission Act, Section 3, 948a). The act was signed into law by president George Bush on October 2006 and its formal purpose was "To authorize trial by military commission for violations of the law of war, and for other purposes"(Military Commission Act of 2006). This abstract formulation leaves alot of space for interpretation, thusly disregarding the problem of using military institutions in order to try, convict and carry out the sentences of civilians. Furthermore, the act expressly states that „No alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights"(Military Commission Act, Section 3, 948b).

Even if this legal provision doesn't apply to US citizens, there are anywhere between 12 and 20 million non-US citizens living and working in the United States, some awaiting citizenship status and making sacrifices in that regard. As a result, this huge civilian population does not benefit from the „habeas corpus" rights (procedural remedy for unlawful imprisonment) nor from the Geneva Conventions' rights if ever faced with trial by military commission. Even if this act is spawned from the necessities of an asymmetric conflict and satisfies the tough requirements of countering this threat in the field, this cannot be achieved "for free", implying a high cost as far as human rights are concerned. Unfortunately, combating the asymmetric threat of terrorism would employ the usage to a certain degree of "exceptional powers" in capitalizing on the material advantages of the state, like for instance the physical possession over known terrorists, the capability of gaining access to intelligence assets and the ability to pursue trial and punishment for a terrorist attack (Mears, 2011). Of course, the policies adopted in preventing a terrorist attack usually employ the usage to a certain degree of "powers of exception" that are meant, in their turn, to capitalize on other advantages of the state, for example its influence over communication networks within its national territory.

Being an example of action-reaction, this counter-terrorist doctrine that makes use of the state of exception is on one hand a response to the problems posed by fighting an enemy well blended with the civilian population but on the other hand raises important issues in the extent of those additional powers and their impact on democratic societies (Duna, 2005) both on traditional democracies like the United States and on eastern states whose' democracies seem to be more fragile as the civilian-military relations have not yet fully matured (Cohen, 2005).

While other asymmetric threats like organized crime, white collar crime, human trafficking or drug related criminal activities still fall well within the boundaries of "common law" even though they are as much of a threat on national security as terrorism is, the exceptional character of the counter-terrorist legislation requires an extension of power that is comparable with the state of exception. As criminal

phenomenon seem to develop more and more links between themselves whilst eluding the authorities and corroding the power of the state, the fight against terrorism explores and pioneers this doctrine in countering this phenomenon and even if it's a controversial approach that has been much debated even before it came into effect, it seems to be an effective one that satisfies the requirements of a conflict waged on an invisible enemy which doesn't stand out from the main civilian population. Whilst other criminal phenomenon like drug trafficking have the same effect on public order or an even greater one in the long run, creating more and more victims every year and some even seriously subverting the licit economy (like white-collar crime) whilst at the same time, taking advantage of the same technologies and relative anonymity they provide, dynamic environment and expansion opportunities as terrorism, one might wonder at which point will the modern state authority recognize these asymmetric threats and put the lessons learned from the counter-terrorist doctrine to use in countering those criminal phenomenon too.

6. Conclusions

Since Globalization has given birth to the "Internet" phenomenon, vast civilian populations have acquired access to vast amounts of information available through information channels that are no longer under the control of the Government. It is not the internet alone that is facilitating access to information and interaction but also the continuing economical and technological advances. The problem is that once an environment for channeling information like the internet or mobile phones has been released on the global market for people to use, principles like "freedom of speech", "the right to a private life", "freedom of thought", "right to public assembly" and subsequently "right to a just trial", "right to fair detainment" and the "right of the presumption of innocence" can be used as a cover for certain obscure interests belonging to either organized crime, terrorist or other types of illicit organizations aimed at undermining the security of a state. On one hand, taking away these technological means of communication altogether would equal to a breach of some (if not all) of the aforementioned principles that hold themselves at the very core of a democratic state of law and limiting or intercepting communication would yield the same results, remaining passive on the other hand would undoubtfully yield terrible results of unprecedented violence. Somehow, the state has to find the balance between making use of the "powers of exception" and upholding the very rights and liberties it is invested to protect in the first place. Technology is one factor that greatly helps in this fine act of balancing but unfortunately it is a double-edged blade that also empowers the "enemies" of a state.

In light of the eerie trends that seem to unravel in the fight against terrorism and the harsh policies that seem to promise a temporary suspension of human rights in the interest of state security, one can only hope that human creativity and imagination, alongside technology, determination and a vast resource of empathy can lead us to finding the answers we seek in a highly adaptative, creative and efficient set of policies that would equally uphold the democratic principles and transparency as they do public order and the State of Law, achieving a long sought after equilibrium.

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THE 6TH EDITION OF THE INTERNATIONAL CONFERENCE
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An Overview on the Strategic Accord between US and EU Concerning Data Protection

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Abstract: Our paper proposes an analysis of the strategic agreement between the EU and US concerning Data Protection of people. Threat after September 11, 2001 has become a matter of security and safety of the entire world. Governments have had to find the fastest and most reliable ways to prevent and combat terrorism of any kind: from a computer, economically at threatening people lives. EU-US transatlantic agreement is an answer to this problem. Creating a common security system requires the most appropriate programs, tools, modes of analysis and experts. The effort of the two powers must relate primarily fundamental rights. This paper is a point of reflection and analysis for researchers, academics, students interested in matters of European security policy analysis and efforts to Member authorities to manage most threatening problem.

Keywords: fundamental rights; european policies; cooperation; financial dates; terrorism

1 Introduction

In an ideological sense, the EU can be considered part of each of us (which resulted in the rights that we have named *the European spirit*), one of the major vectors for the directions we were going (through sharing of creative forces, power, policies etc.), but also one of the most recent controversy: to what we are going as well as organizational entity? Despite these uncertainties, the European Union proposes that the measures taken and its precise objectives to ensure the best conditions for its citizens. Promoting economic and social progress, asserting the identity of the European Union on the international scene, establishing citizenship, development of an area of freedom, security and justice are among the main objectives of the EU and reaching them is through respect for and protection of personal data, thus not affect the privacy of its citizens. The objectives of the *acquis communautaire* concerning the processing of personal data to consider when transposed into national law is the guarantee and protect fundamental rights and freedoms of individuals, especially the right to privacy, family and private life. Taking into account the need to defend the fundamental right to privacy and private, personal data protection is a particularly important area, as evidenced by the presence of a distinct chapter in the Schengen Convention. Regulated in different laws defining for the European Union (Treaty of Lisbon, the EU Charter of Fundamental Rights, European Convention on Human Rights, European directives and other documents and agreements) the aspects concerning personal data protection is controversial from the perspective of a continuous development of a concrete reality (economic, social, informational, scientific, medical etc.) but also in terms of the increasingly important role played by the EU as an international actor through new treaties, international agreements concluded

with various partners. If these external cooperation in various fields are intended to bring an added value to the community through the creation or improvement benefits to domestic issues (health care, electronic commerce, security and justice, internal market etc.), they must protect adequate personal data of citizens, legal and practical. The *processing* covers activities such as data collection, recording and archiving, retrieving them for consultation, sending them to other people, blocking, erasure or destruction. To this end, a European body was created to arbitrate, both at EU and externally appointed European Controller (from the perspective of EU actions at international level), how to comply with the collection and use of personal data, with the institution or body concerned to rectify, block, erase or destroy personal data have been processed in a manner contrary to law.

2 Towards a New EU-US Agreement on Data Protection

2.1 The Conceptual Framework for the Protection of Personal Data

The new agreement is part of the European Union for the medium-term collaboration with the United States to prevent and combat terrorism, called SWIFT - TFTP (*Society for Worldwide Interbank Financial Telecommunication - Terrorist Finance Tracking Program*) and is based on data transfer bank offering the American side the right to access and process personal data of European citizens, to establish concrete measures for joint action. The treaty is named after Belgian banking services provider SWIFT (*Society for Worldwide Interbank Financial Telecommunication*), which operates about 15 million transactions daily among more than 8300 banking institutions worldwide. US using data on remittances in the TFTP program (*Terrorist Finance Tracking Program*) designed to detect potential sources of funding terrorists. Strategies in terms of common security of this agreement cannot be criticized for anything, but the controversies and ambiguities that arise when it comes to intrusion into the privacy of citizens or access to certain confidential financial data of the Union could jeopardizing its integrity. Through *personal data* we understand the information which may be related directly or indirectly in connection with an identified or identifiable natural person, such as: name, surname, personal identification number, address, phone, image, data on work and social life etc. The protection of such data across all measures taken by the European Union is to ensure privacy (Bailly & Daoud, 2010, p. 269). For several years, European authorities responsible for the protection of personal data must face new challenges. In this sense, technology and oversight mechanisms have had some improvements, bringing an added value in terms to fight against terrorism and organized crime, but also in the fight against corruption and other forms of economic and financial fraud. The most important elements that promote access to personal data and could lead to some abuses in this regard are the technological (internet architecture, relatively easy access anonymization technologies, software errors), standing (poor security practices, still limited global cooperation, development and legislative processes too slow to combat cybercrime, to the development of new forms), human (negligence in securing the use of virtual resources).

2.2 European Regulations on Personal Data

The objective of the *acquis communautaire* concerning the processing of personal data in mind when implementing them into national law is the guarantee and protect fundamental rights and freedoms of individuals, in particular the right of intimate, family and private life. One of the most important European standards in this respect is Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and free movement of such data. The directive makes references to

human rights issues that directly, giving, while various options, exceptions, exemptions, which leaves Member States large discretion regarding its implementation. It is also light regulated and their processing, encompassing any means automatic or non-automatic operation (collection, recording, organization, storage, adaptation or alteration, use, disclosure to third parties by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction). This directive applies only to statements which reveal the field of EU competence, it excludes those particular "*treatments of sovereignty*" (defense, public security, State security) conditions applying to such public-private sector. In the matter of personal data protection, the directive will be equivalent in all countries and will no longer be any reason to be potential barriers to free movement. Instead, it provides a strict and detailed regulation of the transfer of data to third countries. These transfers cannot be admitted unless the country of destination ensures an adequate level of protection is assessed by the European Commission and Member States together. At the root of privacy legislation and an adequate system of protection of personal data to state the need to determine what each person may disclose the information concerning him. Other important regulations on protection of personal data issued by the European Commission and the Council of Europe is Directive 2002/58/EC of the European Parliament and the Council concerning the processing of personal data and privacy in electronic communications, the Convention for the Protection 108/1981 for the protection of individuals with automatic processing of personal data, Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data, the Commission Decision of 27 December 2004 amending Decision 2001/497/EC on the introduction of an alternative set of standard contractual clauses to transfer personal data to third countries, the Treaty of Lisbon, the European Charter of Human Rights, The Program from Stockholm. The right to personal data protection is guaranteed by the European Charter of Fundamental Rights which has become an obligatory value date of entry into force of the Treaty of Lisbon.

3 SWIFT – TFTP Agreement Concerning Data Protection

3.1 SWIFT - TFTP Context of Negotiations on the Agreement

SWIFT draft interim agreement, under the responsibility of the Commissioner of Internal Affairs Cecilia Malmstrom, on the transfer of banking data to U.S. authorities was a starting point for the fight against terrorism. In its original formula proposed by the Commission on 11 February 2010 was rejected by Parliament, is considered unsatisfactory because of low of personal data protection and fundamental rights. MEPs (member of European Parliament) felt that the lines were not surprised the report as clearly as was necessary. Thus, on 11 May 2010 the Council has allowed the Commission to resume negotiations on behalf of the European Union to adapt to needs and this project is consistent with the rights of citizens. On 11 June 2010, negotiations were completed. The agreement was signed on 28 June and received approval of Parliament, by 41 votes *for* in plenary on 15 July 2010[1].

The agreement was a request from the U.S. after the terrorist attacks of September 11, 2001, to have access to information on banking transactions through a special program called TFTP (program seeks funding for terrorism) and to develop such cooperation with the company SWIFT, which has, in turn, the monopoly of electronic financial transfers. The need for such US-EU agreement came when we witnessed a change of "internal architecture and European data center storage off to Switzerland".[2] As

[1] Information extracted from the official text of the recommendation, document the meeting, European Parliament, A7-00224/2010, 15/07/2010.
[2] European Parliament-Intranet informative article MEPs canceled SWIFT Interim Agreement.

an interim agreement was signed by ministers the day before the entry into force of the Treaty of Lisbon, which noted the need for approval by the European Parliament to signed international agreements on criminal judicial cooperation, and the agreement had to be renegotiated by Commission to meet the demands of MEPs and to combine harmoniously security, data protection and respect for fundamental rights. Parliament voices have argued that poor security guarantees offered by this agreement and it had re-launched negotiations. However the fight against terrorism is important but the terms of the agreement should be renegotiated in the sense that public confidence must be earned by maintaining a proper balance between protecting civil liberties and global security, but also the U.S. is an equal partner in this joint struggle, blocking and the possibilities of abuse. Or, the original agreement did not ensure that all making the EU an actor vulnerable.

The new agreement between EU and U.S. was passed by Parliament and has the powers to be considered as a "variable geometry of the transatlantic partnership" (Helly & Petiteville, 2005, p. 142) in the sense that the fight against international terrorism is a priority and therefore, by extension, this agreement will serve not only expectations of these two powers and other international entities and the Community. However, the conditions for this agreement to prove their effectiveness and develop a good collaboration to meet certain values of the European Community, the Parliament, as representative of citizens, we must defend. Under the Treaty of Lisbon, each share of the EU as an international player in this case, must comply the European Charter of Human Rights (now mandatory) and, therefore, the principle of proportionality and the need to prevent abuse or to achieve privacy, fundamental rights of citizens. Only through negotiated agreement so well can be obtained such strict and primary guarantees before being made "at any price"[1].

At the same time, another important safeguard is stated in this agreement relates only to the transfer of SWIFT and SEPA[2] data not related to the transfer of data on financial transactions within the euro area. It is still an important safeguard to stop the Americans can pursue their other interests than the struggle against terrorism in its applications, involving minimal risk economical access to information specific to the EU. Moreover, the bulk transfer of this information (without individual), estimated at 90 million data each month, is contrary to European legislation, they can be customized by any U.S. bank. So *double close* proposed by Liberal MEP Jeanine Hennis-Plasschaert on an initial analysis of data on European soil before being transferred to a filter could be more desirable and advantageous guarantee.

However, the conclusion of this agreement has also opened discussions on a future inter-institutional cooperation aimed at negotiating access to documents. Disquiet about the lack of access to documents of the Commission and Council have determined MEPs to make a legislative proposal in this regard. After the Treaty of Lisbon, Parliament must have access to these documents to study each action of the Commission and, finally, to guide negotiations in correspondence with the interests of European citizens. This will form the basis for discussion of a future report. SWIFT final agreement, discussed at Malmstrom Commissioner Hearings in Parliament, ensure a better balance in the fight against terrorism, security and data protection. Thus, the final agreement reflects very well the commitments made by the Council and Commission, but, equally responsible and demands of Parliament. Equally, it encompasses all proposals and solutions listed legally binding on citizens' privacy and security, which shows that the Commission has done well the work of negotiating a proof for this being the 41 votes *for* received in

[1] Opinion supported by Busuttil, Simon, MEP (European People's Party), following the debate in Parliament.
[2] Single Euro Payments Area (SEPA) is a unified payment area and implemented by the EPC member countries. This area aims to harmonize financial transfer modes, the euro currency between countries, a single payment area in the heart of which individuals and businesses will be able to transfer funds in Euros in safe, fast, and cost the same rules that you may have to Currently in their country of residence.

plenary session in July 2010. The question is this: "We are really needed a European TFTP?"[1]. That involves a change in the conception of this collaboration in the U.S. and European authorities. Equally, it requires not only a re-size of this cooperation and the creation of premises infrastructure, a legal basis for developing such a program. This new EU-US agreement is not only a transatlantic dimension of cooperation to achieve a common goal-*the fight against terrorism*, but also an enhancement of the new Parliament's powers relating to the control and the right to veto international agreements following the entry into force of the Treaty of Lisbon. In conclusion, this agreement may be regarded as a step toward diplomatic communication plan for sharing similar objectives, to strengthen EU-US cooperation not only in terms of defense. Equally, one can demonstrate the existence of prerequisites for the development of other partnerships, as long as the policy of *win-win* is respected.

3.2 Peculiarities Agreement SWIFT - TFTP

The final agreement negotiated and voted on by MEPs in July 2010 will be implemented in the coming years. The fight against terrorism will be ensured by a rigorous control and treatment of data received from SWIFT to U.S. authorities for an "inside the U.S. security contributions and, more generally, to global security"[2]. However, we may notice a date for implementing this agreement will be respected as guarantees data protection and information dissemination. Actions taken by U.S. authorities for analysis of these data involve identifying tracks: "a situation of terrorist networks, to complete some investigations to confirm the identity of suspects to locate physically, and prevent terrorist attacks"[3], which means that only data received in these situations the European body SWIFT can be used. This is one of the main guarantees of this Agreement. It remains to be seen how this will be respected, especially in reality controlled by Europol and EU special representative appointed for this. An effective respect of these obligations will be subject to evaluation by the Commission carried out after 6 months after entry into force of this Agreement, since normally it is not known yet when they see the first results. It is difficult to capture in practice if the principles of necessity and proportionality were actually observed data requests, although each request will be granted a legal term that will indicate specifically what is strictly necessary. This could be problematic for assessing the exact number of data necessary for a case in circumstances where a large number of applications will be presented regularly. Moreover, another difficulty may arise also be impossible to know exactly where these safeguards were applied non-discriminatory manner for Europeans and Americans. In addition to the control afforded by the designated official, in reality there is no instrument that can measure precisely the question whether Congress has made an abuse of its applications.

"The interest of Europe and its citizens" which refers both to the fight against terrorism involves a well-negotiated agreement that can certainly provide guarantees of privacy and data protection for the European community. To that extent, the existence of a safeguard clause to ensure exemption from the rules of law in case of abuse or a direct threat and violating securities by the U.S. Treasury. Even if the proposals under discussion were MEPs for the existence of this clause, the text of the final agreement is clearly not in such a stipulation. In this context, it cannot take advantage of this opportunity to protect them more. Distrust in the agreement also led Great Britain, Ireland, and Denmark to be outside this agreement. Applicability of this Agreement will be modified as a result of this exemption that the fight

[1] Claim belonging Busuttil, Simon, MEP (EPP Group) during debate on the report aimed at future agreement TFTP-SWIFT
[2] Confidential report of Judge Bruguière, http://www.lemonde.fr/europe/article/2010/02/04/l-accord-swift-participe-a-la-securite-globale-selon-jean-louis-bruguieres_1301338_3214.html.
[3] Confidential report of Judge Bruguière, http://www.lemonde.fr/europe/article/2010/02/04/l-accord-swift-participe-a-la-securite-globale-selon-jean-louis-bruguieres_1301338_3214.html.

against terrorism cannot be accomplished without a 100% full control and creation of a European TFTP will give more confidence for Europe and demonstrate its usefulness more than the American system. However, the prospects for development of this system are a little insecure because the infrastructure and support necessary to implement the Americans are theoretically available for the moment. This investment requires not only time but also a rethinking and adjustment of the agreement by these two actors.

Achieving this agreement will show the effectiveness of its implementation throughout. At the same time, citizens will be able to see specifically whether safeguards would be applied without discrimination and whether the project of creating a European TFTP will prove its effectiveness to the same extent as those used by U.S. authorities and so quickly. Furthermore, Europol will prove whether he can carry out the control that we need to make applications for information to refute the initial suspicion of MEPs on the ability to have this kind of power. On the other hand, the practical ability of the EU to establish its own TFTP benefiting from U.S. aid cannot be estimated as well as the necessary infrastructure and experience at the moment is only for Americans. Moreover, the agreement does not stipulate details of rethinking the concept of transatlantic cooperation in this case, no words necessary support provided by Congress to develop a program so powerful as the existing.

4 Advantages and Prospects in using SWIFT- TFTP

Working with a partner strong enough and pooling resources to succeed in achieving a common goal- *the fight against terrorism*, can bring many benefits, because there is less effort for each partner. However, this cooperation should ensure a balance between security and data protection, civil liberties and fundamental rights for the Europeans and for the Americans. With this balance maintained control means secured to prevent abuse, the Commission negotiated agreement rather than managing to meet all the conditions imposed by Parliament and meets of Americans. Equally, the creation of a European TFTP is expected to be able to process data within the EU and prevent terrorism, but we do not know yet whether this project will be feasible. Fight against terrorism is a priority for the EU in its policies by ensuring a space of freedom, security and justice. Sometimes, an equally important objective can be achieved entirely by means of which it has an EU and therefore has to resort to cooperation with another international player that looks much stronger. Through this agreement the Commission was able to negotiate for a better European cooperation and a "contribution to the internal security of the United States and more generally to global security." At European level, the struggle for these objectives is resized and has a different significance. Preventing terrorism is a matter of national security and foreign and should be using the most appropriate programs, tools, modes of analysis and experts. For this, cooperation with the American authorities have the infrastructure to manage this type of application is essential. After the September 11 attacks in the U.S. this objective (preventing other attacks) have become essential to protect the American people from threats and to this end, cooperation with the EU would be possible to provide the data necessary for this analysis SWIFT. So, this Agreement has occurred through the sharing of two ways necessary to achieve a common goal: maintaining security.

At the level of U.S. authorities, SWIFT data are valuable for applications made use of a TFTP and will include SEPA data. This does not prevent the U.S. Treasury to conduct espionage for abuse or other interests as those specified in the agreement. Even during the debate in committee MEPs were skeptical about the possible political interests that Americans can show in this collaboration, noting that also benefit from a high level of protection, excluding the transmission of data in bulk. The fight against terrorism means to defend freedom and this should be done under the control of Parliament.

Furthermore, Member States have expressed concern that cooperation with the U.S. especially in terms of data protection. Cooperation with third countries will be more convenient. Consequently, even if we take the essence of compromise as a Community method to achieve this balance of the agreement "should not be done at any cost"[1] the Commission has managed, in response to these requests, obtaining a good agreement negotiated text, which ensure balance between security and data protection and provide maximum possible guarantees for Europeans. We can say that this agreement was a compromise because the EU had initially intended to comply with U.S. demands and only intervention by the Parliament resulted in a better negotiating terms of negotiating progress and cooperation. In conclusion, we present a cooperation agreement that certain guarantees or promises by the two great powers and unify for a common purpose. The effectiveness of this cooperation, however, will be demonstrated starting from the moment in the future, emphasizing also that each party follows the interests and fight for a common interest: to prevent terrorism. In this case we must ask whether a draft European TFTP will be really accepted by Americans or they will be more interested to keep transatlantic cooperation for a longer period. The next 5 years we will demonstrate this. The union of forces to prevent terrorism has generated more comments among MEPs but also among Europeans who are directly affected. On the other hand, MEPs and the Commission think that the success of negotiations is to guarantee good agreement obtained lines, without making major compromises on the other hand, remain a bit skeptical and concerned citizens across the concrete implementation of this agreement controversial. First, the EU united and prosperous extended to the U.S. could be a potential competition on the international scene, but how it meets only American interests, it becomes a potential partner, as the author H. Kissinger noted: " *Une Europe plus active dans les affaires mondiales est dans l'intérêt de l'Amérique. Mais que cette identité soit définie en opposition aux Etats-Unis ne l'est pas/ Europe more active in world affairs is in the interest of America. But that identity is defined in opposition to the United States is not*" (Kissinger, 2002, p. 81). In conclusion, this partnership includes the interests of both parties both political and diplomatic, but creating a TFTP across Europe remains one of the most important perspective based on this agreement, since it can be interpreted as an ambition of the EU not to U.S. reliance on it to get their support and expertise to develop this system in the first instance. This program will help the EU to pursue its security objectives, while at the same time respecting the rights of citizens, thus in this respect will be the safest possible. There will then be necessary to resort to this *shared leadership* was talking about. But strengthening the defense system by a European TFTP will be the precedent for a *Europe puissance* or *space of Europe*, the U.S. can demonstrate their attempts to control? Concrete results will appear in the coming years.

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THE 6TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

Is it Necessary a Higher Administrative Board in Romania?

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Abstract: The idea of establishing a forum of thought and advice for policies and their implementation norms in the field of public administration, a body without jurisdictional role, comes out from the necessity of organizing a professional and balanced support of such decisions. Obviously we are placed in front of a body of the executive power, which imposes to be constituted as an autonomous administrative authority. The competency of such a body would be placed in the field of initializing/advising of projects of normative juridical acts that concern the organization, the administrative rapports and civil service, the non-contentious administrative procedure at the state's level and at the local level. Is it necessary such a body in the Romanian political and administrative system? And which similar bodies do we find in other countries? The present study is researching for an answer.

Keywords: advisory bodies; decision-making process; public administration

1 Introduction

The dynamic of the Romanian post-communist society supposes walking on an anfractuous way, marked by the necessity of attaining some strategic objectives, but also by the rapid adaptation to the eventual accidents on the way. Such an evolution, unpredictable in many times, in a reasonable time limit, can generate the instability of the law as an instrument of the public action, harming both the persons and society but also the credibility of the political class.

Of course, this instability may also have objective causes, derived from the complexity and the unexpected of the transition period, combined with the necessity of harmonizing the Romanian legislation with the European one. In the same time, this situation can demonstrate an insufficient professional and scientific elaboration of solutions, an insufficient evaluation of their impact, as well as a certain precipitation and superficiality in finding the adequate measures. The principle of the juridical security, which constitutes a fundament of the state of law, requires that the juridical norms are clear, intelligible, not submitted to too frequent changes, and especially not unpredictable. The juridical solutions must remain relatively stable, the jurisprudence of the European union Court of Justice and of the European Court of Human Rights formulating and consecrating the principle of the legitimate confidence.

This principle tends to limit the possibility for frequent modification of the juridical norms, in the context of the agreements assumed by the competent authorities, protecting the confidence of the addressees of those decisions in the stability of the regulated situations. It is obvious that the factors that generate the proliferation and the complexity of the juridical norms are not entirely controllable. The exigencies of the juridical security impose finding the appropriate remedies in order not to put into danger the stability and cohesion of the society.

It is entirely valid the recommendation made in 1991 by the French Council of State „*legiferons moins, legiferont mieux"*. (Conseil d'Etat, Rapport public annuel 1991, *De la securite juridique*, La documentation francaise). The context enounced above imposes the adoption of some solutions that

allow a better fundament of the decisions of power with profound social, economical and political consequences. Sometimes, the consultation of a "clear mind" by the one vested with the direct exercise of the political power can place the decisional factor in front of unconsidered openings, raised from the independent experts' professionalism and balanced detachment. The idea of establishing a body for the evaluation, monitoring and advise for the juridical norms and policies of implementation in the field of public administration, without having a jurisdictional role, is grounded on the necessity of ensuring a scientific and professional support for those decisions.

The competence of such consultative body for the Government and the Parliament would place itself in the field of evaluation and advise for the policies initiatives and for the normative acts that concern the organization and the content of the rapports from the sphere of public administration, of the civil service, of the non-contentious administrative procedure, of the public administration system form the level of the State and local collectivities. Researching such a theme requires an interdisciplinary analysis, where to the juridical perspective attaches in the same extent the politological, managerial and administrative approach. The scientific knowledge, grounded on investigation methods and techniques validated by diverse branches of science ensures a multidisciplinary evaluation of the object submitted to the research. In the same time, restraining the object submitted to the research to the field of the preparation of the strategic decision in the fundamental matters of the public administration allows the focalization of the instruments of the research and ensures intensity for the scientific research, avoiding the spread of energies on a large and difficult to control area. Through documentary research and comparative analysis we propose to identify the nature, the role and functions which should have a body called to uphold the process of founded elaboration, on scientific grounds for the decisions concerning the management and the organization of the public administration.

2 Consultative bodies that take part in the process of elaborating public decisions – comparative analysis

Traditionally, the role of official advisor of the Government or the Parliament in the process of elaborating the normative acts comes to the State Council, component of the political and state structure. The State Councils watch over the conformity of the texts that are presented tot hem for advising with the superior legal norms of constitutional and international levels. There are also States which, through their Constitution, constructed other bodies to watch strictly on the conformity of the normative acts to the superior norms, or with the principles of law, and to ensure in this manner the coherence of the legal system. This is also the case of Romania, which, by the norms of the article 79 of the Constitution stated the establishment of the Legislative Council as a specialized consultative body for the Parliament, which advises the projects of normative acts in order to systemize, unify and coordinate the entire legislation. In the same time, the Legislative Council was vested with the official evidence of the Romanian legislation.

In *France*, the State Council is an institution that has the right to assist the Government in the elaboration of the project of laws, ordinances and some decrees. The consultative function ensured by the State Council also involves the elaboration of general studies that are placed at the Government disposal. Apart from the cases of mandatory notice, the State Council may be required by the Government to advise any project of normative acts. The State Council can also be consulted on *the difficulties appeared in administrative matter*. This general formulation allows the ministries to apply to the State Council in questions concerning the interpretation of some dispositions of the administrative acts in force. By its own initiative, the State Council can draw the attention of public powers on the legislative or administrative reforms, which it considers in concordance with the general interest. In this respect, the state Council can effectuate studies at the prime minister's request and has an important role to play in the process of legislative codification.

In *Italy*, the State Council created by the French model is both an organ of juridical and administrative consultancy and a court of administrative contentious. Referring to the consultative function of the State Council, the advise of this institution is facultative for the project of laws and mandatory for regulations

and for the unification of laws and regulations. There are also situations in which the opinion of the State Council is obligatory for the Government, having the nature of a conform advise. It is about the adoption of juridical norms concerning the execution of the competencies of the executive power, as well as the organization and functioning of the public services.

In *Sweden,* before the Government drafts a law project, the respective matter makes the object of an examination of some authorities and interested associations to whom it is offered the occasion to make observation on the text. Than, the law projects are analyzed by the Cabinet and than put forward to advise to the Legislation Council. This Council must ensure that the projects having important implications for the citizens or for the general welfare don't enter into conflict to the existing legislation. At European level there can be found as advisory bodies established by the provisions of the European treaties the Committee of the Regions and the Economic and Social Committee. The Committee of the Regions in consulted by the European Parliament, Council or Commission in the cases provided by the treaty or in any other case, especially in the ones concerning the trans-frontier cooperation, if one of those institutions consider it appropriate. The nature of its advise is a consultative one, as long as its absence does not hinder the future actions of the institution that requested it. The consultation is obligatory for sectors as: social and economic cohesion, education and youth, public health, trans-European networks, social affairs, professional training. (Bărbulescu, 2008)

The Committee of the Regions also can, when there are involved specific regional interest, issue an advise on this matter, and being able to issue such opinions *ex officio* when it considers it necessary.

The Economic and Social Committee is, in its turn, consulted by the European Parliament, Council or Commission in the cases provided by the treaties. In all the other cases it can be consulted by those institutions, if they consider it appropriate. It can also issue an advice by its own initiative, in questions concerning its sphere of preoccupation, especially concerning the internal market, education, protection of consumers, environment, social field. (Scăunaş, 2008) Coming back to our country, we are going to notice the insertion in the text of the Constitution, on the occasion of its revision from 2003, in the 4th Title – Economy and public finance, of a body named the economic and Social Council (Article 141).

The Economic and Social Council is an autonomous body, with advisory role, which, upon the request of the Government or by its own initiative draws reports in economic and social matters. The Economic and Social Council issues consultative advices on the projects of laws, ordinances and decisions form the fields of competence established by its organic law of establishment, organization and functioning. (Constantinescu, M. & all, 2004)

3 The Administrative Superior Council – Nature, Role and Functions

In our opinion, public administration and its components, both in their material and formal aspects, represent a fundamental field of the society and the strategic decision that concerns it holds a priority importance for State and Society.

The body we propose to fulfil the advisory role for the Government and the Parliament in the process of scientific elaboration of the policies and normative acts concerning the fundamental questions of the public administration is the Superior Administrative Council. The establishment of such a body could make the object of some constitutional norms or of an organic law.

Component of the state political structure, the Superior Administrative Council should be an autonomous body, with a consultative role, which, upon the request of the Parliament or Government, or by its own initiative, draws reports in questions concerning public administration. the Superior Administrative Council also issues consultative advices on the projects of laws, ordinances or other normative acts in the field of public administration.

As an independent authority, the Superior Administrative Council helps the activity of the Government and Parliament in the framework of the process of elaboration and implementation of the public

policies, in order to ensure their quality as well as of the regulating norms, in order to provide the juridical stability of the social rapports.

Of the duties that should be conferred on the Superior Administrative Council, we mention:

- analyzes and elaborates opinions and recommendations with respect to the strategies in the field of public administration, including on the measures for the simplification of the bureaucratic procedures;
- elaborates annual public reports, as well as studies on topics of great interest for the field of public administration;
- formulates reform proposals, in the attention of the Government, including normative recommendations;
- answers the requests addressed by the prime minister or the Government, regarding the interpretation of certain constitutional or legal norms in the field of public administration;
- ensures the conformity control of the texts presented for approval with the constitutional or international order norms. Manifests vigilance and exigency with respect to the quality of the legal norms in the field;
- analyzes and elaborates opinions and recommendations with respect to the drafts of codes or laws which may have an impact on public administration;
- evaluates the Government's performances in the management of public administration, in relation to the strategic objectives recorded in the governance plan and with the principles and rules established by law, as well as upon the conclusion of one government's mandate, in the form of public reports;
- offers information in its competence sphere, following the written request of the President of Romania, of the Presidents of the Chambers of Parliament or of the Presidents of the Permanent Commissions of the Senate and of the Chamber of Deputies.

In order to fulfill its prerogatives, by means of its organizing and functioning norms, the SAC must be conferred the possibility to request information, documents, relevant data in any format or at any detail level, from the entities is manages or which are responsible for their processing, entities which have the obligation to submit the information within 15 days from receiving the request.

4 Final considerations

The proposal launched by this paper starts from two fundamental considerations: the strategic importance of the field of public administration for any state, as political-juridical institution, and the need of scientific, professional grounding of he state's decision in this field.

A construction of the nature of the Superior Administrative Council does not appear as new in the Romanian politico-statal landscape, in which we can notice the presence of a similar organism: The Fiscal Council, established according to the Law regarding fiscal liability, no. 69/2010.

In the absence of a State Council, the presence in the Romanian politico-statal landscape of the Superior Administrative Council could contribute to the consolidation of the stability of the policies and norms in the field of public administration, to the provision of judicial security, as fundament of the state of law.

The new organism would not substitute the Legislative Council, the one called to fulfill the function of approving the drafts of normative acts in any field of activity and which seems overwhelmed by their volume, playing a passive role in the mechanism of guiding the legislative work for normality.

As independent authority, the Superior Administrative Council has the role of actively supporting the Government and the Parliament in the process of elaborating, building strategies and public policies regarding public administration, as well as of adopting clear, coherent, predictable legal norms in the matter.

The organizing and functioning of public administration, public service, public function, the administrative codification, could be essential concerns for the research and solution formulating by the new organism with a consultative, not at all jurisdictional role.

Its autonomous character, which should also be reflected in the modality of assigning its members, the basis of which should be professionalism and not political loyalty, would allow it to perform other activities, as well, connected, for instance, by the top exercise of the public function.

We refer to the possibility of the SAC to make recommendations regarding the specialty training, the recruitment and evaluation modalities for the personnel who occupies such functions.

Organized and constituted with good faith and with the acknowledgment of the need to ground the public decision on scientific bases in a priority field of society, the Superior Administrative Council may play an essential role in the consolidation of the state of law in our country.

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Public Order: Challenges of Inter-Institutional and Regional Cooperation in the Context of the Knowledge Society. A Question of Economic and Social Efficiency

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Abstract: The context of public policies undergoes a process of rapid change due to the emergence of the dynamic knowledge-based economy and society. Public administration institutions need to adapt their material and human resources to the dynamic developments of the knowledge and information society in order to maintain efficiency and effectiveness of their scopes. One of the most fragile fields is public order and the need for improved inter-institutional cooperation at national, regional, and EU-level for achieving the objectives of ensuring citizens' safety while safeguarding rights and liberties. The social and economic efficiency of public order policies and measures need to be reassessed and improved based on overhauled and updated inter-institutional and organisational concepts, on diversified methods of cooperation at national, regional, EU- and international level. A recent project developed in the field of public order with respect to juvenile delinquency has shown that major questions still need to be approached with respect to efficiency and effectiveness of inter-institutional cooperation with both public and private bodies, and with representatives of the non-governmental organizations. The outcomes of the project have shown that juvenile delinquency must be approached as phenomenon in the wider framework of public order, of urban and rural safety, of crime prevention and combating. One major conclusion of the project is that a new integrated model is required with respect to the intra-, and inter-institutional cooperation and dialogue, but also with respect to the skills required to work efficiently considering the challenges posed by the overall developments of a society changing towards increased knowledge and information awareness. This would allow also for improved quality assessment and effectiveness measurements based on composite process and outcome indicators for public order, and public administration, in general, as well.

Keywords: inter-institutional cooperation; the knowledge society; human resource; social efficiency

1 European Union and Romania: Reform, Transition and New Challenges for Public Order and Security

The past two-decades of Romania's history are representative for undergoing in-depth reforms, restructuring processes, and extended transition in most fields of political, economic, social and cultural life. Romania's "desert crossing" from a deeply controlled, centralised and oppressive system to a democratic, liberal and decentralised one has been difficult, with many successes but also drawbacks, particularly related to the country's most relevant institutions and organisations which had to adjust to specific requirements related to NATO-membership and European accession, the expected entry into the Schengen Area for which necessary preparations and efforts have been made and still need to be made.

One of the most fragile and sensitive fields requiring rethinking and in-depth overhaul in the new democratic context was the field of public order, safety and security, particularly in relationship with the changes triggered by the dynamic development induced by globalisation and the emergence of the knowledge-based society/economy.

The changes brought about by these two phenomena, influence economy, society, culture and individuals in various forms and impact on all aspects of life having considerable implications for institutional and organisational strategies, policies and measures. Particularly, public administration institutions/organisations need to adapt their material and human resources in order to meet the challenges of the knowledge- and information-society so as to maintain efficiency and effectiveness of their scopes. Empirical researches indicated that public order, safety and security are one of the most fragile fields that require improvements and in-depth adjustments for ensuring citizens' safety while safeguarding rights and liberties due to the changes induced by the emergence of new technologies which impact not only on economy, but also on the overall welfare and safety of the society and individual alike. The economic and social developments of the last couple of decades have increased and sometimes even changed the content of jobs and challenges related to urban and rural safety, to regional, European and even global security. In this context, ITC has a particular influence on many public administration fields of activity providing the required tools for increased efficiency and effectiveness.

Nevertheless, there is also the reverse face of the coin: Terrorism, drugs, human trafficking, new, and even now-emerging types of crimes, and delinquent attitudes have become areas of international concern, and pose new challenges with respect to prevention and intervention, requiring re-defining and improving the approach regarding these phenomena by public institutions/organisations if they are to maintain a satisfying rate of success in achieving their scopes. Public administration institutions and organisations in Romania, but also at EU-level need to adjust in order to meet the challenges of the present and future in the context of dynamic changes induced by the knowledge-based society/economy. In this context, the social and economic efficiency of public order policies and measures need to be reassessed and improved based on overhauled and updated inter-institutional and organisational concepts, on diversified methods of cooperation at national, regional, EU- and international level. More and more questions relate to effectively being able to better measure the institutional/organisational efficiency from policies', measures', action plans' viewpoint, in relationship to investments', costs' made while implementing/ carrying out the respective initiatives and benefits' gained not only at the level of a single community but at national, regional and even EU-level.

In order to achieve the objectives of the ***Stockholm Programme-An open and secure Europe serving and protecting the citizen***[1] different tools are required, many of them closely interlinked between the national, regional and European level. This multi-annual programme for the years 2010-2014 includes several tools that impact directly on the public administration authorities, institutions and organisations, respectively:

- ***Mutual trust***: one of the most decisive tools as it implies high levels of commitment and confidence not only between the representatives at the various national levels in the Member States, and decision-makers, but also between authorities' and services provided by Member State within the respective state and based on cooperation between the Member states. Issues here are difficult to tackle and new means of cooperation need to be established as differences are apparent between legal systems, approaches in dealing with the various types of crime, in dealing with the most concern increasing manifestations of juvenile delinquency, in attempting to harmonise ways and means of action in prevention and intervention, so that the joint answer is univocal at European Community level.
- ***Implementation***: the instruments provided by empirical and scientific research for improving the activity meant to safeguard freedoms and liberties while increasing the security level within each of the Member States and in the EU as a whole need to be not only properly enforced according to the particularities of each of the member countries from the legal point of view, but also require constant review, planning, and evaluation on an ongoing, repeatable basis. Particularly evaluation of provided tools and instruments is difficult as we deal, on one hand with institutional change induced by ITC, and the knowledge-based society/economy and globalisation with respect

[1] Stockholme Programme-An open and secure Europe serving and protecting the citizen, European Council, 17024/09, Brussels, December 2009**.**

to capacity building and enhancement, and on the other hand with increased awareness of the society and concern in how public institutions/organisations answer to the new challenges of the 21st century. In this respect we should mention that if we refer to the clear-cut distinction between "institutions" and "organisations", then whereas organisations can be evaluated based on their overall performance, on their capacity to learn and change while trying to maintain pace with external influences, "institutions" in their strict meaning of "arrangement between two or more individuals with respect to norms, procedures and roles played" are much harder to assess (T.Christian, 2005).

- ***Legislation:*** this domain is one of the most difficult ones requiring further tackling, particularly as at EU-level the initiatives in the field must meet the principles of proportionality and subsidiarity, and enforcement should be done only after ex-ante impact assessment, here including also required assessments of costs' both with respect to material and human resources, all the while also ensuring improved *quality* with respect to contents, coherence and even language of some of the documents.
- ***Coherence:*** EU-level, regional and even national cooperation and coordination require future enhancement of the approaches as it applies to all EU agencies dealing with the fields of justice and security, including public order (Europol, Eurojust, Frontex, CEPOL, the Lisbon Drugs Observatory, the future European Asylum Support Office and the Fundamental Rights Agency).
- ***Evaluation:*** one of the most critical issues is the objective, comprehensive and clear assessment of policies', action plans' and measure quantitative and qualitative measurement. We believe that particularly with respect to cooperation at inter-institutional/inter-organisational level in the field of public administration, and more specifically in the field of public order and security new process, output and performance indicators need to be developed for estimating performance, better identifying weaknesses and potential risks and threats to the effectiveness of aforementioned policies, measures and action plans. More specifically, for public order and security, same indicators would need to be considered and analysed as for all public administration institutions in general, based on a common set of assessment tools for overall and specific performance, and the evaluation mechanisms of all member countries should be harmonised in order to provide a basis for comparisons, for avoiding duplications and for encompassing all policies of the respective area of intervention. Evaluation is also the sound basis for ensuring proper follow-up and improvement, assuring thus continuity of the process.
- ***Training:*** overall training in the field of public administration, but also specific training for the representatives of the public order and security field is necessary with respect to judicial and law enforcement culture and practices, in order to develop better and improved shared understanding of scopes, objectives and tasks, and to increase the efficiency of efforts' dedicated to ensuring the climate of security at EU-level and at the level of each of the member country, a common reply in cooperating at global level, and at the same time safeguarding the freedoms and liberties in an EU Area of freedom, security and justice.

Considering the objectives of the ***Stockholm Programme***, in particular with respect to the key issue of cooperation at inter-institutional/organisational level within public administration, and more specifically regarding public order and security, there is already in place a set of assessment tools regarding financial and human resources, management, government policy making, service delivery and initiative/leadership capacity that can be used and further tested for robustness. For instance, with respect to policy-making the consultation process, including here degree/level of participation and/or involvement could be used by interpreting it based on relevance of proposals, initiatives made, of whether inter-institutional/organisational consultations take place about these proposals/initiatives , and actual delivered outcomes of the consultation process; if and how the impact assessment before actual implementation was performed; delivered outcomes of consultation process and impact assessment; outcomes relevance; number and relevance of agreements reached and measurable outcomes thereof translated into status and process indicators, along a new set of composite qualitative indicators that may be developed in this respect. At the same time, we believe that frequency of inter-institutional cooperation meetings, or indeed number of inter-institutional cooperation bodies should not be regarded

as indicative or possible measurable indicator as not quantity but quality and delivered outcomes are relevant.

In the field of human resources management, recruitment policies, well-defined, specific job contents and specific responsibilities, judicious tasks assignment and balancing, overall and individual evaluation sheets, and development of human resources 'hard' and 'soft' skills should prove most relevant, while with respect to financial management involvement/participation to budget determination, compliance with the yearly and quarterly budgetary levels and constraints, efficiency of budgetary allocations, particularly with respect to investments, from the ones with impact on society to those relevant to institutional improvement and training of human resources could and should contribute to enhance also openness and flexibility of inter-institutional cooperation. However, in Romania public administration institutions still need to reach a better level of agreement on a common set of rules, procedures and assessment means, that would contribute not only to the good functioning of each of the institutions, but also to better and improved cooperation between institutions, not only of the public authorities, but also in cooperating with institutions of the private and non-governmental sectors. This is particularly relevant for the challenges facing public order and security at national level, as the institutions within the system need to develop better ways of cooperation and communication with other relevant institutions and bodies, organisations and the private and NGO sector. But, rather the rather 'conservative' perspective in Romania, which still exists after two decades of reform and transition still determines a rather slow pace of institutional change and inter-institutional/organisational cooperation remains very often formal triggering dysfunctions in practice.

Nevertheless, the economic and financial crisis currently still manifesting effects all over the world, represents a serious challenge also for public order and security, as along with it threats' and risks' thresholds increase, and in the new context of the knowledge-based society/economy and globalisation new types of crimes and typologies develop along the old, usual ones. Therefore, public order institutions should 'learn' to develop better communication and cooperation mechanisms and tools with their partners from labour, health, employers' and trade unions' representatives, and with other relevant partners of the private and non-governmental sector in order to improve efficiency of prevention and intervention. The overall EU scope of an Europe of the citizens' can be achieved only if inter-institutional cooperation and communication are functional first at the level of each of the member states, and at regional level. It requires improved cooperation culture, better and harmonised joint procedures and integrated, operational networks.

2 Public Order Challenges in the Field of Inter-Institutional Cooperation in Romania

The former oppressive regime left its mark on the Romanian society, and public order faces new challenges with respect to public opinion's attitude towards proposed measures and policies. Yet, Romania as EU-member must comply with the overall political goals and harmonise policies in the field of justice, public order and security. Difficulties are perceived from strategies and policies, to measures and actions plans for rendering them operational, particularly if other institutions and/or organisations need and are required to be involved. A relevant example in this respect, and also a 'case-study' highlighting both success and failures of inter-institutional cooperation in Romania, was a MATRA-Project developed in the period 2008-2010 with the assistance of the Dutch Government. The scope of the intervention covered three main objectives: a. a national joint action plan based on inter-institutional cooperation for school safety; b. a network support system around school and c. improved skills in dealing with juvenile delinquency for both teaching staff and police.

The project was important especially because the school nowadays and in the current context must be regarded as one of the essential sub-components of the society, the micro-level at which we can notice the behaviours, attitudes, beliefs and perceptions of an entire society and community, whether in urban or rural context. The school is the place where education takes first place and where benefits of quality education or lack thereof, as well as social issues and success or failure in approaching and solving them can be noticed first. From a pragmatic viewpoint, the school is the first 'enterprise', where students and

parents meet the other 'shareholders': teachers, other students and parents, central and local authorities. Obviously, the school is no longer an 'ivory tower' and it shall have to open more and more to society and to the external influences, in order to keep pace with technological progress, to the demands of the knowledge-society. These external influences are both positive and negative in nature, and therefore, it requires networked, integrated cooperation for preserving a climate of school safety. The reason is apparent: many of the daily concerns and challenges have direct or indirect effects on school, from alcohol and drugs, to erroneous understanding of the meaning of emancipation, and the entire range of showing this lack in understanding its meaning (precocious begin of sexual life, sexual aggression, etc.) to juvenile violence and delinquency, discrimination, racism, radical attitudes, etc. Daily society as a whole, including the most vulnerable and fragile segment, children and teenagers face increased level of stress, and media news more often than not are illustrative for the levels of violence and delinquency in society, while the 'models' presented in mass-media are very often, at least, unfortunate: news, movies and even entertainment shows with increasing levels of tolerance for verbal and physical abuse, where physical abuse is only the tip of the iceberg built on verbal violence, threats, and offences. These increased levels of violence within the society are also transferred to the school climate, and from this it takes only a step to a considerable diminishment of the school safety climate.

Therefore, cooperation should become a key-word for the education system, whether it refers to cooperation and communication with parents or, in our case, particularly to inter-institutional cooperation between relevant institutions, public and private organisations, NGOs and other interested stakeholders. The background consists in the pillar of cooperation which is based, as a rule, on the paradigm 'to learn what's best, more efficient from one another'. Meeting the conditions in order to satisfy this paradigm is a sure resource for obtaining new knowledge, ideas, information, resources, experiences and also acting in an innovative manner that may assist not only in speeding-up institutional change according to the demands of the knowledge-based society, but also could support institutions in acquiring better cooperation skills and keeping pace with the changing external environment in the field. The transfer of good practices provided for by the Dutch members of the expert team, aimed to showcase how cooperation works at the community and national level, and the potential of a good practice example that can be adjusted according to the specifics of each community/region/country to answer the challenges for safety in schools. As a component of public order at national level, school safety is – at micro-level – the future guarantee for healthy, integrated European citizens, and at the same time a 'snapshot' of the public perception about order, security, compliance with laws, rules and regulations, while also underpinning which enhancements and improvements are required in the approach, where does police fit in this picture, and what are the attributions and responsibilities of the two most involved institutions in the process: police and school.

School violence, as such, is not a new phenomenon, however, due to the current crisis the climate threatens to worsen not only in the society, but also in schools and the most known categories of motivations for school violence and displays thereof, leading in last instance to juvenile delinquency, are:

- *Individual factors*: low levels of tolerance against frustration, adjustment difficulties to school discipline, negative self-perception, emotional instability, absence or underdeveloped self-control/censure mechanisms, low emphatic capacity, etc.
- *Precarious living conditions within the family*: the socio-affective climate (lack of parents' affection, and affection between parents, violence attitudes of the parents0 lacking the emotional safety required by the child; the family-type (disorganised families, children from divorced families); the economic and social situation of the family (insufficient incomes in the family, lack of or unsatisfying jobs,); low education level of the parents implicitly their lack of good understanding of the vital role they play; and last, but not least, a rather recent phenomenon in our country, the absence of one or both parents as result of labour migration, as the child/teenager is left in the care of the extended family, or friends (very often, in these instances, supervision is either superficial or none at all).
- *School triggered:* communication difficulties between teachers and students; the sometimes excessively authoritarian attitudes of some of the teaching staff, with the reverse, complete lack

of capacity to impose a climate of understanding, calm, cooperation and mutual respect during classes and outside classes.

- *The group of friends ('the clique') / the social environment:* on leaving the school, in the free and leisure time, juveniles are most exposed to the influence of the so-called street-, street-corner gangs which play an important role in the hierarchy of reasons for which violence display occur in the proximity of schools.

To these categories, new challenges for maintaining school-safety are added by ITC: children and teenagers' access to PCs and laptops has benefits, but also the disadvantage of exposing them to video games, which very often have aggressive content, which trigger also new forms of online violence such as online harassment, dangers of falling victim to pornography and human trafficking networks, while use of mobile phones and other modern gadget provide to students' new, rapid and efficient ways of making public what happens in the school; advertising negative aspects on one hand, and use of the same incidents for "bragging" and/or showing the situations to which they are exposed due to the weaknesses displayed by the teaching staff. In this context, it becomes more and more necessary to ensure integrated, networked systems for ensuring support for schools and students in maintaining safety inside school and in the immediate neighbourhood. It is obvious that such a support safety network cannot be achieved without the coherent, convergent and concerted cooperation between several involved stakeholders: central and local authorities, school, police, health and social care system. For building up such an integrated system, inter-institutional cooperation and clear definition and attribution of roles and responsibilities are decisive and the processes involved in ensuring school safety, the roles and responsibilities of school and police should be clearly defined, assumed and carried out.

The required framework implies: national legislation that clearly provides for explicit safety policies in schools, regional/local safety policies that have as required sub-component school-safety, and schools assuming the task of providing for school safety based the school's policy and the incident registration. The police, in this context, has the responsibility of concluding some "basic agreements" with schools in which it should be specifically stipulated that it takes action on incidents and gets more involved when and only when schools no longer cannot handle occurred safety issues on their own. Again, here the school and the national/local public administration and institutions play a role, that is, their policies should provide for a network support system for the school consisting of other major stakeholders of the society, such as: social workers, health care professionals, mental health care experts (psychiatrists and psychologists), even trading companies placed in the proximity of the school and other representatives of employers' and trade unions' organisations, representatives of the labour agencies, etc. Restricting the image of providing for school safety from the police and school perspective, their roles and attributions should be formulated based on the school policy with respect to safety, and the provisions contained in the internal order regulation of the school, which should contain a compulsory chapter on safety and sanctions for the infringements against it.

The school should be the only and exclusively responsible for the safety inside the school and in the immediate neighbourhood based on the support and assisted by the means provided by the local public administration authorities. Public administration authorities are the ones responsible with ensuring proper lighting, fencing, access routes to and from the school, in brief, they are responsible for facilitating, monitoring, evaluating and stimulating the creation of and maintenance of functional support networks for schools.The police are responsible for putting into practice the policies and measures related to overall public safety within the community and for ensuring that agreements are concluded with schools about prevention and intervention, if necessary. It results that the core tasks of police in the context are: managing usual tasks of public order, providing assistance in case of necessity, emergency intervention, supervision/monitoring of the public domain, signaling and counseling with respect to safety and security issues, and (early) signaling of possible threats and risks and counseling about possible ways and means of assistance.

The tools available to the two main stakeholders (school and police) are: a basic cooperation agreement in which attributions, roles and responsibilities are clearly defined, a checklist and an inventory based

on the contents of the agreement, which can be used both by police and the schools to see the effectiveness of policies and measures implemented. On these premises the project intervention pursued a joint action plan of education and public order representatives meant to send a univocal message also to the other necessary stakeholders/partners within the system about the increased possibilities of intervention in a new, integrated system but also regarding the increased levels of threat posed by drugs, alcohol, human trafficking and prostitution, induced by the current unfavourable economic and social circumstances, even for the schools. Next, it aimed to ensure the background for creating a viable, operational support system for the schools, according to the new, integrated networked 'modus operandi' which can ensure better and on time cooperation and communication between the partners. However, the project during its duration and thereafter, also managed to display the failures and lacks with respect to cooperation, and more specifically to inter-institutional cooperation in the field of public order in the interaction with representatives of other institutions and organizations.

3 Instead of Conclusions: Future Challenges Of Public Order in an Inter-Institutional Cooperation Setting

The difficulties encountered in achieving all goals of the project had a lot to do with the openness and flexibility towards cooperation of the main stakeholders, i.e. public order and education system representatives, and with the other stakeholders in the consultation process with respect to local policies based on the national policy with respect to safety in schools. After relevant data and information was collected and relevant partners selected the institutions identified as relevant for safety in schools and the networked support-system were covering a wide range from proximity police to health and labour institutions' and town-hall representatives. Although all partners shared the common goal stated by the initiative of the project, they failed to achieve full-success due to own agendas and interests, translated in less openness and flexibility towards cooperation, and fine-tuning the process of developing actions, measures and measurable outcomes was extended over the period of the project, while partners failed to develop a 'common language' to be translated in formal protocols and common regulations and procedures in dealing with absenteeism and early school-leaving. While the inter-institutional consultation process identified the clear roles and attributions of each institution involved, and managed a proper impact assessment of the potential joint action plan, protocols, conventions and agreements, the implementation is still hesitant due to the institutional setting and reasons of both objective and subjective nature. The objective reasons covered the specific legal framework and the rather slow decision-making process, the rules, regulations and procedures of each institution which all were time consuming and lacking actual finality; very long periods of time necessary for the conclusion of corresponding legal protocols, joint-orders, etc. For instance, at least one document is still in the process of revision by the legal department of one of the institution even though the project was concluded in winter 2011! Also, the lack of financial support and not only due to the strained circumstances due to the economic restrictions triggered by the economic crisis, translated into the absence of governmental and local authorities' allocated budgets, even if the other half was already covered by other stakeholders. However, the subjective aspects were even more daunting as they related to institutional and organisational culture, to the perception of the roles and their changed content in the present and future societal development, the absence of motivation due to lack of incentives or items that could be perceived as such by the main actors. The debates between the main actors/stakeholders revealed that assuming responsibilities, making decisions, taking action and overcoming formal, informal and non-formal barriers in cooperating with other institutions would require sustained and ongoing training at management and executive levels. The presented case-study was intended to highlight the way in which inter-institutional cooperation can improve not only the situation in particular cases, if successful, but also provide information, valuable data and insights for policies, measures and actions in other correlative or related fields. This type of cooperation generates positive externalities, opportunities for the creation of new jobs, increases institutional skills, efficiency and effectiveness, and creates premises for better and improved institutional dynamics and enable innovation inclusion in their approach.

Nevertheless, it should be emphasised that the key stakeholders are the students, the parents and the school, and that concerns of students' and teachers' in close communication and cooperation with the parents should be related first and foremost in preventing and combating attitudes and displays of behaviours encouraging violence under all its forms, as all 'faces' it takes and all other manifestations such as: alcoholism, drug use and traffic, prostitution, theft, larceny, are found not only in justice statistics about adult population but also in those related to juvenile delinquency. With respect to public order and security, the general conclusion of the project, ascertained by the responsible institutions after analysing the general developments and trends with respect to risks and threats is that school safety, climate and environment inside and around the school are indicative for society developments, in general, and that the phenomenon of juvenile delinquency is a precursor of future delinquency and disturbance of public order, which also increases the threats to security. It also emphasised that future strategies, policies, action plans and measures are required for improving the response capacity and cooperation skills not only between national/local institutions, but also between the national/regional and EU-level. The school-safety and local safety agreements and action plans involving relevant stakeholders are the first and necessary step in ensuring at the next levels public order within the community, in general for the entire society, and the climate aimed by the Stockholm Programme of serving and protecting the citizens. Also, this micro-level approach (school safety) could assist in defining new indicators for evaluation and self-evaluation in order to ensure efficiency and effectiveness of obtained outcomes, particularly when activities are developed within extended inter-institutional cooperation between institutions and organisations with different traditional cultures and mentalities. At the same time, objective evaluation and self-evaluation and the opportunity for extended dialogue both according to hierarchy levels but also at horizontal levels would provide for the legal and operational required framework to initiate new policies, measures and actions, and to act innovatively with respect to improvement of material conditions and human resources training that are available to partners in the process of ensuring an optimum social climate.

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Some General Considerations Regarding the Implications of the Changing of Electoral System upon the Structure of Political Élites in Romania

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Abstract: This paper is inovating the theory of elités in the way it was configured by the Central and Eastern European thinking (researches and studies) because it is focused on the way the changing of the electoral system influences the structure of political parliamentary elités. This study aims at revealing the connection between the electoral system and the structure of political élites, and it is based on two sociological researches that took place in the Romanian Parliament (Chamber of Deputies) in two different chronological and political moments. The first chronological moment was in October 2008 and the second was in November 2009. The political moments are given by the presence of two different types of electoral systems. In the first research, the political élites analyzed belonged to a parliament elected by a proportional representation system (PR) on closed lists, and in the second, the elections took place by „uninominal" system. It is shown that the change of electoral system from a period to another does determines the strategy of behavior of the political parliamentary élites and, implicitly, the functioning of parliamentary democracy through the political decisions that shape a certain behavior of élites.

Keywords: democratic values; parliamentary elections; beliefs and attitudes

1 Introduction

After the falling of communism, in Romania began the transition to democracy. Transition and consolidation of democracy are viewed as distinct processes driven by different actors and facilitated by different conditions. However, the transition to a basic democratic framework is ultimately contingent on the decision of élites. The values percepted by the elites contribute to democracy in a variety of ways. This process of interaction between élites, in turn, determines the institutions and structures in a society and thus the prospects for a well-functioning democracy. A basic condition in setting the foundations in a democratic state are the free elections and, also, are crucial to élites accepting the rules of democracy. Citizens must trust that their elected leaders will generally represent their interests so the type of the electoral system could produce a certain type of leaders. For a better understanding, a necessary specification regards the reason for changing the electoral system in Romania: the institutional changing of the electoral system was necessary in order to change the structure of the parliamentary élites. The reasoning was obvious:

- the parliamentary élites perform under-optimally/ does not perform optimal;
- the increasing of the level of performance is achieved by changing the structure of the political parliamentary élites;
- the changing of the structure of the political parliamentary élites is accomplished by changing the electoral system;

- in order to increase the level of performance a modified electoral system is needed.

So, starting from the belief that the low performance of the political parliamentary élites is caused by the type of the electoral system, the political decision makers promoted a new electoral system hoping that will produce a strong reform of the political parliamentary class. The main question of this research is quite simple: How does the electoral system with „uninominal" vote influence the structure of parliamentary élites? In other words, the subject of research is represented by the way in which the political élites are structured after the change of electoral system in Romania.

2 The Theoretic Model

In order to have a comparative study of parliamentary élites, in the present work we used the theoretic model of Donald L. Horowitz (2003) which claims that an electoral system does not change the parliamentary configurations of a country but only fulfills a range of political purposes aimed at facilitating the functioning of an electoral system. In this model, Horowitz identifies also the political conditions that have to exist in order to exist a proper functioning of the system: the changing of configuration of the parliamentary élites is possible, only if the purposes of electoral system and the political conditions are simultaneously fulfilled to the real functioning of it and it has to pass, at least, three ballots of parliamentary elections organized through the same system (12 years from the first ballot) (Horowitz, 2006, p. 41).

This sociological research on the Romanian parliamentary élites confirms the theoretical model of Horowitz. The assumption of Horowitz's model is that the voting system, *per se*, does not generate changes at structural level of the parliamentary élites only is simply passing from a vote system to another. The design of the research methodology was projected in order to allow the empiric testing of the theoretical model of Horowitz on the concrete situation of Romania. We try to generate empirical data in order make the factual control of the theoretical model: the change of the electoral system does not bring significant alterations at the level of parliamentary élites. The operationalization has been produced the following way: the independent variable acquired two „values" during the research: the proportional representation electoral system with closed lists (in Romania, till 2008) and the uninominal majority electoral system (in Romania, after 2008).

The dependent variable whose variations have been measured was the structure of political parliamentary élites. In this frame, we defined at the level of the general category of political élites, the political parliamentary élites as a specific element, to be integrated in this category. In other words, we tried to investigate whether the change of electoral system in Romania triggered significant consequences in the structure of the political parliamentary élites in the Chamber of Deputies. In order to collect data, we used the sociological investigation based on directly applying a face to face questionnaire. During our two moments of investigations we measured the perceptions of political parliamentary élites generated by the two different electoral systems. The comparative analysis must answer to one question: are the two political parliamentary élites different or similar? Or, another question, did the change of electoral system produce, as a consequence, the significant alteration of the structure of parliamentary élites?

3 The Dimensions of Measuring the Structure of the Political Parliamentary Élites

In order to verify if the new electoral system generated significant changes in the structure of political parliamentary élites we proposed two fundamental dimensions:

- on one hand, we tried to investigate whether the socio-demographic profile of the new élites is significantly different from the old one (the one before 2008);
- on the other hand, we tried to investigate whether the perceptions of the new élites (investigated in 2009) on specific issues – social, economic and politic - are significantly different from the perception of old élites. We used this dimension, taking into account the assumption that a possible and probable alteration of the socio-demographic profile is not enough to admit that a significant change is caused by using a new electoral system.

Therefore, we approach the structure of political parliamentary élites both from socio-demographic angle and from the type of perception by the élites upon some issues, starting from the idea that the alteration of the structure of élites has to be analyzed not only at the level of objective features but also at the level of subjective features. This is why in our questionnaires we projected the design of questions able to produce information about how élites are and what they believe, what are their perceptions. The two questionnaires were applied for the population in the respect of deputies, between the 2004 and 2008 legislation and 2008 and 2012, and two types of groupings were built. The first grouping included 57 deputies and the second one 62. For the two groupings we used a simple, ransom and crossed procedure on layers.

4 The perceptions of the political parliamentary élites on the electoral system

In this part of the paper we present the results of our research and a short analysis regarding the self perceptions of the political parliamentary élites on the uninominal system.

Q1. After the election from 2008, what do you think the direction of the country is going to?

	Good	Wrong	I do not know	I do not answer
2004-2008	60%	25%	12%	3%
2008-2012	52%	45%	2%	1%

Q2. Do you think the uninominal system will have a decisive influence on the direction the country is going to?

	Yes	No	I do not know	I do not answer
2004-2008	49%	48%	2%	1%
2008-2012	48%	52%	0%	0%

From these results, we notice that both the new and old élites have almost no trust at any of the uninominal system, in spite of fact that the new élites were elected in this system.

Q3. Which of the following assertions do you agree with?

	The Romanian voters elect their representatives being well informed	The Romanian voters do not know whom they vote
2004-2008	48%	52%
2008-2012	39%	61%

As we could see, 61% from the present deputies agree the idea that the Romanian voters do not know whom they elected. So, taking into account that these deputies were elected by uninominal system which implies a closer relation between candidates and voters, we can come to the conclusion that the electoral system did not influent the way the citizens voted.

Q4. Which of the following assertions do you agree with?

	The Romanian voters elect their representatives taking into account the electoral program	The Romanian voters elect their representatives being manipulated in different ways (electoral bribe, partisan campaign, etc.)
2004-2008	44%	56%
2008-2012	23%	77%

These results sustain the previous question and identify the way the politicians built their electoral campaign: using manipulative techniques and electoral bribe. The present deputies, in a large proportion - 77% in comparison to 56% - agree with this affirmation. Again, the way the citizens elected their representatives disregarding the success of a campaign.

Q5. Which of the following assertions do you agree with?

	The uninominal system promotes better deputies	The uninominal system promotes worse deputies
2004-2008	63%	37%
2008-2012	54%	46%

The answers are logic because every governance considers itself to be better than the previous one.

Q6. Which of the following assertions do you agree with?

	The uninominal system promoted only candidates with a lot of money	The uninominal system promoted only candidates of high visibility
2004-2008	34%	66%
2008-2012	44%	56%

The success formula to be reached by the Legislative is not the electoral system but a combination between financial resources (intensively used during campaign) and high public visibility.

Q7. Which of the following assertions do you agree with?

	The uninominal system brings advantages for the candidates of the political parties	The uninominal system offers equal opportunities for all
2004-2008	79%	21%
2008-2012	93%	7%

Belonging to a political party is the best way to have access to Parliament, so the idea that the uninominal system promotes independent candidates is infirmed. It could be remarked that the figures are semnificative.

Q8. Which of the following assertions do you agree with?

Period	In the uninominal system the citizens interests are better represented	In the uninominal system the citizens interests are represented in the same way like in PR system
2004-2008	63%	37%
2008-2012	60%	40%

The members of both the legislatures consider that citizens' interests do not depend on the electoral system.

Q9. Which of the following assertions do you agree with?

	In an uninominal system the electors vote rather a personality than a party	In an uninominal system the electors vote rather the political party to whom the candidate belongs
2004-2008	42%	58%
2008-2012	40%	60%

The major importance of a political party is re-asserted.

Q10. Which of the following assertions do you agree with?

	In an uninominal system the electors know better the electoral programs of the candidates	In an uninominal system the electors have less information on the electoral programs of the candidates
2004-2008	58%	42%
2008-2012	40%	60%

The news of the electoral system makes the member of the political parliamentary élites believe that voters will not have enough information about the electoral programs proposed by candidates. These results confirm the previous ones that the citizens will not vote being well informed about candidates programs. Citizens vote unaware of the candidate's electoral program, disregarding the voting system.

5 Conclusions

The theoretical model used in this research is confirmed by the answers given by the political parliamentary élites. The Romanian electors are not mature enough for electing their representatives in a uninominal system. This is also, as we showed, the idea supported by Horowitz, that only after three consecutive elections using the uninominal system one can notice significant alterations in the electoral behavior of the citizens. Only after 12 years it could be understood the functioning of the system, its advantages and disadvantages. So, the electoral system *per se*, does not produce changes at the level of parliamentary élites. Both the old élites (elected by PR) and the new elites (elected by uninominal system) share the same common corpus of values, have the same attitudes in respect of the voters and in the way they percept the responsibilities of the institution they belong. Horowitz sustains that the first changes produced by an electoral system are visible only after three election terms using the same method of selection. Only future, and new and continuous researches, can tell us whether this is valid for Romania and for its parliamentary élites.

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The Democracy at the Local Level

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Abstract: The modalities of citizen participation in the decision-making process of inter-community structures or associations are formulated as principles, general rules. The democratic deficit of such structures is denounced in many European states. Although the main purpose of these associations is to streamline and increase efficiency of local management to the citizens' benefit, the citizens have no means of determining or influencing the exercise of competencies by the local government/authority. The objective of this topic is to analyze the experience of the associations′ evolution in the European space, predominantly in Romania, based on the raports of European Comittee on Local and Regional Democracy and roumanian legislation. The purpose of this analysis is to draw lessons and recommendations for effective citizen participation in the inter-community. The citizens′ participation represents an issue of concern for many states, and is taken into consideration in the analysis of the services offered.

Keywords: citizen; democracy; local autonomy; inter-community

1 Introduction

The modalities of citizen participation in the decision-making process of inter-community structures or associations are formulated as principles, general rules. The democratic deficit of such structures is denounced in many European states. Although the main purpose of these associations is to streamline and increase efficiency of local management to the citizens' benefit, the citizens have no means of determining or influencing the exercise of competencies by the local government/authority. The objective of this topic is to analyze the experience of the associations' evolution in the European space, predominantly in Romania, based on the reports of European Committee on Local and Regional Democracy and Romanian legislation. The purpose of this analysis is to draw lessons and recommendations for effective citizen participation in the inter-community. The citizens' participation represents an issue of concern for many states, and is taken into consideration in the analysis of the services offered.

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2 The Inter-Community Structures in Romanian Legal Science

The democratization of the Romanian society, gradually led to the normative confirmation of some mechanisms able to reconstruct, "reconquer'' the legitimacy of public power trough the assimilation of an administrative communication mode, based on opening and transparency.

The public power, the state must create those mechanisms which can allow the individual to manifest, and the democracy to expand (Bălan, 2007, p. 95). This complex process of actively involving the citizen in the management of public lousiness and in decision making is realized through granting the administrative power to the local collectivity, the chosen authorities and through stimulating the associative structures of the civil society. (Bălan, 2007, p. 95)

We notice that the mechanisms that sit at the basic of the participative democracy[1] construction are fundamented and devolved through the national[2] and international[3] juridical instruments. The European chart of local autonomy[4] is a document through which a series of principles capable of regulating the interaction between local collectivities and central authorities are decided. The objective of this document is to compensate the lack of common European norms capable to appreciate and protect the rights of the local collectivity, which are closer to the citizen and which give him the possibility to actually participate in the decision making process concerning his daily environment.

Without examining these principles which determine a series of rights in favor of the citizen, we stop upon a *recent problem*, more precisely *the democracy of the local collectivity at the level of inter-community associative structures*. The regulations regarding the means given to the citizens, in order to take part at the local collectivities life are incomplete, although the European Chart Preamble of local autonomy foresees that: "local public authorities represent one of the main fundaments of any democratic regime"[5], the right of citizens to participate at solving public issues is part of the common democratic principles for all member states of the European Communion." The local autonomy principle, established by the European Chart of local authorities *founds territorial collectivities and their capacity to organize in cooperation structures*. Therefore, the cooperation is materialized in juridical and territorial autonomy. Nevertheless, the autonomy can know serious limitations, depending on the states' legislation.

The chart is limited at regulating the area of interactions between the local collectivity and the central authorities through the establishment and share of responsibilities and indicating the mechanisms able to facilitate these reports. Awarding responsibilities consists in autonomy, legality, a general competence clause, subsidiarity, and delegation of competences. The second category of principles can be qualified as instruments which guarantee the normal running of relations set at different activity domains, respectively cooperation, information, financial independence, and supervision. The principle of administrative decentralization regulates the interactions area between the local collectivity and the central authorities' trough the establishment and sharing of responsibilities and the indication of the

[1] We appreciate that at the Timisoara Townhall level; the participative democracy is coherent organized. For more details view consultative district committees, the Seniors Council, The Local Youth Council, public debates.
[2] Article 120 from the Revised Romanian Constitution.
[3] The European Chart of Local Autonomy, adopted in Strasbourg on October the 15th 1985, in force on 1st of September 1988. Romania signed the Chart on October the 4th 1994 and ratified it through Law Number 199 from November the 17th 1997, published in "The Official Monitor", Part 1, No. 331 from November the 26th 1077, except Art.7, paragraph 2 from this European Instrument.
[4] Adopted in Strasbourg on October the 15th 1985, in force on 1st of September 1988. Romania signed the Chart on October the 4th 1994 and ratified it through Law Number 199 from November the 17th 1997, published in "The Official Monitor", Part 1, No. 331 from November the 26th 1077, except Art.7, paragraph 2 from this European Instrument.
[5] See the European Chart for local Autonomy Preamble.

mechanism capable of facilitating these reports. Therefore, in order to meet the competences and responsibilities conferred through law to the local collectivity, the insurance of financial resources is necessary, in order to allow the authorities to properly manage the local public issues.

The manner in which activities in common can be realized by the local collectivity is held in the Chart, in articles 9 and 10, in international juridical norms, which on one hand regulate the relative principles at the financial resources and on the other hand fixes the rules regarding the right of local public administration authorities to associate, in order to realize common interests.

While the local autonomy principle assumes an independent administration, which can allow the *substantiation, sizing and distribution of local public expenditures compared to the priorities of the local collectivity* (Bălan, 2007, p. 95), but keeping in mind the legal provisions.

Opening and transparency are defined in the juridical specialized literature as that phenomenon that allows the absorption of opinions, external ideas and, transparency reflects the advertising of administrative actions, *participation in decision-making of persons whose interests are at stake* (Bălan, 2002, p. 145), trough direct access, therefore the approach to citizens being achieved. The objectives of this principle are: respect of public interest and of the individual rights of the individual.

Achieving public interest trough opening and insurance of free access of citizens to the administration- one of the fundamental rights of citizens- has as a goal the limitation of any wrong administration and corruption. The juridical nature of these structures varies depending on the internal legislation of states; there are three types of inter communal legislation states. There are three types of inter communal associations. *A more flexible model based on the liberty of the local collectivity which chooses to manage the public services in common*. This model is based on existing structures: associations, enterprises, unions, informal cooperations, having a juridical system of common right. Applicable law is not a specific right, the juridical frame is quite low, so the statute of these structures fixes the applicable rules and the contracting procedure.(Bulgaria, England, Czech Republic)

Regarding the Romanian legislation- relative to regulating association and cooperation there is a general normative frame which defines the association or the foundation, the federation, the proposed goal for realizing several general community activities or as the case is, activities of personal non-legal interest.[1] The normative act defines the status of associative form, public utility, and sets trough juridical norms the conditions which must be achieved by the subjects in law in order to gain this status, the rights given to them and the obligations arisen from their task. Law Number 215/2001 regarding the local public administration recognizes distinctively the local public administration authorities' rights of association at a national or international level (Manda & Manda, 2007, p. 453) as an issue that fits in the general system of the local autonomy. From the Romanian model point of view, the most important one is the association for inter community development. As we noted, the normative background was O.G. Number 26/2000, even for community services of public expedience. Under these regulations the inter community development association was a private law juridical structure, with the status of a public expedience. The lawgiver interferes with new acts[2] trough which he defines the community development association as a inter community public institution; it establishes the frame status and the constitutive acts[3] of the reports stated between the local public administration authorities and the users as being ruled by public law juridical norms.

[1] See Government Order No.26/2000 approved through Law No. 246/2005, published in J.Of. No. 656/25.07.2005.
[2] See Art.9 from Law No. 51/2006 regarding public utilities community services, published in J.Of. No. 254/21.03.2006.
[3] See H.G. No. 855/2008 for approving the Constitutive Act frame and the frame status of inter-community development associations with the activity reason –the public utility services, published in J.Of. No. 627/28.08.2008.

Following these legislative interventions, we find enough considerations which lead the inter community structure towards an *incorporated model*, characterized through defining the association mainly as a moral person of public law, with specific organs, having as purpose the input and providence of specific services for the local interests.

For example France, Spain, and Portugal have a well covered juridical system, the financial and juridical frame being well developed.

Then we can talk about an *intermediate model* which is found in most states and which borrows from the two models, an option that is motivated by the fact that on one hand the public law structures give them democratic legitimacy and durability and constancy to the means used and on the other hand the private law structure gives more flexibility. The fundamental purpose of these structures is of rationalizing and streamlining the local management through reducing the number of structures which administrates the same service and the relevance, the boldness of the management. Inside the inter-community development associations, the communities freedom of decision making (territorial-administrative units) is preserved, indicating that every unit keeps its local autonomy, according to the law. As for *democracy*, inside of these structures, it seems that is deficient developed: there is a lack of democratic procedures which can regulate the participation of local collectivities. From a *functional point of view*, inter community associations' cover more areas: the internal organizational structure (the technical apparatus), the institutions' autonomy, specific skills (water, dump goods, transport, environment, tourism etc), and the domain of democracy and community concerns the place of citizens in the community structure.

3 The Inter-Community Structures in European Space

Regarding the *initiative to create* an association we distinguish among several actors. The cooperation is generally initiated by the *central power*, like in France, Italy, and Sweden. In Portugal, the juridical basis of inter community cooperation is represented by the 1976 Constitution. Subsequently the legislation evolves and starting with 1981 the inter-communal associations have grown towards other forms of organization. In France, the initiative belonged to the state, the central authorities and later on to the lawgiver-he intervened in favor of a legislation trough which he regulated the territorial administration of the Republic; and in 1999 he opted for strengthening and simplification of the inter-communal cooperation. The cooperation *is initiated at a local level* and afterwards framed by texts at a central level (Russia, The Netherlands, Finland, and Switzerland). In Bulgaria the initiative belongs mainly to the municipalities and it is regulated by the central legislation. The Romanian legislation provides that this initiative belongs to the local public administration authorities who have an exclusive competence in regards with establishing, organizing, coordinating, monitoring, and controlling the services operation through public utilities[1], having as purpose and objectives: building the infrastructure or developing projects.

But the initiative may come from non-governmental organizations, the private sector or associations as well.

The fundament of these institutions is justified by reasons that concern:

- *efficiency of the management*-local structures must be realistic and relevant at exertion competences level.

[1] See Art. 3 Law No. 51/2006 regarding public utility community services, published in J.Of. No. 254/21.03.2006

- *financial and administrative reasons* can determine the cooperation, through accessing subsidies offered by the state or by the European Union.
- *the reasons can also be political*: the cooperation offers communities the possibility to answer the requirements regarding services, with constant or even cut back financial resources.
- *geographical reasons*: the cooperation allows on one hand, choosing the territory for different tasks (creating common transportation networks, with the consequence of responsibility for urban congestion issues).

The motives above, give us enough arguments in favor of this structure, however the concrete forms of participation in the inter-community from behalf of the citizen are not regulated because the legislation incompletely provides the democratic means available and then when they are accessible they prove to be inefficient in fixing errors or authority abuse.

Direct participation in decision making through referendum decision or trough population consulting are pretty rare! For example, the legislative frame in Romania, regarding transparency is quite rigorously regulated, but administrative practice, in most situations denounces the inefficiency of some principles like: advertising meetings, motivating administrative decisions, public authorities' responsibility and liability, administrations efficiency and expediency. The decision making process must have a systemic vision of the realities in the administrative system and a high capacity of analysis and synthesis of information derived from the local administration and/or citizens. Some countries mention the citizens' right to petitions and access to information. The Netherlands, for example, emphasize the possibility given to citizens of complaining (making complaints and litigation) for the situations in which their interests are injured. There is often an indirect participation through the selection of the inter-community structure organs or through rules mentions in certain reports published after the debate of inter-communal structures deliberative bodies. (France, Czech Republic, Finland)

Generally, states assign a right to information in the internal legislation, which is applied or produces effects in terms of inter-community. Certain structures forecast a specialized briefing through editing brochures, information reports and several sites. At a structural level, the state is not present in decisional organs; it intervenes only at a control level or in consultative organs. A situation that makes an exception of the principle mentioned above is found in Luxemburg where the state is present in the inter-community. Structure organs are indirectly elected. No organ scans the election procedure through universal and direct suffrage, even if for example, in France it reflects on this subject; in Finland the lack of democratic control and the presence of leadership in inter-community cooperation is highlighted. We must not neglect the negative effects of elections through universal and direct suffrage, seen as a reduction of the competences transfer, in that the Mayors will is to keep their power.

4 Conclusions

The Romanian legislation enrolls in the same patterns, the effectual normative acts[1] expressly provide citizens the possibility to take part and to be consulted on occasion on *organizing public utility services*, but not of their mechanisms; the technical apparatus being called by the General Assembly. Nevertheless, the purpose of public utility service is to assure"equal and non-discriminatory accessibility to services…transparency and protection to users." The inter-community democratic deficiency is denounced in many European states, motivated by the fact that this inter-community system is often exercised detrimental to democracy whereas *structures are often named*.

[1] See Art.6 Law No. 51/2006 regarding public utility community services, published in M.Of. No. 254/21.03.2006

Therefore, the participative democracy theme inter-community structures level is very little developed and analyzed. The rules applied in regard to the right to information, petition, reference or referendum, are general rules and not specific rules applied to the inter-community; there are no reforms in this direction. At the inter-community democracy level, the direction is to find a high level of democratic legitimacy in inter-communal structures (information, election, consolidating transparency) and also a better quality of services which answer directly to citizens needs. In this sense we notice that the Council of Europe's activities, through the European Committee on Local and Regional Democracy, evidenced in the new project of an Additional Protocol to the European Chart of local autonomy; in which new regulations about the right of citizens to participate at the local collectivities businesses are proposed. The importance if decision making transparency is translated through an evolution of the international society, which recognizes that citizens are actors of the public life. We can not build democratic institutions without taking into account the fundamental role of citizens' participation and involvement in the community they come from, public businesses. The basis of these considerations is represented by the recent "additional protocol to the European Chart of local autonomy, regarding the right to participate at local collectivity businesses" adopted in Utrecht on November the 16th 2009 and opened for the Council of Europe, member states to be signed. The real application of the transparency principle would lead to a higher confidence in laws and regulations since they were adopted while consulting those interested. Trusting the legal frame will result in a higher level of law respect, with positive consequences on economic development and on keeping several cooperation relations between the elected local authorities and the citizens. All this circumstances give rise to a rich doctrinal debate, while the implementation of these valuable principles is still scarcely; the administration has serious deficiencies regarding the compliance of the citizens much proclaimed fundamental right, in the international conventions.

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A Human Rights Perspective on the Reform of Public Administration in Romania

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Abstract: Romanian scholars argue that the evolution and transformations of the national public administration in the past twenty years were marked in a great extent by the process of integration into the European Union. In trying to provide an explanation to the apparition and evolution of the mechanisms dedicated to the protection of the persons in relation to public administration, after the fall of the communism, the first part of the paper studies the establishment, the evolution and the activity of the ombudsman-type institution in Romania The second part of the paper, on the basis of the analysis of the legislation, briefly reviews the most important transformations brought to *People's Advocate* (Romanian Ombudsman) institution at the end of the last year. As suggested by the conclusions of this article, the Romanian Ombudsman played and continues to play significant role in the evolution of the behavior of public administration towards citizens, from the perspective of the human rights.

Keywords: national human rights institutions; ombudsman; citizenship

1 Introduction

In the field literature it is often shown the fact that the reform of public administration represents a broad concept, which includes all the aspects of the organization of the public sector. At the level of the year 2006, the process of the reform of the Romanian public administration, both at the level of the technical apparatus and of the elected officials, was perceived as a process which had not yet brought the expected transformations. (Profiroiu, 2006) The same source indicates that for Romania, the process of transformations of the public administration did not have only to answer to the new challenges of the world economics, but in the same degree to the new conditions of the integration process into the EU's structures. Here it is taken into consideration the fact that the development of the democracy involves *setting up of new relations between citizens and administration, strengthening the role of the authorities and the reconsideration of the partnership with the civil society and the local elected officials.* When speaking about human rights, generally, it can be noticed that it is no consensus on the precise meaning of the term, but nearly everyone agrees that that human rights involve the ability to demand and enjoy a minimal restrictive yet optimal quality of life with liberty, equal justice before law, and an opportunity to fulfill basic cultural, economic, and social needs. (Haas, 2008) Stressing the fact that human rights are first and foremost to be addressed at the national level, the European Union Agency for Fundamental Rights elaborated and issued in 2010 a rapport on national human rights institutions (NHRIs) in the EU, that reached the following key findings: they don't enjoy sufficient political support in all Member States, they are not sufficiently independent and effective and that the existence of several different independent public bodies with human rights remits contributes to a diffusion of resources and gaps in

mandates. The present article addresses some questions related to the attributions and activities of the People's Advocate - which is included in the category of the national human rights institutions and represents an innovative independent authority in the Romanian administrative landscape. We consider that the evolution of the institution in term of attributions and prerogatives as well as the indicators that point out the volume of its activity can reflect the changes and transformations of the public administration from the perspective of human rights.

2 The People's Advocate Establishment, Evolution and Activity

In the vision of the Romanian Constitution of 1991, the Ombudsman was, in fact, an independent person appointed by the Parliament to monitor the administration in its relation to the citizen, whose mission was to defuse the conflicts occurred between them, conflicts which were considered mainly to be generated by bureaucracy. (Mauraru, 2004) From the institution's constitutional consecration, the most important moments in its history are the following years: 1997, year that corresponds to the adoption of the organic law that regulates People's Advocate organization and functioning (Law no. 35/1997); 2003 when it took place the modification of the constitutional provisions that govern the institution and the year 2005 when it was adopted the Romanian Law on administrative contentious. As the historical perspective on the Romanian Ombudsman was submitted to the analysis in prior works, we are going to address briefly the aspects that concern the evolution of the institution. Thus, the Constitution review in 2003 gave the Romanian Ombudsman the possibility to watch over the constitutionality of laws, which he can challenge before the Constitutional Court, both by means of action and through exception, when through their provisions they harm fundamental citizens' rights and liberties.By the modifications brought to the Romanian fundamental law, the sphere of the law subjects that can apply to Constitutional Court was enlarged, in the framework of the prior control *(a priori),* by adding People's Advocate, institution which, by its direct connection with people, holds the position to signal to the Constitutional Court the situations in which a law adopted by the Parliament but not yet enacted by the President of Romania contravenes the Constitution. Accordingly, the People's Advocate was inscribed among the law subjects that can apply to Constitutional Court, together with the President of Romania, the Presidents of the Senate and of the Chamber of Deputies, the Government, the High Court of Cassation and Justice, at least 50 deputies or 25 senators. The constitutional modifications also referred to introducing the possibility for the People's Advocate to rise directly in front of Constitutional Court the exception of unconstitutionality, exception which is based on the People's Advocate's practice in solving the citizen's complaints regarding the infringement of constitutional and legal rights. Another important attribution of the People's Advocate was brought by the Law on Romanian Administrative Contentious, entered into force in 2005, which provides the possibility for the Romanian Ombudsman to introduce, following a control performed, an action before an administrative contentious court for defending the rights of a natural person. This action represents the judicial mean that People's Advocate resorts to after exhausting all other instruments specific to his work, and when he appreciates that the act's legality or the administrative authority's refusal cannot be removed, except through justice. Having as a starting point the analysis dedicated to the ethical means of the Romanian Ombudsman for protecting the citizens' rights and liberties (Bălan, E. & Varia, G., 2010), we follow the evolution of the People's Advocate activity, by surveying the institution's annual rapports.

Firstly, the examination of *petitions* represents the most important part of the People's Advocate activity. As it is shown by the Figure 1, the number of petitions addressed to the Romanian Ombudsman continued to slightly increase in 2008 and 2009.

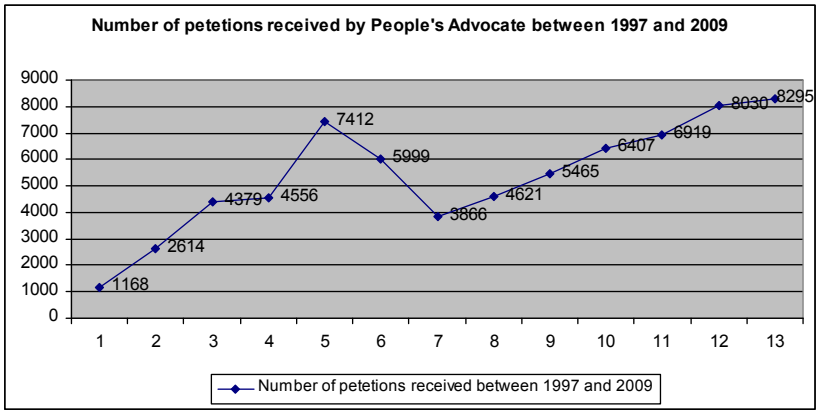

Figure 1. The evolution of the number of petitions received by People's Advocate between 1997 and 2009 (own processing of the data provided by the Annual Reports of the institution)

The *audiences* are a direct form of the institution's relation with the public, and, in most of the cases, audiences represent the first step in petitioning People's Advocate. Audiences are assured by the specialized personnel of the institution.

Also, citizens can be admitted by People's Advocate and his adjuncts, according to the provisions of the Rules of organization and functioning of the People's Advocate institution, republished. As in the case of petitions submitted a very large part of the audiences have objects that fall outside of the institution's competence.

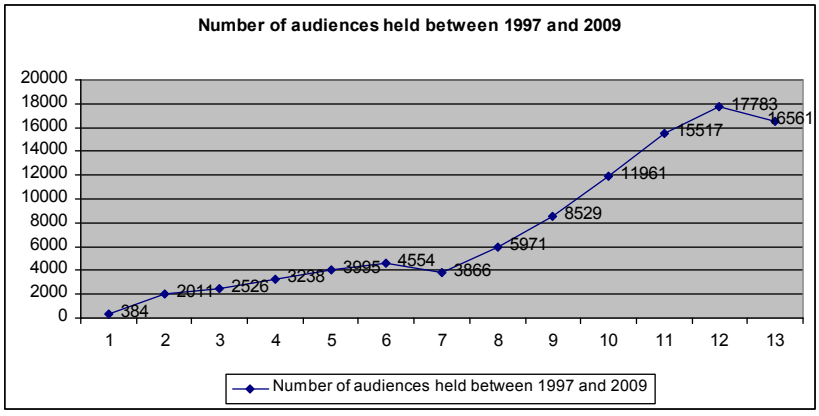

Figure 2. The evolution of the number of audiences held by People's Advocate between 1997 and 2009 (own processing of the data provided by the Annual Reports of the institution)

People's Advocate has the right to effectuate its own *inquiries*, to ask public administration's authorities any information or documents related to the inquiry, to hear and to take declarations from the managers of the authorities, and from any other civil servant that may offer necessary information for the petition's solving. According to law, public authorities are obliged to communicate, or, if case, to put at People's Advocate disposal, the information, documents or the acts the hold related to the petitions received, providing him the necessary help for the realization of his attributions.

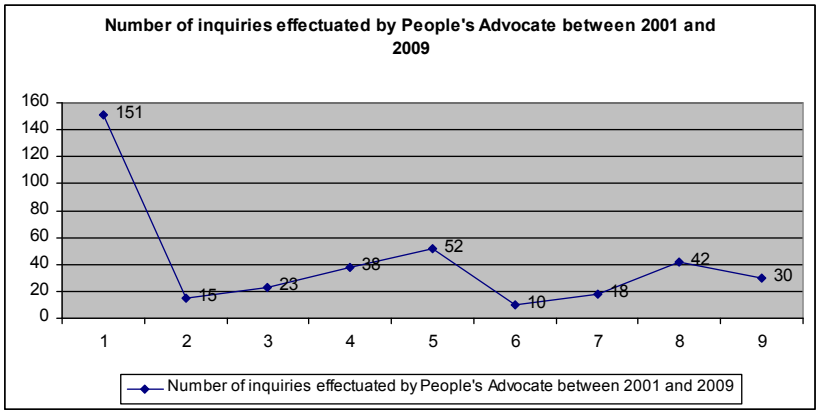

Figure 3. The evolution of the number of inquiries effectuated by People's Advocate between 2001and 2009 (own processing of the data provided by the Annual Reports of the institution)

At the headquarters of the institution, it functions a *telephonic line*, where the citizens can call daily, between 10 o'clock and 14 o'clock. Outside this timeframe, the requests are taped by the robot.

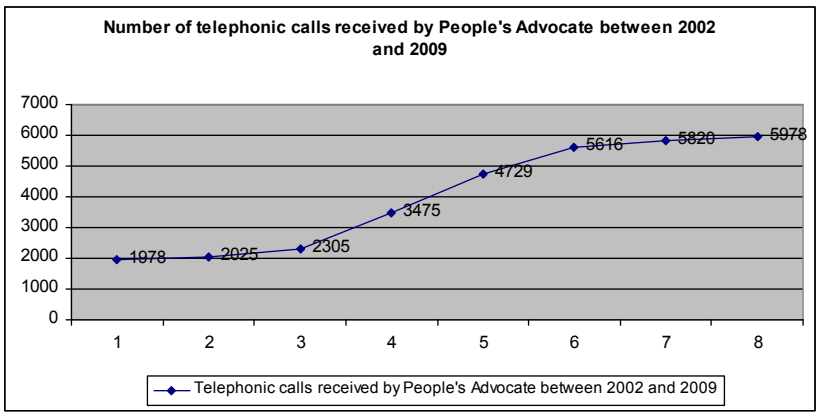

Figure 4. The evolution of the number telephonic calls received by People's Advocate between 2002 and 2009 (own processing of the data provided by the Annual Reports of the institution)

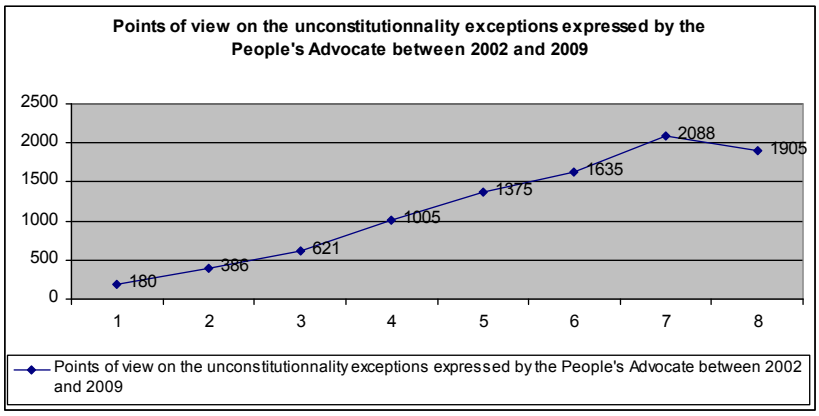

Figure 5 The evolution of the points of view on the unconstitutionality exceptions expressed by People's Advocate between 2002 and 2009 (own processing of the data provided by the Annual Reports of the institution)

3 Recent Changes for People's Advocate at the End of 2010

The Law no. 202/2010 concerning some measures for speeding the litigation process or *The Small Reform of Justice*, as it is more well-known by the public, represents a recent legislative modification through which the field of competence for the People's Advocate is made wider. By the provisions of this Law, People's Advocate is vested with the prerogative of protecting the citizens' rights and liberties in front of public authorities by submitting the recourse in the interest of the law in front of the Romanian High Court of Cassation and Justice. This juridical instrument allows the unitary interpretation and implementation of the legislation by all the courts of justice. The law states that the recourse in the interest of the law is admissible only if it is demonstrated that the law problems were solved in different manners by the courts of justice. The decision is pronounced by the Highest Court of Cassation and Justice only in the interest of the law, without having effects on the prior examined decisions of the Courts, but it becomes mandatory for them beginning with the publication in the first part of the official Journal of Romania. As far as the Law no. 258/2010 for the modification and completion of the Law no. 35/1997 on the organization and functionning of the People's Advocate Institution is concerned, we can notice the shift concerning the law subjects who cand address the Romanian Ombudsman: from *citizens* to *individual persons.* We can conclude by noticing the fact that People's Advocate role is gradually increasing since its establishment by the 1991 Constitution - the possibility to apply to the administrative court, to the Constitutional Court is now completed with the obligation of submitting the recourse in the interest of the law, in front of the High Court of Cassation and Justice. As a consequence, the activity of the institution, rapidly growing, should be sustained by the adequate human and material resources.

4 Acknowledgement

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THE 6TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

The Analysis of Public Administration Reforms in Macedonia and the Evaluation of the Performance of Public Administration by the European Commission

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Abstract: The objective of this paper is to underline the deficiencies in the funcioning of Public Administration in the Republic of Macedonia. The issue of Public Administration reforms in Macedonia has been dealt with by other scholars, but the European Commission reports have not been analyzed years after receiving the status of candidate country for EU membership. The results will reflect the realistic assessments and objective perceptions of citizens about the functioning of Public Administration, based on survey conducted with the citizens of Macedonia, and also the evaluation by the European Commission. The critical assessment of the functioning of Public Administration in Macedonia in this study should create a positive and stimulating effect on public authorities to reform Public Administration in conformity with the needs of citizens and Euro-integration processes of the country.

Keywords: Politicization; transparency; professionalism and efficiency

1 Introduction

The reforms in Public Administration (PA) aim at supporting the development of democratic societies through the improvement of quality of services and the transformation of the administration into a service devoted to citizens and economic subjects.

Reforms represent a permanent process in transition countries, especially from the organizational and functional point of view. Usually, the most important normative changes occur when it is evident that the PA is not functioning the way it is supposed to, as well as when the government or the political factors wish to offer certain support to the PA, particularly when the aim is to establish firm and sustainable institutions through the reforms in PA.

Besides, PA reforms are conditioned by some additional processes such as the implementation of the Ohrid Framework Agreement (OFA), the decentralization process and the integration of Macedonia in the EU.

Therefore, PA reforms in general and their orientation towards the membership in the EU are two complementary processes whose realization requires a strategic approach.

2 The Performance of Reforms in PA

The PA in Macedonia is constantly undergoing some kind of reforms so that it can meet the specific actual needs and requirements.

After the country's independence in 1991, some formal steps about the reformation of PA were undertaken in terms of the normative aspect. Initially, the PA reformation is conceptualized in the 1999 Macedonian Government Strategy which identified some crucial areas for reformation including the

state administration system, the overall PA system, the local self-government system, the redefinition of the role of the state, the realization and protection of citizens' rights, the restructuring of public finances, the development of information systems, etc. (Strategjia, 1999, p.10).

In the function of the realization of PA reforms, the Macedonian Government undertook the initial steps by creating the institutional grounds.[1]

As a result of the internal interethnic conflict between the Albanian and the Macedonian Community, on August 13th 2001 the OFA was signed and it incorporated the constitutional changes. Therefore, as a new obligation which was supposed to be prioritary within the PA reforms was the implementation of the principle on equal and adequate representation of other community members in the PA bodies and institutions. Apart from this, the OFA included the realization of the decentralization process which required essential changes in terms of the transfer and delegation of central power to local self-government units in the field of education, social protection and local economic development.[2]

The PA reforms were part of the Stabilization and Association Agreement (SAA) with the EU, signed between Macedonia and the EU on April 9th 2001 in Luxembourg. Paragraph 4 of the Preamble of the SAA determines the reformation of PA as one of the main objectives; whereas Article 74 emphasizes the concrete obligations for Macedonia in terms of the strengthening of the institutions at all levels of the administration and the implementation of the rule of law. In this respect, Macedonia has been encouraged to work hard in order to establish strong institutions and strengthen the administrative personnel capacities so that they can meet the country's EU integration challenges. However, the above-mentioned reforms associated with the adoption of relevant laws[3] in the field of PA did not change its practical functioning; i.e. it continues to remain inefficient, non-transparent and highly-influenced by politics (Azizi, 2008).

3 The Citizens' Opinion, Employee Evaluation and Political Impact in Selecting New Functionaries

The citizens in Macedonia believe that the PA is dysfunctional and they are dissatisfied with the performance of the administration. According to their perception, the PA system is not considered to have been efficient in meeting their needs and requirements as service utilizers. Their dissatisfaction is a result of their treatment by civil servants during their mutual communication as well as of very long, boring, tiring and complicated procedures. In this context, the data acquired from the Civil Service Agency (CSA), though not that critical towards what we just mentioned above, speak almost the same

[1] The following bodies were established for this purpose: *The Commission on PA Reforms,* the highest inter-ministry body to lead directly the process of reforms in PA (Government decision, January 1998); *The Secretariat for the Support of the Commission on PA Reforms* (Government decision, March 1999); *PA Reforms Unit*, to implement the activities of the Commission on Reforms and those of the Secretariat (Government decision, October 1999). As mechanisms for coordination of reforms in PA, the following were determined: *The Prime Minister* and *the Government* are competent for the strategic management of the reform process in PA; *the Collegium of State Secretaries and the Secretary General of the Government* are competent structures for the coordination of PA reforms.

[2] The increase of competencies in terms of the local economic development, rural and urban development, municipality funding, environment protection, public services, education and healthcare, according to the Law on Local Self-government (Official Gazette of RM, nr. 5/02), implies reforms in the role of the state in the management of sectors to be decentralized, since now the local administration has to be reformed in terms of the improvement of all capacities for a successful realization of all the duties and implementation of modern managing methods which will enable efficient realization of all the rights of citizens and greater participation of citizens in the management of local affairs.

[3] *Law on the Government*, Official Gazette of RM, nr.59/2000, 22.07.2000; *The Law on Organization of State Administration Bodies*, Official Gazette of RM, nr.58/2000, 21.07.2000; *The Law on Local Self-government*, Official Gazette of RM, nr. 5/2002, 29.01.2002; *The Law on corruption prevention* Official Gazette of RM, nr. 28/2002, 26.04.2002; *The Law on Administrative Inspection*, Official Gazette of RM, nr.69/2004, 07.10.2004; *The Law on Institutions*, Official Gazette of RM, nr.32/2005, 11.05.2005; *The Law on General Administrative Procedure*, Official Gazette of RM, nr.38/2005, 26.05.2005; *The Law on Administrative Disputes*, Official Gazette of RM, nr.62/2006, 19.05.2006; *The Law on Civil Servants*, Official Gazette of RM, nr.52, 16.04.2010; *The Law on Civil Servants*, Official Gazette of RM, nr.76, 07.06.2010.

with regard to the evaluation of civil servants that is carried out by their own directors and state administration bodies.[1]

Below is the table with data about the evaluation of functionaries in state administration bodies at a local and central level.

Table 1. Evaluation of functionaries during 2009

	Total	Evaluated	Not evaluated	Proved	Meets	Partially meets	Does not meet
Central government	*7142*	*6112 (85.5%)*	*1030 (14.5%)*	*4643 (76%)*	*1373 (22.4%)*	*85 (1.4%)*	*11 (0.2%)*
Local government	*2147*	*1981 (92.26%)*	*166 (7.73%)*	*1001 (46.62%)*	*883 (41.12%)*	*71 (3.3%)*	*26 (1.21%)*
Total	*9289*	*8093*	*1196*	*5644*	*2256*	*156*	*37*

Source: The analysis of the civil servant evaluation in RM in 2009, Skopje, August 2010, p.9

A negative phenomenon that has seized the country is the partisan employments[2] in the administration, whereas the concept of "competition" is gradually losing its importance in terms of the selection and appointment of professionalized and highly-skilled people.[3]

During 2009, the CSA announced 203 competitions for a total of 1,494 job positions. 119 competitions were announced for 1,216 job vacancies for the needs of state bodies, whereas for municipalities and the city of Skopje there were 84 announced competitions for 278 job positions. Of all the announced competitions, there were only 6 for the employment of citizens of minority communities out of 701 job vacancies. During 2009 there were 63,772 job applications submitted to the CSA, or approximately 43 applications for one position (CSA, March 2010, p.17).

Below is another table which shows the results of a survey carried out with 3,189 people that had applied for the competitions announced by the CSA during 2009, or 5% of the total number of applicants, which actually confirms what was said above.

Table 2. Political impact on new employments in PA

Questions made to the surveyed – job applicants in PA	Answer	
	Yes	No
1. *Are professional performances of candidates taken into consideration upon the selection process?*	*670(21%)*	*2519(79%)*
2. *Does the political affiliation of candidates influence the selection process for employment?*	*2679(84%)*	*510(16%)*

4 The evaluation on the functioning of PA within the EU progress Reports on Macedonia

Since 2005 when Macedonia gained the status of a candidate country for EU accession, it has been receiving annual reports which also include evaluation of the performance in PA. Speaking about the

[1] Every organ of the state administration has a legal obligation to deliver the Evaluation report on civil servants (for the year 2009 there were 148 such bodies, of which 63 were central government bodies and 85 municipalities). Within the time framework, reports from 128 (86.48%) state administration bodies have been sent to the CSA, whereas 20 of them did not fulfil their legal obligation towards the CSA (the Ministry of Education and Culture as well as 18 municipalities).

[2] In the last 20 years the power has transfered from one political composition to another, but none of them undertook concrete measures as regards the reduction of the number of civil servants (as budget utilizers goes beyond 100,000) due to fears from their voters. See for more in *Makedonija se uhvatila u koštac sa reformom javne administracije*, for Southeast European Times, Goran Trajkov from Skopje 07/07/2008.

[3] It is a public secret that the PA has permanently been considered by the citizens as an "employment bureau" for "partisan militants" of governing structures; this means that only people on the lists coming from branches and sub-branches of certain political parties in power are lucky to get the jobs they have been promised.

period from 2005 to 2010, the EU progress reports on Macedonia keep emphasizing almost the same areas that require special attention in terms of their improvement. Generally speaking, Macedonia has been achieving a certain level of improvement in terms of PA reforms and takes seriously the European Commission remarks by undertaking concrete steps towards the improvement of the overall performance of its PA system. However, there are yet some areas for improvement in which it seems that there is no concrete political will to deal with them seriously and responsibly. Those areas include:

- slow administrative procedures as institutional weaknesses that disable the functioning of the market economy; the implementation of the harmonized legislation with the acquis communautaire also lags behind (EU Commission Report, 2005);
- mechanisms of professionalism and efficiency should be improved and independence and political neutrality should be guaranteed; ministries are facing lack of suitable administrative structures for the realization of strategic policies (EU Commission Report, 2006);
- the delivery of reports on the evaluation of civil servants to the CSA is insufficient; there is a high dismissal rate of employees due to government changes as well as politization of appointments at all levels; the PA remains weak and inefficient, non-transparent, unprofessional and politicized (EU Commission Report, 2007);
- there is also a lack of transparency and responsibility upon the employment procedures in certain administrative bodies, whereas CSA does not possess mechanisms for ensuring legality and regularity of these decisions and procedures; the managing positions are quite often filled in with external people without fulfilling the required terms and conditions in terms of professional qualifications and experience, which is against the Law on Civil Servants; ministries do not have the necessary administrative capacity to manage human resources, creation of policies, strategic planning, internal coordination, etc; there are no sufficient human an financial resources for the implementation of the acquis; there is no equal treatment of civil servants, whereas their training and development relies solely on donors (EU Commission Report, 2008);
- significant additional reforms are needed in order to ensure transparency, professionalism and independence of the PA; the legal framework upon the employment of the personnel should be respected; the process of transferring part-time to full-time staff in PA did not ensure merit-based employment; the number of personnel employed for temporary work in PA is too large whereas the government did not provide accurate information; their employment was made in a non-transparent way and was not based on merit; the engagement of non-majority community members is made on quantitative basis without having the real need to do so; the politization of state administration is worrying and many cases of replacement of professionals by people with limited abilities have been identified; the employment procedures of civil servants in accordance with the Law on Civil Servants does not guarantee merit-based employment; the final employment procedure does not provide selection based on transparency and merits since it is quite open to discretion (EU Commission Report, 2010, pp.7-9).

5 Resume

Even though the PA reforms in Macedonia have been inhibiting compared to other social reforms, there have been some steps undertaken towards the establishment of an administrative system which tends to create better organizational structures, improve the quality of administration bodies as well as services offered to citizens, which could be considered as reforming steps of a normative character.

A considerable amount of laws in the past few years have been adopted under the moto of reforms, but they all lack a clear and strategic concept in terms of creating a PA in conformity with the needs of a democratic country.

Today, the PA is based on the rule of law, but it is still suffering a crisis situation; it is far from ideal postulates and independence, efficiency, competency and professionalism. Macedonian citizens have not experienced the reforms in PA yet, which should transform it into a small but efficient service which will not be politicized and corrupted. The PA is characterized by many disadvantages and weaknesses which created disbelief among the citizens; they revealed many anomalies that have to do with slow

procedures, defects during subject administration, inadequate qualification of human resources, unprofessional behavior of civil servants, etc. In one word, we have a PA system which is not immune against influences, which on the other hand cause problems to citizens who have to be serviced adequately and efficiently.

The main characteristics which are not evident in the PA in Macedonia and which have to be provided with the new reforms are as follows:

- a small PA with a regulatory function different from the classical state interventionism;
- depoliticized and non-partisan PA which is led by the transparent and professional component;
- a responsive PA that performs efficiently;
- equal representation of community members and accomplishment of the decentralization process;
- career advancement of civil servants in accordance with the merit-based system;
- efficient implementation of the behavior codecs of civil servants;
- further realization of the SAA.

In order to overcome the above-mentioned weaknesses, it is necessary to undertake adequate measures. If there is no institutional stability, de-partization and democratic control over the general performance, we will not be able to see concrete and real progress and improvement. During the reformation process professionalism, accountability, and responsibility in exercising the administrative function have to be taken into consideration. Reforms in PA should be backed up by a good political will and establishment of an efficient system that will enable adequate recruitment, advancement and evaluation of civil servants. Within the process of reforms, public services should also be included (social protection, education, healthcare, science and culture) as well as the transfer of some of the functions from the public sector to the private one, or to the private-public partnership. Ministries and other administrative bodies play a crucial role in the reformation process, since they can identify the disadvantages of the organizational system of the state administration. PA reforms should be in compliance with Macedonia's determination to establish a professional, competent, efficient, responsible and accountable PA in service to citizens, which will be led by high ethical principles and will therefore enjoy the citizens' trust and respect.

Finally, we are remaining hopeful that the upcoming reforms will help improve the performance of the administration and that it will positively impact Macedonia's euro-integrative processes.

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Recruitment and Selection of Staff - Key Components for the Reform of the Romanian Police

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Abstract: Human resource management is a complex and dynamic process, whose components interrelate and reinforce one another, constantly evolving due to internal influences or because of external pressures. This is a cyclical process, and its "beginning" is represented by the recruitment and selection of staff. In the present context, when the labor market has changed so dramatically, and the demands of the employers are also ever more complex, these activities prove to be essential for the further development and success of any organization. This happens because recruitment and selection of the most suitable people result in obtaining employees who possess multiple skills and qualifications, and who are able to readily obtain high performance, an enhancement of their motivations, building a strong and lasting team, and thus ensure excellent results for the company and the ability to adapt to the present day continuous changes. Therefore, professionally addressing the Romanian Police staff recruitment and selection is absolutely necessary. If the recruitment activities will point out the most suitable people, with potential for development in the organization, a quality selection activity may be the guarantee of identifying the candidates who have the knowledge, skills and abilities needed to transform the potential capabilities into professionalism. Only organizations that will know how to build multidisciplinary, competent and motivated teams will be ready to face new challenges.

Keywords: staffing; staff recruitment; staff selection; employment in the Romanian Police

1 Introduction

In the current economic context it is very important for organizations to view their employees as a priority, since they may represent one of their most valuable assets. Although many companies admit to the importance of the human factor for the success of the organization, however, not always do they prove consistency between this idea and some means of implementing it into practice. Even in times of economic recession, organizations should view staff costs not as an arbitrary cost, which may be reduced or eliminated, according to the size of the budget available, but as an investment in a strategic resource, whose results become more evident in time and that can generate the ability of survival, adaptation and development of a company in a changing environment (Purda-Nicoară (Netotea-Suciu) Valeria-Liliana-Amelia, 2011). Although it is possible that the investment in people is not sufficient for ensuring an increase in the quality and efficiency of the activities, it certainly is a need. Moreover, all other human resources management processes depend on the quality of the people employed.

The reform of the Romanian Police, in the present geo-political context, characterized by increasing globalization, and considering the Romania's obligations and responsibilities as a member of NATO and the European Union, requires clarification of issues related to human resources, their qualitative and quantitative restructuring, the professionalization of the institution. In order to complete the

transformation process began by the Romanian Police after 1989, it is essential to continue the modernization of human resource management and to make the legislation changes necessary to achieve uniformity of the differences among Member States, so that the Romanian police has a similar status to that of the officers in the other NATO or EU countries.

During the current period - perhaps the most difficult since 1989, the Romanian police needs to pay a special interest to activities of staff recruitment and selection, as well as to training and professional development, assessing and motivating, establishing values, objectives and clear criteria for promotion in terms of career development for its employees, all of the above making it more likely to attract and retain the best people and achieve their full potential.

In this context, this present paper aims at a theoretical approach to recruitment and selection processes in the Romanian Police, in the light of the specific activity of this institution.

2 Content and Role of the Staffing Process

Synthetically, some experts in human resource management believe that the staffing of an organization, which is also known as employment, is based on several activities, namely: human resource planning, recruitment and selection (David J. Cherringston, quoted Aurel Manolescu, Viorel Popescu, Alecxandrina Deaconu, 2007, p. 271).

According to other authors, the staffing process is a sequence of specific human resource activities that are reinforcing one another, and that are absolutely necessary to meet individual and organizational aims (Fig. 1, LA Klatt, RG Murdick and FE Schuster, quoted in Aurel Manolescu, Viorel Popescu, Alecxandrina Deaconu, 2007, p. 271).

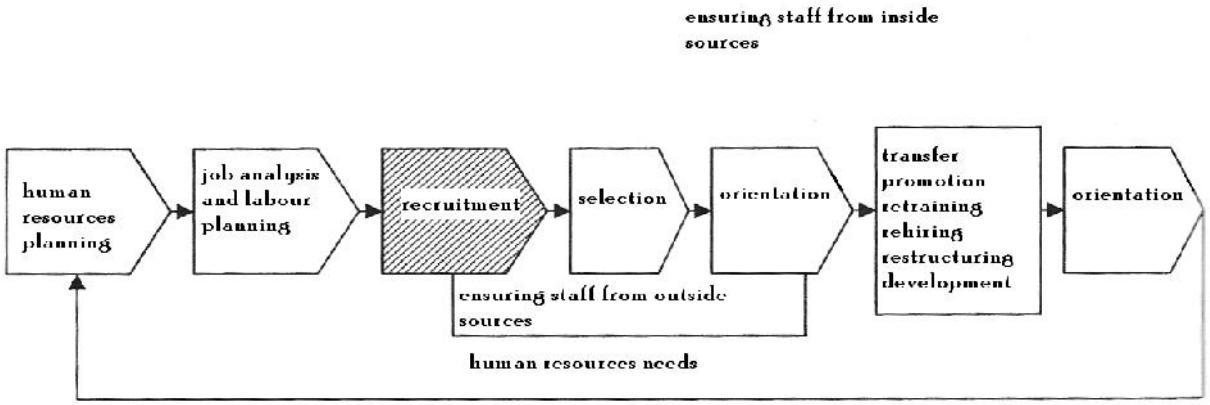

Figure 1 Ensuring staff

(According to Aurel Manolescu, Viorel Popescu and Alecxandrina Deaconu)

The analysis of this model shows that the staff can be ensured from outside the organization (in which case we should consider recruitment, selection and integration of staff) or from within it, a situation which involves movement of personnel due to transfers, promotions, retraining, redeployment, etc. Changes in the number of employees can be a result of retirement, resignation, dismissal or death. In addition to the above activities, as part of an organization's staffing other activities are also included, such as: human resource planning, job analysis and labor planning (Fig. 1).

Staff recruitment is the job of the human resource management department, which identifies the sources of qualified candidates to fill a position, and makes them apply to fill new or vacant positions

within an organization. HR professionals (Aurel Manolescu, Viorel Popescu, Alecxandrina Deaconu, 2007, p. 270) defined **recruitment** as "the process of searching for, locating, identifying and attracting potential candidates, from among whom will be elected the capable candidates, who eventually, prove the professional characteristics necessary or best meet the requirements of the current and future vacancies. " Consequently, recruitment must be addressed primarily as effective staff selection depends largely on the quality of the recruitment process, providing potential candidates for employment positions - in sufficient number and of appropriate quality to meet the requirements of the vacancies for the organization, so that the organization can choose the most suitable ones, to meet the employment needs.

Human resources selection is to choose, according to certain criteria, the candidate whose profile best matches the psychical, social and professional characteristics of a specific job.

Selection is one of the most important human resource management activities currently carried out by organizations, ensuring that vacant positions are filled with people who are not only suitably qualified according to the job requirements, but also flexible, willing and able to cope with change (Donald Currie 2009, p. 129).

The selection policy of the organization is part of its overall policy. In the process of staffing, human resources selection follows, logically, the phases of human resource planning activities, job analysis and job design and recruitment. While most experts in the field of personnel recruitment and selection treat these as separate functions, especially considering that the selection begins where recruitment ends (AH Anderson, quoted in Donald Currie, 2009, p. 110), there are authors as Beardwell et al (2004), for example, who see such activities as embedded in their view "the recruitment and selection process is to identify, attract and choose the right people to meet the human resources needs of an organization," , thus the two activities are inseparable (Breadwell J., L. Holden and T. Claydon, quoted in Donald Currie, 2009, p. 110). Georgeta Pânişoară and Ovidiu Ion Pânişoară (2007) view the human resources recruitment and selection process as a whole, made up of several stages, as shown in the figure below (Fig. 2, George and John, Ovidiu Pânişoară Pânişoară, 2007, pp 33-34):

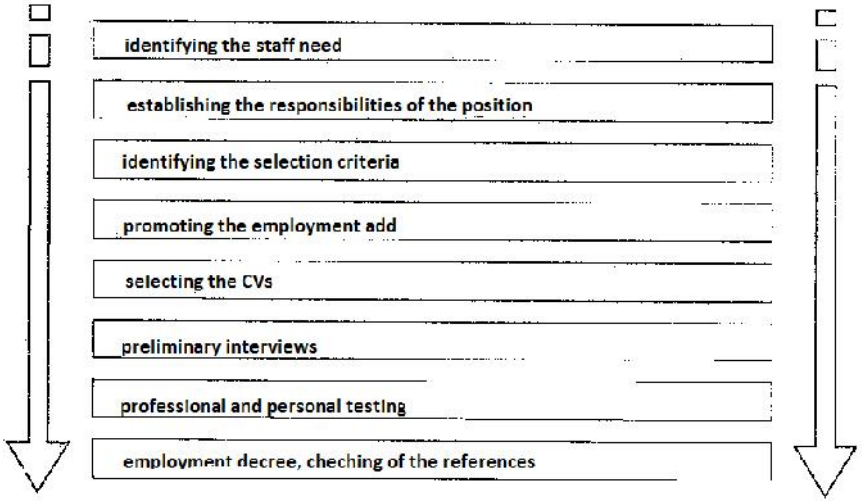

Figure 2 Stages of recruitment and selection

(According to Georgeta Pânişoară and Ion Ovidiu Pânişoară)

In practice, recruitment and selection is a continuous process, the two functions can not have an end one without the other. In carrying on these activities, human resource practitioners use different methods and

techniques and, to understand these, and for theoretical reasons, it is recommended to treat staff recruitment and selection separately.

3 Particularities of the Activities of Recruitment and Selection of Staff in the Romanian Police

Recruitment and selection activities of the Romanian Police staff aim to provide trained, competent, honest, goal-oriented, personnel, dedicated to organization interests, able to fulfill the responsibilities incumbent upon them by law, with professionalism and respect for social and institutional values. Currently, human resources management activities within the Romanian Police are governed by Order no. 665 of 28/11/2008 regarding some activities in human resource management units of the Ministry of Interior and Administrative Reform, published in the Official Gazette, Part I no. 833 of 11.12.2008 and "The Concept of the Romanian Police staff recruitment and selection" (http://www.politiaromana.ro/recrutare_personal/conceptie_recrutare_personal.pdf, accessed on 04/14/ 2011).

According to the above concept, recruitment and selection of personnel is one of the biggest challenges the Romanian Police must face nowadays, as it must ensure the identification of cross-motivated candidates with an appropriate level of training for the job they are to occupy. In this context, a priority should be the rethinking of the field in question so that the system of recruiting and selecting of staff can respond to the needs of updating, adaptation and progress and also to eliminate the shortcomings that still persist in the selection and recruitment of police officers.

The key objectives of recruitment and selection of officers, mentioned in the document mentioned above, are:

- recruitment and selection of candidates based on their skills;
- objective and impartial evaluation of candidates based on clearly defined professional standards;
- occupation of each position with the best fitted person to maintain institutional efficiency;
- insurance that the overall diversity of the police is reflected in the recruitment and selection process for all candidates;
- adoption of best European and international practices;
- compliance with the representation percentage of women and minorities in the police.

The responsibility for implementing the concept of recruitment and selection of staff falls to the General Inspectorate of Romanian Police and the Director of Human Resources Management with the GIRP is responsible for the compliance of the recruitment and hiring of personnel activities, from the administrative point of view. The same document states that the process of filling the personnel vacancies in the Romanian Police will be made in accordance with the procedures established for this purpose, with the purpose to ensure that all hiring decisions are based on objective and transparent criteria, and that all candidates are treated fairly.

Support measures for recruitment and selection activities aiming to achieve this goal are as follows (http://www.politiaromana.ro/recrutare_personal/conceptie_recrutare_ personal.pdf , accessed on 04/14/2011):

- performing an audit of all job requirements and providing a uniformity to all units through the creation of uniform professional standards;

- approved vacant positions and their related functions are available to all managers involved in recruitment, selection and promotion, by means of internal communication;
- vacancies will be published in the media, including national minority media;
- collecting statistical data from applicants to determine whether or not the full range of possible candidates was covered (making surveys, questionnaires);
- development of a report by the beneficiary of the selection process on the activities of employment, which will include any proposals for revision of the recruitment process;
- the "Career" section of the Romanian Police website will be continually updated by this notice ensuring that every citizen has access to information on vacancies and is able, through the process of transfer / promotion, to apply for a vacant position.

To develop the concept mentioned, we performed an analysis of the Romanian Police employment offer, on which occasion we identified a number of "strengths" that may positively influence the perception of potential candidates on the institution and the desire to fit in this system:

- job security;
- average income above that in the public sector, but still below the average private sector;
- opportunities for further training of personnel;
- police work use of advanced technologies;
- opportunities for promotion, based solely on the professionalism and competence;
- an attractive retirement plan;
- public prestige.

This analysis revealed the existence of opportunities that will benefit the Romanian Police during the course of recruitment and selection of staff, of which we mention (http://www.politiaromana.ro/recrutare_personal/conceptie_recrutare_personal.pdf , accessed on 04/14/ 2011):

- Romania currently has over 100 institutions of higher education, from which specialists can be recruited and selected;
- partnerships with institutions, governmental or nongovernmental organizations and associations;
- development of projects with the private sector - Microsoft, IBM, SIVECO IRSA etc.
- technology: information on recruiting is posted online;
- advertising can be made on various other sites for the target audience (e.g.: www.referate.ro), and by the media;
- information can be disseminated at various events with the participation of citizens;
- information can be transmitted in schools, with prevention programs, but also outside of schools, but also with the help of the teachers, in counseling classes.

In an attempt to broaden the areas from which the personnel is selected, and thereby to secure the best possible quality of the people employed, in recent years, the Romanian Police has clearly expressed an interest in obtaining data on community perceptions about the institution, and, in this context, several steps have been taken (http://www.politiaromana.ro/recrutare_personal/conceptie recrutare_ personal.pdf , accessed 04/14/2011):

- talks with citizens or their representatives, carried out by the proximity police officers;
- discussions with teachers in schools;
- meetings with citizens, made during the course of programs in different locations;
- posting questionnaires on the website of the Romanian Police;

- introducing in some surveys, conducted with support from the Institute for Crime Research and Prevention and other independent specialized institutions some aspects about people's perceptions on issues like the police institution, but also on the police profession and guidance of people into the profession (for specific target groups), as, for example, the survey conducted by IMAS Romnibus in September 2009 on a sample of 1245 people, on people's perceptions towards the police.

Assessment of community perceptions is important for the Romanian Police mainly because it is the mirror image of the institution. Secondly, the importance of the information on the image of the institution is that it provides relevant data on community expectations about the policemen, especially those who have direct contact with citizens, which can be exploited in the process of recruitment and selection of staff. While the concept of the Romanian Police on staff recruitment and selection guidelines these processes, practical issues related to job analysis, job description preparation and management, personnel recruitment and selection exercise of professional guardianship, completion of the profession, granting of the professional/ military degree and promoting officers to the next level are governed by Order no. 665 of 28/11/2008 regarding some activities in human resource management in the Ministry of Interior and Administration. According to this Order, filling vacancies through internal recruitment is achieved primarily through the distribution of graduates of educational institutions of the MAI, other educational institutions that have personnel trained for the needs of Interior and Administrative Reform Ministry and, also, by:

a) promotion;
b) relocation for work;
c) transfer;
d) competition or examination, if necessary, notwithstanding the provisions of art. (1) By: detachment, relocation, on request, empowering for the vacant managerial positions, according to the law, etc.

To fill vacancies, they shall constitute, by order of the day of the unit commander, the vacancy committee, consisting of the direct head of the structure in which there is the vacancy, his direct superior, as well as the unit psychologist, where there is such a position. In order to fill the vacancy, the committee will conduct the following activities (http://www.legex.ro/Ordin-665-28.11.2008-91670.aspx , accessed 04/11/2011):

- they identify the staff who meet the requirements of the vacancy and who have the potential for professional development through promotion or reassignment, in the order of the activities established by this order;
- they carry on an interview, with the personnel identified as mentioned above, based on the provisions of the job description, and professional issues;
- they propose, along with the human resources department, the date and the type of exam for filling the vacancy;
- before leaving the service, the commission proposes the members of the competition, committee, unless the contest is held to fill vacancies in the MIA leadership competence.

Promoting guards in the officer corps is generally done by competition for filling vacant posts which include positions for officers. The internal source recruitment process aims at identifying and attracting candidates who meet the requirements of the job and are employed in the unit or other units of the MAI, to fill vacancies. Recruitment from external sources aims to identify and attract candidates who meet the legal requirements and specific criteria necessary to enter professions and occupations specific to public

order and security as well as specialized functions to fill vacancies that could not be filled through internal source recruitment. Recruitment from external sources allows the enrollment in the contest to fill vacancies of all categories of candidates who meet the job requirements. To enter the competition, candidates must meet the following conditions provided by art. 20 of Order No. 665/28.11.2008 on some activities in human resources management of MIA (http://www.legex.ro/Ordin-665-28.11.2008-91670.aspx , accessed 11/04/2011):

- they must have Romanian citizenship and residence in Romania;
- they must master written and spoken Romanian language;
- they must have full legal capacity;
- they must be declared "fit" in terms of health, physically and psychically, medical health checks, physical and mental health will be performed by specialized structures of the Ministry of Administration and Interior;
- they must be aged at least 18 years old, and in the case of candidates for admission in educational institutions of the Ministry of Interior, they must turn 18 during the year they participate in the competition;
- they must have studies according to the requirements of the job for which they apply, and candidates for admission in educational institutions of the Ministry of Interior must be graduates of high school with a baccalaureate diploma; the proof of graduation is a diploma or certificate showing that they sat and passed the school exams;
- they must have a proper conduct permitted and practiced in society;
- they must have no criminal record and they must not be under criminal investigation or trial for committing crimes, except the situations in which they were rehabilitated;
- they must not have been dismissed from public office for the last seven years;
- they must not have conducted political police activities, as defined by law;
- they must meet the requirements of Art. 10 pars. (3) of Law no. 360/2002 on the Statute of the policeman (the candidates who passed an admission exam in educational institutions of the Ministry of Administration and Interior, as well as persons to be assigned directly to the police should not be a member of any political party or organization with political character ");
- they must meet specific conditions for a competitive civil service employment with a special status.

Recruitment criteria are set, with respect to the conditions and criteria stipulated by the valid legislation, according to the specific professional activity for which there is the vacancy. The recruitment criteria, as well as information on auditions, thematic bibliography and the schedule of the contest, are brought to the attention of those interested by the ads posted on the website of the organizing institution and / or in the press. It is not possible to employ from an external source persons who have had this quality, if (http://www.legex.ro/Ordin-665-28.11.2008-91670.aspx , accessed 11/04/2011):

a) they have ceased their employment relations in terms of art. 69 c), h), i) and k) of Law 360/2002 on the status of the policeman, as amended and supplemented;
b) they have been placed in reserve in accordance with Art. 85 d), i), j), k) and Art. Nr.80/1995 87 of the Law on the Statute of the military, as amended and supplemented.

Human resources departments are responsible with carrying out the following activities related to recruitment (http://www.legex.ro/Ordin-665-28.11.2008-91670.aspx , accessed 04/11/2011):

- they identify and they apply the most efficient and effective advertising methods and techniques to attract potential candidates for admission to educational institutions of the Ministry of Interior and Administrative Reform and jobs that were not occupied from internal sources;
- they present to those interested the educational offer of the training institutions of the Ministry of Interior and Administration and / or career paths to graduates of these institutions;
- they direct candidates to educational institutions of the Ministry of Interior and Administrative Reform, which are in best agreement with their skills, advising candidates on their potential professional future;
- they check that, in compliance with the requirements, the documents required to start the recruitment file are proper in form and content;
- they elicit checks in the records of the police and the Romanian Intelligence Service on the candidate;
- they prepare files for recruiting candidates who meet specific conditions and criteria established under the valid legislation, and who have presented the necessary documents for registration for the competition / exam in due time;
- they make tables containing the names of the candidates for admission to attend educational institutions, both on paper and magnetic media;
- they send the files to the organizers of the admission / recruitment competition.

For internal recruitment, records and tables shown above are transmitted to the educational institutions at the time established by the Director General of the Directorate General of Human Resource Management, and if the recruitment was carried out from an external source, the files are kept in the organizing unit until the end of the contest. Unsuccessful candidates may request and receive the personal documents from the recruitment files, based on signature, after displaying the results of the competition.

As stated in the order mentioned, *the competition file* is prepared by the human resources department, and it shall include the following documents:

- an extract from the day order by which the committees and subcommittees have been formed;
- a copy of the announcement posted on the website or, where appropriate, published in newspapers, and posted on the bulletin board;
- a schedule of the examination / competition;
- the applications of the candidates to participate in the examination / competition;
- the candidates' written examination papers and the recording / transcript of the interview on professional topics;
- the minutes of the contest committee and, where appropriate, sub-committees and the settlement of disputes;
- the minutes of the record of the conduct of examination / competition and the results of the candidates;
- the exam / competition dockets;
- the appeals, where applicable, as well as the way they were solved.

In order to participate in the examination / contest for feeling the vacancy, each candidate who meets the legal conditions and job requirements shall prepare and submit the following documents in the recruitment folder (http://www.legex.ro/Ordin-665 -28.11.2008-91670.aspx , accessed 04/11/2011):

- registration application and CV;

- certified copies of documents attesting education level and specialization as stipulated in the job requirements;
- copies of ID, employment record and, where appropriate, military record;
- certified copies of birth certificate of the applicant, spouse and each child, of the marriage certificate as well as court decisions on civil status;
- autobiography, and the table with the candidate's relatives
- the criminal record;
- a characterization from the previous job, or from the institution of education for the graduates in the first year after graduation;
- 3 ID-size photographs;
- two color photos 9 x 12 cm;
- standard medical record for employment in the Ministry of Interior and Administrative Reform;
- psychological examination certificate;
- statement confirming knowledge and acceptance of the conditions of recruitment.

The file of each candidate who meets the legal conditions and job requirements is filled by the recruitment compartment with the following documents:

- a knowledge note, only for candidates who "pass" the exam/competition;
- an address by which, after checking the conditions and criteria for participation in the examination / competition, the candidate is informed that he/she can not participate.

The competition to fill vacancies can, depending on the specific tasks of those positions, include the following tests:

- an interview on professional subjects;
- an evaluation of physical performance;
- a practical skills assessment test, with direct relevance to the job performance;
- a written test required for testing the knowledge on performance of job duties.

Findings of the final results of each competition tests are marked with grades from 1 to 10, and the minimum grade to promote the competition is 7.00, except for the physical test, where the assessment and promotion are made according to specific internal regulations. Candidates who have passed the test are declared "pass" and those who have not passed are declared "rejected". The final grade is the average score of the marks obtained from each competition and it is the criterion for differentiating between candidates. The candidate who obtained "pass" on all tests, and scored the highest, is declared as "pass". The stage in the professional career of a police officer between appointment and the definitive exam is the period of professional training.

To support the police officer's social and occupational integration, as well as that of the pupils and students in the unit, during the professional training period, or internship, where appropriate, professional tutoring operates on the following:

- university graduates employed in positions of police or military personnel;
- police and military staff assigned from external source in units of the MAI
- police and military personnel who have moved / have been transferred to another division / another General Inspectorate, if their activity profile was changed in the process;
- policemen who have gone into the body of police officers such as soldiers and non-commissioned officers who promoted to the officer corps.

On expiry of the period discussed above, the police officers who meet the following conditions are become definitive in the profession:

- they are assessed as "suitable", following the evaluation of their activity in the period of professional training;
- they have passed the definitive exam.

If the policeman does not meet the above conditions, he or she is dismissed from the police force, according to human resource management competences.

4 Conclusions

The Romanian Police, a structure of the Ministry of Administration and Interior, having a great social responsibility, must aim at attracting and maintaining the type of individual that can meet the standards of a professional police officer, despite the budgetary constraints that it has to face and the difficult period it is passing at present (Purda-Nicoară (Netotea-Suciu) Valeria-Liliana-Amelia, 2011). It is also necessary that, by efficient recruitment and selection activities, The Romanian Police should look for, identify and keep the persons who wish for a professional career in law enforcement, rather than a constant salary. It is preferable that this institution should hire fewer police officers, but of higher professional quality, rather than a larger number, but with a performance liable to affect the citizens' trust. (Glenn, RV et al, 2003). Also, in order to keep loyal competent personnel, and to decrease the human resources fluctuation, it is necessary to train the staff all along their career, for an improvement in their professional abilities, an enhancement of the sense of commitment, and an understanding of the social responsibility, as well as establishing clear promotion criteria, and motivational methods which should keep up professionalism in the police force.

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THE 6TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

The Research of the Administrative Phenomenon Within the European Space from the Perspective of the Organisms Specialized in Professional Trading

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Abstract: The problematic of the continuous training, specialization and perfection of professional training of public servants and contractual personnel in the public administration has constituted the reason for which the European Commission sustained the establishment of the National Institute of Administration in September 2001, with the purpose of the EU adhesion. The purpose of its establishment was to respond to the reasonable requests for the European Union adhesion but also to the realities existent within the European administrative space, in the context in which most of the member states in the EU have an institute which is specialized in programs of continuous professional training and at the level of the EU the European Administrative School already exists from 2005. To this end, its dissolution has brought a double prejudice so that it is imposed with necessity to reestablish the National Institute of Administration as specialized organism in programs of continuous professional training but as structure autonomous or subordinate to the Government and the creation, in Romania of a genuine school for the training of the personnel working within the public administration.

Keywords: professional training; public administration; public administration personnel; public servant; public administration institute

1 Introduction

Any modification in economic and political context at the level of a state has implications on the structure and organization of the public service. *The EU integration has determined important changes within the system of public service,* the reform objectives of public service aiming at certain *standards existent at the level of each public office at the level of the European administrative space*.

As a response to these challenges, the national systems had to approach new principles, some of them being borrowed from states with tradition in Europe regarding the exertion of public office.

2 Problem Statement

In Romania, the professionalization of the public office has been an important objective within the reform programs and government strategies especially starting with the period of preparation for the EU adhesion. Therefore, *the problematic of the continuous training, specialization and perfecting the professional training of public servants and contractual personnel within the public administration* have

represented the purpose for which the European Commission supported the establishment, in September 2001 of the *National Institute of Administration*. The purpose of its establishment was to respond to the requests and realities existent within the *European administrative space*.

The objectives imposed by the EU were not reached completely and they were felt especially at theoretical level. Therefore, together with the dissolution of the *National Institute of Administration* a double prejudice was caused: firstly, from material point of view, because the financial resources of its establishment came from the European Union and the money were obtained following a project supported by the European Union and secondly, the dissolution of the *National Institute of Administration* represented, from democratic point of view, a return to the past.

On the other hand, the politicization of the *National Agency of Public Servants* determines the necessity to create an autonomous statute that would remove it from the subordination of the ministry, solution which is presently used by most of the member states of the European Union. For example, in France, the *General Directorate of Public Service*[1] organized within the *Sub-directorate for information and legislation* with the *Interdepartmental Committee for social actions of the state administration* as organism functions under the guardianship *DGFP, ENA*- respectively the *National School of Public Administration*.

3 Concept and Terms

a. Organisms specialized in professional training existent at institutional level within the European Union

At the level of the member states of the European Union most of the states have an *Institute specialized in continuous professional training* and at the institutional level of the European Union, since February 2005, there is the *European Administrative School*.

The European Administrative School is an inter-institutional organism of the European Union with the role of organizing training courses in specific fields for the personnel of the European Union, while the *European Personnel Selection Office* functioning since January 2003 has the task of organizing recruitment contests for personnel that will be hired in all institutions of the European Union. The *European Administrative School* organizes training courses both for the personnel that has been recently recruited as well as for the one already exerting leadership roles within an institution, office or agency of the EU.

b. Organisms specialized in continuous professional training existing at the level of the member states of the European Union

Mostly, the member states of the European Union are affiliated to some groups of public administration, with European or international vocation and within these groups there are schools or academies of public administration. Thus, in the member states of the European Union, such as Austria, Belgium, Czech Republic, Cyprus, Denmark, France, Germany, Greece, Finland, Ireland, Italy, Luxemburg, Malta, Poland, Portugal, Great Britain, Romania, Spain, Hungary are affiliated to the *International*

[1] Was submitted to an important process of reorganization beginning with 2007 (Decision on January 16th, 2007 on the organization of the General Directorate of administration and public office and Decision on January 16th, 2007 on the organization and attributes of sub-directorates and general secretary of the General directorate of administration and public office).

Institute of Administrative Sciences[1] while Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Italy, Ireland, Lithuania, Luxemburg, Malta, Great Britain, The Netherlands, Poland, Portugal, Spain, Sweden, Hungary are affiliated to the *European Institute of Public Administration* (EIPA)[2] being part of the Executive committee. At the level of the member states, the existence of schools, institutes or academies of public administration can be noticed, being organized at national, federal or regional level. In France, the National School of Public Administration (Ecole Nationale d'Administration- ENA)[3] was established in 1945 by Charles de Gaulle with the purpose of organizing courses for initial training of national or international chief executives and for their continuous vocational training; specialization in domains such as public government and administration, community field, international relations etc., while at regional level functions the *Regional Institute of Administration in Bastia*[4].

In Germany, the *German Institute of Research in Public Administration* (FÖV)[5] was established in 1976, its statute being of non-university institution whose objective is research applied in administrative sciences, namely: the modernization of the state and the administration, multi level government, administration by public and private actors. At federal level, the *Federal Academy of Public Administration*[6] was established in 1969 as independent structure from the Federal Ministry of Internal Affairs but in tight collaboration with the public administration, private and academic sector.

In Belgium functions the *Training Institute of Federal Administration*[7] (L'Institut de Formation de l'Administration fédérale) which is concerned with the continuous training in professional careers of the personnel within the federal administration, but also contributes to the training and improvement of the quality of the services offered to the citizens. The training programs are dedicated to statutory public servants and contractual ones within the federal public service as well as institutions, public interest organisms and federal organizations that have a special agreement with the *Training Institute of Federal Administration.*

In Denmark, beginning with 1963 functions the *Danish School of Public Administration*[8] (DSPA) created as an agency of the Danish government with the purpose of training and providing consultancy for public servants at all levels of the administration, the activity of this structure being sustained by a research and administrative development program.

In Greece, the *National Center of Public Administration* (NCPA) comprises the National School of Public Administration, (Nspa) and the National School of Local Government (ESTA)[9]. The National

[1] http://www.iias-iisa.org/e/service/members/europe/Pages/default.aspx/.
[2] http://www.eipa.eu/files/BoardofGovernors02_2010.pdf/.
[3] http://www.ena.fr/index.php?/fr/institution/.
[4] It has the role of training state public servants and the public servants within the local public administration in Aquitaine, Midi - Pyrenees, Languedoc - Roussillon, Provence - Alpes - Côte d'Azur and Corsica; http://www.ira-bastia.fr/.
[5] The activity of research performed by the German *Institute of Public Administration* is supported by the studies performed in the following centers: "Agency for administrative surveys", "Center for scientific management", "Center of scientific documentation on the modernization of the German lands"; http://www.foev-speyer.de/home/home_engl.asp/.
[6] The Mission of the Academy is high level training of the administrative personnel existent at federal level, namely: professional general training for promoting within the superior public service, permanent training in community areas, IT training, training for high level executive personnel, etc.; http://www.bakoev.bund.de/EN/00__home/homepage__node.html?__nnn=true/.
[7] Within the Institute there is the *Study and Documentation Center* and *Self learning Center*; http://www.fedweb.belgium.be/fr/formation_et_developpement/IFA//
[8] http://www.dfhnet.dk// .
[9] The *National School of Public Administration* is represented by the six departments: *executive communication, general administration; social management and health service management; administration and regional development; management of information systems; economy and tourism development.* At the level of the *National School of Local Government* there are

School of Public Administration is a scientific-educational unit of the National Center of Public Administration and has the objective of training the public servants at executive level for the central, regional and local government public service.

In Spain, the *National Institute of Public Administration*[1] functions as an autonomous organism of the state administration, belonging to the *Ministry of Public Administration* with the role of cooperating with other schools and institutes for training and research in public administration.

In Ireland, functions the *National Institute of Public Administration*[2] established in 1957 being the sole Irish organism performing activities exclusively with the purpose of developing the public sector, its activity being focused on organization of training courses in the following areas: auditing and government, specific programs for public service, financial management, management of the health system, human resources management, information technology, leadership and management of development, local government management.

In Italy, in Rome, beginning with 1957 functions the *Superior School of Public Administration*[3]. The *Superior School of Public Administration* is subordinated to the Cabinet of the Prime Minister – responsible for the training of the public managers and high level public servants. The objectives of these structures are the following: initial and advanced training in public administration; organization of symposiums or courses related to the modifications within public administration; collaboration with other schools of administration in other states with the purpose of initiating courses for professional training in the area of public service.

In Luxemburg, the *National Institute of Public Administration*[4] was established in 1999 with the statute of partner of the administration and state and communes' services regarding the initial and continuous training, in tight collaboration with the *Ministry of public office and administrative reform* and the *Ministry of interior and territorial planning*.

In The Netherlands functions the *Netherlands Institute of Public Administration*[5] focused on programs for the public sector at local, national and international level. It offers training and professional counseling, consultancy and feasibility studies, initiation in projects and public policies evaluation, consultancy regarding the administrative reform and good government. Also, the *Netherlands Institute of Public Administration* cooperates at international level with the EU member states in public policy drafting, local government actions and is responsible for the training of the OSCE presidents, diplomats exerting their activity in the ministries of external affairs as well as the training of public servants within the departments collaborating with similar departments in non European states.

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four departments: *management department, department for financial management; department of immigration policies and department of public protection*. http://www.ekdd.gr/esdd/index.php?option=com_frontpage&Itemid=1/.

[1] http://www.inap.map.es/ES/_INAP/Organigrama/estorg.htm/.

[2] The *National Institute of Public Administration* is structured ion five departments: *Center for international cooperation, Center of advanced studies in public service, Center of advanced local and territorial studies, School of selection and training and Publication Center*. http://www.ipa.ie/Education,Training,Publishing,Reseach/.

[3] The *Superior School of Public Administration* is organized in the following specific departments: Information, Studies and Research Office, Initial training Service, Advanced training and e-learning service, studies and research service, Communication and international relations office, Communication and institutional relations service, Training Monitoring and exploitation, International relations service. http://www.sspa.it/.

[4] The *National Institute of Public Administration* has two departments: a department for state personnel training and state public institutions personnel, structured on two directorates, namely the directorate for initial training and directorate for continuous training; and a department for training of personnel within the communes, syndicates of the communes and public institutions of the communes, structured similarly with the department for state personnel training and state public institutions personnel. http://www.fonction-publique.public.lu/fr/structure-organisationnelle/inap/index.html/.

[5] http://www.roi-international.org/.

In Austria, the *Federal Academy of Public Administration*[1] functions beginning with 1976 with the statute of training agency subordinated to the government. It has the purpose of general training of the public servants, offering training programs in management and leadership or high public servants, advanced programs of training in women management, training programs for personnel and human resources management, general programs and specialized training programs for European integration and consultancy and training programs for public officials and training in Central and Eastern Europe.

In Portugal, the *National Institute of Administration*[2]performs its activity subordinated to the prime minister and having scientific and management autonomy. The activity of the Institute is focused on the organizing initial professional training courses as well as continuous training for senior personnel, top management and administrative personnel; research and development; training in information systems and technology; e-learning training, teaching and communication, research and publications.

In Finland, the *Haus Finnish Institute of Public Management*[3] performs its activity since 1971, functioning as government agency for training public servants but beginning with 1995, became state enterprise in virtue of a parliament law and is currently coordinated by the parliament, together with the Ministry of finances.

In Sweden the *Swedish Institute for Public Administration – SIPU International*[4] functions as a government agency organism since 1979, with the purpose of offering consultancy and training for the public sector. Beginning with 1992, the Institute became a joint company, being registered in private administration sector.

In Great Britain, the *Public Service College- Government Management* is part of the *Center for management and political studies* ensuring training programs for public servants in central government as well as local government and public sector, both in Great Britain as well as at international level. Also, in Great Britain functions the *National school of government*[5] focused on training in leadership and strategy, policies and government, business management, management development, personal and career development, training program dedicated to ranks 6 and 7 and beginners in superior management, as well as for those willing to accede in the superior public service (central and regional), management programs at high level, ministerial programs and training programs for the highest level of management.

In Cyprus functions the *Public Administration Academy*[6] whose mission is to provide strategic management programs, leadership and professionalism programs, ensure quality services for the citizen, coordinate and facilitate cooperation with similar organizations, offer modern services in the relation between the state and society and promote a greater transparency and social participation in public management.

[1] http://www.austria.gv.at/site/3327/Default.aspx/.
[2] http://www.ina.pt/index.php?option=com_content&view=article&id=77&Itemid=127/.
[3] The *Public Management Institute* has the competency to offer assistance in the following areas; management and leadership, administrative professional know-how, skills in EU and international management, international and technical assistance, administrative structures, public administration reforms, quality management and organization of public service, legislation and legislative procedure, public service structure and training, development in financial and budget administration based of performance, activities together with the International Institute of Administrative Science (IIAS), OECD/PUMA, SIGMA and EIPA. http://www.haus.fi/en/.
[4] http://www.sipu.se/.
[5] http://www.nationalschool.gov.uk/.
[6] The activity of the *Public Administration Academy* is structured on the following departments: management and development, providing introductive courses for beginners, development of personal and interpersonal skills, organizational development, consolidation of the learning capacity of public service organization, aspects of EU, cooperation programs for public servants in other states, applied research. http://www.mof.gov.cy/mof/capa/cyacademy.nsf/index_en/index_en?opendocument/.

In Poland functions the *National School of Public Administration* (KSAP)[1] the activity of the School being focused on initial training and continuous training in public administration in the following areas: administration and public management, economy and public finances, issued relate to the European Union and external policies.

c. Organisms specialized in professional training existing at national level

At national level we do not have a school of public administration with attributes in the professionalization of the entire personnel within the administration, as shown by the experience of the EU member states presented above. Currently, these attributes are performed by the *National Agency of Public Servants* (ANFP), established by Law 188/1999, through the reorganization of ANFP the *Continuous training directorate* being established. The main responsibility of ANFP is channeled on the *professionalization of human resources in public administration, by developing recruitment and promotion systems based on merit and open competition, adequate levels of payment, a transparent and predictable payment scheme as well as a better human resources management and professional training*. Still, *the drafting of the procedure handbooks in recruitment and evaluation of public servants is yet an unaccomplished fact*. **Since its hierarchical subordinated, ANFP shifts off from the necessity of a better local government**.[2] Thus the reconsideration of the principle of local autonomy is imposed, based on which the authorities of local public administration, in tight connection with the central management structure in public office, are the most suitable in assessing the necessities of local collectivities, in occupying the public office. At the same time, given the attributions taken over after the dissolution of INA, the Agency will be able to focus also on the professional training of the personnel in public administration, which has to have a unitary character, respectively in the management issues of public office at the level of territorial- administrative units.

4 Analysis of Results

Analyzing the experience of the member states of the European Union in research of the administrative phenomenon through the perspective of the professional training organisms, we assert that the reestablishment of the *National Institute of Administration* is imposed, as organism *specialized in continuous professional training programs, as autonomous structure or subordinated to the Government* and the establishment, in Romania, of *a genuine school for professional training for the personnel working in public administration.* Since the dissolution of the *National Institute of Administration, the National Agency of Public Servants has taken its attributes* and *we assert that the Agency will not be able to fulfill, in this context, the requests converging towards a better local government.* From this point of view, in virtue of the constitutional dispositions and national and European regulations in local autonomy, *we assert that the local authorities are the most suitable to appreciate and decide that are the needs of the locale collectivities in the area of occupying the public office.*

[1]http://www.ksap.gov.pl/ksap/index.php?option=com_content&task=view&id=144&Itemid=103.

[2] Analyzing the current judicial frame, especially the constitutional and dispositions and those of Law 215/2001, respectively the provisions of the *European Charter of Local Autonomy*, we can conclude that the *local administration authorities have, by law, the right and effective capacity to solve and manage, on behalf and in the interest of local collectivities, their problems, for a better local government*.

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Digital Governance (in Romanian Municipalities). A Longitudinal Assessment of Municipal Web Sites in Romania

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Abstract: This article presents a comparative cross-country study in order to know the level of web services implementation at the municipality level (what are the public services that municipalities offer to their citizens using the electronic platforms). We've accessed each municipality web portal from Romania (103 in total) and using a defined scale; and rated every one very strictly. Most of the elements used in this research are taken from previous studies, adapted afterwards to take in relevant values for my country. Although there are numerous Romanian initiatives of connecting to the Internet even smaller communities, like small towns or even communes, we have chosen the municipalities due to the positive relation between the number of inhabitants and the capacity to e-Government of the local public administration. All of the 103 Romanian municipalities have been analysed and the results obtained will be presented on each class (there are 5 different classes – e-doc, transparency, etc.), but also by the final results.

Keywords: Electronic; government; local; analysis

1 Introduction

For a correct development of a system, whatever that might be, it's actual status must be examined closely first. This is the reason why the test of analysing it, in its dynamics, starts from a horizontal analysis done with the maximum accuracy possible. The data obtained in this manner can be used to create models optimum for development.

The computers and the Internet have changed significantly the way in which the citizens can have access to public services. The informational society is more and more present in all the activities of the public sector, including through complex applications of electronic governance.

For the municipalities in Romania electronic governance is a relatively new practice (the first national project on this theme was initiated in the year 2003 - www.e-guvernare.ro[1]) and it includes digital governance (the offering of public services through electronic means) as well as digital democracy (citizen participation at the governance activity); (Holzer & Kim, 2005).

Today, for interacting with the public administration a computer connected to the Internet is usualy enough. Connecting from a browser to the Web page of the institution you look for is enough

[1] Law no.161/2003 sets the legal basis of the National Electronic System, with the declared purpose of ensuring access to "public information and provision of public services towards physical and juridical persons."

(generally) for obtaining and sending information to/from the public administration. Scientific literature presents 5 pillars of interaction of the PA with its environment (Pardon 2000; Baltac 2008).

Pillar 1. Displaying information on the Web pages – one-way communication. This is the easiest form of interaction, the posting of information on the official Web page of the institution with the purpose of informing the citizens.

Pillar 2. Two-way communication. Through this method the public administration can collect data from the environment to which it addresses, be it through e-mail or more evolved systems of data transferring using intranets or extranets.

Pillar 3. Financial systems and Web transactions. The Web site available to the public offers the possibility of effectuating the complete public service through, or including, the decision of using the service and the actual supplying of it. For the applicant there is no need for another official procedure through which he must use documents written on paper. This type of government is partially possible through offering access for the citizens and the business environment to on-line databases.

Pillar 4. Vertical integration (inter-department) and horizontal (intra-department) of the public services available on-line. This level of interaction is dependent on the speed with which the synchronization of information is realised for the on-line IT systems to provide in time the data needed by the users.

Pillar 5. Citizen participation to the government activity. In this phase it is promoted the participation through electronic systems like: discussion forums, blogs, electronically voting systems (not necessarily electoral), electronic questioner, or any other method of direct and immediate interaction.

The conceptual frame marked by these 5 pillars is necessary only for the understanding of the evolution of eGovernment. In Romania, in this moment there are 41 districts and 103 municipalities, from which only 96 (93.20%) are present on the Internet in the moment of this study. From these, only few of them (we will find in the following pages more detailed information) have a Web site sufficiently developed to allow communication as it is described in the pillars 3, 4 and 5. Practice has showed that there is no lineal evolution and this is a good reason to expect that at the next analysis the number of municipalities that use well developed Web platforms to be greater.

To the point, the elements taken into account in the analysis were: *the presence of transparency elements*, *the management of electronic documents*, *useful content*, *methods of bidirectional communication* and *some general elements regarding the Web site taken into discussion (graphic interface, the easiness in navigating, the richness of information connected to the municipality etc.).*

2 Research methodology

Although there are numerous Romanian initiatives of connecting to the Internet even smaller communities, like small towns or even communes (one example would be the project www.ecomunitate.ro[1], that has the ambition of connecting to the Internet 255 communes and medium to small size towns from Romania), I have chosen the municipalities due to the positive relation between

[1] The institutions involved in the project are: the Ministry for Administration and Internal Problems, the Ministry for Education, Research and Innovation, the Ministry for Culture, Cults and National Patrimony and the Ministry for Small and Medium Sized Enterprises, Commerce and the Business Environment with the support from the World Bank and the European Union.

the number of inhabitants and the capacity to eGovernment of the local public administration (Moon 2002; Moon and Leon 2001; Musso et al. 2000).

Most of the elements used in this research are taken from previous studies, adapted afterwards to take in relevant values (table 2.1). We can observe, as an example, the study "Digital Governance in Municipalities Worldwide (2007)" realised by Mark Holzer and Seang-Tae Kim in 2007, where Bucharest, the only Romanian municipality, is present on the 37th spot, much higher compared to 2005, when it was situated on the 64th spot.

The obtaining of the data was made through individually accessing of each official Web site of the municipalities, just after these were found on the Internet with the help of the well known search engine Google (this intermediary step was necessary due to the lack of a standard model of Web address; for example the mayor office in the capital city has the address www.pmb.ro and the mayor office in the city of Iasi uses www.primaria-iasi.ro). The whole research was made in the December 2009 – January 2010 period.

Once accessed the Web site, the elements presented in the table 2.1, were followed and values from a scale of 1 to 5 were attributed (according to the table 1 – C5 section) to those elements that present a potential risk of subjectivity from the observer, like: *easiness of browsing, attractive design* etc. In all the rest (for sections C1 to C4 – see the exceptions described below, box 1.1.) the attributing of values was made with 0 or 1 (0 = it doesn't exist; 1= it exists) for every element submitted to the research, for example: "Can you submit petitions on-line?" or: "Is there an electronic map of the municipality?"

We can find two exceptions to these rules, and these are:

1. In the case of the chapter "Transparence", especially at the presence on the Web site of the CVs of the employees. In case the CVs of all the employees are present, the value that must be introduced is 2 (C14 = 2), if only the CVs from the leaders of the institution are present, then the value 1 must be introduced (C14 = 1), and if none of the CVs can be found, 0 (C14 = 0); (amazingly but in this last situation we can find 37 municipalities from Romania, among which we can count the mayor offices from Baia Mare, Ramnicu Valcea, Sibiu, Targoviste, etc.);
2. In the case of the chapter "E-DOC", if on the Web site can be found documents for on-line fill-in (C211 = 1), as well as in standard electronic format .doc and/or .pdf (C212 = 1), then C21 will take as an exceptional case the value 3, or else C21 will be equal to the sum of C211 and C212, which obviously will be equal with 0 or 1.

Box 1.1. Exceptions

Table 2.1 Elements submitted to the research

The research element	The values that can be registered	Codification
TRANSPARENCY		**C1**
Declaration of fortune	0 or 1	C11
Organisational chart	0 or 1	C12
Minutes/meetings published on the Web site	0 or 1	C13
CVs of the employees	0, 1 or 2	C14*
Legislation	0 or 1	C15
E-DOC		**C2**
Authorizations/certificates/electronic forms		C21**
.pdf, doc, .rtf format	0 or 1	C211
On-line fill in of forms	0 or 1	C212
On-line following of submitted request, electronic or not (after registering no.)	0 or 1	C22
On-line petitions	0 or 1	C23
Public announcements for: acquisition projects, concession, renting	0 or 1	C24
COMMUNICATION		**C3**
The possibility to send an e-mail directly to the mayor (or his cabinet)	0 or 1	C31
The possibility to send suggestions (other then regarding the Web site)	0 or 1	C32
Discussion forum between/with the citizens	0 or 1	C33
USEFUL CONTENT		**C4**
Electronic map of the city	0 or 1	C41
Map of public transportation	0 or 1	C42
Possibility to search within the Web site	0 or 1	C43
Mayors' office news	0 or 1	C44
Mayor Office news	0 or 1	C45
Web cam	0 or 1	C46
GENERAL		**C5*** **
Attractive design	Between 1 and 5	C51
Easy browsing	Between 1 and 5	C52
It presents information with general character (taxi phone no., hotel, shows etc.)	Between 1 and 5	C53

Explanations:

0 - not found on the Web site;

1 - found on the Web site

* Exception 1

** Exception 2

*** see table 3.8

The study used 24 instruments for the radiography of the Web site[1], grouped on 5 distinct classes (C1, C2, C3, C4 and C5 as they're presented in the same table), each with a different number of subclasses according to the relevance it had in the analysis. The 5 classes have the same weight in the final classification. The grade on each class is given by the sum of the point's weight obtained at each subclass, so that the subclass will have a value between 1 and 5. In the appendix 1, a model of calculus is presented on the example of the mayor office in Bucharest.

Below is presented the calculus formulas for each class at a time and for the final result:

$$C1\ (\text{TRANSPARENCE}) = \frac{Nmax}{Pmax} * \sum_{i=1}^{5} C1i$$

$$C2(\text{E} - \text{DOC}) = \frac{Nmax}{Pmax} * \sum_{i=1}^{4} C2i$$

$$C3(\text{COMMUNICATION}) = \frac{Nmax}{Pmax} * \sum_{i=1}^{3} C3i$$

$$C4(\text{USEFUL CONTENT}) = \frac{Nmax}{Pmax} * \sum_{i=1}^{6} C4i$$

$$C5(\text{GENERAL INFO}) = \frac{\sum_{i=1}^{3} C5i}{Nelem}$$

$$Pfinal = \frac{\sum_{i=1}^{5} Ci}{Ncls}$$

Where:

C1, C2, C3, C4, C5 – analysis classes (for C1 and C2 we must keep in sight the exceptions described before);

C1i, C2i, C3i, C4i, C5i – subclasses (elements) of analysis, the values obtained after receiving the answers;

N_{max} – maximum grade that can be obtained, (5 in this case);

P_{max} – maximum points that can be obtained through summing up the maximum values that can be given to each element;

N_{elem} – number of elements submitted to the analysis;

N_{cls} – number of classes, (5 in this case);

P_{final} – the points obtained on the Web site under analysis (on a scale of 1 to 5).

[1] Undertook and adapted after The Rutgers - SKKU E-Governance Survey Instrument, that can also be found in the paper „Digital Governance in Municipalities Worldwide (2007)" [Marc Holzer & Seang-Tae Kim]

3 Obtained Results

All of the 103 Romanian municipalities have been analysed and the results obtained can be presented on each class, but also by the final results. As it was expected, the municipality of Bucharest is in the top if we judge according to the final result, but we can find drawbacks at the chapters of "Transparency" and "Generalities" (details in appendix 1).

Table 3.1. The stage of eGov development in Romania

Grade	Municipalities	%
Very good	3	2,91
Good	28	27,18
Satisfactory	46	44,66
Low	16	15,53
Very low	10	9,71

From those 103 municipalities only 96 (93,20%) had at the end of the year 2009 (beginning of 2010) an active page on the Internet[1], from which – after the final results – 3 have obtained the grade *very good* (final points situated between 4,01 and 5,00), 28 *good* (points between 3,01 and 4,00), 46 *satisfactory* (points between 2,01 and 3,00), 16 *low* (points between 1,01 and 2,00) and 3, to which I added the 7 that didn't have an on-line page in the moment of research was realised, *very low* (points under 1,01).

We can see this way that almost half of the Romanian municipalities of the country have a *satisfactory* Web page (information about which we can't say that it is satisfactory from the point of view of the citizen or the business environment) and a third is *good* or *very good.*

Table 3.2. The level of eGov development divided by counties

Grade	Counties	%
Very good	2	4,88%
Good	7	17,07%
Satisfactory	27	65,85%
Low	5	12,20%
Very low	0	0,00%

Further, I made averages for each county and created a chromatic map (Image 3.1) displaying the level of implementation of Web technologies from the municipalities of the analysed county.

[1] The 7 municipalities which are missing are: Falticeni, Toplita, Calafat, Gheorghieni, Targu Secuiesc, Sebes and Moinesti.

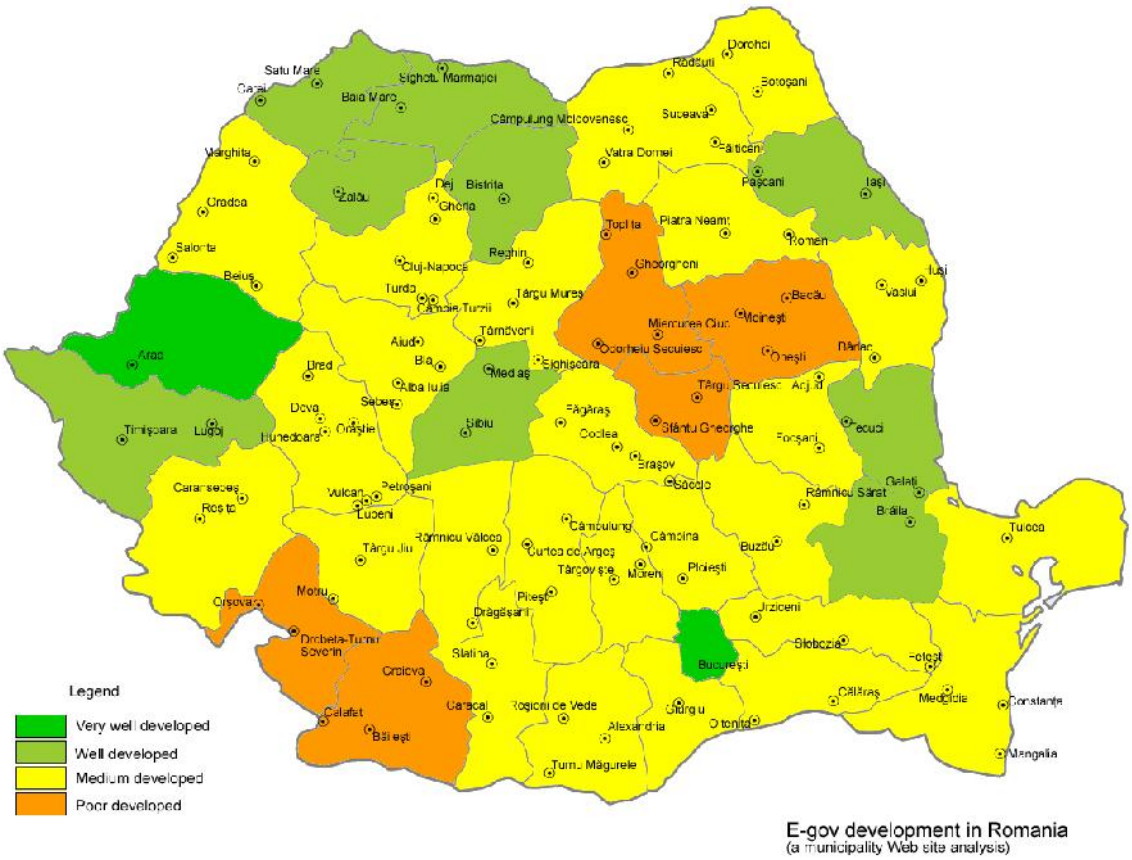


Image 3.1 EGov development in Romania

We can see after the analysis of the counties (table 3.2) that the level of eGovernment development in Romania is mostly *satisfactory* – two thirds of Romania's divisions have received this grade (points between 2.01 and 3.00), while only 2 obtained *very good:* Bucharest (together with Ilfov county) and Arad. We must notice that none of the counties received the grade *very low*.

3.1. Transparency Elements

Law no. 52 from 21 January 2003 regarding decisional transparency in the public administration[1] governs the way in which the local public administration authorities must relate to the communities in the legislative process, especially to involve the interested parts, be it members of the communities, associations or other interested parts (stakeholders). The normative act determines as objective the honour of 3 principles: previously informing, ex officio, the people over the issues of public interest that will be debated, consulting of citizen and legal constituted associations in the process of elaborating normative act projects, as well as the active participation of citizens in the administrative decision making and in the process of elaborating them. (Septimius Parvu)

In the procedures of elaborating normative acts, the authorities are obliged to make a public announcement, with minimum 30 days before submitting it for analysis, notification and adoption by the authorities, which must publish it on *its own Internet Web page*, to post it on its notice board (in a space

[1] Issued by the Romanian Parliament, published in the Official Monitor no. 70 on 3 February 2003

accessible for the public) and to send it to the mass media. The announcement must include a foundation note, an exhibit of reasons or a paper of approval regarding the necessity of adopting the proposed normative act, the full text of the project as well as a deadline, the place and the way through which the citizens can advance written proposals or recommendations. Normative act projects are transmitter to all the people that have submitted a request for receiving the information in discussion.

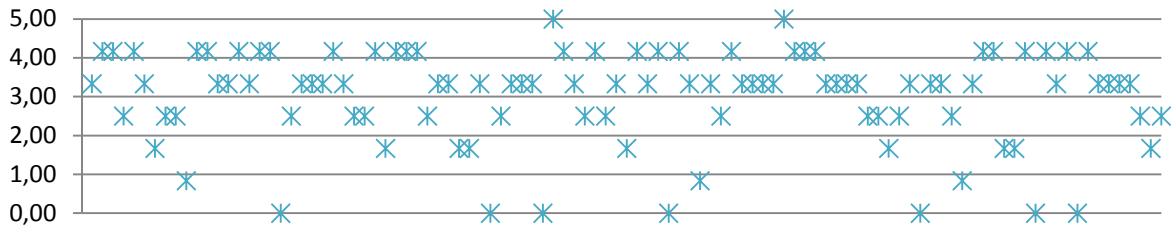
A part of the transparency elements can also be found in the C4 analysis (*Useful content*) subclass C45 (*Mayor Office news*). The weight of this information category (C1 class) is 20% in the calculation of the final result and in its structure we can find 5 elements: *declaration of fortune, organization chart, minutes that are accessible through the institution Web site, Employees CVs* or *legislation available for informing the citizens* interested in the activity of the local elected leaders. At the top of the chart for the most transparent mayor offices we identify Piatra Neamt and Giurgiu, which have obtained the maximum, followed by 28 municipalities with 4.17 points. Sadly there were 3 municipalities (Sighisoara, Odorheiul Secuiesc and Beius) to which, if we count the 7[1] that didn't have a Web site on the Internet, we gather 10 municipalities that counted, in this class, fewer than 1 point.

Table 3.3. The municipalities' status at the Transparency chapter

Grade	Municipalities	%
Very good	30	29,13
Good	37	35,92
Satisfactory	17	16,50
Low	9	8,74
Very low	10	9.71

From all the 103 municipalities, only 4: Piatra Neamt, Giurgiu, Slobozia and Miercurea Ciuc, had on their Web site CVs for the entire personnel. The rest either didn't have any CVs on the Web site or they had only the CVs for the leading personnel.

The average score obtained at this chapter is the highest – 3.01, but probably this high number of points is obtained due to legislative obligations rather than the interest of the officials. We will see that at the E-DOC chapter, where the legislation isn't so compelling, the average is much lower.



Graph 3.1. Dispersion graph at the Transparency chapter

The graphic displayed above shows us that the score of most of the municipalities (65, meaning 63.10% of their total) is situated in the interval 3.33 – 4.17, which is over the average. This may show that in the future also the ones under the average will go up.

[1] Idem 4;

3.2 Electronic Document Management

The E-DOC section includes the documents to which the citizens can have access through the digital environment, whether they're destined to downloading for a future fill in, or for filling in directly on the Web page. On the same section it was included the checking for announcements on acquisitions, franchising or renting; that the mayor's office publishes on its Web site.

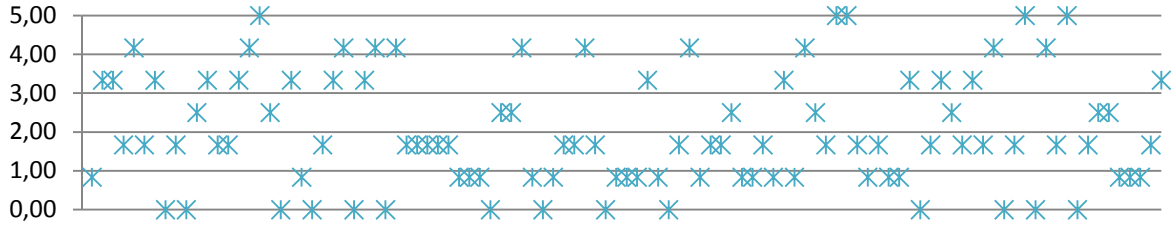
Electronic authorizations / certificates / forms. This category can include documents in .pdf, .doc, .rtf format that can be downloaded for diverse purposes from the mayor office Web site. Most often these represent forms destined to be handed in at the public institution after a previous filling in. From the 103 Web sites analysed, 80 (77,67%) presented documents meant for downloading, as the ones presented above, 34 municipalities (33,01%) benefit from an on-line filling in system for forms – from which only 14 (13,59%) allow the on-line following of the form's track (an easy to implement system from a programming view). For example, the mayor's office in Bucharest has implemented in its Web site an on-line system for tracking the paying of taxes and contributions, as well as tracking of citizen's petitions (in this case a user account must be created by every citizen that wishes to use this service).

Table 3.4. The municipalities' status on the E-DOC chapter

Grade	Municipalities	%
Very good	16	15,53
Good	14	13,59
Satisfactory	9	8,74
Low	28	27,18
Very low	36	34,95

The most developed Web sites from this point of view are those from Bucharest, Timisoara, Targu-Mures, Reghin and Ramnicu Valcea, each of them obtaining a full score. It is also worth mentioning that 23 municipalities (22,33%) have obtained a score lower than 1 point, a finding not so encouraging considering the fact that through these on-line services the mayor's office can get closer to the citizens.

At this chapter we find the lowest average on the entire study (1.99), a fact that shows how many issues the municipalities' Web sites have on the delivering of on-line public services.



Graph 3.2. Dispersion graph at the E-DOC chapter

In the graph above we can observe that most of the municipalities (63 – 61.16%) are positioned under the average. For avoiding a further decrease of it the authorities should "force" the mayors' offices - through an adequate legislative frame - on posting on their Web sites electronic forms/materials for the citizens' access.

3.3. Electronic Methods for Bidirectional Communication

Citizen participation on the act of governance continues to be the most recent area of study for eGovernment. Very few public agencies offer on-line opportunities for their citizens on active participating to the governance process. This can be done through the presence of electronic voting forms when a public decision must be made (a procedure so rarely found that is has not been introduced in the study for the purpose of not diluting the researches' results), or through discussion forums with and between citizens. In this way the present part of the analysis stops at the research of the mechanisms through which the users can send on-line comments or can generate feedback for the institution or its officials. A mayor's office can display on its Web site a considerable amount of documents and information of public interest, but the lack of possibility for the citizen to contact the public institution (for questions as well as for suggestions) damages the citizen – administration communication.

Table 3.5. The municipality's status on the *Contact* chapter

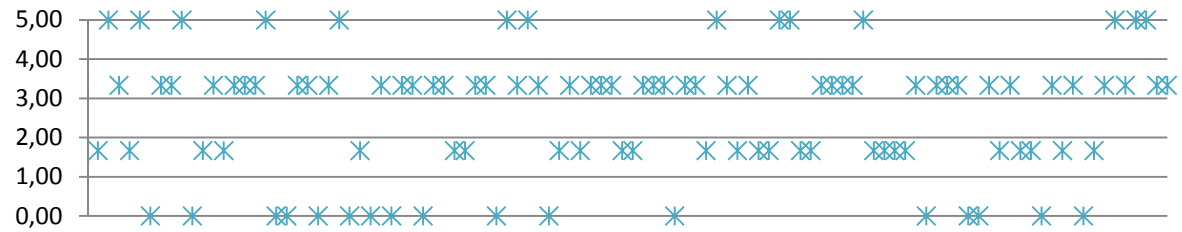
Grade	Municipalities	%
Very good	14	13,59
Good	46	44,66
Satisfactory	0	0,00
Low	26	25,24
Very low	17	16,50

The indicators used for measuring the Web site's capacity of allowing its users to interact easier with the administration were: *the possibility to send an e-mail directly to the mayor (or his cabinet), the possibility to send suggestions (other than referring to the Web site)* and *the presence of a discussion forum between/with the citizens.*

If the possibility to send an e-mail directly to the mayor or his cabinet was encountered in 61 cases (59.22%) and the possibility to send different suggestions to the authorities in 74 cases (71.84%). We can observe that only 25 (24.27%) have implemented a discussion forum. In some rare cases I have encountered institutions that facilitate the communication with the citizens through applications of instant messaging (Yahoo Messenger) or situations where the on-line discussions are structured according to a certain topic (e.g. public politics), more or less a successful ideas, depending on the total number of participants (directly proportional to the population of the community) .

The average score obtained at this chapter was 2.59. The maximum number of points was gained by 14 municipalities (13.59%) – here in this chapter, I have encountered the biggest number of municipalities which obtained maximum points. Sadly, this number is balanced by 10+7[1] municipalities (16.50%) which obtained 0 (zero) points on this subject, a fact that considerably decreased the average score under the expectations, at a value of 2.59.

[1] Idem 4



Graph 3.3. Dispersion graph at the C*ontact* chapter

We can gather from this graph that the scale is slightly out of balance in favour of those with a score over the average results: 60 municipalities (58.25%) are above and 43 (41.75%) below, pointing a possible growth of it.

3.4. Useful content of the Web sites studied

The content is an essential component for a Web site. It is irrelevant how advanced the technologies used are, if the content is not up to date, if it is difficult to navigate on the Web site or if the information is hard to find or inaccurate. In this scenario the Web site doesn't fulfil its purpose.

Table 3.6. The municipalities' status on the *Useful content* chapter

Grade	Municipalities	%
Very good	13	12,62
Good	15	14,56
Satisfactory	22	21,36
Low	19	18,45
Very low	34	33,01

Useful content can be considered the information presented on the Web site like news, or other useful information about the city for its citizens (through an on-line city map, a map of transportation means or the Web cams installed in key points of the city). This type of content is not related only to the external elements of the mayors' office, but also to the easiness with which you can access the information on the Web site, the possibility to choose between languages or the option to search within the site.

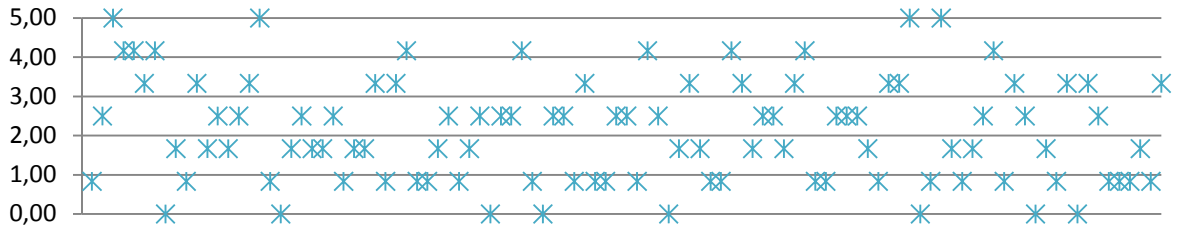
The results on this chapter show that Bucharest, Alba Iulia, Sibiu and Satu Mare are the top cities on the chart, with a maximum score equal to 5. Unfortunate 27+7[1] municipalities (33%) have reached a score below 1 (about the same situation as in the chapter E-DOC – were it was 29+7), which can be interpreted as a situation where the mayors' offices Web sites are not oriented to satisfy the citizen's needs, but due to legislative regulations in the field.

The obtained average is 2.10, which shows that there is an unbalanced situation between the number of municipalities that don't offer information on the Web site about the city and those that present this information. Only 35 Web sites (33.33%) allow citizens to choose between several used languages, and

[1] Idem 4

19 (18.44%) have the option of viewing live images through Web cams. The map for transportation means is available only on 14 Web sites (13.59%) and the map for the entire municipality (a very important element) is presented in 53 Web sites (51.46% - a little more than a half).

A category with higher performance form the Web sites is the *News about the mayor's office*; 81 of them (78.63%) have a section especially designed for this purpose. A note must be made to the fact that this section belongs also to the chapter for *Transparency*, signifying that there are legislative norms which oblige the mayor's offices to make information of this sort available on their Web sites.



Graph 3.4. Dispersion graph at the *Useful content* chapter

Graph 3.4. reveals a concentration of municipalities in its lower part rather than in its upper part (as it would be desired). A number of 53 municipalities (51.46%) are situated below average. It is possible that a legislative intervention, or a higher interest from the local authorities, will increase the values obtained at this category.

3.5. General information about the Web sites in view

This research examines also the level of accessibility of the Web site. In other words, I wanted to see how user friendly the Web sites are. For measuring this, I used mostly, the same techniques applied on to the Web sites analyses made in the private sector, studying how attractive is the design, how easy it is to work inside the Web site, the quality and quantity of information about the municipality.

This is the chapter where none of the municipalities (excepting those 7[1]) didn't obtain a score lower than 1 point, a fact that rise the average to 2.94, very close to the maximum obtained in this analysis (3.01 at the *transparency* chapter, only that in this case the result isn't due to legislative constrains). These results indicate that there is nevertheless an interest from the municipalities for being visible on to the Internet, and this visibility to lead to a pleasant visit (e.g. for tourism the Web site of a city is like its business card).

The results are balanced between those three subclasses analyzed (table 3.7.). We can observe that maximum points were obtained by: 11 municipalities (10.68%) for *design,* 15 for *easy browsing* (14.56%) and 10 for *general information* (9.71%). Despite this, only 5 municipalities can be found in each subclass (Sibiu, Arad, Bistrita, Botosani, Craiova).

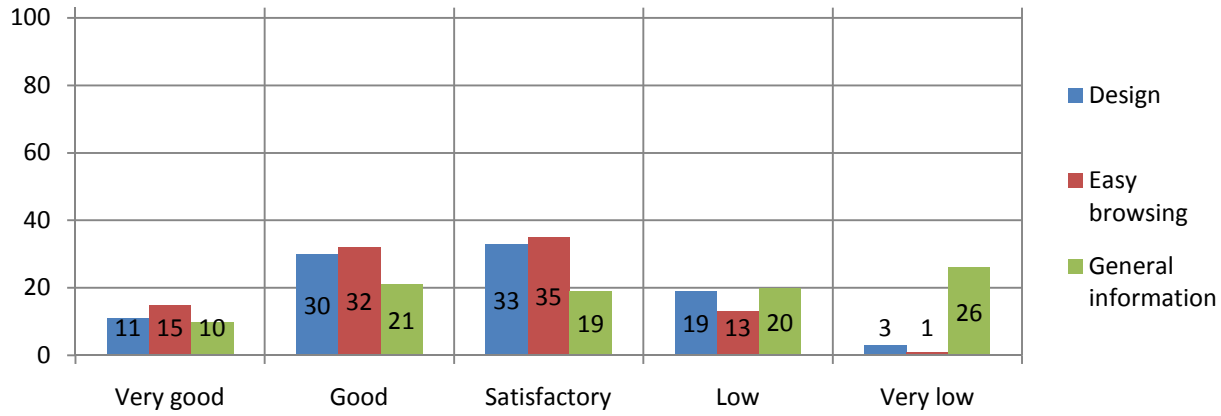
Minimum rating (*Very low* – 1 point) was obtained by:

- 3 municipalities at *design* (Rosiorii de Vede, Roman, Motru);
- 1 municipality at *easy browsing* (Sighisoara);
- 26 municipalities at *general information*.

[1] Idem 4;

Table 3.7. Results balance for the chapter *General information*

Grade	*Attractive design*		*Easy browsing*		*General information*	
Very good	11	10,68%	15	14,56%	10	9,71%
Good	30	29,13%	32	31,07%	21	20,39%
Satisfactory	33	32,04%	35	33,98%	19	18,45%
Low	19	18,45%	13	12,62%	20	19,42%
Very low	3	2,91%	1	0,97%	26	25,24%



Graph 3.5. The balanced results of the chapter *General information*

The scale, according to the table presented bellow, registered values starting with 1 – very bad, to 5 – very good:

Table 3.8. Description of the evaluation scale in the 5th class – *General information*

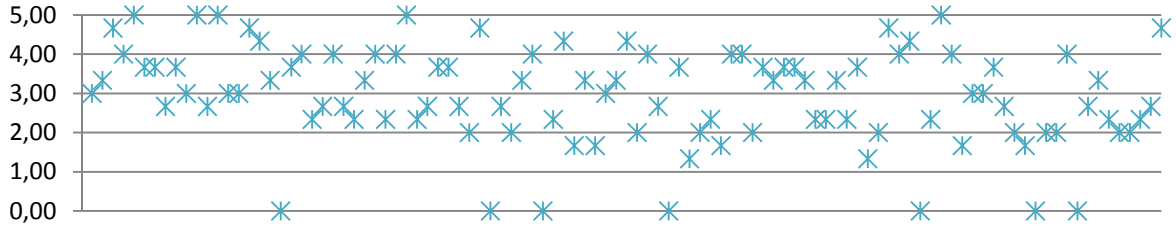
Value	*Description*
1	the design of the Web site is very unprofessional, unattractive, probably the municipality realised it with its own resources/ difficult inside browsing, the Web site is developed in .html and did not present dynamism, the maximum number of needed clicks to reach the last page in a branch is greater than 4/ doesn't present information of general interest for those who are visiting the municipality (phone no. for taxi, hotel etc.)
2	the design of the Web site is unattractive, probably the municipality realised it with its own resources / difficult inside browsing, the Web site is developed in .html did not present dynamism / presents too little information of general interest for those who visit the municipality;
3	design with a satisfactory aspect; the page is still too crowded/ difficult inside browsing, overweighed menus, hard to identify the place where a certain info is located/ general information about the city are displayed in the manner "let's put that here";
4	attractive contrasts, structured pages/ easy browsing, but with overweighed menus even if these are programmed in advanced programming languages like ASP, PHP, etc. / information about the municipality is rich and easy to be accessed;
5	the Web site is designed in a professional manner, with structured pages/ dynamic and intuitive navigation/ Information about the municipality is rich and easy to find/

As an example, I have analysed how visible are the links, if the presence of chromatic elements isn't clumsy, if the number of clicks that must be made to reach the last page of the Web site isn't to great etc.

The general information section includes two information categories. One refers to the Web site itself, to the degree of difficulty found in using it and accessing the information presented on it - finalised in appreciating the Web site's design and the easiness of browsing in it. A second category refers to the information of general interest presented on the Web site: telephone no. for taxi, hotels, shows/events).

Table 3.9. The municipalities' status on the *General information* chapter

Grade	Municipalities	%
Very good	14	13,59
Good	34	33,01
Satisfactory	30	29,13
Low	18	17,48
Very low	7	6,80



Graph 3.6. Dispersion graph at the *General information* chapter

From the graphic above we can conclude that most of the municipalities (55 in absolute measure, 53.40% in relative measure) have obtained a rating superior, or very close, to the average (11 cities, meaning 10.67% out of the total, have obtained the rating 2.67). The "concentration", contrary to the previous chapter, is found in the upper region of the graphic, with an obvious inclination towards an attractive design rather than utility.

4 Best Practice – Models Worth Following

SEOUL – SOUTH COREEA

The Internet is a means of assuring transparency and reducing the corruption. Chile, Colombia, Mexico and – from the European area – Austria, have published the acquisition procedures on-line. These allow public access to information related to public acquisitions. The system was also applied in the case of big cities like Seoul (which occupies the first place in the study conducted by Mark Holzer and Seang-Tae Kim in 2007). Although it is not a European city, the Korean case is worth mentioning for stressing the utility of such systems. In the case of the Seoul municipality the system is called On-line Procedures Enhancement for Civil Applications (OPEN), an application which benefited from a great success, offering the possibility for citizens to monitor the requests for approval and offering them the right to raise questions if illegalities are observed. For example, if a citizen submits a building request he can follow all the stages of approval or rejection of the request from any computer connected to the Internet

– an initiative that can be found at 14 municipalities from Romania (according to the section C22). The Seoul Web page has over 2000 visitors daily[1].

TAMPERE – FINLAND

Another model that worth following is the eTampere Programme[2], implemented in the city of Tampere in Finland. The eGovernment system includes an on-line discussion platform on various themes, a citizen consultation system regarding the development priorities, an especially design section where citizens have the possibility of commenting the administration's plans and their financing, e-cabins on the system of question and answer that assure the obtaining of an answer in the interval of several days.

BLAGOEVGRAD – BULGARIA

An e-service project was launched in 2006 in Bulgaria, which materialized in a system for exchanging documents between the administration and the institutions. The 14 municipalities from the region of Blagoevgrad are the partners, a regional administration and six central institutions represented at regional level (e.g. the regional inspectorate for prevention and control in public health). The project aimed at unifying the separate administrative services from the municipalities, the reduction of the time needed for exchanging the documents, the cutting of expenses in postal taxes, the decrease in the number of contacts between the citizens and multiple authorities. As a conclusion, the decrease in the possibilities of corruption acts.

Another aspect in regard to spreading information through electronic means is the presence of information cabins. These can be present inside institutions as well as in public places, and have the purpose of offering the possibility for citizens to get information about the practices in the public administration, without interacting with civil servants. This kind of method is intensely applied in Greece and Portugal.

TIMISOARA – ROMANIA

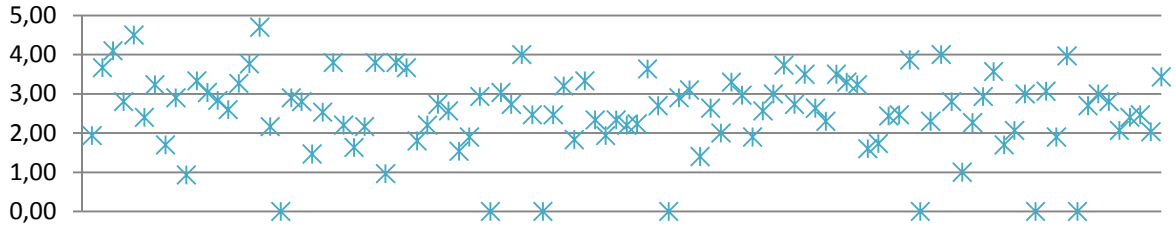
The project "Together for transparency", implemented by the mayor's office in Timisoara, offers a system through which the meetings of the Local Council are broadcasted through radio. West City Radio transmits the extraordinary and ordinary meetings, as well as events. The citizens can submit suggestions to the forum@westcity.ro e-mail address or can transmit messages that are recorded by a telephonic robot. In addition, the members of the Local Council are invited weekly for a direct dialogue with the citizens, hosted by the "Castana de foc"[3] show, broadcasted each Thursday, between 13 and 14 o'clock.

Best practice instruments can be considered consulting the citizens through dedicated e-mail addresses, where citizens can send opinions or complains regarding a specific field; the existence of information sources like newsgroups, as well as through chat instruments. In the new-media era the means through which the local authorities can make themselves visible are extremely diverse, varying from posting information on social networks like MySpace, Twitter or Facebook, to the Web page and blog creation and sending information through newsletters and other forms of electronic subscription. An instrument already used by several public administration authorities from Romania is the on-line broadcasting of their meetings.

[1] Online Procedures Enhancement for Civil Applications. The presentation of the application is available at the Web page: http://english.seoul.go.kr/government/down/OPEN.pdf
[2] www.etampere.fi/english
[3] The fire chestnut

5 Study Conclusions

In this study it is revealed the present situation in the level of implementing eGovernment through the mayor's offices Web sites of all Romanian municipalities. As we can observe from the map displayed earlier (img. 3.1.) or from the table 3.1., and table 3.2, the situation is *medium* which signifies that there are still multiple steps to be made in order for us to be able to speak about electronic governance in Romania, as we encounter it in other European countries (and not only).



Graph 5.1. Dispersion chart obtained by using the final results of the study

This can also be seen in the graph 5.1, by the fact that the "concentration" can be found around the average value (2.52), with 56 municipalities (54.37%) obtaining a rating over the average and 47 underneath it (45.63%).

Fearing a dilution effect which probably would have appeared in the final results, I haven't introduced in this study elements that can be found in similar studies conducted in other countries, like: the possibility to perform on-line pays (a situation rarely found in Romania) or the participation of citizens to the governance activity through electronic vote or electronic referendum (rarely found as well), on-line questioner meant to collect citizen opinions in regard to a possible actions by the mayors' office. This is the reason why the comparison of the best result obtained (that of the mayors' office in Bucharest) with the best results worldwide, or from Europe, wouldn't be quite accurate. But for diversity these information are presented shortly in the box 5.1.

The mayors' office in Bucharest was situated in 2007 on the 37th spot in the world on eGovernance (nevertheless better than in 2005, when it was in the 64th position), outmatching cities like Brussels (38th place), Athens (52nd place), Kuala Lumpur (64th place), Budapest (67th place) or Chisinau (69th place). In the same study, this time at the continent comparison, Bucharest occupies the 19th position in Europe, after Helsinki (1st place), Madrid, London, Vienna; but also in front of the Danish capital of Copenhagen (22th place) or other cities like: Oslo (27th place), Lisbon (28th place), Warsaw (34th place) etc.

SOURCE: Digital Governance in Municipalities Worldwide (2007) - A Longitudinal Assessment of Municipal websites Throughout the World, 2007 - Marc HOLZER, Seang-Tae KIM

Box 5.1. Bucharest vs. Cities of the world

In comparison with most of the cities (even when these were outmatched by Bucharest) we can say that the biggest limitation found in this study, in relation to the Romanian municipalities, is civic participation. It is here that the deficiencies in the relation between the authorities and the citizens are highlighted. The reasons can be diverse, from the lack of informing over the electronic means of

communication, the lack of ways of communication, to the lack of interest from the authorities or the civic qualities of the citizens.

As I declared from the beginning, I will repeat this study every 2 years in order to observe the adjustments appeared and for a possible comparison with other cities of the world. I expect a substantial improvement of the ratings obtained.

APPENDIX 1

Example of Research

The Municipality of Bucharest Web Site (Www.Pmb.Ro)

Start page of the portal:

The form used for research

Bucharest municipality	
Web site: http://www.pmb.ro	
Elements research element	**Points obtained**
TRANSPARENCY	
Declaration of fortune	1
Organisation chart	1
Minutes/meetings published on the Web site	1
CVs of the employees	1
Legislation	1
E-DOC	
Authorizations/certificates/electronic forms	
.pdf, .doc, .rtf format	1
On-line fill in of forms	1
On-line following of submitted request, electronic or not (after registering no.)	1
On-line petitions	1
Public announcements for: acquisition projects, concession, renting	1
COMMUNICATION	
The possibility to send an e-mail directly to the mayor (or his cabinet)	1
The possibility to send suggestions (other than regarding the Web site)	1
Discussion forum between/with the citizens	1
USEFUL CONTENT	
Electronic map of the city	1
Map of public transportation	1
Possibility to search within the Web site	1
Mayors' office news	1
Web cam	1
Electronic map of the city	1
GENERAL INFORMATION	
Attractive design	3
Easy browsing	5
It presents information with general character (taxi phone no., hotel, shows etc.)?	5

Calculating results:

$$C1(\text{TRANSPARENCY}) = \frac{Nmax}{Pmax} * \sum_{i=1}^{5} C1i = \frac{5}{6} * (1+1+1+1+1) = 4{,}17$$

$$C2\ (\text{E}-\text{DOC}) = \frac{Nmax}{Pmax} * \sum_{i=1}^{4} C2i = \frac{5}{6} * (3+1+1+1) = 5{,}00$$

$$C3(\text{COMMUNICATION}) = \frac{Nmax}{Pmax} * \sum_{i=1}^{3} C3i = \frac{5}{3} * (1+1+1) = 5{,}00$$

$$C4(\text{USEFUL CONTENT}) = \frac{Nmax}{Pmax} * \sum_{i=1}^{6} C4i = \frac{5}{6} * (1+1+1+1+1+1) = 5{,}00$$

$$C5(\text{GENERAL INFO}) = \frac{\sum_{i=1}^{3} C5i}{Nelem} = \frac{3+5+5}{3} = 4{,}33$$

$$Pfinal = \frac{\sum_{i=1}^{5} Ci}{Ncls} = \frac{4{,}17+5{,}00+5{,}00+5{,}00+4{,}33}{5} = 4{,}70$$

Case Study Discussion

From all the 103 municipalities submitted for research, the capital has ranked firs obtaining the highest score, the reason for which it was taken as example of calculus. As I presented above, to the results contributed:

- transparency – 4.17. It was surpassed only by Piatra Neamt and Giurgiu, and shared its place with other 27 municipalities from Romania. The average of the category: 3,01;
- E-DOC – 5.00. It obtained maximum rating together with other 4 municipalities: Ramnicu Valcea, Timisoara, Reghin and Targu Mures. The average for the category: 1,99;
- communication – 5.00. It is also at this category that it obtained maximum rating, together with 12 municipalities. The category average: 2,59;
- useful content – 5.00. Again, maximum rating – it is here that Bucharest's mayors' office excels: GIS maps, other means of public transportation (in great detail) made the 5 points obtained to fail in reflecting its real value. Sibiu, Satu Mare and Alba Iulia have also obtained maximum rating in this field of study. Category average: 2.10;
- general information – 4.33. Ten municipalities surpass Bucharest at this chapter, and this is especially thanks to the completely unattractive design where it obtained only 3 points from a maximum of 5. Category average: 2,94;

- final result – 4.70. The highest rating obtained in this study, followed by Arad with 4.50 and Alba Iulia with 4.10 points. The average of the final results: 2.52.

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*** Sistemul Electronic National/National Digital System: http://www.e-guvernare.ro/.

THE 6TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

The Technique of Licensing at European Union Level - Used as a Means of Environmental Protection

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Abstract: Licensing represents one of the modern techniques most often used as an environmental protection means. In concrete, this technique is envisaged in the obligation of obtaining an authorization (lato sensu) in order to develop a certain activity or to use a product or service that is considered to attain an ecological risk, respectively the granting of permits, licences, authorisations or certifications. Authorisation (licensing) is based on the Environmental Impact Assessment, which is a constitutive part of the authorization process, as the conclusions of the environmental impact assessment study are conditioning the result of the authorization process. In order to attain a panoramic and complete reflection of the authorization as an environmental protection legal instrument, we consider to be highly useful the presentation of two transversal instruments, characterised of proactive operativity, a high degree of participation on the part of the involved subjects and a high level of environmental protection that they tend to attain. Basically, these two instruments are Environmental Impact Assessment and Strategic Environmental Assessment.

Keywords: legal instruments; pollution; European Union

1 Introduction

Licensing represents one of the modern techniques most often used as an environmental protection means. In concrete, this technique is envisaged in the obligation of obtaining an authorization (lato sensu) in order to develop a certain activity or to use a product or service that is considered to attain an ecological risk, respectively the granting of permits, licences, authorisations or certifications. The formal proceedings of licensing are imposed to all of the products or services that are considered to be dangerous for the environment and are listed consequently. All the member states derive their licensing systems from one or more legal instruments (Kiss, Shelton, 1993, p.54) Through the licensing, the public authorities, as bearers of the general interest of protecting the environment, verify the preliminary fulfillment of certain location conditions, establish a series of technical and technological parameters for working, implement a control on the activity and fulfillment of the norms that aim at the environmental protection (Duțu M., 2007, p.55). In addition to laws containing general licensing measures, it is common to find norms that regulate directly or indirectly only specific aspects of environmental protection, such as pollution (Kiss, Shelton, 1993, p.55).

2 Paper Preparation

The licensing system at member-states of the European Union level consists of numerous different regulations, while the common regulation is limited to the obligation that certain activities should be subject to environmental licensing, meaning that all the conditions provided have to be fulfilled. Most of the licensing systems are not designed to eliminate all pollution or risk, which would be impossible anyway, but rather to control serious pollution, and to reduce its levels as much as possible. Considering this aspect, the licensing systems are considered to be an intermediary technique between the non-regulated practices and the absolute prohibitions (Duțu, M, 2007, p. 403). The licensing represents a typical manifestation of the administrative intervention activity that reflects the principle of the preventive action. Its essence consists of the fact that it does not exhaust its effects in the moment when the licensing is granted, but it may also vary[1]. The European law, recognizing the advantages of this instrument, utilizes it in a large variety of situations, and therefore numerous European regulations from the environmental field [2] impose that certain activities or projects shall be subject to licensing prior to their beginning (Moreno Molina, 2006, p. 126). Generally, subject to licensing are those activities that have a great potential of risk to the environment, irrespective of the fact that their holder is a legal or natural entity and that it has a lucrative purpose or not. As a general rule, the projects of the public organs, especially the military ones, are exempted from the obligation of licensing.

In some cases, the European authorization legislation do not provide which are the consequences of performing an activity which is subject to a licensing without having the necessary licensing, while in other cases[3] it is clearly provided that the lack of the necessary licensing leads to the interdiction, cease or cancellation of the activity. The licensing is based on the prior assessment of the ecological impact, which is an important part of the licensing process, the result of the licensing process depending on the conclusions of the impact assessment (a study presented in a report). We must draw attention over the fact that the terminology used in the European environmental law is a varied one and sometimes even confusing, reason why we decided to use the term of licensing, that we appreciate to be the most used, given that from the juridical point of view, between the different terms we met that depict this notion, there are no differences that would impose the consideration. We also remind among the different used terms in order to designate this notion, the most used are: authorisation, authorizing, licensing, license, permit, etc.

The given definitions do not have a dogmatically strictness, even the IPPC Directive[4] offers a confuse definition of the „permit", showing that 'permit` shall mean that part or the whole of a written decision (or several such decisions) granting authorization to operate all or part of an installation, subject to certain conditions which guarantee that the installation complies with the requirements of this Directive. Therefore it results that the *permit* is a *decision* through which an authorization is granted. Sometimes, the European regulations [5] do not offer a definition for the licensing although it represents the central object of the norm, which offers an exhaustive regulation of its content and effect. We therefore appreciate that the terms are perfectly inter-changeable, as they are not legally different, the

[1] It can be subject to the control and periodical evaluation, it may assimilate new conditions or criteria when the public interest imposes it.
[2] Among which we remind the Council Directive 76/464/EEC of 4 of May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community and the Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants.
[3] This is the case of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms, which imposes to the states by art 4.5 the obligation to take the necessary measures in order to stop the unauthorized commercialization.
[4] Council Directive 96/61/EC of 24 September 1996, concerning integrated pollution prevention and control (IPPC).
[5] Such is the case of the Council Directive 1999/31/EC of 26 April 1999 concerning waste disposal.

authorisation referred to by the European environmental directives being an administrative decision given by the competent public authorities, that certifies the respect of the pertinent European standards imposed and whose grant is required in order to legally perform a certain activity. The absence of the necessary licensing for the performance of an activity enhances the enforcement of the sanctioning power of the national public administrative authorities, the Union not having the direct administrative powers to enforce its own environmental law (Moreno, 2006, p. 127).

As an example, the European law provides the obligation to own a license for a series of industrial installations, for the artificial „enrichment" of the subterranean water, namely for over-flows, as well as for the production and merchandising of certain products as pesticides, biocides, as well as the import or export of the substances that affect the ozone layer or the exploitation of the endangered species of plants or animals. Regarding the conditions referring to the authorization, a general rule cannon be provided. It can only be shown that the first directives referring to authorization used the technique of establishing detailed conditions, which were never truly controlled. Many times, the conditions are vaguely provided, leaving a large freedom of interpreting to the member states (Duțu, 2005, p. 202).

The same is the situation of the requirements regarding the licensing procedure, these being even more rarely met[1].

In order to get a panoramic and complete view on the licensing as a legal instrument of environmental protection, we appreciate that it is relevant to present two related instruments which are characterized by an operative pro-activeness, with a high degree of participation of the interested subjects and a high degree of environmental protection. More precisely, these instruments are *EIA- Environmental Impact Assessment and SEA- Strategic Environmental Assessment.*

EIA - Environmental Impact Assessment

Regarding the issue of the licensing, one of its main conditions is the general obligation of performing the prior *Environmental Impact Assessment*. The environmental impact assessment is a complex administrative procedure, completed through a forecast, assessment and prevention of the effects that a certain project – either public or private - may have, project that has a certain relevance on a series of elements of the environment[2]. This instrument was introduced at the European Union level by the Directive 85/337/EEC[3] and was created as a consequence of the implementation of the preventive action principle within the procedures of licensing in the environmental field (Bellomo, 2008, p. 150).

The assessment of the impact on the environment, known as EIA (Environmental Impact Assessment) is a procedure to ensure that adequate and early information is obtained on likely environmental consequences of development projects and on possible alternatives and measures to mitigate harm (Kiss, Shelton, 1993, p. 58). The EIA Directive is one of the first and most significant examples of horizontal norms with procedural character, this being adopted within the Third Action Programme in the Environmental Field. The instrument introduced the environmental coordinate in the procedures regarding the licensing, addressed to the national authorities, for certain projects capable to produce a significant impact on the environment (Plaza, 2005, p. 554).

[1] We remind a series of requirements regarding the procedure within the Directive 96/61/CE IPPC, which imposes a written demand with a number of minimum indications and a summary of the documentation, which must be left at the disposal of the public for a sufficient period of time, the public having to be given the opportunity to state their opinion on the project.
[2] Concrete examples of such projects may be a highway, a port, a tunnel.
[3] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

There can be different types of environmental impact assessment, depending on the importance of the project – European, internal (state level) and regional. Obviously, not all the projects must be evaluated, only the most relevant, which have a significant impact on the environment and therefore are mentioned in the corresponding regulations. For other cases provided by the law there are specific procedures – screening procedures – that assess periodically, based on the quantitative or other type parameters, if it is necessary to activate this procedure (Bellomo, 2008, p. 151).

The EIA Directive was modified in 1997, through Directive 97/11/EC[1], which aimed at registering the procedure in the frame defined by the Convention from Espoo[2], regarding the environmental impact assessment in a trans-border context, the avoidance of the divergences of interpretation of the member states and an early assessment of the ecological impact (Duțu, 2007, p. 207).

At present, the executive of the EU proposes a new review of the EIA Directive dated 1985; it could be replaced by a regulation or incorporated within a unique regulation that could cover all the regulations regarding the environmental assessments, these being the options expressed by the Commission as the object of its analysis.[3]. According to the dispositions of the directive, the competence to establish the necessary conditions for the assessment of the notable impacts of a project, before the licensing, comes to the member states.

Article 2.1 of the directive represents one of its major dispositions. According to it, before the license is granted, the projects which by their nature, dimension of location have a potential to affect the environment must be subject to an assessment of their effects. The applicability of these dispositions, which seems to be extremely permissive, is provided, showing that this addresses to the public and private projects that may have a significant impact on the environment.

The EIA Directive states that any project mentioned in Annex I or II is to be subject to an assessment regarding the effects that it may produce on the environment. „Project" in the meaning of the Directive signifies any activity or human action that determines significant changes in the environment. In order to clarify and give more legal certitude to the concept of project, the directive includes a general definition in art. 1.2 and establishes two categories of projects that must be subject to the assessment, exposed in annex I and II (Moreno, 2006, p. 44, 49). The meaning of "project" includes the execution of certain constructions, installations, works or other interventions on the environment, including the ones that involve the extraction of mineral resources. According to the provisions of the directive, the national defence projects are not subject to such assessment. The directive does also not apply to projects whose details are adopted through specific acts of internal legislation.

The projects to which the directive may be applied are divided in two different categories, each of them being listed in a specially designed annex. Annex I includes the categories of projects that are object to impact assessment, while Annex II includes the projects regarding which the member states must decide according to the internal legislation criteria if they must or do not have to be subject to the environmental impact assessment. In this case, the member states have the obligation to abide by the requirements exposed in Annex III when establishing the applicable criteria, which refer to characteristics of the projects, location, possible impact (Jans & Vedder, 2000, p. 314).

[1] Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.
[2] Signed at 25th February 1991 and enforced at 10th September 1997.
[3] According to the European Commission, quoted at 6th of July 2008, by ENDS Europe, http://www.endseurope.com/24286?DCMP=EMC-EE-12-07-2010

Regarding the procedural aspects, the EIA Directive leaves the member states a considerable freedom regarding the manners of performing the analysis. Art. 5 and Annex III provide that the minimum information that must be provided by the holder of the project is related to:

- the description of the project, including information regarding the location, dimensions;
- the description of the measures provided to avoid, reduce and remedy if possible the significant side effects;
- the necessary data for the identification and assessment of the main effects of the project on the environment;
- a list of the main alternatives studied by the developer and the main reasons of his choice, by taking into account the effects on the environment;
- a non-technical summary of the information provided.

Annex IV of the directive contains details regarding the information that must be provided.

Besides these, there are some rules that must be obeyed in order for the project to be authorised. The consultation of the public is an important element and an instrument of EIA, its role being also highlighted by the amendments brought to the directive EIA by the Directive 2003/35 regarding the public participation[1], the public being allowed to express their opinion before the beginning of the project. Also, the authorities that may be interested by the respective project must have the possibility to express their opinion and give advice regarding the information provided by the developer, according to art. 6 of the Directive (Duțu, 2007, p. 408). Moreover, although the Directive does not mention this aspect, the Court established through its jurisprudence[2] that the member states have the right to ask for a reasonable quantity of information. The final result of the environmental impact assessment is a statement of impact of the project on the environmental parameters taken into account, which does not mean that if the result is negative, the project cannot be completed, but rather that the effects of the assessment on the main procedure will be determined by the law (Bellomo, 2008, p. 152).

The logical consequence of these dispositions, indicated also in art. 8 of the Directive is that in the procedure of analysis of the request and the decision making, the results of the consultation and the information provided must be taken into account in the development of the licensing procedure (Jans, Vedder, 2000, p. 319). In cases where a project is susceptible to have notable consequences on the environment of another member state or when a member state that may be affected considerably asks for this, the home state of the project has the obligation, according to art 6 and 7 of the Directive EIA, to give the other state all the information possessed. This information is the basis for any consultation within the bilateral relationships between the two states (Duțu, 2007, p. 409).

Generally, on the basis of expert and public opinions, if it is determined that the activity or project would cause serious and irreparable damage to the quality of the environment, the agency is directed to refuse authorization or approval. If the project or activity can be modified to eliminate or compensate for the negative effects, it may be approved subject to such modification or control (Kiss, Shelton, 1993, p. 60).

When the decision to grant the licensing or not was taken, according to art. 9 of the EIA Directive, the competent authority must inform the public and make available information regarding:

- the content of the decision and all the conditions involved;

[1] Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.
[2] Case C-216/05 *Commission vs Ireland* [2006] ECR I-10787.

- the main reasons and aspects taken into account when taking the decision, subsequent to the analysis of the opinions and concerns of the public, as well as information regarding the process of public attendance in taking the decision;
- the description of the main measures aimed to avoiding, reducing and eliminate as much as possible the negative effects of the project.

The directive allows to the member states to give, in exceptional cases, the exemption of certain projects from the environmental impact assessment although they are listed in the categories of projects provided in the annexes I or II of the Directive. This is the case of the projects regarding the national defence, those approved by a legislative act or those exempted by the government under certain circumstances. The system has its flaws, because it allows to the member states to shirk from the compliance of the European law in a very simple way. In such cases, the state has only the obligation to communicate its decision to the Commission, which does not have the possibility to reject the proposal and prevent the grant of the exempt. Still, a certain remedy was performed by the Court[1], which established that the exceptions must be strictly interpreted, giving certain landmarks in this sense (Moreno, 2006, p. 51).

The proliferation and magnitude of the EIA instrument – Environmental Impact Assessment – reflects its important contribution to the environmental protection. By the fact that it insists on investigating and communicating the environmental risks to the potential affected parties, the EIA ensures a high degree of a decision making based on appropriate information (Kiss, Shelton, 1993, p. 61).

At national level, in Romania, OUG 195/2005 (governmental urgent ordinance) defines in chapter I art.2, points 30 and 31 the environmental assessment and the environmental impact assessment, as art. 21 establishes the general frame of the environmental impact assessment. The EIA Directive is transposed in the Romanian legislation through HG 1213/06.09.2006 (governmental decision) regarding the set-up of the procedure of the environmental impact assessment for certain public and private projects and implemented through the following norms:

- OM 860/2002 (ministerial order) for the approval of the procedure of environmental impact assessment and the issue of the environmental agreement, modified by OM 210/2004 and OM 1037/2005;
- OM 863/2002 regarding the approval of the methodological guidelines applicable to the stages of the procedure;
- OM 864/2002 for the approval of the EIA procedure in a trans-border context and for the public attendance in taking the decision within the projects with a transboundary impact.

According to the national regulations of implementation of the directive, the EIA procedure is realised in the following stages:

- the stages that have as object the determination of the necessity to have a project assessed environmentally;
- the assessment of the environmental impact;
- the consultation of the public and public authorities with responsibilities in the domain of environmental protection;
- taking into account the report of the environmental impact assessment and the results of these consultations in the decisional process;
- making the decision of granting/rejection of the environmental permit;

[1] Case C-435/97 *World Wildlife Fund and others vs Autonome Provinz Bozen and others* [1999] ECR I-5613 and Case C-287/98 *Luxembourg vs Berthe Linster and others* [2000] ECR I – 6917.

- ensuring the information on the decision made.

The licensing is translated in the environmental agreement, defined as a technical-legal act by which the conditions of the project are established, from the point of view of environmental impact.

The environmental agreement is issued by the authorities of environmental protection and gives the applicant of the project the right to develop the project from the point of view of the environmental impact. In order to obtain the environmental agreement, the public or private projects that may have a significant impact on the environment because of their nature, dimension or localisation, are subject to the EIA procedure. The obligation to be granted an environmental agreement is mandatory for the public or private projects or for their modification or extension of current activities, including the decommissioning projects, which may have a significant impact on the environment[1].

The Strategic Environmental Assessment- SEA

The Strategic Environmental Assessment is an European environmental law instrument that aims at assessing the impact on the environment, not of the projects seen individually, but of the plans and programs within which projects are contained. Thus, this instrument is supposed to be even more effective and dynamic than EIA, with a view to discover the deep impacts of certain projects (Moreno 2006, p. 53). The SEA Directive – Strategic Environmental Assessment[2] does not substitute or overlap the EIA Directive, as it provides a procedure situated in a temporary plan that is prior to the environmental impact assessment. The philosophy expressed by this instrument is a double one: on one hand, this completes the impact statement, respectively the directive that provides it, and on the other hand, it realises a better transparency of the decisions that follow the strategic assessment (Duțu, M, 2007, p. 204). The strategic environmental assessment[3] takes place prior to the impact assessment and is completely different from this one mainly because it is an expression of the principle of precaution and not of the preventive action, giving an obvious character of operative discretion, compared to the environmental impact assessment. The strategic assessment is a process and not a procedure like in the case of the EIA, that aims at inserting in the plans and programs, not in the politics, of certain considerations regarding the environmental protection, trying to act prior to the decision of performing a work and not subsequent to making this decision by the developer, like the case of the environmental impact (Bellomo, 2008, p. 151). This technical- legal instrument is applicable for two categories of plans and programs, the fist one including the plans and programs which are compulsory subject to the strategic evaluation because they are always susceptible of having considerable effects on the environment, especially regarding the fields they aim at, and the second category is regarding the plans and programs that establish the framework of the decisions made subsequent to the licensing of the projects".

The main innovative element is the application domain of the instrument, considering that all the legal texts and administrative decisions are subject to the strategic environmental assessment[4].

[1] *The EIA procedure for certain public and private projects, Ministry of the Environment and Forests, National Agency for the Environmental Protection, www.anpm.ro/.../EVALUAREA%20IMPACTULUI%20ASUPRA%20MEDIU.*

[2] Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

[3] The strategic evaluation was born in 1981 in the US, resulting from Housing and Urban Development Department, being then introduced in Europe in 2001 by the Directive 2001/42/EC whose transposition in the member states legislation should have taken place until 21th of July 2004. In Italy, for example, the transposition was realized through the environmental code 152/06, even if there are still many issues regarding a complete implementation of the instrument.

The phases(stages) that compose the strategic assessment are: *the screening* or the definition of the investigational area necessary to the assessment; *the documentation of the state of the environment,* finding and choosing the knowledge base necessary for the assessment; *the definition of the possible significant impacts* on the environment, often expressed in „trend" or tendency terms rather that foreseen values; *information and consultation of the public;* the interaction with *the decisional process* based on the assessment; and finally *the monitoring of the effects* of the plan or program after the enforcement (Bellomo, 2008, p. 152).

Stating from this general presentation of the SEA Directive it can be easily observed that its operational and procedural structure is based on the EIA Directive EIA. Briefly, its key elements are the following:

- the preparation of a report regarding the environment, this environmental report (statement) represents the central axe of the SEA. The document will contain mandatorily the information demanded by art.5 and Annex I of the Directive SEA. It has to identify, describe and assess the significant effects of the plan or programme on the environment as well as the reasonable alternatives. The precise content of this document is individualized in Annex I of the directive, which indicates in article 13 that all the member states have to ensure that the report responds qualitatively to the prescriptions of the directive;
- the consultations are another key element of SEA, this must take place both between the involved authorities and between the competent authorities and the concerned public; the appropriate conditions must be ensured in order for them to be able to express their opinion. Same as in the case of the EIA Directive, when the plan or programme may have trans-border effects, all the possibly affected states must be consulted;
- the assessment of the results, according to art. 8 of the Directive SEA have to be performed by taking into account the environmental statement and the opinions expressed through consultations, but the results are not mandatory for the authority that has the competence to approve the plan or programme;
- the information regarding the decision made has to be made available to the public concerned, to the states potentially affected and to the other authorities consulted.

SEA represents a strategic instrument which facilitates the integration of the environment issues in the decision-making process, starting from the initial stage of issuing the programs and plans in order to attain a sustainable development. At internal level, the SEA Directive 2001/42/EC was transposed in the Romanian legislation by HG 1076/2004 (governmental decision) concerning the establishment of the procedure of performing the attainment of the environmental evaluation for plans and programmes[1], according to which the Strategic Environmental Assessment for plans and programmes has as its scope the identification and analyses of the effects of the plans or programmes on the environment during the conception of the plan or program and before its adoption.

Within the SEA procedure, as it is reflected in the national legal framework, the programme's project completion and the issuing of the environmental report are simultaneously realised within a special working group.

Not all the plans or programs are subject to SEA. The public authorities for environmental protection – after consulting other public authorities interested in the effects that the plan or program may have on the environment, decide if a plan or programme has to be subject to this procedure.

[1] Published in the Official Journal, part I, nr. 707 from 5 august 2004.

The work -group is composed of representatives of the holder, of the competent authorities for environmental protection and health, of other authorities interested in the effects of the implementation of the plan or programme, designated by the Ministry of the Environment subsequent to the screening stage of the project or plan, of one or more natural of juridical entities attested according to the legal provisions in force, as well as of experts that may be hired. The completion of the project of the plan or program, the establishing of the domain and the level of detail of the information that has to be included in the environmental report, as well as the analysis of the significant effects of the plan or program on the environment are realized within the work-group.

The strategic environmental assessment goes through the following stages, according to the internal regulations:

- issue of the environmental report;
- consulting the public and public authorities interested in the effects and the implementation of plans and programs;
- taking into account the environmental report and the results of these consultations in the decisional process;
- making available the information on the decision made.

The results of the environmental assessment are presented in the environmental report and the SEA is finalised by issuing the environmental approval by the competent authority for the environmental protection, based on the project of plan or programme and the environmental report[1].

3. Conclusions

Considering the facts and elements presented above, we conclude that the instrument of licensing is an effective technical-legal environmental protection means that largely contributes to attaining the goal of a high level of protection as well as to realize environmental democracy by public participation, and we appreciate that it has to be seriously applied by the public authorities involved in the procedure as well as to be extended to most of the projects, plans and programmes developed at internal level.

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Preliminary Procedure- Condition of Admissibility of the Action in the Administrative Romanian Contentious

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Abstract: The preliminary procedure is an administrative non-contentious procedure, textualy stated by article 7(1) of LCA Act, that provides for the person that considers himself to be harmed in relation to an individual right or legitimate interest of his own because of an individual administrative act, has to ask to the issuing public authority or its superior authority the anullment of the act concerned before adressing the administrative contentious court.

Keywords: individual administrative act; public authority; administrative contentious

1 Introduction

La procédure préalable a été consacrée expressément dans l'art.7 de L.C.A, qui statue que la personne qui se considère blessée par rapport à un intérêt juste ou légitime individuel, à cause d'un acte administratif individuel, doit demander à l'autorité publique ou à l'autorité supérieure l'annulation de l'acte concerné avant de s'adresser a l'instance de contentieux administratif. De l'interprétation juridique du texte, il résulte le caractère obligatoire de la procédure préalable, dans le cas où la personne blessé blessée par rapport à un intérêt juste ou légitime individuel, à cause d'un acte administratif individuel, s'adresse a l'instance de contentieux administratif. À notre avis, l'obligativite de la procédure préalable ne contrevient pas aux dispositions de l'art. 21, al. 1 et 2 de la Constitution qui stipule le principe de l'accès libre à la justice et aucun droit à un procès équitable prévu par al.3 du même article, ainsi que l'art. 6 § 1 de la Convention pour la Sauvegarde des Droits de l'Homme et des Libertés Fondamentales et s'inscrit aussi dans les dispositions de l'art.23 al.2 de la Recommandation Rec (2007) du Comité de Ministres vers les Etats Membres du Conseil de l'Europe, regardant la bonne administration. Dans le sens de notre soutien, Cour Constitutionnelle[1] a statué que la réglementation expresse de la procédure préalable n'est pas contraire au principe de libre accès à la justice, rapporté au fait que la décision administrative peut être contestée devant un tribunal. Dans la doctrine administrative on a apprécié correctement que le recours administratif préalable constitue une dimension de la bonne administration (Iorgovan, Vișan, Ciobanu & Pasăre, 2008, p. 168, 169), mais au droit à la bonne administration (ainsi comme a été réglementé par les dispositions de l'article 41. de la Carte des Droits Fondamentaux de l'Union Européenne) lui correspond l'obligation corrélative de l'administration de résoudre par une procédure non contentieuse les problèmes des citoyens. Dans ce contexte, tant la jurisprudence de la Cour Constitutionnelle, tant la jurisprudence de la Cour Européenne des Droits de l'Homme ont admis

[1] Cour Constitutionnelle, Decision no. 1074/2007.

la possibilité des quelques limitations apportées par la loi à l'exercice du libre accès a la justice, avec la juste motivation que celui-ci n'est pas un droit absolu. La Cour de Strasbourg n'interdit pas qu'une autorité administrative tranche les contestations sur les droits et les obligations, si ultérieurement la décision prise par l'autorité fait l'objet d'un recours devant la juridiction indépendante, impartielle et qui dispose de compétence suffisante (Lewalle P., 2008, p. 318) (cause Albert et le Compte C/Belgique de 10 février 1983). Dans la doctrine a été posée aussi la question de la compatibilité de la procédure préalable avec la procédure administrative-juridictionnelle. En ce qui nous concerne, on considère qu'il se impose la délimitation de la procédure préalable par la procédure administrative-juridictionnelle qui, en conformité avec le principe inscrit dans les dispositions de l'art.21 al.4 de la Constitution, est facultative et gratuite. Si la procédure préalable est une procédure administrative-juridictionnelle est basée sur les principes contradictoires, de la surete du droit a la défense et de l'indépendance de l'activité administrative-juridictionnelle (art.2 al.1 lettre d). Dans la littérature de spécialité administrative (Popescu, 2004, p. 24) ont été aussi établies autres éléments qui caractérisent la procedure-adminstrative-juridictionnelle: l'autorité administrative est établie par la loi, indépendante et impartielle, elle a pouvoir de décision, elle applique le principe non reformatio in pejus. Dans le sens de ce qu'on a précisé, la Cour Constitutionnelle[1] a constaté comme constitutionnelles les dispositions de l'ancien article 5 de la Loi 29/90 (abrogée en présent) par rapport a la procédure préalable, en motivant que le législateur constituant a dissolu la condition préalable seulement pour la procédure administrative-juridictionnelle et aucune disposition constitutionnelle n'interdit que par l'intermède de la loi on institue une procédure administrative préalable, sans caractère juridictionnel comme est la procédure du recours administratif gracieux ou de celui hiérarchique. Dans la doctrine de spécialité, la procédure préalable a été denomee aussi recours administratif. Le recours administratif dirigé vers l'autorité emitente s'appelle recours gracieux, celui dirigé vers l'autorité supérieure a celle qui a émis l'acte nocif, recours hiérarchique, et la situation dans laquelle l'autorité emitente a autonomie, sans avoir organe hiérarchique supérieur, le recours administratif peut habiller la forme du recours de tutelle, s'adressant à l'organe qui exercice la tutelle administrative sur celle de l'autorité. La norme instituée dans les dispositions de l'art.2 al.1, lett.j, L.C.A, définit la plainte préalable comme la demande par laquelle se sollicite à l'autorité publique emitente ou à celle hiérarchique supérieure, après le cas, la re-examination d'un acte administratif à caractère individuel ou normatif, dans le sens de sa révocation ou de sa modification. On peut dire ainsi que l'institution de la procédure administrative préalable a le rôle d'obliger l'autorité publique emitente de quelques actes administratifs de rechercher en permanence leur légalité et leur opportunité et de les révoquer si elles se prouvent illégales ou contraires aux intérêts des administrations. Dans une opinion (Brezoianu, 2004, p. 311) il a été apprécié que la procédure administrative préalable a été réglementée pour offrir a la personne intéressée la possibilité de résoudre dans un délai plus court et plus opératif de sa réclamation, l'organe administratif saisi pouvant revenir sur l'acte émis antérieurement et émettre un autre accepté par le demandeur, opinion qui est dans le sens de ce qu'on a exposé au-dessus.

2 Domaine d'application. Exceptions

En interprétant per a contrario les dispositions de l'art.2, 7,8 et 11 de L.C.A., il résulte que la procédure administrative préalable est obligatoire seulement dans le cas de l'acte administratif unilatéral typique (comme manifestation expresse de volonté), et pas de refus non justifié ou de silence, qui sont des actes administratives assimilées dans le sens de l'art.2 al.2 de L.C.A. Il nous emble que si le législateur

[1] Decision no. 188/2004 de la Cour Constitutionnelle publiée dans le M.O. no.498/2.06.2004.

organique n'aurait pas eu assimilé le refus non justifié de l'acte administratif unilatéral, la personne à laquelle lui a été refusée l'émission d'un acte administratif, serait dans la situation dans laquelle elle n'as pas accès a la justice parce que l'autorité n'as pas émis un acte administratif, qu'il peut révoquer ayant comme conséquence la violation du droit constitutionnel des citoyens sur le libre accès a la justice, prévu par l'art.21 et art.53 de la Constitution de la Roumanie.

En ce qui concerne cet aspect, notre jurisprudence[1] a été constante pour apprécier que la procédure préalable est imposée par la loi seulement dans le cas de l'action dans l'annulation d'un acte administratif, et pas dans le cas de l'action basée sur le silence de l'administration ou sur le refus non justifié de résolution de la demande, quand l'action peut être intentée directement devant l'instance de contentieux administratif. De l'interprétation corroborée avec les dispositions de l'art.7 et 11 al.4 de L.C.A, il résulte que les actes normatifs, contrairement aux actes administratives unilatérales, peuvent être attaqués a tout moment devant l'instance de contentieux administratif. En fondant notre opinion sur le principe ubi lex non distinquit nec nos distinquere debemus on considère nécessaire l'accomplissement de la procédure préalable, même si la loi ne se prononce pas, mais elle n'exclut pas expressément ou implicitement. En conformité avec ce qui nous soutenons la pratique judiciaire[2] s'est aussi prononcé, motivant que la loi ne distingue pas en rapport avec le caractère individuel ou normatif de l'acte administratif unilatéral. Le recours administratif est obligatoire aussi dans la situation dans la quelle par une loi spéciale on prévoit une procédure administrative-juridictionnelle, et la partie n'opte pas pour celle-ci et s'adresse directement a l'instance de contentieux administratif.

Une autre situation, celle de l'obligativité du recours administratif comme une condition d'admissibilité de l'action dans e contentieux administratif, est consacrée par les dispositions de l'art.7 al.3, L.C.A, qui stipule la possibilité d'une personne tierce blessée dans un droit ou intérêt légitime par un acte administratif à caractère individuel adressé à un autre sujet de droit, de saisir l'instance de contentieux administratif. On précise que les réglementations antérieures L.C.A ne contenaient pas des dispositions regardant le droit de la personne tierce d'attaquer un acte administratif unilatéral adressé à un autre sujet, qui blessait une autre personne que le bénéficiaire de l'acte. (Exemple: une autorisation de construction émise par le maire, qui ne respecte pas les rapports de voisinage). Dans le cas des contrats administratifs, la plainte préalable habille la forme de la conciliation du cadre des litiges commerciaux, en s'appliquant les dispositions de l'art.720 du Code de Procédure Civile. Dans la situation des demandes en dommages intérêts formulées, après l'annulation de l'acte administrative, le législateur n'a pas prévu aucune condition préalable a l'intimation de l'instance, comme dans le cas de l'action qui vise l'annulation de l'acte administratif illégal, fait qui nous détermine de croire que dans ce cas on ne peut pas appliquer les dispositions de l'art.7 L.C.A, opinion confirmée aussi par la pratique judiciaire[3].

De même, le législateur ordinaire précise que, dans le cas des actions introduites par le préfet, l'Avocat du Peuple, Ministère Public, Agence Nationale des Fonctionnaires Publics, c-est-a-dire dans le contentieux objectif et dans le cas des demandes des personnes blessées par ordonnances ou dispositions d'ordonnances, déclarées non constitutionnelles, n'est pas obligatoire la procédure préalable. Dans la doctrine de spécialité (Iorgovan, 2007, p. 154) on a affirmé que dans la situation des actions promues par le préfet, comme suite a l'exercice du contrôle de tutelle administrative, ne s'impose plus le défilement de la procédure préalable réglementée par l'art.26 Loi no. 340/2004, parce que cet article a été abrogé par l'art.IV al. (2) de la loi no. 262/2007.

[1] Cour d'Appel Bucarest Section VIII de contentieux adminsitratif et fiscal, Decision civile no.183/2006 republiée.
[2] I.C.C.J, Section de contentieux administrative et fiscal, Decision no. 1912/31.05.2007.
[3] I.C.C.J, Section de contentieux administrative et fiscal, Decision no 3240 de 4.10.2006 dans la Jurisprudence 2006 II, pp. 171-173.

Dans notre avis, de l'interprétation des dispositions de l'art.1 al.8 L.C.A, il résulte que le préfet peut introduire des actions dans le contentieux administratif, tant dans les conditions de la loi générale L.C.A 554/2004 (dans cette situation n'est pas obligatoire la procédure préalable), que dans les conditions des lois spéciales. Ainsi, les dispositions de l'art. 26 Loi no.340/2004 (modifiée par OUG no.179/2005) institue l'obligation du préfet de solliciter, au moins 10 jours avant l'introduction de l'action du contentieux administratif, aux autorités qui ont émis l'acte, d'analyser de nouveau l'acte considéré illégal en vue de la modification de celui –ci ou de sa révocation. On constate, des dispositions de la loi spéciale, l'établissement d'un recours gracieux obligatoire qui conditionne l'exercice du droit a l'action au préfet pour l'annulation d'un acte administratif des autorités de l'administration publique locale, considéré illégal.

L'Invocation en doctrine, comme argument, des dispositions de l'art.31. al.2 L.C.A (quelque disposition contraire s'abroge) pour le soutien de la thèse de la non-applicabilite de la procédure préalable, contrevient, dans notre opinion, tant aux dispositions de l'art. 1 al. l. L.C.A, qu'au principe specialia generalibus derogant (Giurgiu L., 2006. p. 27). Ainsi, dans les conditions dans les quelles la procédure d'attaque des actes administratives à l'instance de contentieux administratif est réglementée par des lois speciales-contentieux spécial- l'applicabilité des celles-ci a priorité envers la loi générale du contentieux administratif. Dans ce sens on invoque aussi la pratique judiciaire qui a statué que dans les conditions dans lesquelles la procédure d'attaque des actes administratifs à l'instance est réglementée par la loi spéciale, l'applicabilité de celle-ci a priorité envers la loi générale du contentieux administratif[1]. S'impose aussi le fait que les dispositions légales de l'art 7 L.C.A deviennent applicables seulement dans la situation dans laquelle la loi spéciale prévoit expressément la possibilité de l'attaque de l'acte administratif dans les conditions du contentieux administratif, sans instituer des normes dérogatoires. Dans ce contexte, on précise que la procédure préalable n'est pas obligatoire dans le cas prévu par l'art.4 L.C.A qui réglemente l'exception d'illégalité (Apostol Tofan, 2009, p. 96). On peut montrer aussi que a partir de celles exposées au-dessus il résulte que les dispositions de l'art.7 al. 5 L.C.A réglemente deux catégories d'exceptions de l'obligativite de la procédure préalable, c'est-à-dire: celles déterminées par la qualité du demandeur (préfet, Avocat du Peuple, Ministère Public, Agence Nationale des Fonctionnaires Publics) et celles déterminées par l'objet de l'action (cas réglementes par les dispositions de l'art.9, 19,4 et 2 al.2).

3 Régime des délais dans le cadre de la procédure préalable

La plainte préalable, soit le recours gracieux, le recours hiérarchique ou recours de tutelle, s'introduit en délai de 30 jours a partir de la date de la communication de l'acte à l'autorité emitente, pour que celle-ci se prononce sur la révocation de l'acte ou prend des mesures pour l'émission de l'acte administratif prétendu par le demandeur. Dans le même temps l'autorité emitente est obligée de vérifier tant la légalité que l'opportunité des actes qu'elle émit. La norme instituée dans les dispositions légales stipule un délai de 30 jours, qui commence a partir de la date de la communication de l'acte administratif dans le cas de son destinataire, et dans le cas des tiers par rapport a l'acte administratif un délai de 6 mois a partir du moment dans lequel ceux-ci on prit conscience de l'existence de l'acte dommageable adressé a autre sujet de droit.

En ce qui concerne le délai de prescription de six mois prévu dans les dispositions de l'art. 7, al. 3 de la loi (pour les personnes tierces blessées par un acte administratif adresse a un autre sujet de droit), la

[1] I.C.C.J., Decision no. 5909 de 13.12.2005 en op.cit., p. 214.

Cour Constitutionnelle[1] a admis l'exception de inconstitutionnalité des dispositions de l'art.7 al.7 de loi et a constaté que le texte de loi est inconstitutionnel dans la mesure dans laquelle le délai de 6 mois commence a partir de la date de l'émission de l'acte, considérant que les dispositions déclarées inconstitutionnelles violent le libre accès a l'instance et contrevient aux dispositions de la Convention Européenne des Droits de l'Homme (cause Prince Hans Adam II de Lichtenstein C/Allemagne 2001).

Comme effet de la décision de la Cour Constitutionnelle, le délai de 6 mois pour les personnes tierces commence a partir du moment dans lequel celles-ci on prit conscience de l'existence de l'acte, et pour le destinataire de celui-ci a partir de l'émission de l'acte. On précise que le délai de prescription de 6 mois de la prise de conscience de la personne tierce de l'acte administratif dans lequel peut être formule la plainte préalable constitue aussi une application du principe de la sécurité et de la stabilité des rapports juridiques. Le législateur organique réglemente l'institution de la remise en délai, stipulant la possibilité de l'introduction de la plainte préalable dans le cas des actes administratifs individuels, pour des bons raisons et sur la période de 30 jours, mai non plus tard de 6 mois de la date de l'émission de l'acte, qui est qualifié expressément comme un délai de prescription. En ce qui concerne la nature juridique du délai de 30 jours, la doctrine de spécialité (Iorgovan A., 2008, p. 589) dit qu'il est un délai de recommandation, mais non pas sans des conséquences juridiques. En ce qui nous concerne on considère qu'il ne peut être qualifié comme délai de recommandation, mais surtout un délai pour que la norme instituée par les dispositions de l'art 7 L.C.A a un caractère impératif (syntagme « avant de s'adresser » incluant une norme impérative), mais la sanction du non respect des délais légales impératifs est la déchéance. Dans la situation dans laquelle les actions ont comme objet des contrats administratifs, la plainte préalable habille la forme de la conciliation prévue dans le cas des litiges commerciaux et doit être introduite en délai de 6 mois (art.7 al.6) qui commence différemment en fonction de l'objet du litige.

4 Conséquence de la non promotion de la plainte préalable

Avec d'autres auteurs (Dragoș, 2008, p.66), on considère critiquable la solution choisie par le législateur d'assimiler les contrats administratifs, en ce qui concerne la procédure préalable aux contrats commerciaux, parce qu'il se réalise un éloignement du régime de droit public qui gouverne le contrat administratif. Dans le cas de l'introduction de l'action dans le contentieux administratif, sans avoir suivi ou épuisé la procédure préalable (condition sinequa non de la promotion de l'action) la sanction de non-exercice du recours administratif est le rejet de l'action comme premature (si le délai d'exercice n'a pas expiré) ou inadmissible (quand le recours administratif ne peut plus être promu, comme suite a l'epuisation du délai de 6 mois de l'émission de l'acte). Dans notre appréciation, tant l'exception de la prématurité, que l'exception de l'inadmissibilité représentent des exceptions processuelles péremptoires, qui tendent a l'empêchement de la justice de fond, visant des irrégularités procédurales ou manques sur l'exercice du droit a l'action. Dans ce sens on invoque aussi une solution de cas dans lequel l'instance a apprécié qu'elle va se prononcer en premier lieu sur les exceptions de procédure, mais aussi sur celle de fond qui font inutile la recherche en fond de la cause[2], et dans une autre solution[3] a été rejetée comme inadmissible l'action sur la base de l'admission de l'exception de la maque de la procédure administrative préalable. Les exceptions absolues regardent la violation d'une norme impérative, et du moyen de rédaction des dispositions de l'art.7 al 1 L.C.A sur la procédure préalable, il résulte

[1] Decision de la Cour Constitutionnelle no.189/2.03.2006, M.O. no.307/2006.
[2] Cour d'appel Bucharest, Decision no. 10N/2.062005 publiee dans la Procedure Prealable dans le Contentieux Administratif-Pratique Judiciaire, 2006, p. 47.
[3] I.C.C.J., S.C.A.F., Decision no. 2303 de 03.05.2007, non-publiée.

l'existence d'une norme impérative. Etant des exceptions absolues, l'inadmissibilité et la prématurité peuvent être invoquées par n'importe quelle partie en procès et par l'instance d'office, dans n'importe quelle phase du procès, donc directement en recours.

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The Concept of Appropriateness in Issuing Administrative Acts

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Abstract: Administrative acts are a legal way of organizing the execution and enforcement of the law. Law can not and should not establish all cases and all the ways, by means of which public administration bodies interfere with administrative actions, therefore administrative public bodies must have some initiative and ought to be able to assess the situations in which they will issue these acts and to appreciate their appropriateness. The appropriateness principle of administrative acts must be correlated with the legality principle. It can be concluded that the appropriateness principle underscores the power conferred by public administration, permitted in accordance with which it has the right and duty to judge when issuing an administrative compliance of the state of lawand facts, an appreciation that public administration is based on a single criterion: the interests of the community that they represent. Also, the very organization of the state as a state of law leads to the conclusion that the law – which is the materialization of the idea of justice – should be the standard on which the activity of human individuals report both to the quality of beneficiaries of the provisions and benefits of public administration and on the other hand as officials, public servants or ordinary employees in public administration system.

Keywords: Administrative acts; public administration; public servants

Taking into consideration the fact that the principle of legality is considered a characteristic of the state of law, the concern of the Romanian constitutive legislator to expressly govern this principle was natural. Professor Paul Negulescu asserts that the state of law governed by law, "where nothing is born at random, the arbitrary: the law is a force factor, a motion factor and a social transformation factor and within the modern state no one is outside or above the laws" (Negulescu, 1903-1904, p. 2). The state of law is ensured by mandatory law; the legality is of the essence of the state of law requirements. In order to make the public legal rights and obligations acquire a concrete shape the manifestation of will of the administrative authorities is needed, oscillating from the minimum limit of competence where the law prescribes the administrative conduct, until the maximum of the power of discretion, where the law leaves freedom of choice among several options to pursue (Nedelcu & Nicu, 2005, p. 133).

The main legal mechanisms of making the state of law are: the control of constitutionality of laws, jurisdictional control, and equity of administrative acts and organization of an independent justice (Dragan, 1977, p. 291). The key character of the state of law is the judge. He is called upon to decide whether the authority acted on the basis of a legal status and within the limits of authority acknowledged by law, and if the physical and moral persons grounded their action based subjective rights or on legitimate protected concerns (Deleanu, 1993, p. 8). Generally, the doctrine considers that, the more the

methods of control of exercise of the public governance are well thought and clued up, the more the risk of the administration to act abusively is diminished (Apostol Tofan, 1999, p. 18). A topical theme regarding the issuance of administrative documents is the relationship between legality and appropriateness. Legal-appropriateness theory within administrative law has two meanings, corresponding to the two major trends of the doctrine of administrative law in Romania.

Firstly, the legality notion refers to the compliance of the administrative document with the legal provisions of the judicial acts legally superior in the generic sense "with the law". On the contrary, the appropriateness regards the conformity of the "administrative" act with the requirements of society that are continuously changing. We face a right to assess the public authority, for example, when it comes to issuing a permit or when after a contest a winner can not be chosen based on predetermined criteria.

In another opinion (Petrescu, 2001, p. 277), the appropriateness points the conformity of the administrative act with the purpose of law, which, unless expressly provided, may be inferred by interpretation. The opposite concept of legality is conceived as the sum of all the conditions of validity of an administrative act, the appropriateness being, in this spirit, an element of legality. Supporters of the latter concept consider that once with the legality of the act, the court checks the appropriateness or, better said, its unsuitability. Synthesizing from a holistic perspective these two concepts, we may say that they differ in that the first, to which we rally, the appropriateness may be controlled by administrative courts only when it becomes a matter of legality by means of an express legal or implied provision, while in the second, the appropriateness may be controlled in the absence of express legal provisions or implied provisions, as it is however a matter of legality. The unanimous opinion on the judicial control upon discretionary power of the administration, fundamentally coordinated to this type of control aims in essence, only to the legality, not to the appropriateness of administrative act (Manda, 2005, p. 70).

However, when legally, the appropriateness of issuing an administrative act is a matter of legality, the courts are entitled to administer any kind of evidence to determine the appropriate solution to be adopted. It is true that this way the court substitutes to public when assessing the appropriateness, but it is a defeat of the principle of separation of state powers made exceptional by express provisions of law. Legality is the core element of the legal regime of administrative acts. By legal system we understand a set of background and formal rules, which confer distinctiveness to administrative, namely, validity rules (conditions) of the administrative act that governs the effects produced by this specific act.

Generically, by means of the legality of administrative acts we understand their compliance with the laws adopted by Parliament, and also with the normative acts, having superior legal force. The relationship legality-appropriateness constituted an important concern within the Romanian doctrine, especially in the interwar period. Interwar school dealt with "discretionary power", meaning the discretionary authority of the administrative acts as a natural matter of "executive power", governing activity and administrative activity. The Law for the administrative courts of 23 December 1925 (art. 2) distinguishes between the acts of government and the administrative acts of discretionary authority, although both categories were evoked by the term "arbitrary power of executive "or "the power of appraisal of the executive ". In essence, when considering the discretionary power we have to distinguish between "matters of appropriateness" and "matters of legality".

In case of administrative activities “the Executive” has the discretionary power to express appropriateness, but not the legality of its acts, while in the case of governmental acts “the executive power” had to determine not only the appropriateness issues but also the legality issues.

The French doctrine refers to the right of assessment of public administration in order to evoke the administration issue within a legal frame, which is exceptionally a necessary action but contrary to the law. We notice that within French doctrine, and within German doctrine, the relationship between legality and appropriateness, meaning discretionary power is seen through the judicial practice, reaching so far as to formulate some theoretical solutions by reference to existing law and theoretical solutions reported to law created by the judge. As a general idea, the purpose of public administration, namely the achievement of public interest is always an element of legitimacy, while the means for achieving this goal are aspects related to appropriateness. Administration has no right to commit, on behalf of discretionary power, errors, leaflets or do absurd things, and if these happen, then there are grounds for an appeal for abuse of power. Within German doctrine, traditional discretionary power evoke a certain quantity of freedom of public administration for its decisions and actions, meaning the eventuality to choose among several possible attitudes (to do A, to do B or not do anything). To substantiate the discretionary power in Germany, over the years there have been formulated lots of theses, among which the theory about the foundation of discretionary power occurs in the existence of indeterminate legal concepts: public welfare, public utility, public order etc. The tradition of discretionary power of German administration continued even after 1945, the administrative courts continuing to respect tradition.

The letter and spirit of our Constitution, the necessity to penetrate the democratic European institutions and the practice of administrative courts in our country lead us to argue that, no matter how we perceive appropriateness related to legality, the administrative judge has the right to determine whether the public administration acted abusive, contrary to public interest, as resulting from the law on which the administrative act is based.

Thus the result is that there exist some legal type-conditions as follows:

- the administrative act has to be issued under and in law enforcement;
- the administrative act has to be issued on the basis of all acts of state bodies which are superior to the administrative issuing institution;
- the administrative act has to be issued by the administrative body within the limits of its competence;
- the administrative act has to be in accordance with the aim of law as other normative acts of bodies that are superior to the issuing administrative body;
- the administrative act has to comply with legal requirements relating to its form;
- the administrative act has to be appropriate.

In this work, "The Administrative Law and The Elements of Administration Science" from1977, Prof. Ilie Iovănaş considers the following criteria to assess the legality of administrative acts:

- the moment when a law is adopted;
- the place and actual conditions of application of the administrative act;
- the material and spiritual means undertaken by the administrative decision and the length of time that its application requires;
- the compliance of the administrative act with the aim of law.

Bringing forward these considerations, we identify, on one hand, the general conditions of legality, and on the other hand, the specific conditions of legality, based on appropriateness considerations.

General conditions of legality:

a) the administrative act has to be issued in accordance with the letter and spirit of the Constitution;
b) the administrative act has to be issued in letter and spirit of the ordinances;

c) the administrative act has to be issued on the basis of all acts of public administration bodies which are superior to the issuing public administrative body;
d) the administrative act has to be issued by the administrative body within the limits of its composition;
e) the administrative act has to be issued in the form and procedure prescribed by law.

As for the area of legality conditions based on grounds of appropriateness, the aim of the law (ratio legist) is the legal limit of the right to assess (of appropriateness), the limit according to which the administrative judge relates, meaning it all about the excess of power. Failure to accomplish one of the conditions of legality leads to the application of sanctions that are specific to administrative law.

For assessing the appropriate (current) character of administrative we must be aware of the following aspects:

a) the concept of appropriateness.

Law serves its purpose and becomes effective only insofar its provisions are complied with the principle of legality. Administrative acts are legal in nature, but in order to be fully effective they must be adapted to specific conditions, so that they become appropriate or current. The question of appropriateness arises in the case of administrative non-judicial acts, as is the case with all such acts of power, except the law, which is always considered appropriate as long as it is in force. If regarding the legality of administrative acts, the assessment of this quality is made by reference of this act to the legal act having a higher power, including law, as regarding the assessment of the appropriate character, such a criterion lacks. Thus, a legal act may be lawful and appropriate, while an inferior act, although issued under and in compliance with a higher act, may be inappropriate or outdated. The notion of appropriateness is regarded as characteristic for the legal act that defines a specific feature also known actuality. The actuality of a legal document expressing full conformity, within the limit of the law, of the document together with the tasks of the administrative bodies, expresses the correlation between law and the needs of the society that is continuously changing. To the contrary, we consider that act, although legal, and which by the content of its provisions contravenes some specific circumstances and which does not correspond to reality and to which it applies, as being inappropriate. Such an act is always outdated even though it is legal. The problem of the appropriateness of administrative acts is closely related to the right of appreciation of the state administration, which is a faculty recognized by law, such topics when choosing the most appropriate solutions for the effective implementation of the law.

b) the causes that generate appropriateness.

Surrounding reality, within which the decreed law must be applied, is constantly changing and this aspect must be taken into account both by the legislator, through its regulations, and especially by the administrative bodies responsible for applying the law according to practical conditions that are always developing. Starting from the idea that administrative acts are acts of making law, this means that they must be, first of all, according to the supreme legal act and also according to reality. Generally, the more a normative act is on a higher level within the hierarchy of sources of law system, the more its provisions are wider, and that is why further elaboration of regulatory acts in order to ensure uniform application is necessary. Within the frame of detail regulation and along with the issuance of executive acts there exists the possibility that they become outdated by the disparity between the legal provisions and the actual implementation.

The law may grant an appreciation right based on the appropriateness for different cases:

- considerations of place;

- considerations of time;
- consideration of the situation;
- considerations of people;
- considerations of aim.

c) the area of appropriateness.

Relating appropriateness to the stages of the process we encounter the following:

- - within the preparatory stage of issuing the act, if the law provides appropriateness issues for its application, there will be an analysis regarding their sustenance, knowing that such acts are often subject to inappropriateness;
- within the adoption phase there will be an examination whether there were preserved appropriateness reasons for the preparation stage that justify the extent otherwise the act is inappropriate ab initio;
- within the execution stage there will be taken into account the appropriateness considerations of the legal act and the existence of the conditions for the enforcement of the act;
- within the checking stage the appropriateness of the adopted and enforced measures will be appreciated by the controlling body by means of reporting the actuality of the verified measure in regard to the date and conditions of the circumstances of the check.

d) the manner of solving the appropriateness situations

The possibility of action of the administrative bodies on grounds of appropriateness is strictly limited by law.

The right to act on grounds of appropriateness is dedicated by legal acts not being applied a priori and unlimited for the administrative bodies:

- in some cases the hypothesis of the legal rule that is relatively fixed, allowing discretion of appreciation of the state body when enforcing rules;
- in other cases, the directive of the rule being relatively fixed allowing the institution to choose between several solutions;
- the sanction of the legal rule may allows the choice between several alternative sanctions (warning or fine) or regarding the penalty fine (between the legal limit and maximum).

The rules governing the right of discretion are permissive because the body can choose the most appropriate measure and only the liability to choose the most appropriate measure is imperative (the breach of this requirement allows upper bodies to abolish the acts of inferior bodies on the grounds of inappropriateness). The right to assess operates within the limits of the competence of the body that can not be exceeded by appropriateness considerations. The right to assess can not lead to violation of subjective rights of persons to whom the act is intended. Exercising the right to assess is done by compliance with the principle of legality because an appropriate act, but illegal can not be valid.

All administrative acts are subject to judicial review and to appropriateness control made by state administration that is superior. In conclusion, the appropriateness can be defined as an element closely linked to the right of assessment of administrative bodies, within the organization and enforcement of law, which ensures the achievement of legal tasks and duties promptly, with minimal expenses and in accordance with the means that correspond to the aim of the law. Within the activity of public authorities, the application of the principle of legality does not mean total trammels and cancellation of options to decide on an actual manner of law enforcement. The action of administration enjoys a certain

margin of freedom, a so-called discretionary power which allows the administration to adapt to specific conditions, therefore, therefore to judge whether his actions and acts are appropriate. Ever since the interwar period there has been formulated the argument according to which "except the cases where the law is imperative, when it definitely orders in all other cases, it leaves the sovereign choice of administrative authority to make or not to make the act for which was authorized by the law under discussion. This authority is given in other words, the power to assess the appropriateness of the act, in one case and another, the circumstance is still legal " (Teodorescu, 1910, p. 406).

This way the distinction between acts of government and administrative acts is made by the discretionary authority. Thus, it was noted that "freedom of appraisal upon appropriateness of the measures to be taken" stands in the power of the administration, which "within its activity is subject to legal order" (Negulescu, 1934, p. 22). This way there was made a distinction between matters of appropriateness and legality.Within the speciality literature (Lazar, 2004, p. 162), examining the relationship between legality and appropriateness, it is noted that the principle of legality can not be perceived as absolute only in the case of principles, because when we talk about its application we necessarily encounter an approach characterized first of all on flexibility.

It is also noted that limiting to the principle of legality in the sense that it only refers to the strict compliance of the administration of law, namely "the regulatory unit" scaled according to the Constitution and in relation to the judicial force of rules of which it is comprised, it would an approach which would be characterized by rigid boundaries because of its primitivism, but could not express the real and flexible feature of the administrative activity and which occurs within the margin of freedom and which imposed the distinction between legal competence and discretionary power, which derives from the relationship legality-appropriateness. In 1910, Prof. Anibal Teodorescu formulated the argument according to which "except the cases where the law is imperative, when it definitely orders in all other cases, it leaves the sovereign choice of administrative authority to make or not to make the act for which was authorized by the law under discussion. This authority is given in other words, the power to assess the appropriateness of the act, in one case and another, the circumstance is still legal "(Teodorescu, 1910, p. 46). Prof. Paul Negulescu showed that "freedom of appraisal on taken measures "stands in the power of government "which is subject to legal order within its activity." (Negulescu, 1934, p. 22) The same author claimed that only the freedom of decision of the administration is discretionary, which may do or not do the act, the court being the one competent to examine whether the conditions and formal procedures required by law are implemented, and the facts found by the administration are accurate or appraised. As shown, in regard of the problem of application of the principle of legality in public administration activities, the relationship between legality and the appropriateness of the administrative act has become a controversial issue in Romanian doctrine, outlining the two distinct schools of thought, namely the School of Cluj and the School of Bucharest.

In foreign doctrine, the issues of the relationship between legality and appropriateness are revealed by means of the need to respect the separation of powers, the equilibrium and their balance within the constitutional democracy, this fact leading to the variety of theories about the freedom of action of the administration.

We limit ourselves to highlight the great value of comparative studies made by Jurgen Schwarze, who stated that: "A key feature of the state governed by law is the principle of legality of administration, but what seems an absolute obedience of administration to law, can not be achieved. If adaptability and flexibility of the executive have to be ensured (Schwarze, 1992, p. 223); the conclusion is that although lately we witness the extent of the legal restriction upon administration however, each legal system allows the executive to have a certain movement space for decision-making, whether called freedom of

appraisal (France), discretionary power (Germany) or freedom of decision (England) (Schwarze, 1992, p. 274 et seq).

In France, the concept of discretionary power expresses freedom of decision and action within the frame permitted by law; the Administration has, therefore, the power to determine the appropriateness of a particular course of action (Devolve & Vedel, 1990, p. 426). In Germany (Schwarze, 1992, pp. 283-294), a dominant feature of administrative law is exactly the frequency of the topic of freedom of decision is brought into question. This trend is understandable as, during the post war period, existed the wish to build a constitutional state, whose leadership be strictly bound by law, this fact leading to the idea that the Administration's discretionary power is especially a kind of foreign body within the structure of the state of law, an institution built to ensure the flexibility for administration (Ioan, 2003, p. 241). As the "ultra vires" principle operates, the abuse of Administration is considered in Great Britain an illegality, subject to the control of judicial court, being examined, both in relation to "The Common Law - Background, with the jurisprudence and secondary regulations and the "State of Legal Rights and also in relation to "improper purpose". That is why the principles of reasonableness and control is being applied, moreover the balance between public and private aims being also ensured. Finally, within Community law, the concept of manifest error is accepted, although some theorists consider that the concept is not as well established as that of "reasonableness" which limits the control of British courts over administrative acts, but without excluding this control.

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