



THE 7TH EDITION OF THE INTERNATIONAL CONFERENCE  
EUROPEAN INTEGRATION  
REALITIES AND PERSPECTIVES

## Reforming Public Administration

### Emerging Administrations under European Union Rules

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**Abstract:** The idea of emergence is generally used to indicate the appearance of patterns, structures, or properties that cannot be adequately explained by referring only to the system's pre-existing components and their interactions. The term "emergence" has an interdisciplinary approach specific to administrative sciences, too. In this article, the concept of "emergence" signifies *lato sensu* a kind of change and it will be used to refer to countries that have a high volatility and that are in transition and to define the changes that suffer the public administrations of the countries which are part of the European construction. European Union through its policies and legislation has a great impact on economic and social conditions in Member States. The aim of the paper is to present a theoretical approach on the dimension of emerging administrations understood as changes and reforms that suffer the institutions from the EU member states under the pressure of the European Union rules. The study is using the concept of emergence to research and to analyze the nature of the changes in the public administration starting from the approach of the systems theory.

**Keywords:** emergence; public administration; reform; European integration

#### 1. Introduction

Since January 2007, 27 Member States have agreed on participating and contributing to common regional, social, agricultural and monetary markets, creating in between a single European space of security and defense. Conceding an amount of their sovereignty to the European Union, Member States have also agreed on accepting the European acts as a special category of external demands to which answering is usually imperative and driven by common formulated models, standards or institutional arrangements. Possible packages of alternative solutions, the latter seem to replace the decrepit internal institutional arrangements, with minimum effort and political debate (Andersen, 2004, p. 21 in Matei, Matei and Iancu, 2010).

The dimensions of cooperation between the EU and Member States, the permanence of those involved in European policies and the need to act at two levels - domestic and European - impose significant requirements to the governments of Member States. These requirements relate to creating and maintaining a complex system of horizontal and vertical connections in each Member State. Governments must make decisions concerning the scope of coordination procedures and structures suitable for the delivery and allocation of responsibilities (Kassim et al., 2000).

In these coordinates, an analysis of institutional change concerns on the one hand, the influence of local institutional framework conditions imposed by the EU accession process and on the other hand, after the time of formal accession, the ability to formulate strategies relations with EU institutions, while preserving institutional autonomy.

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We will refer at these kinds of institutional changes caused by the EU at the state level with the term “emergence”. The “emerging administration” can be considered the administration which is transforming its own system and values under the influences and impact of the external environment (represented in this case by the European Union and its processes of European integration and Europeanization).

## **2. The Nature of Emergence in the Public Administration System**

Regarding from the perspective of general system theory (see, von Bertalanffy, 1968), the term “emergence” has an interdisciplinary approach. We can speak about emergence in biology, sociology, and physics.

When looking the explanation of the word „emergence”, we started from the explanation given to this word in the Explanatory Dictionary which refers to the emerging evolution theory, a metaphysical and idealistic one concerning the „ development process, according to which the appearance of the new qualities is absolutely spontaneous and unpredictable”(DEX, 1996). According to J. Huxley (in Corning, 2002) the emergency phenomenon in the natural world implies a multi-level system which interacts with the two parts –the inferior and the superior of the system and or with the exterior or interior medium. Moreover, these emergent present systems have in their turn an up and down influence – especially in a horizontal plan.

There are a few relevant examples: the scholar system, the ecosystem, the political systems, the local societies, the interacting systems inside small groups and so on. These can be explained as: „an ensemble of unimportant elements which exist in different states or conditions. If the changes of state are measurable we can consider these elements as variable and the state of the system at a given moment will be the values list of these elementary variables”(Corning, 2002).

All these mustn’t take us to the conclusion that it is about a strange thing connected to the physical systems, because the feature of emergence is not limited only to the biological and physical systems but this is also characteristic to other social, economic, political or administrative systems, too (Matei & Berceanu, 2011).

During the last decades the word „emergence” was associated and used especially with the economic systems concerning the emerging economies or markets. The term of „emerging market” was introduced by Antoine W. van Agtmael in 1981 during a conference which was taking place in Thailand<sup>1</sup>. Presently, the word “emerging” as Ashoka Mody considers in his paper “*What is an emerging market?*” (2004, p. 4) was referring to countries with a high volatility and which are in *transition*, facing economic, political, social and demographic nature changes.

The countries which became members of the European Union in the last two waves from 2004 and 2007, they have known also this general framework of emerging system, respectively the economic, political, social and demographic nature changes and they have undoubtedly an impact upon the national administrations. These countries are in transitions and they are trying hard to catch up with the other countries to reach the established objective: the accession and integration in the European Union.

Administration, *as an institution*, includes its activity and structure. From the perspective of organizational theory outlined the current institutional framework, which focuses on changes that are happening in organizations, starting from the moment when they are institutionalized.

In a society, institutions are never closed and autonomous entities. Institutions are contaminated by the prevailing of social values and patterns of organizations. As institutions, “public administration is part

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<sup>1</sup> In that period Thailand was considered a third world country and this expression used to discourage investors. So, van Agtmael used the word “emerging” to eliminate the negative shade.

of the social order, it transcribing not only essential characteristics, but also contributing to the creation of these characteristics” (March & Simon, 1958, p. 159).

The social values and institution are highly influenced by external stimuli which resonate with the public administration system. In our case, the external stimuli is represented by the European Union, which by its values and rules is causing some transformations in the structures of the member states.

We will refer at these kinds of institutional changes caused by the EU at the state level with the term “emerging”. The term “emerging” will be used to refer to countries that have a high volatility and that are in transition. These countries have to face with political changes, economic changes, social changes and demographical changes. This term will be used to define the changes that suffer the institutions and the public administrations of the European countries under the pressure made by the European Union through its rules.

### 3. The Processes of Implementing EU Rules: European Integration and Europeanization

The institutional changing is determined by the resize of the instruments and the redistribution structures of the resources at society level (Börzel, 1999). The changing of the administrative component of a process of institutional change at a real level can be considered, from this point of view, part of the European integration process (see Radaelli, 2000).

The European integration, as part of the emerging administrations from EU member states, illustrates the experience of the open systems of *bottom-up* type. The change as a learning process „as a principle of harmonious competition of cooperative nature, which opens the main way of globalization, as a building paradigm of another idea of global order than a hierarchical one” (Dinu, 2007). This European version, which means spreading the EU rules, the political organization and the ways of government beyond its territory and a process of changing in the institutional national practices and of politics which can be attributed to the European integration, can be named *Europeanization* (Hix & Goetz, 2000, p. 27; Olsen, 2002, p. 937 in Trauner, 2009)

The Europeanization, seen as a globalization process in the European field, represents a situation which contributes to the European integration and has, among others, its impact upon the national administrations (Matei, 2004). In this context, the social dimension of the globalization has more importance. The opening degree of an economy can determine the fragility of the work force market of the volatility balance policies and of its efficiency, as well for the countries which are not institutional and functional adapted to the new social and economic conditions (Matei and Dogaru, 2010).

To all these can be added some values that will be common to all countries that want to perform this process, values that make up the European integration model: the market- in its institutional form, the democracy, the cohesion – with its social, economical and territorial dimensions, the multilevel governing or the convergence (economic, administrative). These promoted values can be found in the Europeanization process that was identified for the first time for the countries in Eastern and Central Europe, (Grabe, 2001) and this was then adapted to the states in Balkanic Europe which was in pre-accession process. Regarding these we can identify three types of Europeanization for the candidate countries (see figure 1). The “top-down” approach: the Union gives, while the candidate countries take – type *Ec1*, “bottom-up” approach : the Union gives what was previously influenced by the candidates, the taking being thus facilitated – type *Ec2* and an approach dealing with the policy transfer between Members and Candidates - type *Ec3* (Iancu, 2011).

Probably one of the most original metaphors of the social sciences, which can be used for the study of the European Union, is the *Heineken* metaphor. This was formulated for the first time by Hellen Wallace (2000, p. 381 in Iancu, 2010) and according to this the European Union, thanks to its formulated policies gets to, as the Dutch company (due to the beer it produces), in any corner of the world, does and creates different reactions according to the consumer. Translated and interpreted for the present work, the Heineken metaphor says the fact that the European Union through its demands

(demands that refer to the public administration) generates different changes at the level either of the member states or at the candidates or possible candidate states.

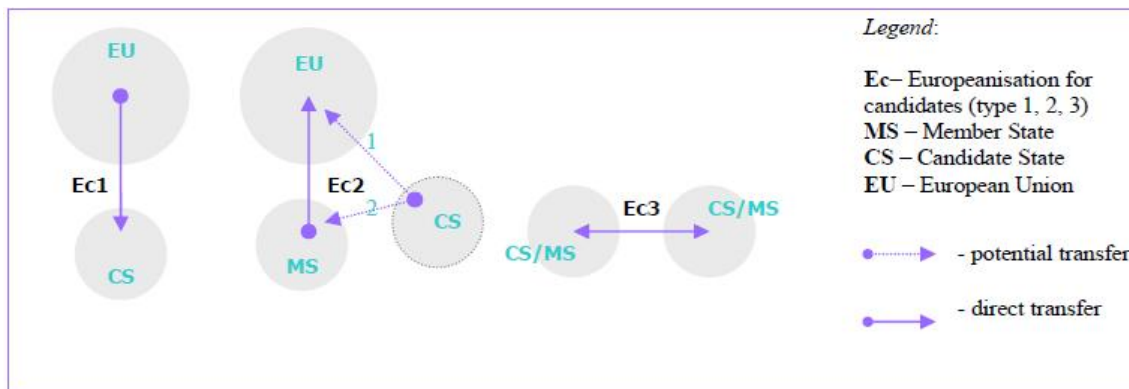


Figure 1 The actors involved in the three types of Europeanization

Source: Iancu, 2011, p. 134

In the support of the statements above, we can say that the European Union has formulated some ever since 1993 some clear rules that were about the its relationship with the countries from the old communist system, criteria which are valid to an expansion in present, too. These criteria can be identified as factors that generate the emergence (seen as a process of reform and evolution) in the states that want to access the European Union:

- permanent institutions which should guarantee the democracy, the rule of law, the human rights, the respect to minorities and their protection;
- a functional market economy;
- the ability to face the obligations that come from the quality of member in the European Union, as well as the joining to the Euro area.

To this there was added in 1995 through The White Carta concerning the preparation of the associated countries from the Central and Eastern Europe, the bureaucratic criteria, that can be translated through a reformation of the national public administrations, meaning the adapting of the administrative machinery and of the whole society to the necessary conditions for the implementing of a new legislation. This is a complex process that presents the creation or the adaptation of the institutions and of the administrative and judicial structures. The overlap between the initiatives to reform public administration and European Union accession process has been felt in most countries which joined the EU recently. Political objective of accession is achieved, post-accession reforms in these countries know the different trajectories, and the main interest is in new condition, increasing the absorption of structural funds. The changes may be associated with a process of Europeanization of domestic institutional mechanisms (Goetz, 2001; Howell, 2004, Knill & Lehmkhul, 2002). This process is ongoing and part of it took place in pre-accession period. The main instrument of this integration is the massive adoption of legislation, as the *acquis communautaire* and transfer policies and courses of action which replaced the domestic training of law by successive agreements constituents. The adoption of the *acquis communautaire*, an objective condition for accession, aimed at providing formal post-accession propagation mechanisms at the domestic European policies (Howell, 2004). In this first sense, the problems relate to the institutional context of European integration. Also, other rules which generate the reformation of public administrations could be considered the type of national coordination of EU policies (Kassim et al., 2006) and the character and the formation of the positions taken by Member States to the public policy agenda of the European Union. Given their scale and their implications in the Member States, the institutional system of training local public policy represented by formal rules and informal decision making structures and reforms initiated characteristics may be associated with representations of this type of reporting to EU institutions. The dimensions of

cooperation between the EU and Member States, the permanence of those involved in European public policies and the need to drive at two levels - domestic and European - member governments impose significant. These requirements relate to creating and maintaining a complex system of horizontal and vertical connections in each Member State. Governments must make decisions concerning the scope of coordination procedures and structures suitable for the delivery and allocation of responsibilities (Kassim et al., 2006).

According to Knill and Lehmkuhl (2005), there can be identified some consequences regarding the implementation of European policies and legislation at the national level, such as:

- *Strategies of compliance.* Under this type of strategy, rules and standards adopted at EU level should be absorbed entirely by the institutional framework of the Member States. Compliance strategy induces an administrative behavior accordingly (process of forming centralized regulation, excessive formalization) to the Member States;
- *Performance strategies.* If this type of strategy adaptation induced at domestic performance is achieved through competition between Member States institutional arrangements. To induce competition, EU regulations take the form of taxation "weak" by drawing some general directions for action, without providing details about the nature of institutional changes to be made at home. Also at the domestic level, the relevant criteria are not represented in a process of institutional change, the costs to replace the old institutions involved, but the performance of the new institutional framework concerned. In this situation, it is likely that the preferences of members of an administrative bureaucracy in the process of institutional change is influenced by social and political pressures that can result in the formation of such a change of premises;
- *Communication strategies.* In this case, the reactions of local-level institutional change rather are directed to transfer policies (best practices), and less to obtain reliable results in a competitive framework. Given the costs of change at local level, strategies to encourage adoption of best governance practices create fertile ground forming a mainstream regarding the adoption of a model for change at home. The implications of these strategies at this level tend to be found in legitimate measures of institutional change through legitimation provided by this mainstream. In this case, institutional change results are predominantly the result of internal legitimacy effort to change directions of the institution rather than identifying the best solutions, given existing institutional framework at home.

#### 4. Conclusions

We called this process of reforming public administration and the institutional transition of institutions in the Member States the process of emerging administrations. It is a consequence of European integration and Europeanization which represent the implementation of common rules and strategies in order to fulfill the objectives imposed by the European Union. As final remarks it is also important to underline that compliance with EU rules is a complex concept. It does not relate to only one stage, it is the outcome of a multi-phase process, including law-making at domestic level(s), which may involve adopting new rules or adapting existing ones; control of these laws with regard to their application in practice; and enforcement in cases where the laws are not followed (Faulkner, 2010). Distinctive national patterns of institutional adjustment "emerge as corresponding to a basic logic of differentiation in dissociable from the integration process itself" (Harmsen 1999, p. 81 in Faulkner, 2010).

At the beginning of this paper we wanted to find out the significance of the connection between policies, legislation and conditionalities that the European Union is imposing at to the Member States and the emerging institutions. We noticed that the system of public administration is inter-related with other systems which influence it. This is a sub-system of the global social system with strong political, social, economical, cultural determination, in a complex connection with its environment (Matei, 2009).

The emergence of public administration was regarded from the perspective of the transition and changes to which the countries are subjected with a stress on the strategies of reform in the public administration under the guidance of the EU rules. In this respect, we present some theoretical perspectives on institutional change and factors that can influence this process. We have shown that the process of accession to the European Union required the initiation of measures associated with the effort out of compliance. Meeting these conditions aimed at among others, without being as inflexible as the process of adopting the *acquis communautaire*, the initiation of measures associated with a process of modernization.

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**Territorial Reform, Institutional Change and Economic  
Development. The Regions' Evolution and their Perspective along the  
Romanian History**

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**Abstract.** The present study had as starting point the fact that regionalism has quite a strong tradition in Romania. Ever since the formation of the modern Romanian state the state divisions occurred as solid administrative units, each of them having its own peculiarities. Regardless of the political regimes that have taken turns in power, it can easily be observed that one of the main objectives was the development of better links between the different regions of the country. Recently, after having set clear goals to join the European Union structures, Romania has been compelled to improve social and economic conditions. This process began on the background of historical inter-regional disparities, mostly due to external factors. The present paper analyzes, from a historical perspective, how the implementation of regional development policies could be applied and work, depending on the social status of people, on traditions, on ways to develop interpersonal relationships and relationships with the authorities.

**Key words:** economic performance, institutional matrix, institutional transformation, transition, regional development, administration, cultural factors

**JEL classification:** D03, E02, R11, R58

## **1. Argumentum. Considerations on Economic Performance**

The economic activity implies - even in its simplest forms - interacting with other individuals, the coordination of human activity being basically a social problem, referring to how people's behaviors are interconnected, thus being closely related to the social order in general and defined by the institutional matrix incorporated in the society's structure. If sociologists consider individual behavior as being largely determined by social and cultural norms transmitted through the socializing process, economists - followers of the rational choice theory - insist on the behavior's rational and voluntary nature.

The analysis of how an economy works indicates a combination of two ways - by the market (which involves voluntary cooperation, that guides individual actions towards satisfaction maximization in a certain context, while individual interest is limited to the constraints imposed by the price system leading to a resource allocation mechanism), and by administrative decision (which implies authority, in which case individual actions are not the outcome of negotiations but determined by the imposition of authority, which is either accepted voluntarily or imposed). History shows that a society's economic organization combines, in various proportions, the two types of activity coordination, one's share prevailing.

When discussing economic performance *the role the state can play* should be taken into account; reference here should be made primarily to the quality and working of the judiciary and of the

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bureaucracy, namely the constraints they impose on the economic activity; the manifestation of public power – the state, is due to the need for *order, predictability and trust*.

Neither economics nor any other discipline provides an integrated theory of both economic and political development. General economics teaches us that, with ideal economic policies and markets, the participants in an economy face incentives to maximize the efficiency and output of a society. On the other hand, political science, anthropology, sociology, and the law offer pertinent ideas and information, they do not subsume the logic of the market nor provide any general theoretical frameworks that can guide research into this question nor mobilize and summarize knowledge for the policy maker. A unified set of ideas is needed not only to focus research but also to assist decision-making in developing countries.

Researchers coming from varying intellectual traditions and specialties use different names for what is essentially the same set of ideas or general theory. Such a unified set of ideas has been emerging in recent years and is coming to have significant and increasing influence in economics and in other social sciences as well.

Many economists and other social scientists studying less developed countries have been aware that the institutional environment in these countries differed from that in industrialized ones. In the early postwar decades there were intense debates about the degree to which standard neoclassical economics needed to be modified to apply to less developed countries; the standard neoclassical economics was based on institutions that existed in industrialized countries but that did not necessarily exist in less developed countries. After World War II development economics assumed that the institutions of the economy were different, but there was little attention among economists to the evolution of these institutions or to deep explanations of them.

In recent decades, the subject matter of economics has expanded in many directions (Hirschleifer 1985); of particular interest in the present context is the application of economic reasoning to the rules of the game, in two directions. First, there is the decision of individuals whether to obey the existing rules. Secondly, there is the collective action of people to change the inherited set of rules. Neoclassical economics had assumed that the rules of social interaction were given, in the form of the rules of the market economy, and that people obeyed the rules of the game. These assumptions made sense in the neoclassical world of imperfect information, for violations of the rules could be easily detected and the perpetrators punished.

The extension of the subject matter of economics has reinforced the modification of the basic assumptions. The study of the evolution of cooperation through the theory of repeated games leads to recognition of the important role of focal points, which can become symbols with affective content. The study of the evolution of norms leads to economic theories of how moral sentiments develop. However, many economists have felt that this theory has not been properly explained unless it emerges from a model based exclusively on rational self-interest; if stated that choices were constrained by cultural norms, it was regarded as an unsatisfactory explanation. Recently, though, research has been done on the benefits to individuals of having a conscience (Frank, 1988) and on the efficiency gains resulting from shared mental models (North, 1995), by willingness to accommodate a richer conception of human motivation. Methodologically, criteria were suggested by which we judge theories (Stiglitz, 1986): these include simplicity (fewer assumptions are better), internal completeness (assumptions should be as “primitive” as possible), consistency with available data, predictive power, and the ability to make specific predictions in a variety of contexts. If people form groups and internalize group goals in predictable ways, then models incorporating these regularities will perform better by the various criteria than models based on the postulate of individual self-interested motivation.

Economists have often shed some light on cultural explanations, arguing, first, that people in different cultures tend to want the same things and, second, that since cultural variables have not been satisfactorily measured, explanations based on culture have been empirically blank. It would be important to note, thus, that individual culture is what the individual carries with him as a result of



having been brought up in a particular culture; on the other hand, community culture is the set of norms, attitudes and values of an entire community, and it of course affects the incentives of individuals to behave in particular ways. There are sets of rules that are recognized and frequently followed by members of the community and that impose constraints on the actions of individual members. Community culture tends to reinforce and be reinforced by the patterns of behavior in the community, and it is obvious that the behavior patterns (in the form of institutions) and the associated cultural norms can be a serious obstacle to economic progress in the community.

## **2. Economic Development, Transition and the Institutional Transformation**

The economic system has evolved over time, from the primitive to the slavery era, to the Middle Ages, to socialism and capitalism; analyzing these stages we can notice large differences regarding the most defining characteristics of an economic system – technology, property, relationships between economic agents, relationship with the authority figures, methods of production, and respectively the dissemination of the results of the economic activity – differences that suggest an evolution of these characteristics and of the economic system in general. Therefore we consider economic development that particular change – occurring faster or slower – regarding these characteristics of the economic system. Constructive would be to find both the explanation to continuity – the people's tendency towards routines and habits, and to change – through intended action, namely by the result of learning and by extending knowledge, which leads to establishing new habits and routines, these representing the very process of economic progress – their behavior being in its turn influenced by the changes recorded by these institutions.

The way the institutions and the mental patterns change can generate a dependency of action, due to which the poor performance of an economy may persist for a longer period of time; this, moreover, reflects the reason why the transition experienced by some former communist countries was both difficult and time consuming. The changing of the mental patterns – and institutions – can be achieved with great difficulty, especially for situations in which the effort is directed toward correcting the effects instead towards analyzing and influencing the causes – in this regard being useful an analysis at the appropriate level and the use of the appropriate theory. It should also be noted that all cultures have inherent tendency towards change, while showing resistance to change; there are both factors that encourage acceptance of new ideas and trends, and conservative factors that block the change, promoting stability, their lack even generating social and economic chaos. The factors that determine resistance to change include the habits, and respectively the interdependence of institutions. People are usually reluctant to changing their way of perception, thinking and acting; the habitual behavior provides emotional security and psychological comfort in a more and more dynamic and unpredictable world. The fact that cultural institutions are integrated and interdependent induces a resistance to change, as precise changes trigger other – more or less desired – changes. Thus this cultural integration leads to a slowing down and to a deviation of cultural exchanges on one hand, and on the other hand it may lead to stress and frustration regarding the ones involved. Basically, the sources of influence or pressure that are responsible for both promoting change and resistance to change are (1) the forces within the society, (2) the changes occurred in the natural environment, and (3) the contact with other societies, these acting in different directions with different degrees of intensity depending on the country, on the historical period, on the institutional and social system. It was stated that one fact cannot be denied, i.e. that ancient Greece, Rome, and later Spain, England and France, as well as other colonial empires promoted models of culture, governance and justice – with a civilizing role and lasting contributions to the emancipation of countries they conquered (Galbraith, 1997).

The economic transition is a type of economic development, which the former communist countries face in an attempt to adopt the market economy system. The transition from socialism to capitalism is not exactly a new topic of economics, capitalism being a system which is in constant evolution, so in terms of the economic theory transition represents a time-compressed economic evolution. Change management provides a useful perspective, the analysis of change at micro-level being helpful as the

institutional transformation is reflected in every organization, and respectively, in every individual. Change is defined mainly by a few basic elements. First we can consider the existence of interdependencies between various components of the system; changing one component will put pressure on triggering change to the others, not always desired, but there are also situations in which a component can be altered intentionally in order to produce the expected changes in the others. Secondly, we have to face the fact that there exist conflicts and frustrations that put pressure both towards change in certain circumstances and towards resistance to change in other circumstances. And last but not least, time lags can also be considered, and these are due to the fact that the different components of an organization adapt to change differently, at their own pace.

The transition is not a simple process to restore the balance of a system where interest is shown only given the final equilibrium conditions, the transition should also be viewed as a historical process, an evolutionary one; in this respect, this builds a market-based economic system while giving up old production relations which were based on centralized planning. The experience of countries that have faced a transition showed that there is no unique formula applicable to all transition-induced problems in different countries, because the institutional gap does not fill itself – changing the informal rules is done at a slower pace, requiring considerable effort. Similarly, the imposition of formal rules, though quickly achievable, will not automatically entail their compliance, more so if they conflict with the informal rules. And the economic performance is ultimately determined by these formal and informal rules/ norms. North (1995) notes that “the societies that adopt the formal rules of another (the way Latin American countries adopted Constitutions similar to the U.S. one) will register performance characteristics which will differ compared to the countries of origin, as the informal rules and their application will be different”. This is the reason why the results of similar measures may be different if the starting points in terms of institutions are different.

### **3. The Regions’ Evolution and their Perspective along the Romanian History**

Regionalism has quite a solid tradition in our country. Ever since the formation of the modern Romanian state the state divisions occurred as solid administrative units, each of them having its own particularities.

Subsequent to the Union on January 24, in 1859, a single administration was created a year later for both Moldova and the Romanian fatherland, which later on led to the initiation of the first draft on the administrative organization of the Romanian territory. Thus it was suggested that the partial decentralization of the administration should be achieved, jointly with the respective re-centralization at the ministries’ level of those activities that were of high importance for the socio-economic life of the country; another core objective was achieving better links between the different regions of the country, between central and local administrations, pursuing the idea of making a better match between the local communities’ potential and needs. The bill, which came into force in 1862, provided the organization of the country’s territory into four regions – general prefectures – which broadly overlapped historical regions (Oroveanu, 1986) – law which was later considered unfortunate on the grounds that a territorial division of the country based on historical provinces would only have led to the exacerbation of regional mind-sets, thus considerably restraining the perspective of absolute unification. Therefore, on April 2, in 1864, the *Law for county councils* was passed, granting the counties’ legal entity, by acknowledging their right to disposing both of their own assets and of obligations – a law which remained in force for several years until the administrative law of 14 June 1925 was passed, being amended 9 times during this period. The major event that marked Romania’s history between the two Unifications was the independence gained as aftermath of the Russian-Romanian-Turkish war (1877), and also adding the territory of Northern Dobrogea to Romania, thus gaining access to the Black Sea, but having to renounce three counties in southern Bessarabia.

After setting the configuration of the Romanian unified state subsequent to the joining together of Transylvania and the Kingdom of Romania in December 1918, four administrative arrangements were operating on Romania’s territory as integrative parts of a single global system: the administrative

regime of the Former Kingdom of Romania, the administrative regime of Transylvania, the administrative regime of Bassarabia, and the administrative regime of Bucovina. These four administrative delineations had their own uniqueness, indicating pronounced imbalances regarding both the size of their territory and demographics and their shape, position in the county council headquarters or degree of accessibility. From another point of view, the cohabitation of Romanians with other ethnic populations, in territories administered by different imperial capitals, led to the population of these regions having very different concepts in terms of administration, towards the centralizing trends induced by the Former Kingdom. Consequently, politicians have claimed that the most appropriate frame for accomplishing national cohesion and a climate of understanding and tolerance among the majority of the population and the ethnic minorities would be a decentralized administrative structure, allowing people from different parts of the country to preserve former institutions which distinguished their culture and traditions from those of the regions'. This differentiated legacy was reflected in the first administrative map of the newly formed Greater Romania which showed the association of heterogeneous territorial structures, which were formed and evolved under different political-administrative systems. In the interwar period projects on administrative unification were put forward, some of them being oriented towards centralization, others being based on an administrative regionalism based on decentralization and local autonomy. The contrasts – although they decreased in time – continued to remain quite profound, both at demographic and territorial level.

The Constitution of 1923 confirmed Romania as a unitary and indivisible national state, unifying the different legal systems inherited by the several regions of the state. The county was the basic administrative unit in charge of territorial activity coordination, the county' councils being directly subject to central authorities; the counties were grouped into administrative districts, these being allotted executive role but no legal entity, led by general administrative inspectors, to streamline administrative activities and for a better, more rigorous and uniform application of administrative guardianship.

The government led by Iuliu Maniu (1928-1930), focusing attention on the reform of administrative structures, passed the *Law on the organization of local administration* on August 3, in 1929, which was hoped to be an important step towards the local administration's democratization and decentralization. This law renewed the former idea of historical regions, organizing the country's territory in 7 *ministerial directorates* named after the cities appointed to function as administrative centers. Their delineation, partially overlapping the historical provinces, took into account both the ethnic criterion and the traditional relations established at urban system level. This administrative delineation remained stable for two years until 1931, when the National Rural Party lost control of the government; the Liberal government which succeeded in power abolished this administrative structure, considering that they would be divergent to national ideals and would threaten state unity.

The last administrative reform in interwar Romania took place after the royal dictatorship of Carol the 2nd set in, by adopting a new constitution on February 24, in 1938. This resulted in the counties association in the new macro-territorial structures – 10 *regions*, acknowledged by the administrative law of August 14, 1938. This time, the delineation of macro-regional administrative structures did not take into account the configuration of the former historical provinces, but assumed that they had to be “well-defined geographical and economic entities, putting together the united people of the new Romania, according to their real needs, to their natural geographical location, to means of communication, to the common character of the economic life, to available resources” (Calinescu, 1938:3-5). The avowed goals of the regions' delineation related to a better administration of local communities by subordinating them to a local governor, appointed by central government bodies.

It can easily be observed that the evolution of interwar Romania's administrative-territorial organization was a reflection of two conflicting trends, corresponding to the two political trends promoted by the coming-next-after parties in governance: a *trend of centralist character*, promoted by the Liberal Party, based on the local autonomy's suppression and on the denial of historical provinces, and another, of *regionalist, localist character*, supported by the Peasant Party, advocates of unity in

diversity based on macro-regions which were supposed to overlap historical provinces and have dispose of extensive local autonomy. But neither the advocates of centralism, nor those of regionalism have succeeded in creating new administrative units, settling for regional clippings put together by aggregating former counties.

The constitution of 1948, issued by the first government led by communists of pro-Soviet referencing, aimed to provide for a new administrative-territorial reorganization of the country, without being granted an immediate priority. Later, in the early '50s – a period which earmarked Romania's transition under the Soviet influence – the Soviet model was adopted, the administrative-territorial organization including *regions* and *districts*, so that the entire territory was divided up into 28 regions, being made up of districts (177) and villages (4052) – in accordance with the Soviet model. These were delineated according to the “criteria of social and economic complexity”, being considered administrative units which directly supported the central state bodies in the implementation of state policy. Their configuration does not resemble the former counties, relying heavily on former natural barriers represented by the Carpathians and the Danube, but also on the reason of the agricultural regions' subordination to urban centers, accomplishing integrated agro-industrial structures.

In time, the 28 regions were found to form an excessively fragmented structure, which was unresponsive to the political demands of that time; this form of organization could not survive the constitution of 24 September 1952, so that constitutional provisions were incorporated by decree 331/29 September 1952 which established a new administrative-territorial organization. Thus 12 regions disappeared – by blending – other two being set up instead, i.e. the Craiova region (by merging regions Dolj and Gorj) and the Hungarian Autonomous Region (by unifying the territories inhabited by szeklers – Covasna, Harghita and Mures). The natural consequences reflected considerable increase of the regions' territories and the disappearance from the country's administrative map of some former Romanian names, deeply rooted in the public perception, which were replaced by the names of local county capital cities or by “imported” names. The main reasons behind this approach were first of economic nature – the establishment of larger and more powerful regions, easily capable of reaching a higher level of economic specialization, and secondly of an administrative nature – aiming at accomplishing regions which were larger and easier to administer compared to central power authorities. But even these regions were not large enough, so that four years later (1956) other two regions will be eliminated; in the meantime other changes were made to former configurations, by passing some districts from one region to another.

After the withdrawal of Soviet troops' withdrawal from Romania in 1958, the Soviet communism stage was replaced by wave of communism of nationalist character, so the former Romanian names reappeared on the country's administrative map. At the end of 1960 there was a new administrative reform that amended the structure and configuration of regions, following the abolition or transition of districts or passage from one region to another. If the regions formed in 1950 were based on the criterion of economic potential homogeneity, the new regions were designed to be functional structures, encompassing different landscape units within their territories, as well as resources and varied potential, which altogether were aimed to generate economic complementarity. They did not vary much in size but more in the number of villages they comprised – 33 in Covasna to 125 in Ilfov. The central character represented the reason behind investing small towns (which were less developed economically) with administrative role, which therefore needed heavy investments in order to justify their role as coordinating centers and polarizing nuclei for settlement systems formed at the county level. But these measures generated other imbalances, so that besides stagnant – often regressive – dynamics of urban centers, which have never regained administrative function, there were also some disruptions at macro-territorial level. There resulted substantial differences in terms of areas and the power of polarization towards the surrounding rural areas. While some villages were under the influence of two or more urban settlements, vast rural areas remained on their own or were quite poorly polarized by an urban core. This discrepancy is also the reason why 49 of the larger rural settlements were granted the status of towns in 1968, (other 27 were added to them in 1998). On

January 1, in 1968, this structure was renounced and the current pattern was adopted, comprising 39 counties plus Bucharest, respectively – later on - 41 counties plus Bucharest.

Following the legislative provisions 8 regions have been established corresponding to NUTS II statistical level, thus not being considered administrative units. The regions of development were formed by the counties' association to a higher level, and they are named after their geographical position in the country (Table no. 1). Later on, by grouping the eight regions, four macro-regions of development were set corresponding to NUTS I level. Within the Romanian regional structure of NUTS type, only the NUTS III territorial units – comprising the 41 counties and Bucharest – dispose of territorial administrative competencies. The macro-regions and the regions of development have neither administrative statute nor their own form of governance or administration.

NUTS I	Macro-region I		Macro-region II		Macro-region III		Macro-region IV	
NUTS II	North-West	Centre	North-East	South-East	South-Muntenia	Bucharest-Ilfov	South-West	West
NUTS III	Bihor	Alba	Bacău	Brăila	Argeş	Bucharest	Dolj	Arad
	Bistriţa – Năsăud	Braşov	Botoşani	Buzău	Călăraşi	Ilfov	Gorj	Caraş-Severin
	Cluj	Covasna	Iaşi	Constanţa	Dâmboviţa		Mehedinţi	Hunedoara
	Maramureş	Harghita	Neamţ	Galaţi	Giurgiu		Olt	Timiş
	Satu Mare	Mureş	Suceava	Tulcea	Ialomiţa		Vâlcea	
	Sălaj	Sibiu	Vaslui	Vrancea	Prahova			
				Teleorman				

The current configuration (table no.1) following the general trends experienced throughout Europe, reflects the need to pursue an administrative system of regional type, by setting up macro-territorial structures (the 8 regions), based on the former historical provinces and on polarization centers which dispose of regional responsibilities. The territorial planning strategies considered founding the economic and social development on balanced spatial structures, which should ensure a balance between economic efficiency and social justice; the reality of imbalances and backlogs in the territorial development of the country on one hand, and the variety of landscape, natural resources, the demographic potential of areas in the country, on the other hand, amply justifies the need for an active regional policy to be developed and carried out by the Romanian state. These considerations of internal nature are complemented by ones of external character, given Romania's option to successfully integrate into European structures.

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THE 7TH EDITION OF THE INTERNATIONAL CONFERENCE  
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REALITIES AND PERSPECTIVES

## The Sources of Administrative Law and their Role in Consecrating the Administrative Space of European Union

Gina Livioara Goga<sup>1</sup>

**Abstract:** At the level of the European Union, we cannot find a proper law in the sector of public administration, there are no precise regulations of administrative law within the legislation of the European Union therefore we cannot talk about a system of administrative law characterized by written laws. The experience of half a century in European integration has proved, given the diversity of the systems of European law that the most important activity of the European judge was to create the law, to cover some gaps, to define or redefine the principles of administrative law. Since the jurisprudence of the Court of Justice of the European Union has known a more and more development and recognition in the past decades and especially at the level of the member states, *the European administrative law has been identified with these principles that seem to be defining it in the future in the lack of a general codification of what we call an European administrative space.* The purpose of this research is to understand the sources of the European administrative law analyzing at the same time the legislation of the European Union as well as the jurisprudence of the Court of Justice and the other instances of the European Union.

**Keywords:** sources of administrative law; principles of administrative law; European administrative space; European Union.

### 1. The Role of the Primary Law as Source of Law

*The sources of the administrative law of the European Union are the written law, the custom law, the general principles of law as well as the praetorian law.*

The primary legislation includes the *founding treaties* that instituted the European Communities, respectively the *treaties of amending them*. The first treaties, that instituted the ECCS, EEC and Euratom are named *institutive treaties or basic* as they comprise regulations the judicial literature named as *constitutional community law* (Cairns, 2008). This confirmation comes after which in the *Les Verts decision*<sup>2</sup> the Court asserted that within the new internal judicial order, of cross national dimensions, *the treaty has the character of fundamental constitutional chart.*

The institutive treaties establish the fundamental objectives for which they have been concluded, the community institutions and organs are created and their competencies are established, the judicial principles and action mechanisms are created in order to reach the wanted purpose. Even if their objectives were different, the three treaties comprised principles of common law. Therefore, in spite of the provisions comprised by the treaties in which the member states, respectively the institutions of the Communities had to respect the independent character<sup>3</sup> of the latter, it has been admitted that the

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<sup>2</sup> ECCJ Decision (April 23, 1986). *Les Verts/ European Parliament*

<sup>3</sup> In the content of the Treaty establishing the European Community it was stated that its dispositions do not have to modify the provisions of the CECO Treaty "especially in what concerns the rights and obligations of the member states, the attributions of the institutions of this Community and the norms established by the treaty regarding the functioning of the common market for coal and steel" (article 305, EC Treaty). To the same extent, article 42 in the Maastricht Treaty established that "under the reserve of the dispositions to modify the Treaty of establishing the EEC in order to establish the EEC Community, the Treaty of establishing the ECSC, the treaty of establishing CEEA (...) no disposition in the present

treaties can be interpreted through the others, often used being the EEC treaty, in the virtue of the common objective of the three treaties, namely the performance of the process of European integration.

The institutive treaties are structured, in general, according to certain criteria. Therefore, within each treaty, dispositions are found regarding the criteria of the institutional clauses (organization of the administrative structures) material (modalities for administrative action in order to fulfill the objectives of the treaties) aspects regarding their entering into force, review of the treaties etc. In order to apply these objectives, the Union has the help of the institutions that have executive character, respectively by *European administration* as is for example the Commission. The main obligation is to apply the provisions of the Union and supervise the way in which they are fulfilled. Also, the *Council fulfills certain activities regarding the put into force of the law of the Union*. Therefore, *there are regulations of the Council that are within this execution frame of the Union*. For example, regarding the provisions of article 65, within the Statute of the Public Servants of the European Union which stipulates the obligation of the Council to proceed to an adaptation of the remunerations of the higher servants and the servants of the Union, within the economic and social policy of the Union, the court of Justice stated that this measure is rather administrative that normative.<sup>1</sup>

Regarding the criteria of the material clauses, article 173 in the EEC Treaty (current article 263 in the Treaty of the functioning of the European Union, former article 230 TEC) the Court of Justice *had the right to judicial verification of the administrative decisions* having the ability to control “the legality of the acts of the Council and Commission, other than the recommendations or notifications”.

We also have to mention that once the process of unification<sup>2</sup> of the institutions that belong to the three Communities was performed action, it has been ensured a higher degree of cohesion in what concerns the activity of the political and administrative institutions of the Communities so that the principles regarding the public administration gained an uniform practice concerning the three treaties.

The most recent dispositions regarding the amendment of the institutive treaties are the ones provisioned in the Lisbon Treaty. Therefore, article 20 in the Treaty of the European Union<sup>3</sup> regulate a different chapter regarding the forms of cooperation, through which the member states can establish, within the nonexclusive competencies of the Union, a form of consolidated cooperation. This form of cooperation takes place through the institutions of the Union and targets the accomplishment of the Union’s objectives, the protection of these objectives and the consolidation of the process of integration. The acts that have been adopted as a result of the cooperation between the states are mandatory only for the member states participant to and do not represent an *acquis* that has to be imposed to the candidate states in the process of adhesion to the EU.

## **2. The Derived or Secondary Law**

*The derived law* is made of all the normative acts adopted by the institutions of the Union according to the purpose and objectives established in the constitutive treaties and based on the competencies established through them. The secondary legislation<sup>4</sup> comprises *regulations, directives, decisions*,

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treaty does not breach the treaties of establishing the European Communities nor the treaties or subsequent acts which they modified or amended”.

<sup>1</sup> ECCJ Decision (June 5, 1973). *Commission c. Conseil, Aff. 814/72, Rec., 1073*, p.575.

<sup>2</sup> The process of unification began on March 25, 1957 by the adoption of the Relative Convention for some institutions common to the three communities and ended in 1965 with the conclusion of the Treaty of merge on the establishment of a Council and Commission common to those there Communities.

<sup>3</sup> Article 20 modifies a series of articles, respectively articles 27 A-27 E, 40-40 B, 43-45 TUE and articles 11 and 11 A in TEC.

<sup>4</sup> In article 189 in the Treaty instituted EEC was stipulated that in order to fulfill their mission and in the conditions provisioned by the treaty, the Council and Commission can adopt regulations and directives, can make decisions and formulate recommendations or notifications. According to article 249 in the Treaty establishing the European Community (former article 189 in the EEC Treaty) the institutions adopting regulations and directives, made decisions and formulate recommendations and notifications are the European Parliament together with the Council and Commission. Currently,



*recommendations and notifications*. The inclusion of the normative acts in this listing does not send to the idea of a hierarchy from the point of view of the superiority of one of them instead of another act of the Union. Still, in practice, it is a custom that through the adoption of a regulation, the basic dispositions from a certain domain get regulated and based on that the directives and decisions are adopted or, on the contrary, within a directive the main frame is found, and the regulations and decisions complete them (Craig & De Burca, 2009).

Regarding the first three types of acts adopted by the institutions of the Union, they together represent the *category of the formal acts* while the recommendations and notifications form the *category of informal law*, together with the other *measures or methods of developing the policies of the Union* and are called *soft law*. These informal norms are found in practice under the shape of general orientations or inter-institutional agreements.<sup>1</sup>

The regulations have a general applicability that do not require the transposition within the national law therefore they have direct effects (Alexandru, 2000).<sup>2</sup> By direct applicability of a regulation, the Court of justice, in the *Cause Variola SpA v Italian finance administration*<sup>3</sup> defines “the entering into force and application in favor or in the detriment of the subjects of law” which “accomplish independently from any measure of take-over by the national law”. The member states have the obligation, according to the treaties, not to obstruct the inherent effect of the regulations and other community judicial norms, as a necessary condition for the simultaneous and uniform application of the regulations on the territory of the Union. Regarding the possibility of access for the private or legal subject to the Court of Justice in order to cancel a normative act that carries the name of *regulation*, this is inadmissible. This aspect results from the conditions of admissibility expressly provisioned in the content of article 263 TFEU. Still, the Lisbon Treaty brings something new. The normative acts will be able to be attacked (such as regulations or directives) but only if they regard the private or judicial person directly and if execution measures are not imposed. To this end, the conditions will be accomplished to determine the validity of a regulation, validity owed to the norms with general character that it regulates and that have to be applied at the level of all the member states, and on the other hand, due to the effect of *direct applicability* in the member states.

The *general applicability* derives from the fact that it is applied to some situations determined in objective manner and the judicial effects target categories of people that are not identified and have an abstract character. Still, there are situations when such an act can have both the characteristics of a general and abstract act as well the features of a decisional act. In practice, there are cases in which a certain measure that carries the name of a regulation is actually a decision, so that in the assertion of a legality control in front of the Court, the conditions of form of the act will not have priority, namely the *character of the mandatory force of the judicial act* or the fact that *the act can produce judicial effects*. In order to make a distinction between the regulation and the decision, in the Court’s jurisprudence<sup>4</sup> it has been stated the necessity to distinguish is one of these acts has a general applicability or not, being asserted the nature of the act attacked, exactly the judicial effects that this act produces or will produce. To this end, it will be verified if the act individually aims at a person.

*The directives* are mandatory for the member states, but their transposition<sup>5</sup> remains the task of the member states. In other words, according to the conception in the civil law, it is *an obligation of result*

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article 288 in the Treaty on the functioning of the European Union it is mentioned that for the exertion of the competencies of the Union, all the institutions adopt regulations, directives, recommendations and notifications.

<sup>1</sup> Ibidem. See regarding the measures of developing the policies of the Union the dispositions of Protocol no.2 on the application of the principles of subsidiarity and proportionality, attached to the Treaty of the European Union and the Treaty on the functioning of the European Union, that follows the establishment of the conditions for the application of the principle of subsidiarity and proportionality, respectively the institution of a control system for the application of the two principles.

<sup>2</sup> In practice, it has been admitted that there are split in two categories, respectively the category of basic regulations or regulations of derived law of level I and the category of administrative regulations or of derived law of level II regarding the activities of execution and can be assimilated to the administrative acts with normative character.

<sup>3</sup> ECCJ (1973) Case 34/73. *Variola SpA. v Italian Administration of Finance*.

<sup>4</sup> ECCJ Decision (February 24, 1987). *Deutz und Gelderman/Consiliul*, 26/86, Rec., p. 941.

<sup>5</sup> The regulations are automatically valid in the member states and do not have mandatory direct effect if they have a subsequent legislation. See to this end the case 39/72 *Commission v Italy* (1973- regarding the killing of the cows) and case 970

and not an obligation of diligence as the member states are not only encouraged to respect the treaties but they are obliged to apply them. At the level of the Union, the institutions have some certain flexibility in choosing the act that enacts, concerning the enactment through regulation or through directive. The adoption of regulations is preferred because they ensure an immediate impact, specifically precise and clear in order to enact, which is greater than in case of enactment through the directives (Craig & De Burca, 2009). On the other hand, the enactment through the regulations confers the highest degree of convergence through the applicability of its content in an uniform manner, to all the member states. Still, this independence regarding the right of the Union's institutions to assert the type of act that has to be adopted at the level of the Union is censored through the treaties that state the cases in which the institutions are obliged to adopt only directives.<sup>1</sup>

*The decision* is completely mandatory for the subjects aimed. The decisions of the EU represent acts with mandatory character, directly applicable, issued individually, both to the member states as well as to private or legal subjects, in which clarifications are made regarding the way certain administrative measures can be put into practice.

*The recommendations and notifications* are the only acts that do not have mandatory character for the member states, as the latter are the ones deciding if they will consider the former or not in fulfilling an objective provisioned by the EU. To this end, the Court of Justice<sup>2</sup> stated that in fact, the precise judicial effect that such an act can produce does not have the nature to determine the right to invoke the provisions of this act by a individual in front of the Court in order to control the legality of the behavior of the Union's institutions without presenting importance to the nature of the appeal, respectively an annulment appeal or a action for damages.

### 3. The Role of the Custom Law as Source of Law

In the area of the European administrative law, the *custom law* has not gained the character of source of law. In order to produce such effect, the custom norm has to have a long and continuous practice, in this case being obvious that such norms cannot have been consolidated through a long practice if we relate to the moment of the creation of the European Communities. Even if there were some principles that were applied in a reduced proportion and obviously un-uniform within some administrative procedures at the level of the European Communities, these principles cannot have the character of non custom norm.

In the jurisprudence of the Court, in *cause Watson and Belman*<sup>3</sup> the general attorney stated that fact that these principles have been catalogued as having the value of some unwritten principles of law that contributed to the accomplishment of a spontaneous judicial order at the level of the Union. Given that

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128/78 *Commission v Great Britain* (1979). In an effort to improve the transposition by the member states of the directives and avoidance of the application actions, the Commission organizes meeting in the member states named *directive meetings* to analyze the way in which the member state approaches the implementation of the directive and solves the eventual problems. The member states seem to improve the implementation of the directives, in the annual report no.18 (COM 2001) the Commission reported an improvement in the rate of transposing and the highest rate was reached in 1992. The Commission was encouraged by the fact that the transposing rate was growing in every state. This improvement continued until 2001 and the situation improved even after the extension. The 10 member states that adhered in May 2004 have reached high rates of transposition and until December the average was 97.5% for the old 15 member states and 97.3% for the new 10 states, reaching an average of 97.69%. an integrated system of electronic notification of the national measures of transposition of the directives became operational in May 2004 and the new member states are using it. Up to the end of 2004, only France, Holland and Sweden did not enter in the system (The 22<sup>nd</sup> COM Annual report (2005) (570).

<sup>1</sup> For example, article 50, paragraph 1 in the TFEU states that "in order to accomplish the liberty of establishment regarding a determined activity, the European Parliament and Council, decides according to the directives". Also, article 52, paragraph 2 in the TFEU states that "the European Parliament and Council deciding in accordance to the ordinary legislative procedure, adopts directives regarding the coordination of the dispositions mentioned previously".

<sup>2</sup> ECCJ, connected causes C-120/06 P și C-121/06 P, *Fiamm and oehrs/Council and Commission Consiliul and Commission in ECCJ Repertoriul jurisprudenței Curții de Justiție și a Tribunalului de Primă Instanță/ Repertoire of the jurisprudence of the Court of Justice and Court of first instance*, Part I, Luxemburg: CURIA, 2008-8/9 (A), p. I-6515.

<sup>3</sup> ECCJ (1976). Cause 118/75, *Watson and Belman*, Rec.

these principles do not gather the conditions listed above, the Court avoided to decide on the matter, namely that at the level of the European administrative practice there were no practices of this nature. By not having clear regulations within the treaties regarding the principle according to which the European administration has to perform its activity, the Court of Justice defined the so called unwritten principles. These rules of the law of the Union have the features of fundamental norms of law in the jurisprudence of the Court. In fact, the unwritten principles are nothing more than rules or principles of law existent within the constitutional traditions of the member states. For example, regarding the *principle of good administration*, in the decision on December 10, 1957 on the *High Authority*<sup>1</sup>, the Court stated that its obligation is to examine the aspects that are particular to the individual cases represent the essence of a good administration, these principles being nothing more than unwritten rules of the ECSC law. Subsequently this principle gained the character of written norm but a few decades later. The role of its consecration within the jurisprudence so soon is owed to the long tradition it has in states such as Holland, Belgium or Great Britain.<sup>2</sup>

Also, there is the possibility that on a longer basis, the two systems of administrative law, the national and the European one, would not be maintained within the internal judicial order in a certain state, as the European legislation cannot function as an efficient system if is not applied in a uniform way. In other words, the success of the European integration would consist in performing a *codification of the administrative law*, respectively of *the administrative principles*, that would determine a higher transparency at the level of the Union. Currently, at the level of the Union, we cannot talk about a general codification of the law of administrative procedures because there is no express judicial competence from the EU and no significant judicial-political will but we can assert that the first steps have been made to the codification, *the Community Code of Customs* being the best example in this matter (Schwarze, 2007).

If we attempt an analysis of the jurisprudential system existent in Great Britain, we will notice that *under the influence of the europeanization of the Union law, the British system has adopted several rules of law unwritten that they apply here in the case of the administrative procedure such as the irrational character or unreasonable character of the decision*, as procedure vice (Fromont, 2006).

#### 4. The Jurisprudence as a Source of Law

Given that the legislation of the EU does not comprise regulations that would define the principles applicable to the European administration, the Court of Justice had the role of defining these principles by inspiring from the general principles of the existent public administration at the level of the member states. Therefore, the absorption of the regulations of the Union takes place without strictly regarding the legislation of the EU in the form of the obligation to implement. It is the transfer of some principles that belong to other member states but through the EU law. The principles of European administrative law are shared by the member states at the moment of the implementation and application of the Union's law on one side as being a natural event and on the other side, these principles guide the national law of the states in the future actions, under the guidance of the jurisprudence of the Court, principles that are gradually included in the content of the Treaties.

*But, as we will see, neither the states with experience within the EU and in general all the states that have adhered in the past decade, including Romania, cannot praise with remarkable results in what concerns the takeover and application of modern principles within the public administration under the influence of Europeanization.* Except from some founding states, which has systems of administrative law of reference at the level of the EU, the other states have been pushed to apply these principles for

<sup>1</sup> ECCJ Decision (December 10, 1957). *Usines à tubes de la Sarre c. Haute Autorité*, Causes 1/57 and 14/57, Rec., p. 201, 209, 220.

<sup>2</sup> In the cause *Girardot*, with the object of damage claims, based on article 91, paragraph 1 in the Statute of the EC public servants, the Court of Justice proceeds at solving the appeal by examining the judicial systems of the member states at the moment of referring to the Court of First Instance of the European Communities. CJCE, C-348/06 P, *Commission CE/Marie-Claude Girardot*, p. I-848, I-849.

at least two reasons. Firstly, it is about imposing the criteria of adhesion to the future candidate states that were conditioned by the performance of remarkable progress and in a very short period of time and once they adhered, of a process of gradual integration in the European administrative space. For example, the European Council in Madrid in 1995 underlined the necessity to adapt the administrative and judicial structure of the candidate states. Secondly, it is relevant the development of the Union depending on the modifications that took place in trade, legislation, litigations and lobby in the life of the European community (Haas, 2004) and another period of gradual European integration according to the evolution<sup>1</sup> that took place between the member states but also at their borders.<sup>2</sup>

From the perspective of the legislative sector<sup>3</sup> an increase in the activity of the Union was registered as the perception of the legitimacy of the rights regulated by the EU raised. The number of regulations, directives, and decisions adopted raised too, and together with it an intensification of the judicial activity at the level of the Court of Justice of the EU. Any public or private actor had the ability to address the Court of Justice if their rights recognized by the legislation of the Union were breached. For example, article 234 in the Treaty of Rome allowed the national judges to require the Court of Justice interpretations regarding the causes that involve disputes on the laws of the Union.

*The increase in the activity of the Court reflects the degree of development and intensification of the institutional activity of the Union, as well as certain aspects regarding the integration of the member states in the European space.*<sup>4</sup>

## **5. Conclusions**

If we analyze the *percentage in which the case law of the Court of Justice of the EU is applied at the level of the member states* we will notice that the proportion is very low. Although a European administrative law is delimiting, some member states did not adapt to the principles imposed by the jurisprudence because of the administrative traditions existent at their level. In spite of the absorption of the ideas and principles, especially by the states that have adhered recently, the process of the consolidation of the democratic traditions has proved to be the hardest to accomplish. A more intense activity was therefore imposed to the national courts under the aspect of the implementation of the decisions of the Court of the European law in general as well as the necessity of a codification of the rules of coordinating the indirect administration of the law of the European Union (Schwarze, 2000). The conclusion deriving from the present paper is that the consolidation of the system of administrative law of the European Union has been accomplished together with the development of the role of the jurisprudence of the Court of Justice. Actually, the notion of *European administrative law* has gained a certain expansion and certain characteristics at the level of doctrine once the

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<sup>1</sup> These results have been explained by the non functionalist theory regarding the regional integration of Ernst Haas, appeared at the end of the 50s theory according to which the integration was approached on certain sectors and that inevitably would generate a development of other sectors in the meaning of the integration due to the links between them. The phenomenon of positive integration and negative integration seem to be responsible for the excess of power on the market.

<sup>2</sup> A first period is the one between 1958-1969 when the preoccupation was to create institutions and vitalize their activity. The second period is between 1970-1985 period in which the Commission and European Court of Justice have been preoccupied especially in eliminating the borders of trade in order to create a Unique Market within the European Communities and the cross national exchange but also the harmonization of the policies between the member states. The third period is after 1986 together with the adoption of the Unique European Act modifying the system of voting in favor of the qualified majority. This is the reason for which after 1986, there is the most active stage of the European institutions reflected in the program of the Unique Market.

<sup>3</sup> The trade between the private actors of the member states has raised, as in Brussels there were more and more groups of lobbyists. They influenced the elaboration of the community legislation reason for which at the creation of the Communities there was the attempt to draw them together with the officials of the Commission and even their involvement in influencing the over national policies.

<sup>4</sup> For example, at the beginning of the 60s, the number of the causes brought to the Court of Justice by the member states was not so high. Toward the end of the 60s they begin to grow and more and more gaps are starting to form in the national legislation in favor of the Community legislation. From this moment on, at the level of the Union, there was a need for the elaboration of a legislation that would govern the free circulation of the goods, respectively the need for a normative frame and institutional frame, both stable.

jurisprudence managed to answer the most acute problems existent at the level of the direct and indirect administration within the European Union. On the other side, *as long as the jurisprudence of the Court will prevail as importance, there is the risk that we cannot wait for a possible codification of the norms and principles of administrative law very soon.*

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THE 7TH EDITION OF THE INTERNATIONAL CONFERENCE  
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REALITIES AND PERSPECTIVES

**Reorganization of Public Institutions in Romania  
Caused by the Economic Crisis**

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**Abstract:** Any organization is established to achieve a mission, a goal and certain specific objectives. In the Romanian's case, due to the financial crisis and the IMF requirements for their loan, certain agencies and departments of several ministries or public institutions have been dismissed or reorganized. We ask ourselves – who is to continue the activity of those organizations? Is it possible that after the reorganization, the institution to properly function with less staff? Is it about the fact that Romania cuts public expenses, by giving away certain priorities (respectively, organizations?) How do the new organizational structures look after being reorganized – can they handle the initial objectives? The topic in hand: Government says that these reorganizations are to earn to the public budget a considerable amount of money, and that they are not to affect the organizations' activities. Our paper will include analyses of the organizational changes, following the factors of change, the objectives for change, the forms of change and episodes of changes and their results. Research methodology: 1. analysis and comparison of organizational objectives and missions before and after reorganization; 2. analysis and comparison of two organizations subordinated to the government before and after reorganization.

**Keywords:** organizational change; reform, public administration; public institution

## 1. Introduction

Generally, the public sector and particularly public institutions are regarded as strongly opposing change. The aim of this paper is to analyze and observe the resilience of public institutions in Romania with regard to the organizational changes arising from the economic crisis. More precisely, we will observe how public institutions have operated and are operating in their organizational structures, under the constraint of lack of funding. Also we will analyze crisis management as a changing factor for public institutions, changes in the public sector being the more critical as the forms used to address change management are often poorly adapted.

The issue is relatively simple to understand in the case of private organizations as these are in direct interaction with the market. If they don't meet the needs and opportunities of their market, they are sanctioned by the loss of turn-over. This is not the case of public organizations which do not benefit from this instant feedback.

Greiner (1972) estimates that the organizations' dynamics in increasing their number follows a succession of phases of evolution and revolution and demands stability in the latter. Crisis are characterized by such a scope that they entail major transformations affecting both the institutional structure and the behaviors and objectives. The nature of the crisis depends upon the development stage in which the institution is positioned. Nutt and Backoff (1997) suggest using the unbalances caused by crisis to make managers agree to the institutional change. Greiner (1978) on the other hand

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points toward defining as a change (in a crisis situation), a new organizational pattern for the next evolution phase.

To achieve what we intended the paper will include a theoretical part at the beginning, based on specialized literature on change in public institutions and a second part which will summarize the conclusions withdrawn from cases of organizational change registered in the crisis of two public institutions in Romania.

## **2. Organizational Change**

Change is a concept that encompasses many different meanings. To change means in the same time to become, to adjust, to adapt, to transform (Beaudoin, 1990). Some authors have defined change as the transition from one state to another, observed in the environment and which has a relatively permanent nature (Collerette, Delis and Perro, 1997). In his mind, change could be switching from a current state to a desired state, a current original case considered inappropriate into another deemed as adequate and which meets better the demands or the new aspirations of the concerned people (Belanger, 1994). Thus, for Belanger, change is in a way a version of imbalance. Therefore, it can be considered as the source of a more or less comfortable or directly proportional to the search for a new equilibrium point.

There are many definitions of organizational change, out of which the following two seem the most relevant: according to Grouard and Meston, organizational change is "the process of radical or marginal transformation of the structures and competences set up in the process of the development of the organizations (Grouard and Meston, 1998); for Collerette, organizational change is "a relatively sustainable change occurring in a subsystem of the organization, provided that this change can be observed by its members or by those who are connected with that system" (Collerette, Delis and Perro, 1997).

"Organizational changes are answers to some external forces such as changes in the market, different pressures in terms of competitiveness, etc, or may be caused by some endogenous variables, such as manager's tendency to apply different methods / techniques (Burduş and Androniceanu, 2000).

Usually, institutions transform themselves in a rather incremental way, and not discontinuously (North, 1990).

### **2.1. Trigger Factors for Change**

**2.1.1. External factors** are generally associated either with the environment within the organization, either to external factors which changed it. Grouard and Meston (1998) have identified six major external factors, considered as reasons for change: market, competition, technological innovation, changes in laws and regulations, structural changes and developments in society, lifestyle and way of thinking.

The main sources of change, in fact factors justifying its necessity are: 1. economic factors: economic crisis, market globalization, marked differentiation of market segments, free movement of capital (human, financial) at a global scale; 2. the development of technologies; 3. socio-cultural factors: demographic situation, the polarization of society, changes in the system of values and aspirations, level of corruption in the country; 4. politico-legislative factors: attitude towards entrepreneurship, attempted nationalization of organizations, political instability, inefficient legal basis; 5. ecological factors: climate change, negative influence on the ecosystem.

An important thing about these external triggers is that some of them are less predictable than others and thus less open to change scheduled (proactive).

**2.1.2 Internal factors** are associated with the organization itself. They can occur throughout the entire organization or only to one of its structures: offices or service. Besides the obvious influence of exogenous factors, changes can be caused by forces of the organization's internal environment, namely: internal conflicts: psychological conflict, confrontation between different value systems; staff

turnover; strikes (wage demands, improving working conditions); innovation efforts to introduce cultural change (management style) (Gerald, 2004); need to improve quality of service, make better use of resources; need to address potential new services created by research and development and marketing department; crises - are a common cause to launch change programs (launching a new service failure, the failure of a manager).

Grouard and Meston (1998) have identified two internal factors, appointed and determinants of change: (1) development of the organization and its growth, and (2) the management's vision.

**2.2. The actors of change.** Analyses of change and theories of organizations have often questioned the problem of relations between actors and systems. This classic problem has been addressed either privileging one pole depending on another or trying to highlight the margins of freedom of actors, operating strategies by them or by revealing construction operations or mutual structuring of actors and systems or structures.

Even if the actors of change are often anonymous and difficult to identify, in the specialized literature we find three types of actors: (1) engineers or technicians working with structures and strategies that are often expert-consultants (internal or external) who play the role of tutor or/and "facilitator of change"; (2) the leaders of change which present themselves as the initiators of change in the direction of change and innovation (3) the "victims" of change represented by the individuals and/or organizations subject to change. The actor represents basically the interface of change and is engaged in carrying out arguments made on these actions.

**2.3 "Objects" of change** are first of all the actors of the organization or of its background. Beyond these human factors, "objects" of change can be both material and ideal. The material ones have as an object, the structures and contexts of action (example: shift from a pyramid structure to a network structure) or processes (e.g. The shift from standardization to flexibility). Ideal objects of change, generally reveal strategic guidance of individuals or organizations, or of culture (e.g. shift from a culture of control to a culture of trust) and /or knowledge (e.g. the dynamics of tacit and explicit knowledge). The changes of ideal "objects" are related to those material and may result one from the other.

**2.4 The shapes of the change.** Many authors distinguish between a change type [1] which is breeding and evolutionary and a change type [2] which is transforming and revolutionary (Miller and Friesen, 1984). According to Tuschman and Romanelly 1994, the life of organizations is characterized by long, stable periods of convergence where change is limited to incremental adjustments which strengthen the strategic guidelines already chosen, followed by revolutionary changes in short periods rarely named as shifts. In some cases, successive incremental adjustments are likely to lead to radical changes in the system. These partial adjustments of the subunits lead either to an overall recovery of the organization; either is at the origin of progressive and continuous loss in what concerns the resilience of the organization to its surroundings.

**2.5. Aims and functions of the change.** Many approaches regard change as one of the missions of the managers. A performing manager would be the one who is able to change things in a "good sense". The change would be therefore a manifestation of power and strength. This view is dominant and serves mainly to persuade current and future managers (in training) on the usefulness of reflection on organizational change. There are two schools of thought in the specialized literature: either change in technocratic manner in order to improve or reform a given system, be that change is approached from a critical political approach and whose finality consists less in reforming the system taken into account but only in a change which is more or less radical.

The technocratic and functionalist conceptions of change is regarded as a process of building an organizational consistency (internal / external, intrinsic / extrinsic) or alternatively, change itself as a result of the dynamics implied by organizational consistency. In the first case the attention is on the notion of convergence, while in the latter case attention is on the concept of co-evolution.



The political conception of change draws upon the sociology of conflict and different form of interaction. It is considered that management literature is not only not-critical but also anti-critical. This political conception or critic of change aims at the empowerment, autonomy and accountability of individuals. Values and meanings generally presented as preconditions or results of a good change would only be changes and veta thrown in relationships of power and strength. Change would also be the proof and the result of domination that managerial literature (especially that related to change), strengthens and mystifies.

### **3. The Economic Crisis – a Factor of Organizational Change in Public Institutions in Romania. Case Study: National Institute of Administration (NIA) and the National Agency of Civil Servants (NACS)**

#### **3.1. Description of the current situation in Romania**

##### **3.1.1. Global and European economic context**

The latest estimates indicate an extension of the economic crisis. The decline of the annual GDP accelerated in the emerging economies of Europe in the second quarter compared to the same period of 2008, the Baltic states were the most affected: Lithuania-22.4%, Latvia -19,% Estonia -16.6% also Slovakia registered a contraction of 5.3% in the second quarter, Hungary 7.6% versus 6.7% in the first quarter<sup>1</sup>.

##### **3.1.2 Romania's economic situation**

In July 2009, Romania registered an annual inflation rate of 5.06% over June 2008 and a 0.77% decrease from the previous month. Romania had the highest annual inflation in the European Union in July (according to EUROSTAT), the EU average was 0.2% and the euro area recorded a deflation of 0.7%.

According to early estimates made by the National Institute of Statistics, Romania's gross domestic product declined by 8.8% in the second quarter of 2009 compared to the corresponding period of 2008 and first quarter 2009 compared with 1.2% (seasonally adjusted data). Following the August 2009 budget adjustment, the budget deficit for 2009 was set at 7.3% of gross per domestic product.

These financial data and projections made by competent authorities in the field outline the image of a deep economic crisis, threatening the economic stability of Romania and, thereby, public order and national security.

Therefore, the economic crisis, a global phenomenon that affects the structural Romanian economy, required exceptional measures, which, by their efficiency and timeliness of application, reduce its effects and lead to prerequisites for a national economic recovery. However, these measures should ensure the fulfillment of the obligations under the Memorandum of Understanding concluded between the Government and the European Commission and the Stand-by Agreement between Romania and the International Monetary Fund (IFM).

To this end, in November 2009, passed the Law no. 329 on the reorganization of public authorities and institutions, rationalizing public spending, support business and compliance with the framework agreements with the European Commission and the International Monetary Fund published in the Official Gazette, Part I no. 761 of November 9, 2009.

The law provides two types of solutions:

1. reduce expenditures by:
  - The reorganization of public authorities and institutions;

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<sup>1</sup> Source: Government of Romania, Background note of the draft law on the reorganization of public authorities and institutions, rationalizing public spending, support business and compliance framework agreements with the European Commission and the International Monetary Fund

- Reducing staff costs in public authorities and institutions;
- Strengthening financial discipline in the autonomous administrations, national companies and companies owned or state majority companies
- Limit the possibility of accumulation between the pension and the salary.

2. To support the business field, to strengthen its capacity to overcome financial difficulties caused by the current economic context and to revive the commercial circuit by:

- Exempt profits invested in equipment (machinery, equipment) used in the pursuit of basic activities;
- Fostering the renewal of the national auto park, including the one destined to agricultural work;
- Facilitating access to funding to recipients from the agricultural and food sector.

The measures established in the law have the effect of a **public administration reform, streamlining and rethinking spending budget destinations** for stimulating investment and business development support. Seen from a social perspective, the law draws a substantial reduction of jobs in budget system (the central and local government, the autonomous, national companies, companies owned or majority state), limiting thus the taxpayer's effort in supporting the administrative device.

### **3.2. Organizational change within public institutions in Romania. Case Study - National Institute of Administration (NIA) and the National Agency of Civil Servants (NACS)**

As illustrated by the above mentioned economic figures, Romania was in a delicate situation. When contracting the credit from IMF, the Romanian Government pledged to reduce public expenditure (expenditure on salaries in the public sector was around 8% of annual GDP, which was according to the IMF a large figure). The political power had two options: either reduce employees' wages or to lay off staff. The government took the following decisions: it didn't reduce wages – instead, it decreased bonuses and reorganized and abolished some of the public institutions deciding that vacancies in these institutions should be blocked.

In this study we will analyze how the National Administration Institute, a national public institution with legal personality subordinated to the Ministry of Interior was abolished and was merged by acquisition and takeover activity by a new direction namely the National Agency of Civil Servants. According to Law 329/2009 merging by acquisition was expected to reduce 18 positions in the headquarters of the NIA, currently The Directions for Training and Professional Improvement of the NACS. Following this absorption, the NACS undertook the activities of NIA and added to its original mission and objectives those of NIA (see Table 1). Programs and projects of NIA were assumed by NACS and will be run by it until their completion.

Meanwhile, the second institution analyzed, NACS<sup>1</sup>, was reorganized in the following ways:

- a) Dissolution by merging by acquisition of NIA and acquisition activity by a new direction to set up the National Agency of Civil Servants,
- b) Abolished regional training centers for local government and takeover activity by newly established institutions subordinated to the NACS, and
- c) Reduction of 20 positions.

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<sup>1</sup> Specialized body of central public administration, with legal personality under the Ministry of Administration and Interior

**Table 1**

Criteria	The National Institute of Administration (before dissolution by merging by acquisition)	National Agency of Civil Servants	Directions of training and professional development of the NACS
Mission	Develop strategy and provide training and development of specialized education in administration, for civil servants and staff with individual employment contract in public authorities and public institutions, for persons appointed or elected to positions of public dignity or their equivalent from the central and local government as well as for other stakeholders.	Ensure the implementation of strategies and of the Government Program in the field of management for civil and public servants, and training of government personnel.	
Aims	-Manages various forms of training. -Conducts studies, projects and publications in the field of public administration.	-Update the strategic and normative framework in the field of the management in public administration and civil servants. - Efficient management of administrative procedures relating to civil and public servants. - Increase management capacity of public offices and records of public officials. - Increasing the transparency and integrity of the public office.	
Attributions	a) organizing specialized training courses in central and local government; b) training of specialists in the field of electronic platforms for the public administration c) certification of compliance with international quality standards of local public administration, directly or through collaboration with regional training centers for local government	a) Bringing under regulation the civil service; b) providing the management of the public office and the civil servants; c) providing training of civil servants; c) providing training in the public administration; d) managing civil service programs; e) monitors and controls activities related to civil and public servants.	a) provide training for senior civil servants, civil service managers, young civil servants who may become public managers, young graduates, future public managers, civil servants working in the central government b) ensure institutional communication and collaboration with other institutions that organize long terms trainings c) organize a specialized training program in public administration, with a duration of 2 years, for graduates of long-term higher education, with a bachelor, aged 30 years, to quickly access their public function according to the requisites of the law; d) organize specialized training for senior civil servants; e) organize a specialized training program, lasting one year for young civil servants under 33 years and with maximum of 7 years of experience; f) organize specialized training programs, lasting one year, for civil servants holding management positions g) Organize development programs up to 90 days, intended for senior civil servants, civil service managers and executive civil servants of the central government; h) Organize seminars and conferences

				on major issues for local and central government.
		Before reorganization	After reorganization	
Maxim number of jobs (excluding high officials and jobs connected to the minister's office)	70	120	190	
Number of hierarchical levels	7	8	8	
Number of general directions	4	1	1	
Number of directions	7	5	6	
Number of services	5	5	10	
Number of offices	-	2	2	
Number of compartments	-	8	8	

As a consequence of the reorganization of the NACS, one can observe that the organizational structure has changed, increasing, namely:

- after the dissolution by the merging of NIA and the takeover of the activity by a new Direction for NACS, one can note that all the subdivisions of NIA turned in a direction which has a service subordinate;
- also, according to NACS flow chart, before and after the reorganization, the number of hierarchical levels is the same, eight, but nevertheless NACS, according to Government Decision 1000/2006 regarding the organization and operation of the NACS updated, reserved the right to create offices and other departments under the law by order of the President of the Agency, under certain circumstances.
- the number of General Directions is the same, one, but not the same General Direction - in the place of the Legal Direction for Development and Implementing which was abolished, was created the General Direction for Civil Service Management;
- the number of directions increased by one division - was emerged the Direction for Training and professional development;
- the number of services increased by five division - was emerged five new services: Service for organizing and implementing programs, Service for methodological coordination, Service for operational management, IT service and Service for policies and strategies.
- the number of offices is the same, two;
- the number of compartments is the same, eight.

Analyzing the above note, one can notice that although an institution has disappeared and another was reorganized, the continuing of missions and objectives are ensured both by the former NIA through the newly created Direction and by the NACS which reduced the number of positions.

We conclude that through the modifications made, the goal of reducing costs to the state budget was achieved. If in the studied case an institution was abolished by merging by acquisition, in other cases dissolution occurred as a result of merger consolidation by creating new legal persons or cancellation by dividing activities, which are taken by other institutions, without any resulting entities. In other cases there was only a reduction of the number of positions.

#### 4. Conclusions

Following the political decision making (no managerial / technocratic) to reduce costs to the state budget, most public institutions in Romania have undergone reorganization. In this paper we describe the theoretical context of such changes and model (reduction of posts, merging by absorption) thereupon of the institutions subject to this phenomenon have been reorganized. Change was not planned, but was rather a radical one, so the Government could subsume within the requirements of lenders. The changes analyzed in our study were made only based on economic reasons (imposed by external factors) and were not related to the improvement of the organization. Note that in times of crisis, the political power adopts exceptional solutions. In our case, it is yet to be proven if such future changes will be beneficial for these institutions. As IMF provided all tranches of the loan contract, one can conclude that the changes were seen by this international institution as positive ones, at least from an economical perspective.

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THE 7TH EDITION OF THE INTERNATIONAL CONFERENCE  
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REALITIES AND PERSPECTIVES

## **Decentralized Local Services for Improvement of Quality of Life in the Republic of Macedonia, Case Study Tetovo Municipality**

**Memet Memeti<sup>1</sup>, Agron Rustemi<sup>2</sup>**

**Abstract:** The process of decentralization in Macedonia began in July 2005, after the adaption of the constitutional amendments made which triggered the process of the decentralization in the Republic of Macedonia. Having in mind that the decentralization implied structural changes in the Macedonian political system and in relations between the central and the local government, the implementation of the process of the decentralization was designed with a phased approach in order to accommodate the local government institutions with the new competencies. Among others the process of decentralization had an objective to bring the local authorities closer to the citizens through provision of quality local services. In addition it aims to provide an opportunity for broader participation and representation of the citizens in their communities. This paper attempts to answer three main questions related to quality public services: - The process of decentralization has helped to improve the quality of public services? - What areas of public services under municipal jurisdiction are satisfied with it? - How much would you like to be informed about community activities? In this paper we are going to analyze the findings from the field research about the quality of public service that provide the municipality of Tetovo of R. Macedonia. The paper focuses on the satisfaction on the public services and provides recommendations for future improvement of the decentralized public services in the Republic of Macedonia.

**Keywords:** Decentralization; Public service; Local self-government units; Citizens satisfaction; quality of service

### **1. Introduction**

#### **1.1. Background**

Considering that the Law on Local Self-government only provides a general framework for the responsibilities of the municipality and the limitations in access to fiscal resources provided by the Law on Financing of Local Self-phased approach has helped relieve the municipalities during this process.

Law on Financing of Local Self-government has paved the way for new revenue sources for municipalities to support the implementation of the new competencies transferred. Of 85 municipalities, 68 entered the second phase of decentralization, fiscal decentralization. This is expected to increase municipal revenues from collection of municipal taxes, state land management, and property taxes.

All this means that the administrative capacities of municipalities should be significantly strengthened if any significant progress was made in terms of delivery and improve services at local level and bringing about better opportunities for development and improving the living standards of citizens.

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## **1.2. The Authorities of the Municipality and Economic Development**

The process of decentralization municipalities are faced with serious difficulties in terms of human and capital resources in providing quality public services for citizens. This fact is noted in the European Commission report filed in 2006 on Macedonia's progress in preparing for EU membership: "There are still serious challenges to be addressed before making the next steps in the process of decentralization. The issue of debt remains a problem, and substantial debt could threaten the functioning of several municipalities. Smaller municipalities have difficulties in providing basic services. Possible under-funding of the education sector is a subject of concern. municipal tax collection remained a challenge in many municipalities. Further progress in fiscal decentralization will require the development of financial and internal control mechanisms to ensure proper planning and to minimize the risk of corruption. Capacity fraud and municipalities to manage state property should be developed, especially considering the limited resources available to stimulate local economic development. "

In 2004 UNDP published the National Human Development Report-2004 decentralization called for human development. According to that report, increasing the powers of the municipality should lead to their greater involvement in the planning of local economic development. [This may refer to the main findings of our project] municipalities may have a greater role in implementing social programs, such as those for unemployment or poverty reduction. Specifically, local authorities are able, whether alone or in cooperation with local NGOs to more effectively identify beneficiaries of social programs and thus ensure that social assistance to the poorest.

## **1.3. The Quality of Public Services and Decentralization**

Local development is at the heart of politics and political discussions of decentralization in Macedonia. Decentralization among other objectives such as, approaching the local authorities to the people, providing an opportunity for broader participation and representation, another important goal to provide quality public services. This report will try to answer three main questions related to quality public services:

- The process of decentralization has helped to improve the quality of public services?
- What areas of public services under municipal jurisdiction are satisfied with it?
- How much would you like to be informed about community activities?

## **2. Methodology**

### **2.1. Methodic Approach, Procedures and Instruments**

Satisfaction of citizens from services offered at the level of municipality and its assessment about the impact of decentralization on the quality of services are based on questionnaires, taking into account the specifications and priorities of the municipality. The questionnaire consists of fifteen questions (Annex 1) that focus on collecting information for analysis of the four principles first which satisfaction with the services that are under the jurisdiction of the municipality 2nd impact of decentralization on the quality of municipal services 3rd the participation in the process of creating policies 4th suggestions for improving the quality of services. After the actual statistical analysis of the responses of the respondents followed the presentation of guides with focus groups composed of municipal administration (service providers) and focus groups of service users or citizens. According to data obtained from the survey concern the municipality for education as a whole, as well as public hygiene and public greenery is a low assessed. Due to this fact when selecting members of the focus group will be taken to be representatives from the department of educational and community services.

The sample of research advance was not elected according to the criteria of representativeness, but on the contrary, he was a target, situational elected. Namely surveyed all citizens during the interviews

were for a service in your municipality, and approved to answer our interviewers. Therefore, some comments are according to biographical data they collected about participants in the survey.

### 3. Results of Field Research

#### 3.1. Significance of differences between respondents

In order to verify the objectivity and consistency to the statements of the respondents did check the interconnection of key variables (tab.1 and tab.2).

Thus, a significant rank correlation between general job satisfaction of the municipality as a whole and satisfaction with the quality of municipal services in four key areas, shows that the respondents are consistent in their assessments of ordered services of public administration of the municipality of Tetovo.

**Table 1 correlation among key variables**

<i>no.</i>	<i>Correlations between variables</i>	<i>Rang coefficient (ρ)</i>	<i>Pirson coefficient of correlation R</i>	<i>significance</i>
1.	General satisfaction and satisfaction with urban planning, construction and spatial arrangement	0,519	0,084	Significance ρ
2.	General satisfaction and satisfaction with the collection of taxes	0,407	0,100	Significance ρ
3.	General satisfaction and satisfaction with the care of hygiene and public greenery	0,614	0,064	Significance ρ
4.	General satisfaction and satisfaction with care, on education and personnel policy	0,464	0,090	Significance ρ
5.	General satisfaction and assessment of the impact of decentralization on the quality of services	0,392	0,121	Significance ρ
6.	Information and assessment of the impact of decentralization on the quality of services	-0,286	0,490	Significance R
7.	Education of students and evaluation of the impact of decentralization and the quality of services	-0,024	0,043	No significance
8.	The age of respondents and assess the impact of decentralization the quality of services	-0,016	0,062	No significance
9.	The age of respondents and their level of knowledge about things in the municipality	-0,024	0,492	Significance R

Correlation between variables and rank coefficient

**Table 2 Inspection by  $\chi^2$  (chi-square) test of the relevant variables**

<i>no</i>	<i>The correlation between attributes variables</i>	$\chi^2$	<i>Scale of freedom</i>	<i>Significance</i>
1.	Gender distribution and assess the impact of decentralization on the quality of service	4,11	3	Not
2.	Employment status and impact assessment of the decentralization on the quality of service	1,59	6	Not
3.	The level of education of respondents and their level of awareness	0,49	12	Not

The connection of assessing the impact of decentralization on the quality of public services in the municipality is the lower limit of the significance of the correlation (ed. no. 5 of Table 1). However,



this connection is sufficient to indicate that the process of decentralization, if not crucial, however contributes to the quality of public services at the level of municipality.

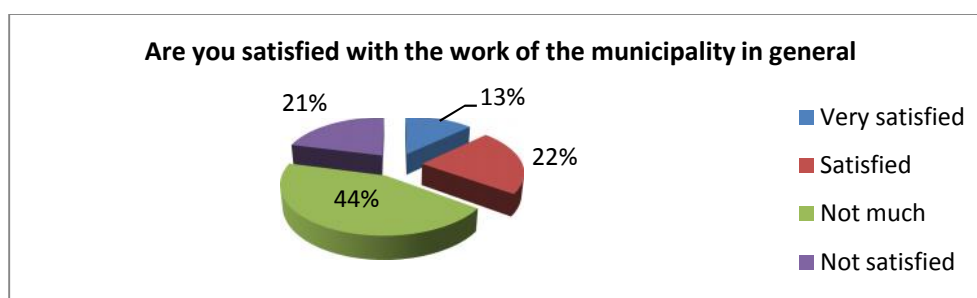
Unlike previous relationship, more informed respondents giving a higher rating of the positive impact of decentralization on the quality of public services (ed. No. 6 of Table 1). This higher correlation increases on the belief that objective, the process of decentralization and of itself is a factor to improve the quality of public services in the municipality.

Testing the connection between the estimates of the impact of decentralization to the level of education of respondents shows no significant relationship (ed. 7 of Table 1). We can interpret those participants with different levels of education the same way you evaluate the impact of decentralization on the quality of services. It further indicates that the estimates can be considered quite realistic or objective. If we added that testing the impact of age (red.br.8 from Table 1), gender and employment status (ed. 1 and order. No. 2 of Table 2) the assessment of decentralization shows independence these three variables from the assessment of the impact of decentralization, then confidence in the objectivity of the assessment of the impact of decentralization on the quality of services in the municipality continues to increase.

Correlation, between the level of awareness and age is significant, which leads to the conclusion that older respondents are more informed about the work of the municipality. Is it just due to age or greater experience accumulated higher levels of awareness, should be further checked.

### 3.2. Satisfaction with the Work of the Municipality as a Whole

The overall assessment for the municipality as a whole is satisfactory. Under the strict criterion of satisfaction higher than 44% can be considered as a high degree of bvolstvo satisfied. If we add the respondents gave the assessment satisfied then we come to two thirds higher job satisfaction of the municipality. As previously pointed out, this high score is correlated with satisfaction with specific services that will be shown below. But a third disgruntled citizen is a fact negligible, particularly as you can see the section on handling complaints and the level of awareness.



**Figure 1. Satisfaction with the work of the municipality as a whole**

### 3.3. Satisfaction with the services of Urban Planning, Building and Planning

Services in the field of urban planning, construction and spatial arrangement are dominant in terms of needs and interests of citizens. Satisfaction with these services is slightly lower than the general satisfaction (fig.7), which can be interpreted in the opposite direction – of satisfaction services of this kind significantly from the general job satisfaction of the municipality.

In addition to statements of the respondents for their relatively high satisfaction with this kind of public services, in addition to state and the objective fact of the intense urbanization of the municipality that is probably, among other things, conditioned by the efficiency of delivery of this kind of public services of the municipal administration.

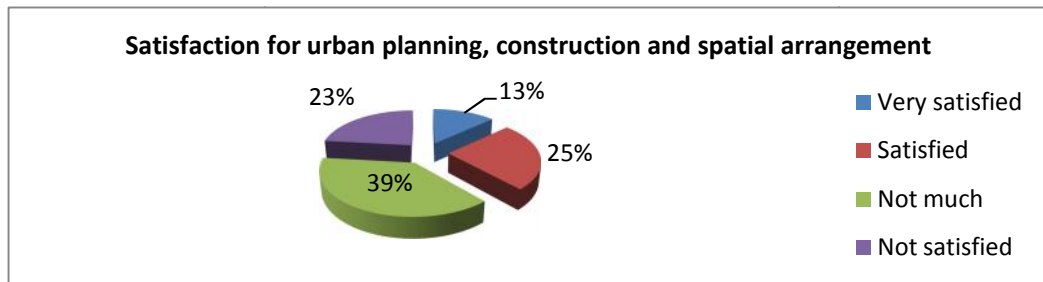


Figure 2. Satisfaction for urban planning, construction and spatial arrangement

### 3.4. Satisfaction with the Collection of Taxes

The collecting taxes and citizens expressed a high degree of satisfaction (Fig. 8). Since this is the performance of the obligation of citizens to the municipality and the state, this high degree of satisfaction is above the expected level, probably due to the perception that increased collection of all taxpayers in the past, mainly the ones noticed that you regularly perform their tax obligations. Also, this needs to be joined the practice of the methodology and the manner of calculation and payment of tax along with increased technical and human capacities of the municipality leading to greater satisfaction of citizens from this kind of service.

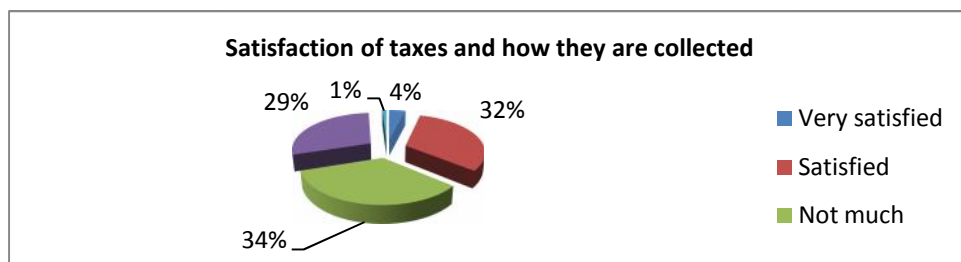
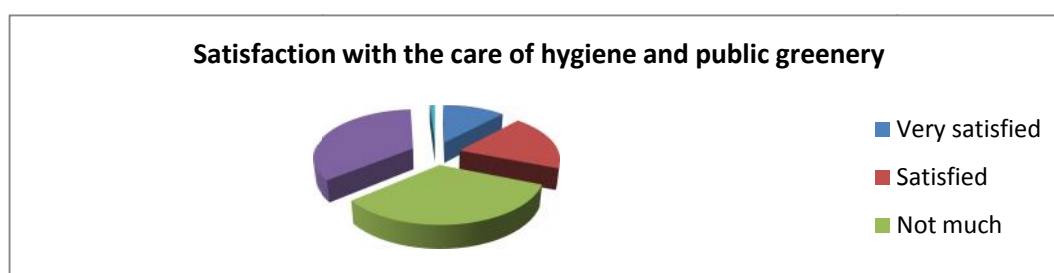


Figure 3 Satisfaction of taxes and how they are collected

### 3.5. Satisfaction with the Care of Hygiene and Public Greenery

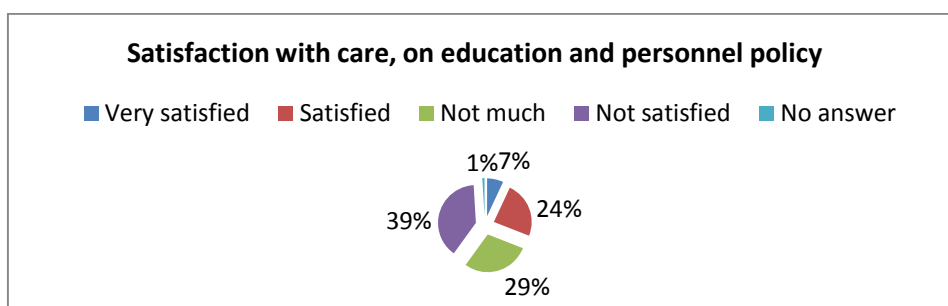
Caring for the urban public hygiene and public greenery in January rounded care of the municipality for the total urban ambiance of the city. But while the delivery of services in urban planning at the individual level is within a solid practice, then the perception of the care of the city's public dimension of urban environment is very low (sl.0): less than one third of respondents were satisfied from what they see as a public hygiene and public greenery, and even only 12% said they are very satisfied with the exercise of this function of the municipality or its public enterprises. Un satisfaction of this service is an interesting fact given the fact that the municipality at least once every week knocking on doors of all private courtyards within the municipality and organize more times stopping at special locations such as schools, apartment buildings and other defined collection point of junk. According to data obtained from the focus group about the possible reasons for low hygiene pleasure of greenery and two reasons were cited, first as second citizens' ignorance of the low level of public awareness of the general hygiene. Also pointed out that one of the possible causes of dissatisfaction come from landfill crisis between the municipality of Tetovo and Gostivar in what happened in the first half of 2010.



**Figure 4 Satisfaction with the care of hygiene and public greenery**

### 3.6. Satisfaction with Care, on Education and Personnel Policy

Unlike the previous two areas of public services, care of the municipality for education as a whole, the conditions of the work and finally on the policy of personnel staffing, and public hygiene and public greenery, is a worrying low assessed (Fig. 10). While in previous areas satisfaction moved within about two thirds of respondents satisfied, here's the other way around - more than two thirds of respondents are not satisfied as treats or municipality specifically January manages the field of education in its jurisdiction (Primary and Secondary Education)



**Figure 5. Satisfaction with care, on education and personnel policy**

This low rating of the quality of this public service that delivers the municipality, mostly indirectly through the institutions for primary and secondary education, deserves special attention in terms of its explanation, more in terms of the implications of this situation. From the data obtained by survey researchers can anything further as an additional event for the explanation of this condition. Therefore, we give a right to the moment when they gathered additional empirical evidence to rely on our general knowledge of the situation and relations in this phenomenon. In that sense, as a possible explanation of such low grade, this means low quality in this area. You can specify the following general conditions and relations in the sphere of education at the local level:

First, in the field of primary and secondary education is not yet completed the full process of decentralization of responsibilities from central to local level. Lack of awareness of citizens about the responsibilities of state and the municipality in this area leads to the overall situation in the education most people the responsibility to locate in the municipality.

Second, practice the duties of state towards education local level, is often performed differently in situations where local and central government are the same and different political affiliation. It may be an additional aggravating factor, especially in improving the conditions to work in primary and secondary education.

Third, the personnel policies in education, which is primarily manifested by the shift of managerial furniture in schools during each shift of political garniture in the municipality, which may be considered, justified in terms of achievement of the political priorities, unfortunately it just ends at that level but it continues down. Such a practice among many stakeholders in general creating un satisfaction which indirectly affects the overall low score of the services in this area.

**3.7. Overall Assessment of the Quality of Public Services and the Impact of Decentralization on their Level**

The assessment of the impact of decentralization on the quality of public services is in direct correlation with the degree of decentralization. Unfinished process of decentralization of all legal responsibilities of local government, most likely is a limiting factor for the objective quality of public services, and thus the subjective perception by citizens or subjects (sl.11). Therefore, the assessment that only 18% of respondents think it is a big influence, and over half of respondents believe that this influence is only partial, we can consider as very objective. This in turn leads to the need; this status can be used as an argument in the requirements of local to central government which needs faster to complete the process of decentralization of all authority of the municipality.

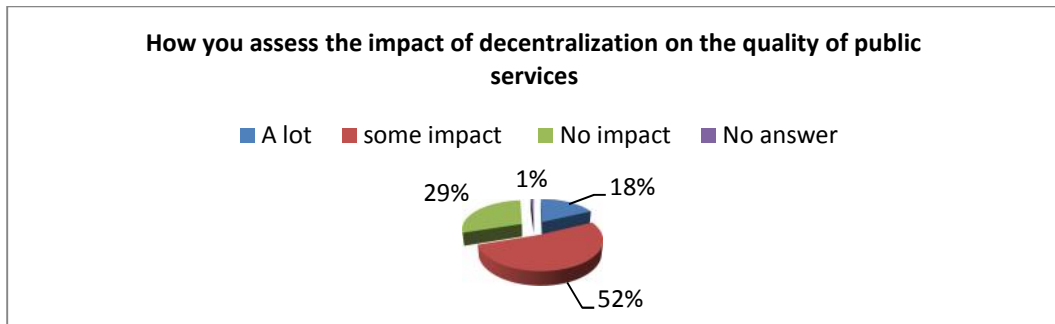


Figure 6 How you assess the impact of decentralization on the quality of public services

The previous evaluation further confirms the assessment of students on the need to further improving the quality of municipal services. Although the rule applies regardless of the level is always welcome and may further improve the quality, however the high level of 85% (Fig. 12) indicates that efforts are needed in this direction is an indicator of attention. Mostly if put in context to specific proposals in that direction given by respondents (sl.13).

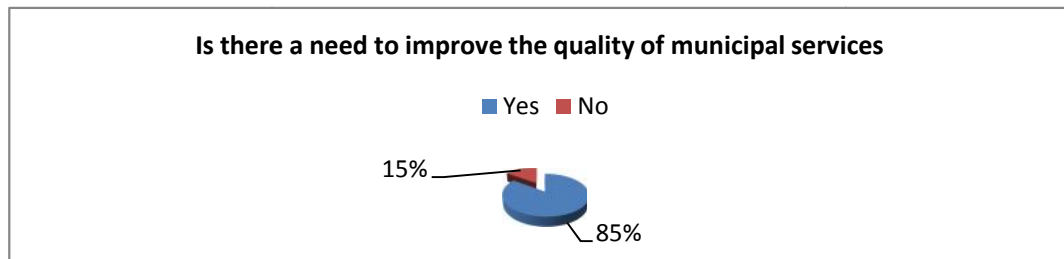


Figure 7. Assessment of the need to improve the quality of municipal services

The received proposals for improving services in response to an open question deserving special attention (Fig 13). Namely the part of the proposals is inconsistency in the answers to previous questions, some of suggestions concerning the achievement of the functions of the municipality, rather than direct public services, such as employment, infrastructure and so on.

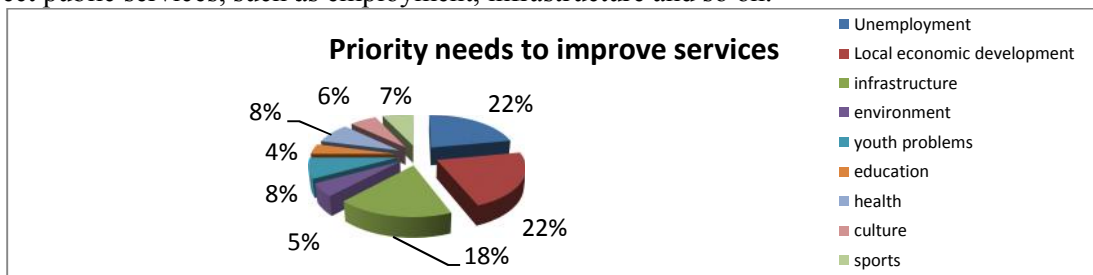


Figure 8. Priority needs to improve services

In our view, the inconsistency clarification of these proposals with previous estimates should be sought in the context of the second group of proposals that are general concern of the citizens (unemployment, infrastructure, local economic development). Therefore, the results of this question should be used more as an indicator for determining the overall priorities of the municipality to define the strategy for achieving more authentic to its responsibilities, not only in the delivery of public services.

#### **4. Conclusions and Recommendations**

1. Although the research was conducted according to situational selected units of the sample during the survey, however, from a practical point of view, provided a representative sample. Check the reliability of responses from certain demographic characteristics of respondents revealed that the obtained scores isporachuvanite kkomunalni public services are in high level objective.
2. The survey showed that among respondents, with a high degree of riability we can expect the entire population has a high satisfaction with meeting the individual needs of public utilities (urban planning and construction, tax collection). On the other hand, respondents indicated a relatively low quality of general (public) services such as maintenance of public hygiene and greenery and the care of the municipality for education and personnel policy practiced.
3. The previous statement address the need to take internal measures and systemic capacity building of the municipality for greater impact on public utility accountable for performing its function. In that respect must be efforts to build capacity to assume full responsibility in education and thus directly contribute to raising the quality of primary and secondary education in the municipality.
4. In the area of transparency of the operation of the municipality and thereby influence in formig public opinion, concluded Lag information. Other checks, however, showed more positive attitudes toward the relationship between decentralization and quality of public services by informing of respondents. It goes to the need to increase awareness of citizens about the overall work of the municipality and thereby gain their acceptance of policies and practices of raising the quality of public services.
5. With previous efforts would have made contribution to capacity building of the municipality in managing its resources, and thus accelerate the process of decentralization as a key factor for the systemic contribution to raising the quality of public services.
6. The research was initiated indirectly, and respondents strongly emphasized the dimension unemployment and local economic development (LED). Although not directly delivering the public services, however administrative and technical support and building of municipal infrastructure for local economic development matters both directly and indirectly contributed not only to reduce unemployment, but also to provide resources to meet the common needs of all citizens of the municipality, and thus the creation of resources and facilities of the municipality for a better fulfillment of services to citizens.

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### **Legal Framework**

*Constitution of the Republic of Macedonia*

*Law on local-self government (Official Monitor no. 5/2002)*

*Law on territorial organization of the local self-government units (Official Monitor no 55/2004, 12/2005, 98/2008)*



THE 7TH EDITION OF THE INTERNATIONAL CONFERENCE  
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REALITIES AND PERSPECTIVES

**The Role of Sustainable Leadership  
in Public Administration**

**Ionica Oncioiu<sup>1</sup>, Mihail-Silviu Pocora<sup>2</sup>**

**Abstract:** This study aims to investigate the role of leadership in creating a sustainable and realistic administrative organizations in Romania based on the idea that any institutional or organizational change starts from its employees who realize that something goes wrong and report it. We used as research method the descriptive questionnaire of leader behavior, adapted from LBDQ (Leader Behavior Description Questionnaire) and SPSS program. The LBDQ questionnaire has 100 items and 11 dimensions, and the sample consists of 150 subjects, civil servants, average age 35, most of them having university studies, employees of the Public Service Taxes and Fees and other Local Budget Revenues in Ploiesti and Brasov. The results of the study show that, in terms of representation outside the organization, there are differences between the behaviors of the two leaders, but there are also significant differences between the two groups of subjects in terms of employee perceptions.

**Keywords:** leadership; sustainability; administrative organizations; change

**JEL Classification:** H83; L38; Q56

## 1. Introduction

What is a sustainable development policy implemented by the administrative organization and how is it defined? "Our Common Future," also known as the Brundtland Report, defines sustainable development as "ensuring that it meets the needs of the present without compromising the ability of future generations to meet their own needs." Sustainable development policy comprises institutional and environmental safeguards that will protect the environment and the economy as a whole, as well as another set of guidelines and principles on economic and social sustainability.

Many authors and researchers argued that economists have to take ecosystems seriously. Some suggested a focus on 'qualitative growth' rather than exclusively pointing to the quantitative monetary aspect (Leipert, 1983), Ignacy Sachs coined the term 'eco-development' in the sense of ecological development (Sachs, 1976, 1984) and in Eastern Europe, Hristo Marinov (1984), among others, argued in favor of 'greening the economy', Al Gore made very often reference to the 'ecological imperatives for public policy', i.e. principles for decision-making primarily formulated in negative terms such as: non-degradation of the natural resource base in your own region, non-degradation in other regions, observing a precautionary principle, etc..

Sustainability economics can be described as economics for sustainable development or economics for sustainability. It represents a broad interpretation of ecological economics where environmental and ecological variables and issues are basic, but also part of a multidimensional perspective. Social, cultural, health related and monetary/financial aspects have to be integrated into the analysis.

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Looking from the perspective of organizational change, sustainability process of an administrative organization is determined to a very large extent by the quality and accuracy of strategic decisions that the leadership implements. Therefore, to know the essential elements of a successful strategy means to have sustainable and realistic basic skills for an organization that wants a bright future.

It is important to point out that this process of increasing the administrative organization participation has important limits that are against the sustainability of urban development. The limits that threaten the sustainable development of cities are led by trends in a chaotic and disorderly urban growth which is specified in the Kyoto project. But which elements are behind sustainable administrative organizations?

The first element we can consider as essential in an administrative organization's sustainability is knowledge. In modern society, and consequently in the cities, there is a new paradigm based on the incapacity of the leadership of administrative organizations because of the impossibility to process and transmit knowledge. As stated by Castells (1995), in the same way that new energy sources emerged from the different industrial revolutions and fuelled diverse societies, today we find that knowledge is the dominant raw material. This is the most important asset that a society possesses. The administrative organizations are part of this asset because they facilitate the transmission of knowledge regarding the realization of a balance between short-term priorities and long-term vision from the perspective of sustainability.

Besides, sustainable administrative organizations must be flexible and diversified, with the existence of an integrated plan regarding land uses, transportation and the urban environment. However, we must remember that the administrative organizations' sustainability directly links with the broad concepts of solidarity, equity and tolerance, and the assumption that public and subordinates' participation is central to a sustainable city.

The second component concerns the incapacity of the politicians to sacrifice their voters today in favor of tomorrow's results. The puzzle of leadership in the public sector is truly intriguing. In a sustainable organization or in a post-New Public management regime, leadership becomes even more essential than in a bureaucratic organization. Moreover, a change in the public service is welcomed because it is expected that public managers will take the initiative in leading improvements in public service delivery. Leadership as strategic management involves taking key decisions about the structure of team provision of services in the context of ensuring a viable sustainability. Many teams have bad or unsuccessful leaders and some leaders do have capable teams. Failure is a common theme in organizational analysis.

These deficits make difficult a generalization of the culture of urban sustainability, as a process of collective learning, without which any undertaking is deemed to fail. Perhaps at this point it would be reasonable for administrative organizations to intensify their efforts for a city to become sustainable.

Chasek, Downie and Brown (2010) report that few countries have lived up to their Rio Summit commitments, stating that National Agenda 21 efforts led to "increased academic debate, heightened public awareness and minor adjustments in the system of national accounts and taxation rules, but they have not fundamentally altered the way we manage and measure our national economy."

Current developments further complicate the process of change in the public organizations by promoting a leadership able to keep its employees active and creative in sustainability. This article discusses, on one hand, the theory that decisively influenced the sustainability process and, on the other hand, the issue of leadership role in creating sustainable and realistic administrative organizations in Romania. The model takes into account the changes that they induce leadership at the organizational structure design process in administrative organizations.



## 2. Theoretical Guidelines on Public Leadership

Leadership has been defined in terms of individual traits, behavior, influence over other people, interaction patterns, role relationships, occupation of an administrative position, and perception by others regarding legitimacy of influence. There are several definitions of leadership depends on many factors such as: "Leadership is an influence relationship among leaders and followers who intend real changes that reflect their shared purposes." (Daft, 1999). Also, "Leadership is both a process and a property. As a process, leadership involves the use of influence. As a property, leadership is the set of characteristics attributed to someone who is perceived to use influence successfully." (Griffin, 1998).

Things are more complex in public organizations. Leaders do not have a single title and are clearly separable from other employees in terms of remuneration. What still reinforces the formal-informal separation is the public law framework for public organizations. Since, in principle, all decisions taken by a public organization can be contested by means of filing up a complaint of some sort, the confusion between formal and informal leadership will be minimized.

Public leaders will in some way weigh up the relative advantages of 'credit-claiming' with 'blame-shifting' and give autonomy to other institutions and actors when the expected advantages of blame-shifting exceed those of credit-claiming. Hood and Lodge (2006) argue that under the 'directed agency' form of a 'public service bargain', public servants undertake to be loyal to whoever holds elected office at any time in exchange 'for access to the confidential counsels of those politicians and a measure of anonymity when it comes to public praise or blame'. The trust relationships that are established over time through such arrangements may be jeopardized where (1) the public servant take credit for leadership of a successful policy initiative, or (2) the politician shift the blame on to public servants for its perceived failure. Responsibility for the leadership of a public service delivery team would thus be assumed by politicians even if, in practice, public servants performed important but 'invisible' leadership functions on the perspective of sustainability.

Leadership is also related to the type of motivation that 'revisionist' economists (Sen 1977; Schelling 1980; Hirschman 1982, 1985; Sugden 1984; Rose-Ackerman 1996) identify as 'commitment'. They take their lead from Sen (1977), who challenged the mainstream economic assumption that individual actions are shaped by a 'single all-purpose preference ordering' by distinguishing 'commitment' from 'sympathy' in that it involves individuals choosing acts that involve some sacrifice in personal welfare. Altruists with interpersonal sources of utility (Collard 1975) or individuals who derive 'in-process' benefits (Buchanan 1979) from the process of striving towards the realization of a group's goals, may thus be said to be motivated by sympathy rather than commitment. Commitment requires the formation of 'second order meta-preferences' (Hirschman 1982) through which individuals evaluate their preference of what they want to prefer. It may also involve an 'intimate contest for self-command' (Schelling 1980) through which individuals struggle to impose a 'second order' preference to keep a commitment over first order preferences.

Leon C. Megginson, Donald C. Mosley and Paul H. Pietri, Jr. (1989) said that there are many interrelated variables affecting a leader's behavior. The most significant ones can be classified as general and specific factors.

Subordinates consider leadership to be valuable, but leaders become an integral part of an organization, group, or team only after proving their competence and value. Leadership grants people power over others; with this power, people believe that they can influence to some extent the well being of others and can affect their own destinies. Leaders receive their authority from subordinates because the subordinates have accepted them as leaders. To maintain a leadership position, a person must enable others to gain satisfactions that are otherwise beyond their reach (DuBrin, 1995; Russ and Velsor, 1998).

### **3. Method of the Research**

The research used a descriptive questionnaire on leader behavior, adapted from LBDQ (Leader Behavior Description Questionnaire) and SPSS software. LBDQ questionnaire has 100 items and 11 dimensions, structured as follows:

1. Consideration - concerns the extent to which leader is concerned about the general condition and status of subordinates;
2. Initiating structure - the extent to which the leader defines its own role and subordinates them to know what is expected of them;
3. Representativeness - the extent to which the leader speaks and acts as a representative of the group;
4. Reconciliation - reconciliation requirements - the extent to which leader reconciles conflicting organizational requirements and reduce clutter in the system (entropy of the system);
5. Tolerance to uncertainty - the extent to which leader is able to bear the uncertainty and postponement without becoming nervous or anxious;
6. Persuasion - persuasion - the extent to which the leader uses persuasion and discussion effectively and strongly believes;
7. Tolerance to liberty - the extent to which leader gives subordinates the opportunity to take initiative, make decisions and act;
8. Retention role - playing the role - the extent to which the leader actively exercises leadership and authority not delegated to others;
9. The accuracy of predictions - predictions accuracy - the extent to which the leader demonstrates foresight, the ability to provide correct results;
10. Integration - the extent to which leader maintain the unity of the group he leads, resolve conflicts arising between group members;
11. Relationship with superiors - the extent to which leader maintain good relations with superiors, has influence over them, and struggling to raise his status.

Rating is achieved by assigning each item a scale of 1-5 and adding the score to each dimension separately.

The questionnaires contain 10 leadership factors as following: communication skill, motivation skill, decision-making skill, empowerment skill, emotional skill, negotiation skill, teamwork skill, planning skill, human skill and innovation skill. In the questionnaire, each question comprises into 3 questions, one for each factor. The question asked subordinates for opinions and answers about leadership behaviors and characteristics. There are 5 scale for each question as follow; 1 is strongly disagree, 2 is disagree, 3 is neither agree nor disagree, 4 is agree and 5 is strongly agree. The strategic formula to measure the mean value of class interval is width of class interval.

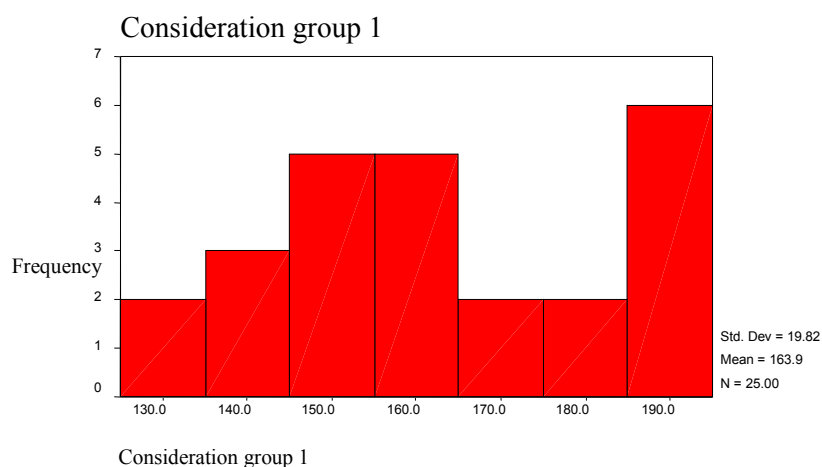
At the same time, the target group consists of 150 subjects, civil servants, average aged 35, most of them having university studies, employees of the Public Service tax and other revenues of local budgets from Ploiesti and Brasov

The data obtained were processed in Excel, SPSS, resulting in interpreting frequency tables and graphics in the form of histograms.

### **4. Results and Debates**

For the first lot of subjects (employees of the Public Service tax and other revenues of local budgets from Ploiesti) the minimum score is 133, the maximum is 193, hence amplitude equals to 60. For consideration the average scores were compared with LBDQ standard, resulting in an average valuation of the leader. We can see in Figure no. 1 that employers do not consider that this is a charismatic leader, due to the statute, but do not appreciate that particular person (values are

concentrated in the left side of distribution). Moreover, the relationship between the average (125.48), median (122.00) and method (114) show a positive asymmetry.



**Figure 1. Distribution on “consideration” factor**

If reconciliation dimension represented by the width resulting from the difference between maximum score (124) and the minimum score (79) is equal to 45, Compared to standard LBDQ, it results a higher valuation.

The leader announces changes in time to come, is skilled in discussions, making sure group work is coordinated. He is willing to make changes and help group members to resolve differences.

He is a leader who is involved, puts pressure to increase productivity and scheduled work to be done.

From the analysis of the media comparison table 1, there are significant differences between the two groups of subjects considered. If the size comparison, this is confirmed by the endoscope indicator value t (4,376), which is higher than tabular values of t statistics (2,014 for a threshold of 0,05 and 2.690 for a threshold of 0,01).

**Table 1. Environments for size comparison “consideration.”**

**T test for independent samples**

Consideration	t test for equality media			
	t	Degrees of liberty	The significance of bilateral	Mean difference
Common variants	-4,376	48	0,000	- 18,04

Indicator value is equal to 5,104 t for integration. This means there are significant differences between the results obtained from subjects of both groups of subjects analyzed. The t statistic is greater than 2,014 for a threshold of 0,05 and 2,690 for a threshold of 0,01.

Unlike the leader of the first group questioned, the one of the second group (employees of the Public Service tax and other revenues of local budgets from Brasov) maintained a greater unity, he led the group and resolved conflicts occurred between group members more effectively. This resort to all kinds of small gestures to make you feel better as a member of the group makes the group work in close unity, as a team, group members implementing proposals.

Indicator value t is equal to 5,006 for tolerance dimension to freedom as you seen in table 2. This means there are significant differences between the results obtained from subjects of both groups of subjects analyzed. So, t statistic is greater than 2,014 for a threshold of 0,05 and 2,690 for a threshold of 0,01.

**Table 2. Environments for size comparison “tolerance of liberty”**

**T test for independent samples**

Tolerance of liberty	t test for equality media			
	t	Degrees of liberty	The significance of bilateral	Mean difference
Common variants	-5,006	48	0,000	- 6,32

Members of the first group of subjects perceived their leader as having a behavior that does not allow them the opportunity to take initiative to take decisions and act. While the leader of the second group of subjects is perceived differently: he lets his subordinates work full freedom, allowing them to use their own problem-solving court, an initiative encouraging group members and leaving them many times to do the work as they think best.

The leader of the second organization is definitely perceived by his employees as charismatic, professionally competent with communication and relationship skills. Able to maintain an organizational climate without any conflicts, he valorizes his employees, motivates them to optimize and streamline their activities. He is concerned about the general condition of the organization and status of his subordinates.

As it can be seen from table 3, the first group leader is a nervous person, anxious all the time, worried a little, while the second leader is perceived as being more able to bear the uncertainty and postponement without becoming nervous or anxious.

**Table 3. Compare leadership factors between 2 groups**

Nr. crt.	Leadership factors			t	Dif.	Sig.
		Group 1 Ploiesti	Group 2 Brasov			
1.	Communication skill	1,74	1,94	1,592	42,674	0,001
2.	Motivation skill	1,57	1,83	2,219	44,877	0,000
3.	Decision-making skill	1,57	1,60	0,276	44,244	0,292
4.	Empowerment skill	1,68	1,78	0,938	44,097	0,032
5.	Emotional skill	1,56	1,64	0,800	44,766	0,057
6.	Negotiation skill	1,62	1,79	1,333	44,610	0,005
7.	Teamwork skill	1,69	1,75	0,602	44,778	0,116
8.	Planning skill	1,69	1,94	1,790	44,995	0,001
9.	Human skill	1,76	0,19	1,345	42,499	0,005
10.	Innovation skill	1,60	1,76	1,058	44,975	0,019

The significant difference between leadership factors and leadership perspective from the two groups is communication skill, motivation skill, negotiation skill, planning skill, human skill and innovation skill. For example, the significant value of communication skill was 0,001 that was lower than 0,05, it means leadership from the two groups have significantly different perspectives. At the same time, decision-making skill, empowerment skill, emotional skill and teamwork skill are non-significant difference leadership factors perspective.

The leader of the second group is much better seen in terms of assuming the role than in the one in the first group. He acts like a spokesman for the group, speaking as a representative of the group,

maintaining intensive work in groups, organizes group meetings outside the institution, while the leader of the other group is the leader in name only.

## 5. Conclusions

Sustainable development is a visionary development paradigm. Over the past 20 years governments, businesses, and civil society have accepted sustainable development as a guiding principle and try to made progress on this way. According with Moyo (2009) the world has made little progress in implementing programs and policies to improve the lives of the poor, and the integration of the three pillars of economic development, social development, and environmental improvements remains a challenge. Sustainable development is not easy and will take considerable time and effort. Public leadership may involve both politicians and managers organizations in creating a sustainable and realistic. On the other hand strategic management is not without relevance in the new organization and should be a key focus when debating the direction of public sector reform. As a normative concept, it complements the traditional focus of public administration upon bureaucracy and the rule of law by emphasizing the achievement of objectives through organizational design and the handling of contracts with the team responsible for public service provision.

Comparative analysis of the results of subjects following administration of the questionnaire LBDQ the following conclusions:

- The research hypothesis is confirmed, there are different perceptions of behaviors as leaders in the two organizations studied.
- All dimensions are characterized by the existence of significant differences between the two organizations. In other words, the perception of employees on the behavior of the leader of the second group of respondents is much higher than the corresponding subjects in the first organization. This means that the leader of the second organization has a democratic behavior, knows how to motivate and appreciate his employees, compared to the leader of the first organization, whose behavior approaches that of an autocratic leader.
- The leader of the second organization is definitely perceived by his employees as charismatic, professionally competent, having communication and relationship skills. Able to maintain an organizational climate without climates, he values his employees, motivates them to optimize and streamline their activities.
- The leader of the first organization should learn how to motivate your subordinates to do the job well, try to understand what your subordinate want and know and what is the most important influence to motivate your subordinates for success goal. He should give more opportunities to his subordinates to make decision some job by them and always assign job to your subordinate to improve their skill and their ability to make good performance.
- In terms of representation outside the organization, there are differences between the behaviors of the two leaders, between the perceptions of their employees accordingly. Thus, the first is concerned with his image more than the organization he represents, compared with the second, who is the organization itself and the people who compose it.
- A larger number of subjects of the second group perceive their leader the way he speaks and acts as a representative of the group. He acts as spokesman for the group, speaking as a representative of the group.

Our results are useful for administrative organizations wishing to develop their own policies on sustainability and to acknowledge responsibility for the environment and society. Moreover, the specific characteristics of different administrative units provide information for future research on the shaping of guidelines to generate a possible model for leader's assessment by his employees. Based on this, sustainability can be achieved in terms of changes in those organizations. The benefit of this research is that employees can achieve and gain more knowledge about leadership behavior and leadership styles. Education and experience are major have influence and effect to leadership behavior and leadership development. This research will be benefit to leaderships how to improve leadership behavior to be change in organization. It could be a reference for further study for a person who was

interested in public leadership. The further study could use this study for other research for example, the different leadership behavior between leadership and employees as perceived by taxpayers. The main limitations of our research are related, on one hand, to the evaluation of sample size and bias responses, which can be subjects of debate for and against. On the other hand, it may be that the extension and the homogeneity of the sample imply greater emphasis on information obtained through interviews. In conclusion, today, strong public leadership is required to address the difficult challenges. Therefore we believe that restoring confidence in leadership in administrative organizations can only be done by assessing primarily by its own employees to pursue the creation of long-term sustainable value.

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REALITIES AND PERSPECTIVES

**Internal Control of the Public Administration  
Bodies (Institutions) in the Republic of Macedonia**

**Fadil Zendeli<sup>1</sup>**

**Abstract:** The main objective of this paper is to address a significant segment of public administration which is in direct contact with citizens and more often seen as a main violator of human rights and citizens. By analyzing and observing the state of public administration, legal and political instruments which are known to exert internal control within the Administration, the paper attempts to increase accountability and legitimacy of the Administration and thus sets more efficient legal system of functioning of the Administration. The paper is focused to internal control of administration but the gained experiences in administrative bodies can be practiced in other institutions that perform work in the public interest. Public administration reform is an important segment of the overall reforms in the Republic of Macedonia and one of the preconditions defined by the European institutions for full membership of the Republic of Macedonia in the European Union.

**Keywords:** administration; control; observation; internal

## **1. Entry**

The main role of the modern state in a democracy already established, where rules of market economy function, is to provide standards and rights equal for all the citizens and to build efficient institutional and legal frames for the performance of various state institutions.

Public administration must also ensure that the principles of national and European administrative law apply in the work of public administration institutions.

Compatibility of public administration in the Republic of Macedonia with the European administrative principles is a priority of developing administration in accordance with best practices and in conformity with EU law (acquis).

Republic of Macedonia as well as applicant countries for EU tend to apply best practices that refer to different manners "European standards" and the rule of law.

From the analyses that can be done to public administration reforms in different countries that are directly related to the EU laws (acquis), no standard solution can be found, that would be acceptable to all countries. Differences may be in the field of education policy, civil service, ecology, etc.

One of the functions of public administration, since the first form of appearance in the context of the development of state and law, is the power of administrative bodies to exercise control over the work and other acts of administrative bodies, or self control administration at different levels of vertical and horizontal organization.

In everyday language, with control we mean all forms of control, supervision and verification in general. However, referring to law, legislation and especially to the administrative law, with supervision we understand the meaning of entities or organized activities, exactly determined by the

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state (administrative and executive bodies - most often), which are authorized by the legislative body for this activity, to ascertain illegitimacy and the same may impose and enforce sanctions (Simeon, Naum, Borce, Ana, pg. 337).

Control over the administration bodies is required to make public administration accountable, to ensure that the administrative bodies use their powers under the law and follow established procedures. Institutions, through control and surveillance mechanisms monitor and observe the actions of public officials. Montesquieu in the famous work "The Spirit of Law"<sup>1</sup> emphasizes that "It is a life experience, that everyone who has power is prone to abuse, doing this until you encounter any obstacles."

The aims of supervision are to assess whether public administration bodies and officials perform their functions efficiently and on time, and abide the established principles and procedures. In other words, supervision aims to ensure the administrative principle - "administration through law", because in principle, it is essential protection of public interest, but above all is to protect the rights of citizens.

All these mechanisms and institutions aim to strengthen, in effective way the action of law, transparency, accountability, effectiveness and efficiency as key principles in public administration and civil service.

Control is the activity of supervision, how legal authorized entities perform their function toward administration, the manner of execution of authorities and acts, respectively, measures taken to implement these powers<sup>2</sup>.<sup>3</sup> Control is not an authoritative process, but it shows, provides help and advises the ones under control, virtually eliminating errors and defects rendered, and improves the work of state bodies.

## **2. Internal Control of Administration**

Among the forms of control that apply to the administration of special importance is the internal control of the administration. The organization of this form of control, presents more detailed regulation of mutual relations within the administration and authority which as a rule have higher administrative organs toward lower administrative bodies. Internal administrative control sometimes is referred to as the hierarchical control, as derived from administrative systems that rely on pure principle of hierarchy, under whose administration the work is not primarily regulated by law (Stefan, Pavle, Marko, 2002, pg 396).

Internal control, as part of system of a wider audit has close relation with it, as his recommendations and assessments serve as the basis to make necessary improvements in procedures and rules proclaimed as a legal obligation.

This form of control means that the activity of public administration is subject to the constitution, laws and regulations and international standards and agreements ratified by the Republic of Macedonia.

The essence of internal control is seen as this type of control that does not come outside the frames of administrative organization, but remains within the administration implemented in a way how an administrative body is overseeing the work of other administrative bodies. Due to the specific relations that have prevailed in the past between the administration bodies, this form of control is seen as the most important on legal or technical terms (Ivo, 1997, p. 110).

Internal controls means the organization and the methods used to assist and ensure that program managers are achieving their expected results, that resources used to implement these programs are consistent with the purposes of a public entity and that they are obtained by fraud, abuse, etc.. The main objective of internal control is to express the responsibility of the administration. The objective of internal control in the public sector is that by building systems, design and implementation of rules

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<sup>1</sup> Charles de Secondat, Baron de Montesquieu (1748). The Spirit of Laws.

<sup>2</sup> SIGMA Papers No. 27: European Principles for Public Administration



and procedures to ensure continuous pace to managing bodies of public administration, so that management moves by objectives and that their resources are used effectively.

From the administrative theory, administrative control means exercising influence over the senior administrative pendant body organs, related to the successful performance of their official duties. Administrative control, which is exercised over the work of administrative bodies, is adjusted by legal norms and laws of the higher bodies.

There have been developed various forms of administrative control in order to ensure the operation and coordination between different administrative structures on vertical and horizontal line that ensure normal and lawful operation of state administration. Internal control is the kind of control that is exercised within a ministry, other central institutions, local government body, etc., And the control exerted by them on the bodies, public entities and institutions subordinate to their area<sup>1</sup>.

Republican government exercises control and supervision over the work and acts of ministries, with the right of abrogation and annulment of administrative acts of ministries and administrative organizations which have public authority, whereas under conditions prescribed by law, ministries supervise the work of other administrative state bodies and local self-governance bodies under the authority provided by law. Internal control aims at improving the method of work of every employee to realize his duties, as well as activation of versatile and smooth operation of all levels within the body or institution.

Its objective is to increase the efficiency of the control and improvement of control rules, to prevent or detect violations of law in the field of public administration, to combat deviant phenomena (corruption, bribery), which are prevalent in public administration with negative consequences for society as a whole. These rules intend preservation and utilization of human resources, as well as finance to increase social welfare.

From comparative analysis of administrative systems in different countries, administrative control is done in two ways: a) Instancional control and b) hierarchical control or official supervision.

*Instancional control* - means control over administrative acts through unsatisfied parties with an administrative act in the first instance body, which means that without complaint there is no instancional control. The unsatisfied party could appeal an administrative decision which affects the body on the highest administrative level.

An appeal is a critical element of instancional control (*conditio sine qua non*). Appeal is a regular legal tool by which an aggrieved party with attacks on the administrative decision will realize any right or obligation, and it represents the main institution of administrative proceedings, where enables interested parties to be protected from unlawful or arbitrariness of state administration bodies.

In the political and legal system of the Republic of Macedonia, the right of appeal is the right of citizens guaranteed by the Constitution of the country. It guarantees the right to appeal against individual legal acts adopted in the first instance proceedings before courts, administrative bodies or other organizations and institutions exercising public authority<sup>2</sup>.

In the instancional control, object of supervision is the concrete administrative act, namely the decision to be issued in administrative matters in the direct implementation of the provisions, which will decide the rights and obligations or the public interest to individuals, legal persons and other parties<sup>3</sup>.

So, instancional control takes place in the general administrative procedure, with the filing of an aggrieved party. In accordance with the Law on general administrative procedure against the decision of first instance, an aggrieved party may appeal through the appeal to the body of second instance.

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<sup>1</sup> Ermir D,( 2003), Administrative Law I, Tirana, p. 201.

<sup>2</sup> Constitution of Republic of Macedonia, 1991.

<sup>3</sup> Law of internal control in the public sector, (official gazete of RM, nr.69/04)

Powers of bodies that decide on the basis of complaints consist in the cancellation or cancellation of administrative act.

The issue of administrative settlement (decisions) is one of the main issues of administrative reform. In developing the administrative procedures in the Republic of Macedonia, but also in other countries, European Union countries, apply administrative law principles (rule of law, transparency, equality before the law, etc.). Principles of administrative procedure apply to all levels of administrative decisions.

The effective functioning of the administrative procedures contributes to the legitimacy of administrative bodies in the exercise of its powers and ensures efficiency and legal certainty on providing of services to citizens.

*Hierarchical control* - as a form of internal administrative control is carried out ex officio (ex officio), respectively, higher administrative organs have the right and both are also obliged to exercise control over the work of lower administrative organs. In the context of administrative oversight, it is observed that higher administrative bodies exercise supervision over lower administrative bodies on the implementation of laws and other acts, as well as the legality of the work and procedures of public administration bodies, in accordance with the law (the body by a decision of its own can cancel the decision of the lower body). Hierarchical control or hierarchical supervision may be exercised in different ways and forms. Thus, the control may be from individual concrete acts of lower bodies and may even belong to the overall work of one or more lower bodies. Supervision is done by the inspectorate and auditing.

Important function of control is control by auditors. The purpose of audit is that to entity leaders it ensures objective evaluation, independent, with the aim of improving the performance of the entity and internal control effectiveness, respecting the principle of legality, independence, fairness, economy, effectiveness and efficiency etc. Control through audit is an independent and objective instrument, which verifies the data, gives advice in order to improve the work of the entity in achieving its objectives.

The internal auditor has the right to see all financial statements, books, records and other documents and may request all information which he or she needs to perform control.

### **3. Control within Municipal Institutions**

The existence and functioning of control and supervision over the work of municipal authorities is evident, and it is usually carried out by the state government, administrative bodies and special bodies of local self-government.

The procedure for controlling and monitoring includes equally all acts and regulations of the municipal authorities and subject to assessment are in legal Basis of the act, the operative part and process of adoption. The system of control and supervision of municipalities is established to build an effective system of control and supervision, over the work of the bodies of local self-government.

The system of internal control and supervision is one of the basic preconditions for preventing certain irregularities in the functioning of all institutions. The data show that the system of internal control and supervision is not sufficiently established and accepted in the municipalities, which in itself speaks about the need for its establishment, in order to proactively influence regarding the elimination of certain irregularities.

Most municipalities today have not appointed an internal auditor. This indicates a violation of legal regulations in terms of establishing the system of internal controls and supervision in accordance with positive legal norms.

In the context of rights and duties of the municipality established by law, supervision can be performed by the council, the mayor and authorities, organizational forms of municipal administration and managed clerks.

The Municipal Council within their jurisdictions decides and adopts appropriate legislation primarily in the area of the municipal budget, establishment of public services, adopts programs, plans and other authorities under their jurisdiction.

In practice this can most vividly be presented with the possibility that the council has for rejecting certain decisions or solutions offered by the mayor or the relevant departments of the municipality, especially the most clear case is the absence of the municipal budget, the rejection of the final bill of municipality, etc.

Within the jurisdiction of the mayor, his power of supervision of the Council controls the legal regulations of the council, publishes regulations of the council in the official gazette of the municipality and ensures the implementation of Council decisions, and others.

#### **4. Citizens as Supervisors of the Work of Public Administration Bodies**

Citizens in any democratic society enjoy the right to participate in the institutions of public character and to be informed about the work of governmental institutions, parliamentary activity, courts, local self-government and all institutions of public character. Communication of public institutions with different groups of citizens, the media and citizen participation in policy making, decision making and control process, are important elements of each society build in a democratic way. Citizens have the right to directly participate in decision making processes in public institutions and it is their right which cannot come into question, it is also the right behind which stand and guarantee the international acts and those of the country (whether central or local). Freedom of information is one of the fundamental human rights of citizen specified in the Constitution of the Republic of Macedonia (Article 16) and citizens are guaranteed access to getting the right information and the receiving and transmission of information. One of the most important international documents that provided, fixed and guaranteed the right of citizens to directly participate in decision making processes in local authorities, is undoubtedly the European Convention on Local Self-Government of the Council of Europe<sup>1</sup>.

Citizens' access to existing institutions to oversee the issues of their interest, it is considered relatively low with many aspects to improve citizens access to bodies of public administration and should provide easier and more appropriate access of citizens to the authorities of control and supervision. Without governance transparency there is no democratic society. The benefit is twofold because, citizens participate in setting priorities, and then the control during their realization; on the other hand the power verifies the correctness of its policy and strengthens the trust between citizens. Public assessment is the best way of control; yet it does not mean that supervision by competent authorities should be abandoned.

#### **5. Conclusions – Recommendations**

- Through the use of legal and political instruments of control is intended to preserve and advance the functioning of democratic institutions, democratic values and citizens in protecting the public and private interests.
- The purpose of exercising administrative control and taking measures is to apply legitimacy, to determine the responsibility of administrative bodies and officials who have violated the law.
- Internal control aims to ensure that final decisions will be legal and administrative bodies in exercising their activities respected already established legal rules.

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<sup>1</sup> European Convention on Local Self-Government of the Council of Europe  
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- The main objective of internal control is to increase the efficiency of the control and improvement of control rules, to prevent or detect violations of law in the field of public administration, to fight deviant phenomena that are prevalent in public administration with negative consequences for the society in general.
- Administration bodies which develop administrative procedures should strengthen internal control system, including supervision of administrative decision-making process in the first instance and under the grievance procedure.
- The managing bodies of public administration bodies in all levels of administration should receive reports and information for developing supervision of administrative procedures and this will be the basis for improving the quality of work of administrative bodies.
- Administrative control of the Government towards the administration should be perceived only on sound and professional basis and not based on the political-party.

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THE 7TH EDITION OF THE INTERNATIONAL CONFERENCE  
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REALITIES AND PERSPECTIVES

## General Considerations on the Institution of Fiducia

Andreea Diana Papa<sup>1</sup>

**Abstract:** Of Roman origins, fiducia was under the form of a pact (the fiduciary pact) secondary to a temporary transfer of property, by which a natural person preserved the property to the benefit of the testator under a resolutive condition and during all the life of the testator; after the death of the testator the properties should be transferred either to the direct descendant, or to other person authorized by the testator by legacy. The contemporary fiducia in the continental civil law has its origins in the English right in the specific institution in the common law of the trust, which designates the judicial rapport created by acts between the living or for a death cause from a person named founder who transfers two or more goods under the control of an administrator to the benefit of a person or for a given purpose. The Regulation in The New Civil Code Part III, Title IV, articles 773-791, followed the pattern of the French Law no. 2007-211 in 19<sup>th</sup> February 2007 which introduced in the French civil code, the Title XIV "On fiducia". The Romanian legislator took in an adapted form the provisions of the French normative act operating some important changes or additions.

**Keywords:** fiducia; fiduciary patrimonial mass; the founder; the fiduciary; the beneficiary

### 1. Introduction

#### Characteristic elements of the contract of fiducia . Definition and the form of the contract.

Fiducia is defined in article 773 in the Civil Code as following: "The judicial operation by which one or more founders transfer real rights, claim rights, guarantees or some other patrimonial rights or an assembly of such rights, present or future, to one or more fiduciaries who exercise them with a determined purpose to the advantage of many beneficiaries. These rights form an autonomous patrimonial mass, distinct of some other rights and obligations in the patrimony of the fiduciary" and it has the following characteristics:

- it represents a judicial operation which implies the existence of three parts ( founder, fiduciary and beneficiary) , respectively of at least two or more people;
- it can be constituted only with a determined purpose to the advantage of one or more beneficiaries;
- it is a complex judicial operation which implies may stages, respectively the transfer of patrimonial rights from the founder to the fiduciary, the exercise of these rights of fiduciary to the advantage of the beneficiary, the transfer of the emolument to the beneficiary.

All these stages form a whole unit, but as it results from the definition given in article 773 in the Civil Code, the institution of fiducia includes a series of judicial rapports which resemble the mandate and the stipulation for the other;

- it has as an object exclusively correlative patrimonial rights and obligations;
- the rights which are transferred to the beneficiary are constituted in an autonomous patrimonial mass, distinct of other rights and obligations from the patrimonies of the fiduciaries.

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The goods which constitute the object of fiducia form an autonomous patrimony named fiduciary patrimony or fiduciary patrimonial mass.

## **2. Paper Preparation**

Article 31 in the New Civil code defines the fiduciary matrimonial mass as being a patrimony of affectation and article 32 in the New Civil code adds that transfers of rights and obligations can be made from a patrimonial mass to another and it does not represent alienation. By the interdiction formulated in article 775 in the New Civil Code, the contract of fiducia is completely annulled if by this an indirect liberality is realized ( the renunciation to the right, the delivery of duty, the stipulation for the other), to the advantage of the beneficiary being admissible only the direct liberalities as far as all the fond and form conditions imposed are respected.

In conclusion, the contract of fiducia is a named, bilateral contract, with commutative title *intuitu personae* and solemnly and it is constituted of three distinctive operations, but tightly bound between them: the transfer from the founder to the beneficiary, closing an administration mandate and the transfer of the advantage to the beneficiary. It should be added that after the fiduciary achieves the obligations assumed in the purpose established by contract, he should return the founder the transferred goods or transmit them to the third party named by the founder. The sources of the fiducia in our right are the same as in the French right, article 2012 in the French Civil Code stating that: “fiducia is established by law or by contract”. In accordance with article 224 in the Civil Code, “fiducia is established by law or by contract closed in authentic form”. So, irrespective that mobile or immobile goods are taken into account, fiducia being a judicial solemnly act can be constituted only by authentic act.

Also, fiducia cannot be deduced, there is no chance that it can be presumed-as it results from article 774 paragraph 1 in the Civil Code: “It should be express”. The law establishes that in the situation in which by the contract of fiducia the beneficiary has not been mentioned, this being established later, this operation must be done by a “written act, registered in the same conditions” (article 780 paragraph 3 in The Civil Code).

Besides the request of the authentic form, the Civil Code provides another form condition, of fiscal nature. In accordance with article 780 in The Civil Code:” Under the sanction of absolute nullity, the contract of fiducia and its changes must be registered upon the request of the fiduciary, at the fiscal organ competent to manage the sums owned by the fiduciary to the general consolidated budget of the state in a month from the date of its closing. Also, when real immobile rights are comprised in the fiduciary patrimonial mass, these will be registered, under the conditions established by law, under the same sanction (of absolute nullity) at the special compartment of the authority of the public administration competent for the administration of the sums owned to the local budgets by the administrative-territorial units, where the immobile is situated.

Besides the request of the authentic form and of the condition of form, of fiscal nature, the Civil Code also establishes an opposability condition to the thirds, respectively, the registration in The Electronic Archive of Mobile Real Guarantees. Once closed, the fiduciary contract in the form and under the conditions imposed by law, this will produce effects between the parties, but, in order to produce effects to the thirds, the registration in the Electronic Archive of Mobile Real Guarantees is necessary: article 781 paragraph 1 Civil Code: “The fiducia is opposable to the thirds from the date of its mentioning in The Electronic Archive of Mobile Real Guarantees”.

In the situation in which immobile real rights or immobile real guarantees are part of the fiduciary patrimonial mass, these will be registered in The Book Land for each right. (article 781, paragraph 2 Civil Code).

### **The Parts of the Contract of Fiducia**

As we mentioned above, fiducia is the judicial operation by which one or more founders transfer real rights, claim rights, guarantees or some other patrimonial rights or an assembly of such rights, present or future, to one or more fiduciaries who exercise them with a determined purpose to the advantage of many beneficiaries.

#### *The founder*

Irrespective of the French Civil Code, which makes no mention regarding the founder, referring only to the fiduciary, article 776 paragraph 1 in the Civil Code establishes that any legal or natural person can be a founder. The founder is that person who transfers real rights, claim rights, guarantees or some other patrimonial rights to the fiduciary so that the latter should exercise them with a certain purpose to the advantage of a beneficiary. In order to make the transfer previously mentioned, the founder must have the necessary judicial capacity, respectively the whole exercise capacity. As long as the legislator regards that “any legal person” can be a founder it is presumed that not only the legal people of private law are regarded but also those of public law, and also the legal people with a patrimonial or nonpatrimonial purpose.

#### *The fiduciary*

The fiduciary is that person to whom the transfer of real rights, of claim rights, guarantees or some other patrimonial rights is made by the founder and who has the obligation to exercise/manage them with a determined purpose to the advantage of the beneficiary/ beneficiaries. The contract of fiducia is an *intuitu personae* contract because the fiduciary relations involve special qualities of honourableness, efficiency and financial stability. Article 776 paragraph 2 and paragraph 3 in The Civil Code establishes who can have the quality of fiduciary, the enumeration being express and limitative, so that no other person besides the ones mentioned by the Civil Code can have this quality.

In accordance with article 776 in the Civil Code in the contract of fiducia having the quality of fiduciary can participate the credit institutions, the societies of services of financial investments, the insurance and reinsurance societies legally founded, the public notaries and the lawyers, irrespective of the form of exercising the profession. As the French legislator (article 2015 Civil Code), our legislator stopped at the specialized fiduciary system with a qualified character, as it results from the limitative enumeration provided by articles 776 paragraph 2 and 3 in The Civil Code. Irrespective of other legislations which stipulate that in each contract of fiducia cannot exist but a fiduciary, The Civil Code provides the fact that the rights which form the object of fiducia can be transferred to one or more fiduciaries. In the situation of many fiduciaries, these are obliged, joint and several, the founder and the beneficiary being offered the possibility of acting against any of the fiduciaries. As far as the capacity of the fiduciary is concerned, this has to have full capacity of exercise. In the doctrine there was expressed the idea according to which the fiduciary who is a legal person can also have the quality of beneficiary, it will be enough that this must have limited capacity of exercise until the appointment of the administration organs because it can close administration, conservation or even disposal acts, doing this thing on its own risk. (Tripon, 2010)

#### *The beneficiary*

The beneficiary is that legal or natural person who will get the advantage produced by the goods which form the patrimonial mass and sometimes even the goods which make the object of the fiducia. The beneficiary is not part in the contract of fiducia as the founder and the fiduciary are, this being only a third in the right of obligations. In the moment of closing the contract of fiducia, the beneficiary gets a claim right against the fiduciary, but in the hypothesis in which the fiducia was finished with the purpose of transmitting the beneficiary a certain good, the latter will have the right to assert.

The Civil Code establishes in article 777 that the beneficiary of the fiducia can be the founder, that means any legal or natural person, the fiduciary or a third person, irrespective of the French Civil Code which provides in article 2016 that the beneficiary can be the fiduciary or the founder, without mentioning as a possible fiduciary a third people as the new Roman Civil Code provides.

In the contract of fiducia the attributions of the thirds must be expressly established as well as their limits. The Civil Code recognizes the right of the third to request the judge the change of the fiduciary, the right to name a temporary manager of the fiduciary patrimonial mass, as well as the right to request the fiduciary to justify the achievement of his obligations.

### **The Content of the Contract of Fiducia**

Article 779 in the Civil Code establishes the elements that the contract of fiducia must contain under the sanction of the absolute nullity:

**a) real rights, claim rights, guarantees and any transferred patrimonial rights.**

The contract of fiducia can have as an object not only principal real rights (property, charge, usufruct), but also secondary real rights.

The guarantees which form the object of fiducia can be real guarantees (mortgage, deposit) or personal.

The object of fiducia can be any mobile or immobile goods- corporal or incorporeal (claims, rights of intellectual property, mobile values, trade funds, etc).

The goods, the rights and the guarantees can be present or future (as an example, an immobile which is being built).

In accordance with article 773 in the Civil Code (as well as the provisions of article 2011 in the French Civil Code) there is provided the possibility that the object of fiducia must be formed by an assembly of such rights and goods, therefore, an universality.

In accordance with article 786 in the Civil Code, “the goods in the fiduciary patrimonial mass can be followed, under the conditions of law, by the claim titular as far as these goods are concerned or by those creditors of the founder who have a real guarantee on the latter’s goods and whose opposability is achieved in accordance with the law, previously of the establishment of the fiducia”.

Besides the claim titular as far as these goods are concerned in the fiduciary patrimony in accordance with article 786 paragraph 1 in the Civil Code the fiduciary patrimonial mass can be also followed by the founder’s creditors, but some conditions must be achieved:

- there should be a claim previous to the establishment of the fiducia;
- to have a real guarantee on the respective goods;
- the formalities for opposability previous to the establishment of the fiducia must be achieved in accordance with the law.

**b) the length of the transfer must not overcome 33 years, starting with the date of its closing.**

The contract of fiducia is a contract with determined length and the transfer of property which is given at the beginning of fiducia is temporary. The length must be comprised in the contract.

Nothing opposes that the parties extend the length of the contract of fiducia, in this case being necessary the achievement of all the formalities provided by the Civil Code for closing the contract of fiducia.

- c) the identity of the founder or of the founders;**
- d) the identity of the fiduciary or of the fiduciaries;**
- e) the identity of the beneficiary or of the beneficiaries or at least the rules that allow their determination;**
- f) the purpose of the fiducia and the length of the administration and disposal powers of the fiduciary or of the fiduciaries.**



### 3. The Purpose of Fiducia (the Cause of Fiducia)

As far as the purpose of fiducia is concerned, the New Civil Code establishes some provisions with an imperative character. So, as it results from the definition of fiducia provided in article 773 in the Civil Code, the founder transfers real rights, claim rights, guarantees or other patrimonial rights to the fiduciary/fiduciaries so that this/these exercise(s)/manage(s) them with a determined purpose to the advantage of one or many beneficiaries. The Civil Code does not define the purpose of fiducia, but this must be determined and obligatory comprised in the contract of fiducia, under the sanction of absolute nullity in accordance with article 779 letter f in the Civil Code: "The contract of fiducia must mention under the sanction of absolute nullity the purpose of fiducia and the length of the administration and disposal powers of the fiduciary or of the fiduciaries".

The cause constitutes an element on which the existence of the judicial act depends, this must exist, must be licit and moral. The achievement of the followed purpose when this appears previous to the fulfillment of the date mentioned in the contract of fiducia constitutes one of the causes of finishing the contract of fiducia in accordance with article 790 paragraph 1 Civil Code. Therefore, it is necessary that in the content of the contract of fiducia to be inserted the detailed explanations of the founder regarding the motifs and the purpose for which it appealed to the institution of fiducia besides the absolute obligatory mentions provided by article 779 in the Civil Code.

Depending on the purpose of fiducia, this can have many forms, but much lesser than the different variants of presenting the trust because the institution of fiducia lacks the variety and the versatility of the institution of the trust by which it has been inspired.

So, we can distinguish:

- fiducia with an administration purpose;
- fiducia with a guarantee purpose.

#### *Fiducia with an Administration Purpose*

This type of fiducia implies that the fiduciary must be transmitted patrimonial rights to manage by the founder with the obligation for the fiduciary to manage/ fructify, so that the resulted benefits must be transmitted to the founder. Also, at the expiration of the contract, the fiduciary has the obligation to return to the founder the given patrimony. Fiducia with an administration purpose can have many and varied applications, it can be used especially in the financial purpose and not only. By this type of fiducia, the founder transfers/ puts some funds at the disposal of the fiduciary with the purpose that these should be invested in accordance with the disposals that the founder gives to the fiduciary to the advantage of a third or even to the founder. Another application of fiducia with an administration purpose is the fiducia of immobile administration and of the building projects by which the fiduciary obliges him to manage a building project which can consist in a residential neighbourhood, one or more office buildings or living spaces, a complex of commercial spaces etc.

#### *Fiducia with a Guarantee Purpose*

Fiducia can be used with a guarantee purpose. By this judicial instrument, the founder-debtor transfers the property of one of his goods to the fiduciary (who can be the creditor or a third) with the obligation for the latter to return to the founder in the case the debt was paid, or, by contrary, to give to the creditor. Fiducia with a guarantee purpose offers the creditors the right to cover the claim from the price obtained from the sale of the good which forms the object of the fiducia or even with the good itself under the form of an operation of payment.

Not only the sale, but also the payment is realized through the fiduciary who acts as a titular/owner of the right. The good was transmitted by the founder to the fiduciary with the latter's obligation to sell or to pay in the case in which the creditors will not have received the payment of their debt. Irrespective of the deposit of dispossession, the guarantee fiducia offers the creditor exclusiveness on the transmitted good and it allows the debtor to keep the possession of the good which is the object of

the guarantee fiducia if the contract provides this thing. In the French literature the so-called “rechargeable guarantee” was considered which implies that the transmitted good by the guarantee fiducia can guarantee not only present goods, but also future ones, the guarantee does not finish once with the disappearance of the initial claim, so that the same guarantee can be used to guarantee a new future claim without being necessary the closing of a fiducia contract, if the parties stipulated in this way. (Lefebvre, 2009, p. 22)

#### **4. Conclusions**

The regulation of the institution of fiducia in the Romanian right represents a natural response of the legislator as far as the new judicial and globally economic realities are concerned. There was expressed the opinion<sup>1</sup> according to which the role of the fiducia will be felt in a primordial way in the domain of the financial investments by significantly reducing the costs in the development of new investments. Fiducia can constitute the solution even in the case of a trial when the appointment of a fiduciary can be more useful than the measure of distraint. Fiducia is applicable even in the case in which a person inherits, for example, an immobile, but he does not have the necessary capacity (be it because he is minor, be it because he does not know) to use it. This institution offers the partner of a commercial society the possibility to withdraw temporally from the sphere of business, transferring the fiduciary the duty of managing the patrimony during this time.

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\*\*\* The project of the Civil Code.

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<sup>1</sup> The project of the Civil Code, p. 146-147.



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**Applications of the Motivation Theories in the Management  
of the Romanian Police**

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**Abstract:** Currently, there is a world tendency to rejuvenate police units. This trend is compounded by the fact that this category of staff is subject to intensive fluctuations, which is an issue for the police system in the U.S., Canada and not only, even if this problem has varying degrees of severity from one country to another or from one unit to another. One of the reasons explaining the fluctuation of the staff is the lack of motivation in the police service employees (Brodeur, 2003, p 301). Given these issues, as well as the fact that meeting the aims of the Romanian police is not possible without the management in this field laying the „foundations” of effective motivation strategies, this article aims to analyze the motivational theories and models applicable in the management of the Romanian police, their advantages and disadvantages, so as to provide those interested a clear view of the phenomenon of motivation and the necessary elements to develop coherent programs to motivate the special public servants of this institution.

**Keywords:** needs; performance; motivation; the concept of motivation; the factors that influence motivation

## 1. Introduction

In order to achieve objectives and ensure sustained success, it is imperative for any organization that employee motivation be an essential objective of management, given the fact that "people's motivation largely determines both the quality and the quantity of work" (Drăghici et al., 2011, p. 193). Knowing the factors that trigger, guide and perpetuate employees' behaviors, the factors affecting their motivation or the means and ways of action which may be used to increase the motivation of workers can both increase the efficiency of activities, increasing the likelihood of explanation and prediction of human behavior and success of the employees and the organization's major achievements.

Currently, there is a tendency worldwide to reduce the average age of people working in the police. For example, in the U.S., the average age of police officers was between 40 and 50 years in 1972, it ranged between 31 and 35 years in 1982, and it is now below 30 years (Brodeur, 2003, p. 301). The same tendency to rejuvenate police unit is manifest in our country (the average age was 38 years in the Romanian police in 2004 and within four years, in 2008, it decreased to 35 years). This trend is compounded by the fact that this category of staff is subject to intensive fluctuations, which is an issue for the police system in the U.S., Canada and not only, even if this problem has varying degrees of severity from one country to another or from one unit to another. One of the reasons explaining the fluctuation of the police employees is the lack of motivation in the police service. Jean-Paul Brodeur (2003, p. 301) says that less than 10% of those employed in the police units are interested in police

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work and most people seeking employment in a police unit do so to avoid unemployment and continue to declare themselves in search for a job in another field.

## **2. The Link between Performance and Employee Motivation**

Performance and motivation are two of the most discussed aspects of corporate life.

Performance reflects, on the one hand, the achievement of organizational objectives and on the other hand, the performance of all employees in the organization. Therefore, the quantity and quality of the work of each employee is one of the decisive factors influencing organizational performance. Therefore, to ensure success, organizations must achieve a competitive advantage by improving the performance of the people working there, and by the development of teams.

Employee performance is the extent to which they are contributing to the organization as one of its members (Plum, 2007, p. 194). The employee performance is influenced mainly by two factors:

- their ability to perform the assigned work;
- their motivation to do so (Currie, 2009, p 229).

For a police officer to carry out their tasks properly, they should have both knowledge and skills, and the desire to succeed, to self assert. These are influenced, in turn, by the attitude, experience and training of the police officer (Lynch, Lynch & Bender, 2005, p. 96).

While these attributes are required to perform police work, it not necessarily guaranteed that their owner will use them for the benefit of the organization. A proof that few employees work at their full capacity can be represented by the studies performed in numerous companies. These studies showed that in some situations, employees may work well below their potential (40-50% less than what they are able to) without losing their job or that an employee may work an average performance in only two thirds of their capacity to work (Cândea & Cândea, 2005, p. 180). According to experts, the difference in performance between two individuals who perform the same activity and who are as competent may be explained, in most cases, by the difference in their motivation. Furthermore, some authors believe that "people only do what they are motivated to do" (Currie, 2009, p. 229).

Police managers, managing different types of people, should try to do their best in order to make their staff more productive. Lynch, Lynch & Bender (2005, p. 96) mentions three aspects that are necessary to obtain motivated and effective police employees, capable of high productivity, namely:

- assuming they have the ability to perform the work, the police need time to grow and develop, time which the manager can grant;
- the police need more knowledge to operate and it can be provided by the manager through effective individual and group training programs;
- the desire or motivation, which is the most important ingredient and which must come from within the individual; without motivation neither the employer nor the employee should expect any growth and development.

For this reason, it is imperative for police managers to try to better understand their subordinates, to determine their past behavioral problems and to enable them to foresee exchange and control future behaviors. For this, they must design and develop effective incentive programs, which should work towards the maximization of productivity of workers, a work environment that would lead to satisfaction and which should cause them to become more involved in achieving organizational goals.

Motivation and performance are connected with the so-called *optimal motivational*, which is the level of intensity of the motivation at which the work is performed with maximum efficiency. The relationship between motivation and performance, which is one of mutual conditioning, is expressed in or *the law of motivational optimum*, or *the Yorke - Dodson law*, according to which efficiency is highest at a certain amount of motivation intensity, called motivational optimum, or in other words,

the growth of performance is proportional to the increased motivation to a point, beyond which there is stagnation or even decline. Using these considerations and given the expected performance, the manager knows how to motivate people to achieve the desired results. It is also important for managers to know the individual objectives of the police officers – these being the actual reasons for their work, and whenever they are consistent with the objectives of the management, to help them reach their goals. In this way, managers can refer to how the police want to be motivated, but also the desire to achieve certain performance.

### 3. The Concept of Motivation and the Role of Needs in the Motivational System

Etymologically speaking, the term "motivation" originated in the Latin word "movere" which means moving away.

Over time, the breadth and scope of complex motivation was discussed in numerous specialized works, so there are many definitions for the concepts involved in the training of personnel. Although opinions on this issue are quite varied, they revolve, however, around a common element: *the needs of the employees*, the unmet needs which are energizers for all human behavior.

Thus, some experts (Nicolescu & Verboncu, 1999, p. 491) believe that "Motivation can strictly be defined as the correlation of the needs, aspirations and interests of staff within the organization with the carrying out of objectives and duties, powers and responsibilities assigned within the organization", while others (Câdea & Câdea, 2005, p. 181) define motivation as "a force that energizes, directs and maintains behavior" or as "the process by which managers determine their subordinates to achieve success, giving them grounds to do so" (Drăghici et al., 2011, p. 197).

So motivating is the action to motivate or trigger the process of motivation and motivation means all the motives - internal (inborn or acquired) or external, acknowledged or not, physiological needs or abstract ideals - that initiate, direct and maintain behavior of a person towards the achievement of a purpose, which, when it is reached, meets an individual need. In connection with this definition, we can make the following comments:

- the internal needs of the person (such as hunger, the need for security and recognition) cannot be isolated and observed, only the behavior they started can;
- a motivational process analysis draws on the individual characteristics, observing his behavior and on the issue of assumptions about the needs that have initiated them;
- motivation has always resulted in action, in other words, to meet their domestic needs, people act towards the objectives that they consider to be generating satisfaction;
- Behavior and motivation are notions that can not be mistaken, the first being determined by many factors (biological, social, cultural, organizational and psychological), among which an important factor is motivation.

In terms of employee motivated behavior, we can say that it is the result of the interaction between internal or individual factors (perception of tasks, attitudes, needs, interests, value systems, etc..) with the external or organizational factors (the salary system, specifying tasks, the working group, the control system, monitoring, communication, feedback, leisure). Motivated behavior of the employee results in the meeting of some needs, which determines a balance of the individual physically, mentally and spiritually, however, this balance is fragile and transient, because meeting of one need leaves other needs to be met, so there will always be a new imbalance which will require individual remotivation.

According to some authors (Currie, 2009, pp. 230-231), motivation to have a good performance is influenced by many factors, which can be grouped into two categories, as follows:

- *organizational factors*, related to the work environment, including:

- training and development programs for employees;
- the state of relations with employees;
- methods of reward used within the organization;
- communication and leadership style of managers;
- organizational culture, etc...
- *individual factors* that relate to employee attitudes towards work, his position, and the organization and the factors of his personality.

Donald Currie (2009, pp. 230-231) presents the main organizational factors that influence motivation, as follows:

**Table 1 Organizational Factors Influencing Motivation  
(According to Currie, 2009, p. 230)**

No.	The factor	The effect
1.	Training and development	It raises morale and develops the sense of competence, causing visible changes in the behavior of employees and tangible benefits in terms of better performance. It increases the versatility of the employee, the joint planning and execution of complex tasks give birth to trust and mutual respect.
2.	Relations with employees	Reasonable and fair policies and procedures support an individual's motivation to work. From the '80s onwards, mutual recognition that managers and employees share in the survival and prosperity of the organization has a motivating effect.
3.	Rewarding	It plays a crucial role in work motivation. Financial rewarding of employees is seen as a gain on their investment of time, effort and application of skills. If therefore they believe they are fairly and equitably rewarded, they will continue to be motivated and work.
4.	Leadership	Many employees still see themselves working "for" their managers rather than "together" with them. The style in which managers communicate with their staff therefore exercises a significant effect on the level of effort that the employee is willing to make <i>for the manager!</i>

Motivation at work is closely related to at least three categories of variables involved in the process of work: individual characteristics, job attributes and characteristics of the working environment, all these sets of variables determining employee motivation to achieve performance.

The core of the phenomenon of human resources training is motivation - the psychological factor with a role in activating employee performance and efficiency.

### 3. Motivational Theories

At the core motivation lie human needs, that is the physiological or psychological states caused by a lack or discomfort, which must be corrected to maintain a balanced state of the human body.

Motivation has been the subject of many theoretical investigations over time so that there are several approaches to understanding and explaining it. We shall not dwell here on the motivational theories that specialists grouped into several categories, according to several criteria, but we will summarize, in the table below, one of the classifications considered to have greater applicability in human resource management:

Table 2. Motivational Theories

NO.	TYPE OF THEORY	NAME	PROMOTER	YEAR	BASIC PRINCIPLES
1.	THEORIES FOCUSED ON CONTENT	1.1. Instinct theory	William James, William McDougall	1890, 1908	The outbreak of human behavior is due to instincts
		1.2. Murray Theory	E. Murray, Charles Carver, Michael Scheier	1964	Individual behavior is determined by twenty "social reasons", whose hierarchy differs with each individual
		1.3. The hierarchy of needs theory	Abraham Maslow	1954, 1972	Human behavior is always motivated and determined biologically, culturally or situationally. People seek to satisfy ongoing needs, which are ranked as a pyramid with five levels and are satisfied in a particular order of priority.
		1.4. ERG Theory	Clayton Alderfer	1972	Individual behavior is explained by the existence of three needs: existential, relational and development.
		1.5. The double folded theory (the motivation-hygiene theory)	Frederick Herzberg	1957	Employee attitudes toward work depend on two factors: hygienic (which cause dissatisfaction) and motivational (responsible for staff satisfaction).
		1.6. The X-Y theory	D. McGregor	1960	Managers base their work on two sets of assumptions, generalizations and hypothesis about human behavior: one considered negative, called theory X, and another, considered positive, called theory Y.
		1.7. The theory of acquired needs	David McClelland	1965	People who acquire one of the needs of affiliation and power (which can be acquired through experience and learning) behave differently from those who lack that need.
		1.8. The job characteristics	J. Richard Hackman, Greg R. Oldham	1976, 1980	How employees react to the nature and configuration of their work varies with individual characteristics. For a job to be more stimulating, it is necessary to act on its characteristics.
2.	THEORIES FOCUSED ON THE PROCESS	2.1. Theory of expectations	Victor Vroom	1964	The employee will choose one behavior of several possible options, depending on the likelihood of the alternative behavior leading to achieve the desired, expected outcome.
		2.2. Theory of expectations	Lyman Porter, Edward Lawler	1968	The employee perceives performance as an opportunity to receive intrinsic or extrinsic rewards, which they expect to achieve by providing a better efficiency.
		2.3. Theory of equity	J. Stacey Adams	1961	Employee motivation is based on concepts of justice and fair trade continuously assessed by comparison with others, regarding their efforts at work and the rewards they get as a result of these efforts.
3.	THEORIES FOCUSED ON STRENGTHENING	3.1. Strengthening theory	B.F. Skinner	1957	Behaviors with positive consequences tend to be repeated and behaviors with negative effects tend to be avoided.
		3.2. Theory of rewards	F. Landy	1987	Motivation is a result of environmental stimuli determining the individual to take action to achieve certain desirable objectives or to avoid unwanted events.

#### 4. Applications of Motivation Theories in the Management of the Romanian Police

In developing programs to motivate police officers, managers should bare in mind that motivation is strongly individualized, depending on the importance assigned by each of the subjects to the meeting of needs, the rewards and values pursued and the motivational factors underlying their behavior are not static but continuously changing.

Next, we will focus on the motivational theories considered to have greater utility in the human resources management of the Romanian Police.

*Maslow's theory* is one of the most popular motivational theories in use and it can be used in the human resource management of the Romanian Police. Abraham Maslow described human behavior in terms of human needs. He argued that the needs are complex and hierarchically arranged in five steps and that one always wants something, because once one need is satisfied, another takes its place, but only unsatisfied needs are sources of motivation.

Based on this theory, to really motivate and effectively utilize personnel under their command, police managers should first assess the needs of their subordinates through the motivation needs hierarchy; if the staff is on one lower level of the pyramid, it is likely that the rise to the next level be prohibited by barriers imposed by organizational structure and not by the quality of the staff.

Following investigations, a correlation was established between Maslow's hierarchy of needs and the needs expressed by police officers.

Thus, the starting point for the motivation theory developed by Maslow is the basic *physiological necessities* such as food, water, oxygen, shelter, rest, etc.; whose satisfaction ensures individual survival. If police officers aim to satisfy physiological and safety needs, motivating them should focus on financial rewards.

*Security and safety needs* are above physiological needs, being the following category of needs that can motivate. At the organizational level, this set of needs involves paying attention to the management regarding work safety conditions, wage growth with inflation, securing the existence of a pension, medical care etc. Although this has not been fully verified, managers should not forget that some people who have chosen to enter the police are convinced that government agencies provide a safe and financially stable workplace and therefore they want stability more than anything else (personal security protection against threats and hazards, job security, etc.). If you want to meet security needs expressed by these police officers, who see everything in black and white, managers can focus on traditional trade union requirements and reduce any risk of the activity undertaken by them.

Security needs must also be analyzed when promoting a person as a manager, because it can provide valuable information about that person. Thus, a manager driven by such needs will be well organized, and they will make outstanding efforts to please the upper levels of management. They can ignore the needs of their subordinates and they can use manipulation, when necessary, often believing that subordinates do not need to control their life (Miller & Braswell, 2010, pp. 24-25).

*Social needs* include the needs of belonging to a group, the need of acceptance, friendship, comradeship, love, etc. They can be satisfied through communication, involvement and social interaction and they become active after the needs of the lower orders are met. If police officers that obviously face social needs fail to meet these needs within the organization, they will manage and use time improperly and thus have low productivity. To avoid this undesirable situation, the manager must promote social interaction with these individuals, which can be achieved through activities such as training in gyms, attending parties or sports activities, etc.

The management of the institution must monitor the social needs because their presence may indicate an increased degree of personal needs in the detriment of the needs of the organization.

*Self-esteem needs* are above social needs and they concern each individual's desire to be respected by others, to have their prestige and achievements, their reputation and status in the organization recognized. They refer to two categories of needs, according to Maslow, as follows: on the one hand, self-esteem, power, social adequacy and reliability to the world, on the other hand, the prestige, reputation, attention and appreciation from those around.

Police officers whose esteem needs were not met by their work are, as existing studies show, dissatisfied employees. It is therefore important for managers to recognize a task or activity well



executed by their subordinates, as meeting esteem needs generates a sense of self confidence, self appraisal, power, confidence that can be useful. On the other hand, not acknowledging employees' merits causes feelings of inferiority, weakness, helplessness, inability, which can lead to discouragement or neurotic behavior. (Pânișoară & Pânișoară, 2010, p. 38). At the organizational meeting this set of needs can be provided in the performance evaluation process by providing positive and negative feedback by considering the employee work with the delegation of responsibilities, etc. (Cândea & Cândea, 2005, p. 189).

*Needs of self accomplishment ("self-actualization" or accomplishment)* concern the need of spiritual development, training, self-esteem, fulfillment and realization of individual potential and this is the maximum level, at the top of the "pyramid of needs". This need describes the condition in which the individual needs to develop feelings of professional growth and maturity. At this stage, the police officer progresses, becoming more competent earning more and overcoming difficult situations with skill and mastery. Motivation is fully internalized and it does not require external stimulation (Miller & Braswell, 2010, p. 25).

Policemen led by the need for self-realization / fulfillment usually focus on constructivism, utility and creativity in their work. Therefore, a police officer whose need for self-actualization is strong is most appropriate to participate in special missions, as they have the opportunity to express creativity in their activities.

*The motivation-hygiene theory* developed by Frederick Herzberg argues that employee attitudes to work depend on two categories of factors: hygiene (extrinsic, relating to context) and motivating (intrinsic, development or content). The first category of factors are usually related to working conditions and it includes: payment of unethical labor, annoying supervision, unfavorable working conditions, tense interpersonal relationships - formal and informal -, questionable job security, unexplained uncertain and distant personnel policies of the organization management, different from the wishes and aspirations of employees, etc. (Drăghici et al., 2011, pp. 210-211). The second category refers to the work itself and revolves around the values of achievement, advancement, recognition, responsibility and personal development. Herzberg's theory argues that job satisfaction is determined only by a kind of factors (the motivators), while dissatisfaction is due to another type of factors (the hygienic). According to this theory, hygienic factors have a greater potential to cause dissatisfaction than satisfaction, and motivational factors are responsible for the appearance of satisfaction. Managers must consider that the presence of hygienic factors does not generate satisfaction, but simply serves to prevent dissatisfaction, while their absence or insufficiency increases dissatisfaction at work. They also must take into account the fact that the presence of motivational factors results in increasing job satisfaction, while their absence does not cause dissatisfaction.

Developed by Douglas McGregor, *the XY theory* supports the idea that managers based their work on two sets of assumptions, generalizations and presuppositions about human behavior: one considered negative, positive called theory X, and another one considered negative, called theory Y.

Theory X, which is the traditional view of management and control was the predominant force in the previous period and it focuses on the following: employees really dislike work and will do whatever is necessary to avoid it, so that they have to be controlled and directed or coerced and threatened with punishment to achieve organizational objectives; safety is important to the employee, they have little ambition and it is enough to tell them what they have to do. This theory focuses on the control, direction and leadership activities, and procedures based on this, applied in the police, provide close supervision of workers and means to deliver punishment.

Theory Y can be used to motivate police officers who have developed social esteem or self-actualization needs and it is based on the following assumptions: employees do not naturally dislike work, and it is an important part of their lives; to achieve organization objectives the management can also use other techniques than control and direction, such as, for example, commitment. Involvement in achieving the organization goals depends on personal rewards associated with achieving them. Employees have the potential (imagination, ingenuity, creativity, etc.) to achieve these goals.

Applying Theory Y is limited to the need of external control, using other management techniques to achieve organizational objectives. In the light of this theory, managers should consider police officers as assets of the organization they belong to, and stimulate development of interpersonal relationships (Miller & Braswell, 2010, p. 26).

*Expectations Theory* was documented by Victor Vroom, and it is based on the concept that internal and external forces affect the police officer, who will act in a specific manner to perform an activity, if they will consider that it will lead to an expected, desired result.

## **5. Conclusion**

Human motivation in general, and policemen motivation in particular, represent a complex and dynamic process, which cannot be achieved in one single way, or by using one single factor which can influence people's abilities; as a result, motivating police officers can only be achieved by taking into account a multitude of factors.

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THE 7TH EDITION OF THE INTERNATIONAL CONFERENCE  
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REALITIES AND PERSPECTIVES

## Institutional Dynamics versus Economic Dynamics in Romania

Socoliuc Oana-Ramona<sup>1</sup>

**Abstract:** Economic growth and development are undoubtedly the major objectives of every nation. From the large variety of determinant factors, institutional economy emphasizes the role of institutional efficiency in achieving such performances. In Romania, the binomial relationship between effective institutions and development tend to be a utopia, taking into consideration that responsible for poor economic performances is precisely the institutional inefficiency. There is a path dependency, which clearly explains the current stage of development, given the poisonous influence of ex-soviet regime. Hereditary mark of the past inhibits any chance of progress, inclusively in the context of EU membership, which certifies Romanian formal integration at the transnational European level. The purpose of this paper is to offer an overview of Romanian economic dynamics through the quality of institutional framework, and furthermore, to highlight the necessary measures for redressing the inland economic conditions.

**Keywords:** institutions; path dependency; institutional efficiency; institutional dynamics; economic dynamics.

### 1. Introduction

Beyond classical and neoclassical perspective on economic growth and the determinants of wealth, currently the New Institutional Economics is required to explain development gaps between countries all over the world. It promotes a distinct approach of economic theory, where institutions are the central pillar of analysis, even if free market remains also a key element. Institutional quality determines the level of economic development, as it relates to both, incentives and factors which inhibit this positive evolution. Economic theory of institutions pleads for the biunique relationship between institutions, as the rules of the game, and economic performance. In other words, institutional dynamics influences economic dynamics; the quality of institutions derives from economic evolutions, as well as a healthy institutional system is able to promote economic growth and development.

### 2. Institutions – Pillar of Growth and Economic Development

The multiple definitions of the term *institution* have a common denominator, the idea of *behavioral regularity* (Hodgson, 2006; North, 2003; Sugden, 1986). Its origins proceed from the particularities of social institution, allowing the expression of a certain behavior in some specific situations (Marinescu, 2004). Taking into account the bounded rationality of individuals, the uncertainty and risk specific for the economic environment, institutions are responsible for doubt reduction, structuring everyday life. Moreover, they constitute an existential premise of any society.

The generic title of *institutions* include on the one hand, *formal institutions* that support free market and its development, like: property rights, credit institutions, those for macroeconomic stabilization, such as fiscal or monetary policy, institutions for social insurances, or those for conflict management adjustment. On the other hand, there are *informal institutions*: habits, traditions, ethical rules, or codes of behavior (Rodrik, 2000). These two categories coexist and mutually interfere; consequently, we might endorse the idea that institutions should be perceived as a whole. The interaction between these

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two components of institutional matrix might be favorable for economic expansion, or adversary, depending on complementarities or disparities between created rules and genetic heritage of each nation.

There is a circularity relationship between institutions and economic development (Pohoată, 2009). Institutional background is strictly dependant on economic evolution, while national level of development is highly based on the efficiency and quality of internal rules and norms of conduct. Undoubtedly, labour division, innovation, capital accumulation, or efficient combining of production factors have a substantial contribution on growth and economic development, but even so, human action should not be neglected. In order to understand why individuals prefer saving money, investing it, or furthermore, to acquire knowledge, it is necessary to consider institutions. They belong and made part of human interaction, so, are able to encourage the welfare or the decline of a society.

Economic theory pointed out certain factors, which support economic progress as property rights, economic freedom, foreign direct investment attractiveness, competitive markets, freedom of trade relations, healthy currency, or low taxation. Among all these, property rights are “the fundamental institution of market economy” (Marinescu, 2004). Legal property existence cannot be analyzed in isolation from the economic perspective. Moreover, the creation of property rights was necessary in the context of resources rarity, when conflicts between individuals might be generated on their usage account. As owners and users of such resources, people were encouraged to use them with parsimony and responsibility. Hereby, human interaction became less problematical while economic behavior converges to efficiency. When property is most useful allocated to efficient practices, economic welfare appear as a natural consequence (Marinescu, 2007). Institutions are responsible for activating all these factors, which enforces the idea that in the process of economic growth, institutions do matter (North, 2003).

### **3. Institutional Dynamics vs. Economic Dynamics in Romania**

The phenomenon of economic dynamics illustrates a *permanent change* in both ways, positive, meaning economic growth, and negative with the sense of economic decline (De Giancarlo, 1997). The quality of institutions is responsible for economic oscillation between these two hypostases. Institutional dynamics is favorable to development when the metamorphosis of formal rules is in totally accordance with informal institutions. Hereby, the institutional mix will allow the decrease of transaction costs, stimulating economic growth, especially when rules are targeting individual freedom, or labour division (Kasper & Streit, 1998).

Culture has a great impact on the process of society change, taking into account that informal rules are genetically inherited from the past. This explains why some nations are wealth oriented and promote *just institutions* able to induce growth and development, while others are power oriented, resistant to the process of institutional change and have significant difficulties in improving their own economic performances. Romania is representative in this case and is suffering from what Romanian economist Paul Fudulu calls *cultural handicap* (Fudulu, 2007). This means the inability to adapt to free market conditions, due the persistence of the ex-soviet values.

From the beginning of 1990, Romania was under the permanent changing process generated by reconversion from plan to the market oriented economic system. All these mutations involved institutions, economic and social sphere, but also a reconfiguration of inland mindsets. A new challenge came along with the EU accession process, but having different dimensions. Economic development was extremely important, however, the reality of the past few years highlights precisely the opposite (Jain & Ohri, 2007), given the national *institutional sclerosis*. Usually, institutional transformation is able to change and support the evolution of society; unfortunately, in Romania this transformation never took place. Old values of the communism continue to survive under the mask of democratic ideas, being responsible for corruption, bureaucracy, public sector inefficiency, poor economic performances and so on.

### 3.1. Transition Challenges in Romania

Post communist conversion was very complex. Measures like price liberalization, privatization, or economic stabilization were essential for setting up the new market economy, but were not able to guarantee even the success of transition. Building the institutional framework was the greatest challenge so far (Dăianu, 2003). Reinforcing institutions needs time, and is extremely important for the proper work of each society, mainly for developing countries. In all this period, Romania had to face inconveniences related to institutional building and adaption, the need to catch-up developed countries in a short period of time, and furthermore, to procure social and political stability (Idem).

First, transition is a process of *institutional transformation*, which involves starkly changes of nodal society rules and institutions that shape human behavior and coordinate economic activities (Marinescu, 2004). Second, the transition to free market economy means *destruction, creation, and adaption* (Idem). Everything connected with ex-soviet regime must be replaced with new rules and new mechanisms consistent with the free market economic system. From a Schumpeterian perspective, transition might be perceived as a creative destruction. Elimination of old values will generate new ideas, attitudes, knowledge, mindsets, or ideologies and all these will support the consolidation of a new prosperous society.

Social norms have a great influence on economic development (Putnam, 1993), but Romania is the example of unhealthy principles and behaviors persistence, which came from the communist regime. The shadow of the past identifies today with bureaucracy, corruption, indolence of authorities, high uncertainty, and abundance of laws, the lack of effectiveness, or low national productivity, all generating chaos and disorder. The gradual transition is responsible for these problems. After more than two decades, we are witnesses of economic failure and social abjection. As the quote says, a chasm cannot be crossed in two small jumps, one big step is needed. In other terms, a radical change implies a total detaching from the previous condition. Regrettably, the progressive metamorphosis is not compatible with the idea of successful transition and economic performance. This reluctant attitude brought the transition process on *the third way*, a sort of fusion between socialism and pure capitalism (Pohoată, 2000). Thus, private property was belated defined and is far from being connected with the notion of productivity. As Douglass North noted, institutions are not necessarily created in order to be socially efficient, but to satisfy the needs of those who have the power to negotiate them obstruction (North, 2003). Weberian “nouveau rische” are to be blamed; the ex-socialist dictatorship ardent followers, actually disguised in capitalist initiators have guided from shadow the processes of privatization with the purpose of serving their own interests.

### 3.2. Path Dependence - the Source of Institutional Disease in the “European Romania”

Romanian social organism is suffering from an institutional “disease” defined by poor market activity, fragile democratic and institutional framework, and the inability of the state to activate proper institutions, based on rule of the law. In such circumstances, opportunistic behaviors and bureaucracy tend to expand alienating Romanian society from European values. Changing of political regime, democracy and liberty were not sufficient for shaping a new society. Old values are still alive. As Veblen sustained, “institutions are products of the past process, are adapted to past circumstances, and are therefore never in a full accord with the requirements of the present” (Veblen, 2009, pp.168). Even so, the consistency of past beliefs and values is able to influence present and future economic situation; this is what institutional economists call, *path dependency* (Witt, 2008). In other terms, individuals have the propensity to perceive the present and future using some pre-existent mental constructs, or clichés from the past. Douglass North for example, used the concept of path dependence to explain poverty and poor economic performances of the nations. Therefore, we can assume the idea that countries governed by healthy institutions have the necessary basis for further development, while the future of transition countries remain unclear due to their institutional fragility (North, 2005).

This is also the situation of Romania, where corruption is still a nodal problem despite EU membership. Both, public and private sectors are “contaminated”; bribe and power abuse are

frequently encountered and almost assimilated in the society behavior. The lack of transparency of public expenditures and government decisions, the instability of government policies, economic fragility, asymmetric dispersion of wealth, or the privatization of public resources, are sources of inland corruption (Richter & Burke, 2007). This is becoming a measure unit for institutional inefficiency while public sector is responsible for promoting it (Baciu, et. al., 2009).

The trust of population in institutions of state is extremely low. Only 2% of Romanian citizens would seize upon a corruption case to authorities<sup>1</sup>. Romania is no able to learn from the past, in order to narrow the possibility of a further replication of institutional inefficiency (Pohoată, 2009), or moreover, to imitate successful models of European developed countries. Despite European Union membership, seen before as the “necessary vaccination” for economic retrieval, actually the situation is totally different. Institutional sclerosis obstructed the ability of magnetizing European funds, encouraged improper activity of Justice and corruption and economic problems have no solving hope for the moment. There are huge disparities between national background and European forms, which highlights the idea of a *formal insertion* of Romania in EU community. Development gaps between member states are becoming more and more obvious and hard to remove; further progress inside the EU community remains a mystery, but also a challenge for our country. Romania definitely needs a total change, a redefinition of rules, internal norms, codes of conduct, mentalities, in one-word new institutions, in order to provide the necessary stimulus for further economic and social expansion.

Romanian mindset definitely contributed to actual development level. First, political class and then the public sector take advantage of their position in order to satisfy personal interest to the injury of national convenience. Ostentatious consumption, luxurious cars, or houses, are made from illicit activities specific for those who have overnight enriched. They are the agents of *the leisure class* from descriptions of Thorstein Veblen, so their ability to procure wealth is only to themselves oriented. Second, individuals and society tend to comply with the unfair treatment of authorities and refuse to take a position in this respect, which encourages corruption and inland inefficiency. Both, society mindset and the role of the state in Romanian society need capital reconsideration. State must be a sort of guardian, able to provide certainty and a stable environment for economic and social activities through clear rules and strict sanctions for those who disobey the law. These rules and norms of conduct adapted to efficiency and a proper and responsible conduct might generate a deep transformation of social behavior, able to promote honesty and equity. Incremental changing remains the only hope, while institutions are the only way to improve the standard of living.

#### 4. Concluding Remarks

Accumulation of wealth and factors that are able to encourage this process was for decades the nodal aspect of economic theory. The New Institutional Economics reveals another perspective, according to which rules and social norms are essential in achieving economic performances. Modern economic growth implies knowledge accumulation, political institution to guide individuals to productive activities, economic institutions to induce market efficiency, markets expansion, and proper institutions in educational system to ensure growth of human capital quality and innovation possibilities. Unfortunately, in Romania all these conditions are impossible to acquire because of institutional inefficiency. The inland corruption, bureaucracy or the fragile legal system are responsible for poor economic performances. State ineffectiveness to activate the proper democratic institutions encourages opportunistic behavior and narrows national productivity and credibility.

The excessive political involvement in economic and social life has a great contribution to what we call *the institutional disease*, because it promotes the wrong values of the past. The path dependence is able to explain the poor economic performances and inability to join European requirements. Important is that Romania does not have second chances anymore. The fundamental reconversion is

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<sup>1</sup> See *Special Eurobarometer 374, Corruption Report, February 2012*, European Commission, retrieved from <http://ec.europa.eu> on 21 February 2012.

waited, but also needed, is the condition for a better future. This major changing process is impossible to accomplish without institutions, they are the guiding rules that definitely influence economic and social dynamics of every nation worldwide. The latest studies in the field converge on the idea that Romania needs a process of institutional change, but unfortunately, this transformation presumes a long period. Romania will have the insertion opportunity among prosperous states only when the public authorities will focus on providing clear rules and proper methods in order to put these conventions in practice.

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