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CONTENTS

PUBLIC ADMINISTRATION

WHAT ABOUT MUNICIPAL STRATEGIC MANAGEMENT AND PERFORMANCE MEASUREMENT

Krister BREDMAR
School of Business and Economics, Linneaus University
Kalmar, Sweden
krister.bredmar@lnu.se

***Abstract**: The purpose with this paper is to study how environmental uncertainty affects strategic priorities and to what extent the strategic priorities could be monitored through performance measures, within a Swedish municipal context. The findings show that in some areas, such as a budget in balance and cost control, there are traditional priorities and performance measures, whereas in other areas such as monitoring day-to-day improvements and growth and expansion, there is less support from performance measurement systems.*
***Keywords**: Strategic areas, municipal CFOs, performance measurement*

INTRODUCTION

It is from time to time stated that the single most important task for management is strategy (Macintosh, 1994). In a classical manner this comes down to two different tasks, i.e. formulating a strategy and implementing a strategy (Andrews, 1971). The latter task is usually integrated with management control ideas where historically important authors like Anthony (Anthony, 1965) places management control in the area in-between strategy and operations in an organizational hierarchy. Still today, even though the first thoughts in line with the above reasoning, is dated around the second world war and was fist fostered at Harvard Business School (Merchant, 1989), there is an interest in what circumstances that contributes to the strategic thinking in organizations and to what extent that impacts strategic actions. In this context modern performance measurement and management ideas have come to grow and it has had a natural impact on how systems and models have been developed.

Even though performance measurement and management ideas in its contemporary form could be traced back 50 years in time, there have been two developments that have triggered the interest in the research community. Firstly there has been an increased technological development especially around the ability to store and present data and information in a never-ending capability. This has made it even more important to really understand what information is needed since there is more or less an infinite supply of data in larger organizations. Secondly there has been an increased interest in broader information as well as in financial reporting, a trend that could be described as a consequence of the relevance lost debate in general and the balanced scorecard models been developed in particular. New information needs have been named and the information market has become even more demand oriented. Much of the

development that is happening today comes from the industry and very few new ideas come from public administration in general and municipal organizations in particular.

Over some time now there has been a transfer of management ideas from the industry to public sector, which has come to be summarized in the concept New Public Management. Since the public administration in many ways is an even more complex operation to manage, due to several different stakeholders and due to huge volumes handled, there is a possibility to use resources in a more effective way, if effective management tools are used. In this study effectivity is about measuring to what extent an operation is reaching its goals. As a consequence performance measurement comes down to being able to follow how well a strategy is implemented, and if the goals are reached. In a way, this also defines the purpose behind developing extensive measurement systems, and that is to be able to measure how well the organization is fulfilling its strategic intent and purpose.

This paper focuses on strategic management in a municipal context. Since two basic tasks are formulating and implementing a strategy, this is also of interest in this paper. This interest could be formulated into three questions; [1] in what areas does municipal CFOs consider uncertainty?; [2] in what areas are there strategic focuses?; and [3] in what ways is it possible to follow performance? In this way, strategic management is understood as being conscious of uncertainties, making strategic priorities and then measuring performance. Even though much of the development in the area of strategic management and performance measurement today comes from industry, there should be a clear interest within public administration to be able to translate and transform ideas and models from industry to public sector. Especially since the public sector is so diversified and deals with so many different operations and since computer technology and modern information systems make it possible to follow and monitor complex operations.

THEORETICAL FRAMEWORKS

One important task for strategic management is to handle strategic uncertainty. Usually this is done through an ongoing alignment with the changes and uncertainties in the environment (Andrews, 1971; Anthony, 1965). For a municipal organization, uncertainties can come from political and regulatory stakeholders (Ebrahimi, 2000). In order for the organization to be able to act in a strategic way, it therefore needs to scan its environment for potential uncertainties and threats which can be done by the top managers, special units or parts of an organization (Porter, 1980). Because of the problem with scanning the entire environment research have argued that it needs to be decomposed into segments (Bourgeois, 1980; Fahey & Narayanan, 1986). One segment consists of remote environmental sectors, such as political, economic, social, cultural and technological ones (Asheghian & Ebrahimi, 1990; Sawyerr, 1993). From another point of view, the task environment consists of issues dealing with goal setting and goal achievement (Bourgeois, 1980; Duncan, 1972). Altogether, strategic management is thus a form of continued alignment of the internal ambitions with the ongoing changes in the environment.

When making strategic priorities it becomes important to understand both the internal and external environment in order to handle strategic uncertainty. There are several important differences between how private businesses are operating compared to public sector management, especially shown in the environment (Rainey, Backoff, & Levine, 1976; Ward & Mitchell, 2004). One of them is that the public sector is dependent on formal regulations and procedures more than the private sector, which also affects how strategic management is done. The customer is the citizen or constituent, which does not pay for the service directly but indirectly through taxes, in most cases. It then becomes important to understand in what areas the critical success factors can be identified (Rockart, 1979), something that from a public management perspective gives vital input to the strategic management in general and strategic priorities in particular.

After deciding what the strategic priorities are, it becomes important to decide in what ways performance within the strategic areas should be measured (Poister & Streib, 1999). There are several different areas that need to be understood and dealt with in order for the performance measurement to be effective. Measures should for example be derived from goals and objectives, different forms of standards or targets needs to be established and instead of focusing on what data is available there should be a focus on what is important to measure. It is also important measure over time to be able to identify changes in performance and also to measure and define metrics in a similar fashion over several operations in order to be able to benchmark and compare performance. The timing in measuring a performance is also crucial in order to be able to take action when performance is not satisfactory.

METHODOLOGY

This paper is based on a survey conducted in March 2014. There are 290 Swedish municipalities and they were contacted by e-mail. The CFO or the person with an equivalent job description was asked to answer a web-based survey with mainly 18 proposals and three background questions. The proposals, which are translated from Swedish, are presented in the appendix. The respondent was asked to give a response on the proposal based on a seven grade Likert-scale (Norman, 2010). If the respondent answered 1, the respondent did not agree to the proposal at all and if the answer was 7 the respondent fully agreed to the proposal. The survey was open for the respondents for about a month and during that period 91 answers were given. Out of them 85 answers were complete and were used as the empirical material for this study. The method was in many ways suitable for the purpose of the paper and even though a higher response rate always is better, the collected material showed enough of variance to be interesting.

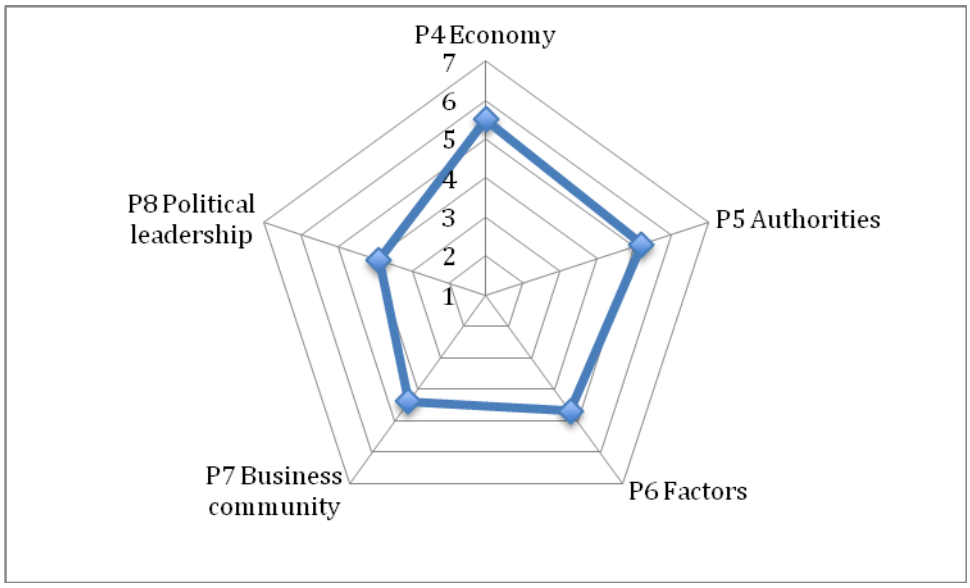
Since this paper is of a descriptive kind, with three rather open questions, this method give a broader view and a more general picture of what the CFO's opinions are within this field. There is a problem with a general picture such as the one presented in this paper, much due to the fact that a municipal operation is complex and multifaceted. The picture presented is therefore of an aggregated kind and mainly based on one respondent's opinion and view. This could also be biased based on how the CFO wishes things to be instead of how they actually are. Nevertheless, it gives a quick glimpse of

how they look at strategic management and performance measurement, which for example gives insights into additional studies and more focused methods. In the next section, the findings will be presented and this is done with an ambition to give a broader picture. Likert-scale studies are not suitable for advanced mathematical calculations, due to the type of scale used, and because of that, the only actual calculation done was three means. In addition, seven combinations between two questions are presented in frequency tables.

FINDINGS

From a more general perspective, the findings could be categories or clustered into three groups. The first group consists of proposal 4 to 8 and deals with how uncertainty is perceived. The second group of questions is proposal 9 to 15 and this group answers to questions about strategic priorities. In the final group, proposal 16 to 20, the respondent's answers describe how performance measures and reports are dealt with in the organization. In order to get the general view or picture, a mean of the answers to each proposal or question in the groups have been calculated and the answer is presented in a radar-diagram in the coming paragraphs.

Figure 1 Means from proposal 4 to 8, grouped into how uncertainty is perceived



In the first group of answers to proposal 4 to 8, the findings show that the respondents agree on the fact that uncertainty is produced from external factors like the general economy, proposal 4, and legislative and regulating authorities, proposal 5, to a greater extent. It also shows that they agree that there are many factors that influence the municipal outcome and economy, but it is not an uncertainty factor in the same way, nor is the business community's success or failure an uncertainty factor. The least source of uncertainty is the political leadership and how they are working. The diagram, see figure

1 below, show a slight tendency to acknowledge uncertainty as something coming from the outside, from the general economy and authorities, and not from the inside, e.g. the political leadership.

When it comes to answers about strategic priorities, the means shown in a radar-diagram can be found in Figure 2 below. In this group of findings, there is one thing that stands out and that is the answer to proposal 9, a budget in balance, which has a mean of 6.7. It is a clear statement from the CFO's but maybe not a surprising one. One might think that to a CFO it is of highest importance in a strategic perspective to have a budget in balance and a good economy in general. The answers also show a strategic interest in growth and expansion (proposal 10) cost control (proposal 11) and in adapting service levels, and improving operations in general (proposal 12 and 13). However, when it comes to two additionally interesting areas, employees' conditions and marketing, the answers show is a slight decline, but they are still quite high since the mean is above 5.

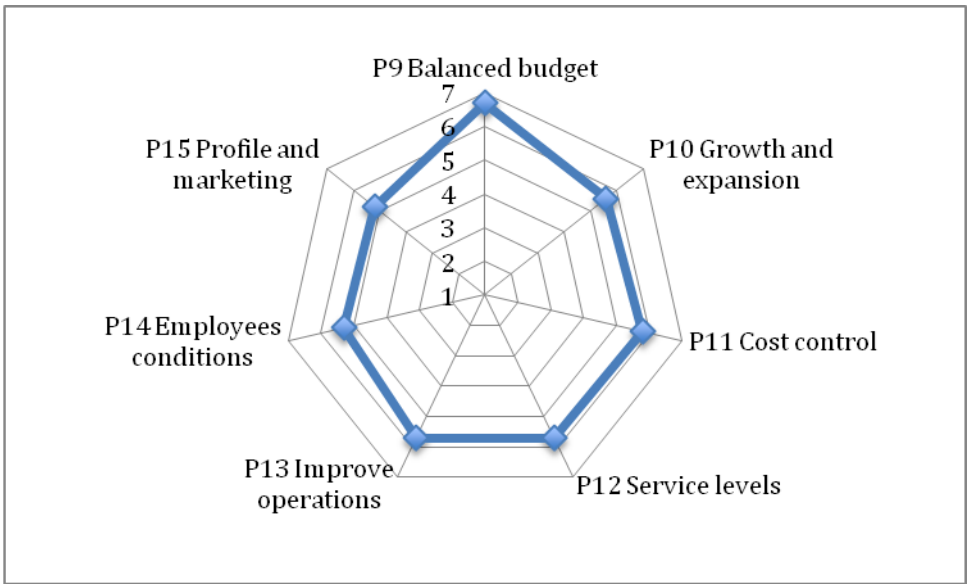


Figure 2 Means from proposal 9 to 15, grouped into strategic priorities

The final group of answers shows two different perceptions. In a more general way, the respondets on avarage are pleased with the report systems (the mean on proposal 16 is 5.3) and they also think that it is fairly easy to follow costs (the mean is 5.7 on proposals 18). However, on a more specific level it is harder to follow growth and expansion, with a mean of 4.0, and both day-to-day performance and work results are hard to trace in the reports. The respondets give those two proposals a mean of 3.5 for proposal 19 and 3.6 for proposal 20. So the performance reporting systems seem to be working on a general level but when it comes to more specifik areas the respondets are not that pleased.

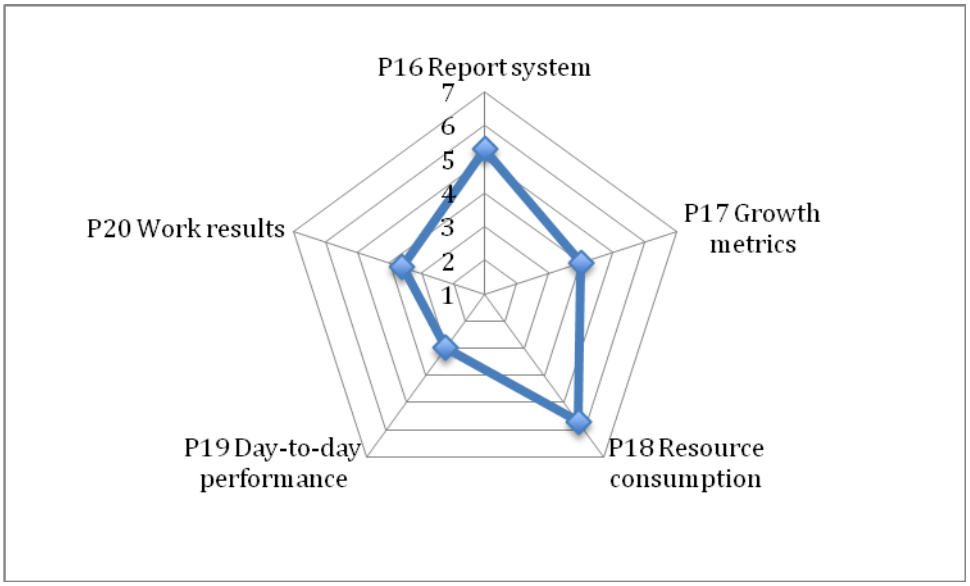


Figure 3 Means from proposal 16 to 20, grouped into performance measurement and reports

In addition to the more general picture painted above this paper continues with cross-tabulating different proposals with each other. With this kind of cross-referencing the idea is to see if statements and proposals from one perspective are back with support from other proposals and perspectives. Each of the seven presentations or cross-tabulations is shown in summary in a table. Since working with strategic management issues in many cases comes down to understanding how to deal with uncertainties the first table shows how different type of municipalities see uncertainty in the general economy, which is shown in table 1 below. There is a slight tendency towards showing that municipalities closer to big cities see the general economy as a larger uncertainty factor than the average municipality. Other than that, the uncertainty concerning general economy is fairly evenly distributed.

Type of municipality	P4 Impact from general economy						
	1	2	3	4	5	6	7
Metropolitan				1		1	
Suburbs of metropolitan					1	4	7
Town				1	2	8	
Suburbs of town					1	1	
Commuting municipality			1	6	2	6	4
Tourism and hospitality municipality			2	1	2		1
Goods-producing municipality				1	6	6	2
Sparsely populated municipality				2	2	1	
Municipality in densely populated region					2	4	1
Municipality in sparsely populated region					2	2	

Table 1 Type of municipality and general economy uncertainty

One of the strongest indications in the survey was that finding a budget in balance was of strategic importance. This more general statement is interesting in itself but it is also interesting to see if the respondents that thought the issue of getting a budget in balance also think that there are many factors to deal with which would cause uncertainty. This combination is shown below in table 2. 66 of the respondents' answers that a budget in balance is of highest strategic importance, but when it comes to different factors affecting the outcome of the local economy the answers are more evenly distributed, with a focus around 5. This might be interpreted as if an uncertainty is recognized but its impact is not that crucial.

P9 Balanced budget	P6 Uncertainty from many factors						
	1	2	3	4	5	6	7
1							
2							
3							
4							
5				3			

6			2	4	5	2	2
7		4	9	13	18	16	6

Table 2 Cross-tabulation from proposal 9 and 6

In a similar way it is interesting to combine two questions or perspectives that should support each other. If the organization focuses on the budget, it should also be interested in financial dimensions in the financial reporting system. The answers are shown in Table 3 below. The majority of the respondents have answered that it is easy to use the report system, but also here there is a more even distribution with several outliners. Two respondents have answered 2 and 3 on proposal 16, which could be interpreted that even though there is a strategic focus on a budget in balance it is not easy to follow in the existing reporting system.

P9 Balanced budget	P16 Easy to use the report system						
	1	2	3	4	5	6	7
1							
2							
3							
4							
5					2	1	
6			1	3	6	5	1
7		1	1	8	19	31	6

Table 3 Cross-tabulation from proposal 9 and 16

In the survey there are some questions/proposals that ask about the same topic but from two different perspectives. In the following section four of them are presented. One important part of leading an organization strategically is to decide whether it should grow and expand. However, if that decision is made then it also becomes important to follow to what extent there actually is a growth. Among almost half of the answers that state that growth and expansion is of strategic interest, a majority is not stating that they have clear metrics and reports showing this. The answers to this combination are presented in Table 4. It seems like there is a tendency to think that growth and expansion is important but the CFO does not have measures to follow whether this is accomplished.

P10 Growth and expansion	P17 Metrics and reports that show growth						
	1	2	3	4	5	6	7
1							
2			1				

3		1	1	1	1		
4		2		4		1	
5		3	4	10	5		
6		1	4	9	11	1	
7	1	1	4	6	5	6	1

Table 4 Cross-tabulation from proposal 10 and 17

Traditionally, financial information systems have focused on costs and consumption of resources. In the next combination of proposals, shown in Table 5, there should be dominance towards showing costs, especially if cost control is of strategic importance. That is to a certain extent also true since there is an even distribution around answer 6 on proposal 18 (if the report systems show costs). However, it is also interesting to see that as much as a quarter of the answers are a 5 on the proposal if costs are of strategic importance. Overall, the findings are more or less as expected.

P11 Cost control	P18 Reporting systems show costs						
	1	2	3	4	5	6	7
1							
2						1	
3							
4			1	1	2	2	1
5				2	4	16	
6			2	2	6	11	4
7			1		6	10	11

Table 5 Cross-tabulation from proposal 11 and 18

For sometime there has been a focus on improving day-to-day operations within industry, something that also is a part of New Public Management. Two of the proposals were centered on this, proposal 13 and proposal 19 as shown in Table 6 below. This seems, however, to be an area where there has been little or not sufficient development. When it comes to being able to measure day-to-day performance, there is a great variance among the answers, with a center around 3 and 4. These answers are in this context fairly low. At the same time, a majority says that improving daily operations are of strategic importance.

P13 Improve operations	P19 Measure day-to-day operations						
	1	2	3	4	5	6	7

1							
2						1	
3							
4			1	1	2	2	1
5				2	4	16	
6			2	2	6	11	4
7			1		6	10	11

Table 6 Cross-tabulation from proposal 13 and 19

Being able to measure daily performance is also something that involves the ability for an employee to follow their work, which was one of the strategic proposals. Combining proposal 14 with 19 shows to what extent respondents' look at employee's conditions as a strategic issue and if there is a possibility to measure what is done, what the performance is. This combination is shown in Table 7. As presented earlier in this chapter there is a somewhat weaker tendency towards focusing on employee conditions as a part of strategic issues, which also is shown in Table 7. Nevertheless there is a slight linear pattern showing that the two proposals follow each other to some extent.

P14 Employee conditions	P19 Measure day-to-day operations						
	1	2	3	4	5	6	7
1							
2							
3		1		2	1		
4	3	3	5	3		1	
5		4	6	7	6		
6	2	3	5	6	5	2	
7		3	4	3	5	2	

Table 7 Cross-tabulation from proposal 14 and 19

Altogether, the findings show that some of the answers are close to what could be expected while others show a greater variance. In the following section, the paper continues with a short discussion of the findings.

DISCUSSION

Overall answers show what might be expected. CFOs think that it is of strategic importance to have a budget in balance and they also feel that they can use their reporting

systems to follow this. They also see it as important to follow costs and consequently they find that information to a large extent in the reporting systems. When it comes to handling uncertainty as a part of the strategic management process, there seems to be an emphasis on issues they can not control, such as the general economy and legislative and regulatory authorities. The political leadership, which is one of the most important stakeholders, seems not to create to much of a problem or uncertainty. In a more general perspective, it seems like the respondents have a higher profile among the answers when it comes to strategic intent and a slightly lower response distribution when it comes to performance measures and reporting. In a way, this might be interpreted as intention and reality, what the CFO wish for and what they live by.

In some areas there seem to be answers that might not be expected. One of those areas is that if there is a specific strategic intent it is not always easy to follow what the organization performs. One such example is the ambition to grow and expand, which seems not to be that easy to follow in reports. In the same way, there is an intention to improve on a day-to-day basis but at the same time this is an area that is hard to measure and report on. This is an interesting result since at the same time the respondents say that they are interested in controlling costs, and that is something that can be monitored in the systems. But for some reason that is not connected to day-to-day operations. Being able to follow and monitor daily operations is also something that on average shows lower distributions among the answers. When the relevance lost debate turned into a balanced scorecard solution, many public administration managers were quick to embrace the non-financial reporting thought. As a last question in this survey, the respondents were asked to name non-financial measures and reports that they used on a regular basis. Only one forth of the respondents did this, which might signal that they do not work with that kind of reporting to the extent that it sometimes has been presented.

CONCLUSIONS

In this paper, three different areas have been connected to strategic management, that is, dealing with strategic uncertainty, making strategic priorities and working with performance measurement. In a way the findings show that these three areas could be understood together, as parts of strategic management. In order to be able to work with strategic management, one must understand the uncertainties, make priorities and follow performance. Theories within this field have a heavy focus on business operations, which in several ways are different from working in the public sector. In many cases the stakeholders are harder to grasp, compared to in a business environment, where, for example, the customer is equal to a citizen and boards are made of different political opinions. Nevertheless, the findings show that municipal CFOs are heavily focused on thinking strategically.

When it comes to the three areas, which in this paper makes up strategic management in a municipal context, the proposal that got the highest average was how the general economy had an impact on operations. This is truly something that neither the CFO nor the politicians can do something about. In the same way, it seems like the CFOs do not think that the political leadership is creating uncertainties, which might mean that

they have an executive management function that is working. Among strategic priorities the proposal saying that it is of strategic importance to work with a budget in balance got the highest average. In general all of the proposals in this grouping received high averages. This might be explained by a general interest among CFOs in strategic question. On average the third group of proposal answers was much lower. This could be due to the fact that the respondents have high intent, strategically, but it might be more difficult to follow that intent in reports and measures. Even though saying that the highest average among answers in these categories was on the proposal that it is easy to follow planning and outcome in the report systems.

Since the municipal environment is so much more complex in many aspects, it becomes interesting just to study traditional business logic, when it comes to contemporary management control theories. In some cases that logic is easy to transfer and translate (such as a budget in balance) but in other areas (such as growth and expansion) it becomes harder to compare ways of working with the theories. In the long run, benchmarks between different branches and environments could enrich the other areas and maybe in the future, businesses will look at how the public sector have chosen to solve issues with strategic management and performance measurement.

APPENDIX

The following proposals were used in the survey.

P4 The general economy in Sweden largely impacts municipal operations.
P5 Legislative and regulatory authorities often alters our business conditions.
P6 There are so many factors that affect the outcome of the local economy, and the economy is then perceived as uncertain.
P7 There is a strong link between if the business community in the municipality succeeds and if the municipality succeeds.
P8 The way the political leadership is working, is creating uncertainty for municipal operations.
P9 A functioning economy, such as a balanced budget, is strategically important.
P10 Growth and expansion are key strategic areas that we work with.
P11 In our business, it is a strategic priority that we control our costs.
P12 It is strategically important for the municipality to adapt the municipal service levels.
P13 We work long term to improve the daily operations.
P14 It's a strategic priority that employees at all levels in the municipality have the best conditions possible to do their jobs.
P15 In our municipality, it is strategically important for us to continually enhance our profile and we market ourselves in the best way.
P16 It's easy to follow the municipality's financial planning and outcome in our report system.
P17 We have clear metrics and reports that show growth and development.
P18 Our reporting system shows where we consume resources in the municipality, ie where the costs were incurred.
P19 The performances in the day-to-day operations are easy to present using reports.
P20 Employees at various levels in the municipality are able to get access to reports that show the results of their work, what they have done.

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INNOVATIVE PUBLIC MARKETING AS INSTRUMENT FOR CREATING THE SOCIAL VALUE

Ani MATEI
National University of Political Studies and Public Administration,
Bucharest, Romania
amatei@snspa.ro

Corina-Georgiana ANTONOVICI
National University of Political Studies and Public Administration,
Bucharest, Romania
corina.antonovici@administratiepublica.eu

Carmen SĂVULESCU
National University of Political Studies and Public Administration,
Bucharest, Romania
carmen.savulescu@administratiepublica.eu

***Abstract**: The public sectors in most states are under the pressure of innovation processes and simultaneously of developing the public and nonprofit marketing. The common characteristics of those two processes include openness and focus on valorising the internal resources of national and local communities in view to increase their general welfare. Their interaction generates a new concept - innovative public marketing – which incorporates and adapts the mechanisms specific for social innovation aimed at creation of new social values. The current paper aims to define and to operationalize a new concept, that of innovative public marketing, in view to describe the new mechanisms for creation of new social value. The paper will valorise, mainly, theories and analyses concerning social innovation, especially open innovation, as well as newer concepts concerning sustainable public marketing, public sector marketization etc. The research methodology will include bibliographical research, socio-statistical analysis and case study.*
Keywords: *Innovative public marketing, social value, open innovation*

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1. GENERAL CONSIDERATIONS

The economic, social, technological changes, in a rapid and permanent pace, require public organizations to improve or rethink marketing. Public organizations must understand the dynamics of the forces and changing technologies; must have a strategic

design; need to consider new effective practices; need to innovate; must be able to present their merits to the general public and audiences who pay taxes and track their activity.

The public organizations in fulfilling their mission (meeting the citizens' interests) do not adopt the concept of marketing to the same extent as the companies in the private sector. The practice of marketing in the public organizations is specific concerning the efficiency and complexity. Public marketing represents the process enabling the public organizations to obtain the beneficiaries' satisfaction and expectations, creating value for the public services.

The paper is designed to define and to operationalize the concept innovative marketing in the public sector, in view to describe the new mechanisms for creation of new social value and its sustainable redistribution.

The idea of this paper belongs to Professor Lucica Matei , being our mission of honour to continue her research directions, initiated in the framework of our university and of the EGPA Permanent Study Group "Public and Nonprofit Marketing".

2. INNOVATIVE MARKETING VS. INNOVATIVE PUBLIC MARKETING

2.1. Literature review of innovative marketing

The current concept of innovation in economic theory describes innovation as creation of a new or improved product/service that better reflects the needs of the consumer or the introduction of new production, management or marketing methods in view to increase the effectiveness and efficiency of the product or the provision of services (Svidroňová, et al., 2015:2 apud Drucker, 1993; Lament, 2012; Mokyr, 2009; Rosenberg, 1994; Wolak-Tuzimek & Duda, 2014).

Innovation is frequently identified as a critical success factor in providing competitive advantage (O'Dwyer et al., 2011: 94 apud Darroch, & McNaughton, 2002; Otero-Neira et al, 2009), in this context fulfilling a similar boundary-spanning role between organisations and their stakeholders as the marketing function (O'Dwyer et al., 2011: 94 apud McCartan-Quinn & Carson, 2003; Miles & Darroch, 2006; Wind & Robertson, 1983).

A marketing innovation is the implementation of a new marketing method involving significant changes in product design or packaging, product placement, product promotion or pricing (OECD, 2005:472).

Marketing innovations are aimed at better addressing customer needs, opening up new markets, or newly positioning a firm's product on the market, with the objective of increasing the firm's sales. The distinguishing feature of a marketing innovation compared to other changes in a firm's marketing instruments is the implementation of a marketing method not previously used by the firm. It must be part of a new marketing concept or strategy that represents a significant departure from the firm's existing marketing methods. The new marketing method can either be developed by the

innovating firm or adopted from other firms or organisations. New marketing methods can be implemented for both new and existing products (OECD, 2005:472).

In Romania, the provisional data of the statistical survey show that, during the period 2010-2012, there was a weight of 20.7% among the business enterprises that introduced or implemented products, processes, organizational or marketing methods new or significantly improved, 10.1% less compared to the period 2008-2010 (see Table 1). Out of them, 14.4% were enterprises that implemented only new organizational or marketing methods, while 1.9% represents the enterprises that introduced or implemented only new or significantly improved products and/or processes. A weight of 4.4% of enterprises introduced new products and/or processes, as well as new or significantly improved organizational and/or marketing methods (INS, 2012:1).

Table 1. The weight compared to the total number of enterprises (%) in Romania

	2008-2010	**2010-2012**
Total enterprises	**100.0**	**100.0**
Innovative enterprises	**30.8**	**20.7**
Innovators of only product/process	4.3	1.9
Innovators of only organizational/marketing methods	16.5	14.4
Innovators of product/process and of organizational/marketing methods	10.0	4.4
Non-innovative enterprises	**69.2**	**79.3**

Source: INS, 2012, The innovation in industry and services during the period 2010- 2012, www.insse.ro

According to the type of innovation implemented (no matter the other innovations), during the period 2010-2012, most innovating enterprises implemented methods of organization – 14.1% and methods of marketing – 13.8%. The weight of the enterprises innovating products was 3.4%, while the weight of the enterprises innovating processes was 4.6% (see Table 2 and 3).

Table 2. Enterprises innovating methods of organization and/or marketing in Romania, during the period 2010 – 2012

	Number of enterprises	**Weight in total enterprises (%)**
Enterprises innovating methods of organization and/or marketing (no matter the innovations of products and/or processes)	**5427**	**18.8**
Enterprises innovating only methods of organization	1446	5.0
Enterprises innovating only methods of marketing	1354	4.7
Enterprises innovating methods of organization and marketing	2627	9.1

Source: INS, 2012, The innovation in industry and services during the period 2010-2012, www.insse.ro

Table 3. Implementation type of a new marketing method (marketing innovation) in product and/or process innovative enterprises, 2008–2010, (% of the total of product and/or process innovative enterprises)

Country	Introduction of significant changes to the aesthetic design or packaging	Introduction of new media or techniques for product promotion	Introduction of new methods for product placement	Introduction of new methods of pricing goods or services
Romania	60.8	59.4	49.2	64.7

Product and/or process innovative enterprises i.e enterprises that implemented product and/or process innovation including enterprises with ongoing, suspended or abandoned activities, regardless organisational or marketing innovation

Source: Eurostat Pocketbooks, Science, technology and innovation in Europe, 2013 edition, p. 84, (online data code: inn_cis7_sucmet)

Innovative marketing is useful at a more strategic level. Gardner (O'Dwyer et al., 2011: 2 apud Gardner, 1991) argues that: "Marketing's role in innovation is to provide the concepts, tools and infrastructure to close the "gap" between innovation and market positioning to achieve *sustainable competitive advantage".*

Kleindl, Mowen and Chakraborty (1996:214) define innovative marketing as: "doing something new with ideas, products, service, or technology and refining these ideas to a market opportunity to meet the market demand in a new way".

The primary components of innovative marketing include product enhancement, alternative channels and methods of product distribution (Carson et al., 1998), an exploration of new markets, an alteration of the marketing mix and new operational systems (Stokes, 1995). In reviewing these elements Cummins, Gilmore, Carson and O'Donnell (2000) assume that, although innovation can include new-product development, it contains more than that, therefore incorporating innovative developments in other aspects of marketing (O'Dwyer et al, 2009:384). More generally, the characteristics of innovation within enterprises have been identified as searches for: "creative, novel or unusual solutions to problems and needs. This includes the development of new products and services, and new processes for performing organisational functions" (Knight et al., 1995:4).

Based on prior research, it is argued that innovative marketing is made up of (at least) six elements: marketing variables; modification; customer focus; integrated marketing; market focus; and unique proposition (O'Dwyer et al, 2009:384) (see Table 4).

Table 4. Elements of innovative marketing in the private sector

Elements of innovative marketing	***Description***
Marketing variables	- three of innovative marketing primary components are **product enhancement**, **alternative channels and methods of product distribution** (Carson et al., 1998), and an **alteration of the marketing mix** (Stokes, 1995), which, for the purposes of this research, have been categorised as marketing variables.
Modification	- firms define the basis of their marketing activities as innovative (Siu, 2000) in terms of being **proactive** and by embracing **change**

	management (Carland, Hoy, Boulton, & Carland, 1984; Carroll, 2002; McAdam, Stevenson, & Armstrong, 2000; Nieto, 2004).
Integrated marketing	- innovation is pervasive throughout marketing (Hills & LaForge, 1992; Simmonds, 1985), where adjustments regularly need to be made to current activities and practices. This leads to the need for **marketing integration** and the **permeation of marketing**.
Customer focus	- **customer-satisfaction** and **customer-orientation** are strongly associated with success in smaller firms (Blythe, 2001; Brooksbank et al., 1992; Mohan-Neill, 1993), where considerable emphasis is placed on personal relationships in developing a customer base (O'Donnell & Cummins, 1999; Stokes, 2000) and on the significance of customer satisfaction to competitive success (Pearce & Michael, 1996; Siu, 2000).
Market focus	- market focus includes **vision** (Ahmed, 1998; Carson & Grant, 1998; Knight et al., 1995; Kuczmarski, 1996), **profit** (Cummins et al., 2000; Tower & Hartman, 1990) and **being market-centred** (Carland et al., 1984; Johannessen, Olsen, & Lumpkin, 2001; Wang & Ahmed, 2004).
Unique proposition	- innovative marketing is dependent upon **uniqueness** (Cummins et al., 2000; McAdam et al., 2000; Pitt, Berthon, & Morris, 1997); **newness** (Cummins et al., 2000; Johannessen et al., 2001; Lado & Maydeu-Olivares, 2001) and **unconventionality** (Stokes, 2000), which (for the purposes of this research) have been categorised as unique proposition.

Source: Table achieved by authors according to O'Dwyer, M., Gilmore, A., & Carson, D. (2009) Innovative marketing in SMEs: an empirical study, Journal of Strategic Marketing, 17:5, 383-396, pp. 384-387

2.2. Innovative marketing in the public sector, open innovation and the social value

In public sector the innovation is linked to the creation of "public value in terms of increasing the efficiency, quality and transparency of public services" (Svidroňová et al., 2015:2). When innovation in the public sector should be successful, there must be a consistency between the nature and the environment where innovation takes place. The innovation process requires legitimacy (Wilson, 1989), political sustainability (Moore & Hartley, 2008), strengthening democratic values (Bason, 2010) and respect for the needs of citizens (Korteland & Bekkers, 2008, Matei et al., 2009). Innovation in the public sector should bring in the provision of public services not only economic value, but also legal and democratic values (Svidroňová et al., 2015:2).

2.2.1. Innovative public marketing

It is important to recognize that there are a variety of different approaches to public sector marketing (Peattie et al., 2012:988), and one that has become prominent is innovative public marketing. Innovative public marketing applies processes and tools developed in commercial innovative marketing to pursue public goals by developing behavioural change interventions aimed at particular target audiences.

The marketing behaviours of public organisations can be intrinsically linked to innovation by focusing on the action-oriented identification of change opportunities, and the induction of continual change in their organisations and markets (adapted from O'Dwyer et al., 2015:2 apud Morris & Lewis, 1995).

The definition of innovative public marketing is not obvious in the literature.

Innovative public marketing is a process where a public service or a public good is delivered and communicated to the citizens by the help of ideas and process which were not used earlier. It can be done through changes in the service or good design, launching the service or good in unique place, promoting through new or significantly improved method, gaining a competitive advantage and creating social value.

Regarding the definition of innovative public marketing, it is made up of (at least) six elements: marketing variables; evolution through change; integrated marketing; citizen focus community focus; and unique proposition (see Table 5).

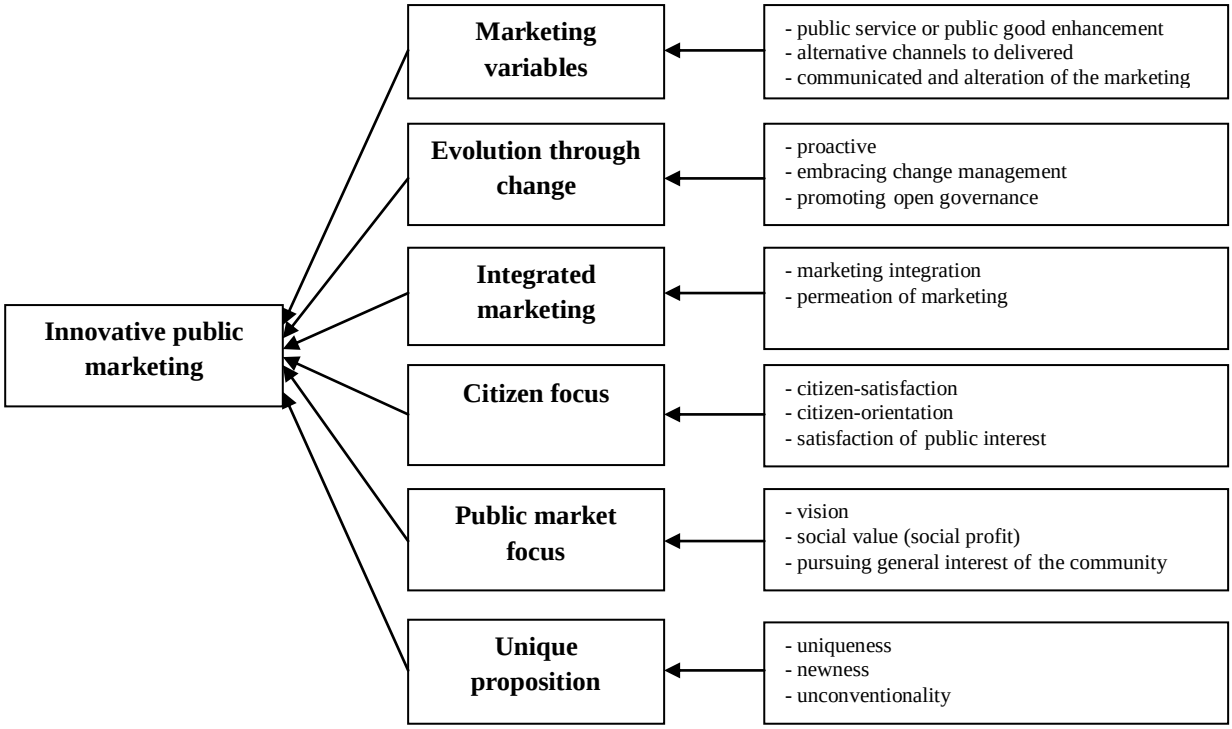
Table 5. Elements of innovative marketing in the public sector

Elements of innovative public marketing	***Description***
Marketing variables	- the primary components of innovative public marketing are: **public service or public good enhancement**, **alternative channels to delivered and communicated** and **alteration of the marketing mix**.
Evolution through change	- public organizations define the basis of their public marketing activities as innovative in terms of being **proactive** and by embracing **change management,** promoting **open governance**.
Integrated marketing	- innovation is pervasive throughout marketing, where adjustments regularly need to be made to current activities and practices. This leads to the need for **marketing integration** and the **permeation of marketing**.
Citizen focus	-**citizen-satisfaction, citizen-orientation and satisfaction of public interest** are strongly associated with good governance in public sector.
Public market focus	- public market focus includes **vision**, **social value** (social profit) and **pursuing general interest of the community.**
Unique proposition	- innovative marketing is dependent upon **uniqueness**; **newness** and **unconventionality**, which have been categorized as unique proposition.

Source: Authors adapted from O'Dwyer, M., Gilmore, A., & Carson, D. (2009) Innovative marketing in SMEs: an empirical study, Journal of Strategic Marketing, 17:5, 383-396, p. 384-387

Based on the elements of innovative public marketing, we could speak about a conceptual model for innovative public marketing (see Figure 1).

Figure 1. Conceptual model for innovative public marketing



Source: Authors based on elements of innovative marketing in the public sector

2.2.2. The public market: exchange processes, open innovation and social value

Due to the economic and fiscal crisis, and the decline of legitimacy of public institutions, governments are seeking to find new ways to provide public value (adapted from Voorberg et al, 2014:2) and social value.

The ”public market” sees citizens choosing between different public providers of different services, or between public and private providers of similar types of services (Matei & Matei, 2011).

The public market differs from other types of markets in three important respects. First, it is not a market in the traditional sense, because entrance to the market or providers (or suppliers) is restricted by legislation or other public rules. Secondly, the public market differs from other types of market with respect to demand structures, price mechanisms and the determinants of purchasing power. And, the public market is characterized by strong political control. Thirdly, the public market differs from other markets with regard to the type of commodities it allocates. The public market allocates services and goods that are nominally public, that is to say, they have at some previous time been delivered by public organizations but have now became subjected to completion and can thus be delivered by either public or private supplies (Pierre, 1995).

The marketization of the state is said to serve an essentially good purpose, namely to increase the quality of public services, bring private sector management into the public sector and empower individuals in relation to the state (Pierre, 1995:76).

Many of the recent changes in public administration seem to aim at replacing the traditional exchange between the individual and the state, based on needs, obligations and entitlements with a market-like exchange process. In this exchange process, service providers under different auspices are assumed to be in competition with each other. Customers choose in a rational fashion between different services and different services providers, thus sending signals regarding the quality of different services (Matei & Anghelescu, 2010).

The concept of the public market is employed in our paper to indicate the commodification of public services, new forms of the production and distribution of public goods and services, and the notion of the beneficiaries of such services as customers rather than citizens.

Open innovation creates an environment where individuals and organisations can actively get involved in the creation of mutually beneficial solutions (Matei & Matei, 2011). Through open innovation decision making is becoming a truly democratic process. It allows for a bolder, wider approach to problem solving. It suggests interacting with broader groups of stakeholders and it builds collaborative community engagement around specific challenges and issues: ideas and input flow into organisations from outside and smart, innovative solutions are easily generated.

Open innovation means creating and innovating with external stakeholders: citizens, customers, suppliers, partners and your wider community. Nowadays, public organisations are increasingly seeking to work and source knowledge beyond their boundaries. Open innovation can be considered as a process of co-creation.

In processes of co-creation in social innovation, but also in open innovation, citizens are participating as partners who provide and share relevant sources, like knowledge, information, competences and experiences, together with the resources that are provided by public organizations and governments (Voorberg et al, 2015:9). This collaboration is based on an equal partnership between citizens and public organizations (Matei et al., 2009).

Henry Chesbrough (Chesbrough et al, 2006) defines open innovation as "the use of purposive inflows and outflows of knowledge to accelerate innovation. With knowledge now widely distributed, companies cannot rely entirely on their own research, but should acquire inventions or intellectual property from other companies when it advances the business model (…) Competitive advantage now often comes from leveraging the discoveries of others. An "open" approach to innovation leverages internal and external source of ideas".

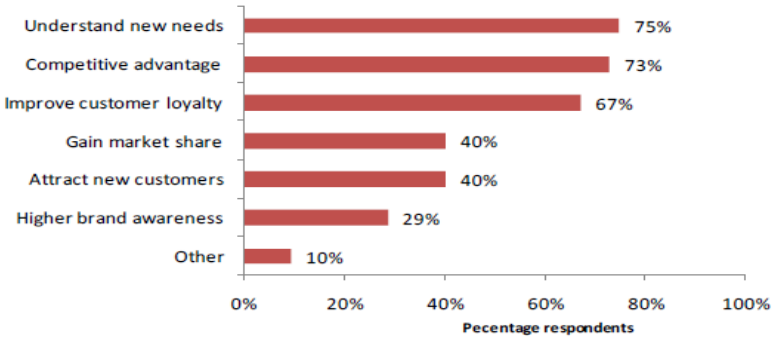
Public organizations increasingly rely on the efforts and capacities of citizens (Voorberg et al, 2014:2). As such the government is no longer to be considered as the (only) provider of public services and public value.

Open innovation is an inclusive, social way of solving complex issues and improving processes.

Social value creation is a process that results in the creation of something of value for society. 'Social value creation' is a construct that is very difficult to operationalize and define. In public sectors is very difficult to give a definitions as a financial value. We can understand value such as social expectation and need. Social value refers to wider non-financial impacts of programmes, organizations and interventions, including the wellbeing of individuals and communities, social capital and the environment (DEMOS, 2010).

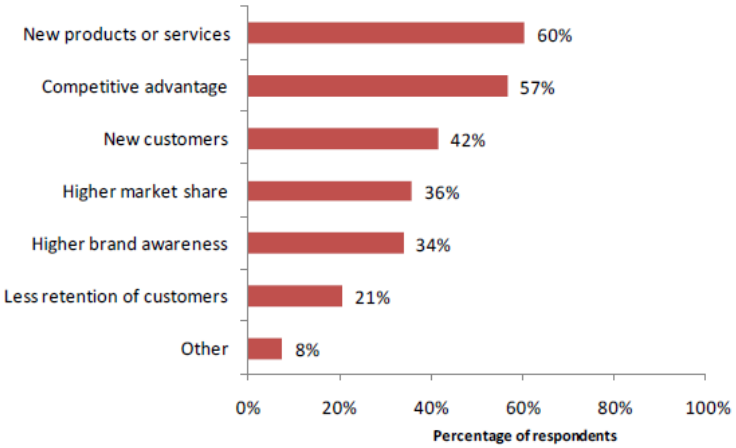
Figures 2 and 3 reflect the importance of customers' involvement in value creation.

Figure 2. The primary drivers for involving customers in value creation



Source: Capgemini Consulting, Co-creation beyond the hype, Results of the Global Co-creation Survey 2010, p. 7

Figure 3. Results brought to organization further involving customers



Source: Capgemini Consulting, Co-creation beyond the hype, Results of the Global Co-creation Survey 2010, p. 7

Innovative public marketing is currently often used as instrument for creating the social value, as a marketing tool. Its aim is to understand customers better and to develop public services and public goods that fit their needs.

In relation to public services, the innovative public marketing can be understood as the development of public services towards better meeting of the needs based on the

modification of the status of entities/actors in the system of public services provision (adapted from Svidroňová et al, 2015:2 apud Hartley, 2005; Mulgan & Albury, 2003; Osborn & Brown, 2005). These entities are able and willing to learn, to improve their work and cooperate with each other (Svidroňová et al, 2015:2 apud Von Hippel, 2007). Innovative public marketing must meet the needs of the public or needs of society or a particular community whose members are involved in the process of creation and implementation of innovation. A new concept of government is defined as the sum of interactions where there is a cooperation of actors from public and private sector in solving social problems (Svidroňová et al, 2015:2 apud Osborn & Brown, 2005). The emphasis is on the citizen.

Innovative public marketing brings innovation in the public sector, aiming to enhance the public and social values, such as democracy, effectiveness, efficiency, legitimacy. Innovative public marketing is used in public administration in the process of producing public goods and services as 1) open mechanism, focused on the public market and citizens through their involvement in designing and developing public goods and services by using new techniques of communication and methods of promotion in view to produce social outcomes and create social value, and 2) a change of relationships between citizens and public organizations.

3. ADVANTAGES OF USING INNOVATIVE PUBLIC MARKETING IN PUBLIC SERVICE - PUBLIC RELATIONS SERVICES IN PUBLIC ADMINISTRATION

The quality of public services for citizens could increase significantly implementing innovative public marketing in the public administration.

Further applying innovative public marketing, new partnerships on long term are developed, based on knowing the requirements (needs and expectations) in various stages of the relationship, delivering products and services which correspond to citizens' expectations.

Innovative public marketing uses a set of practices based on technology and focused on citizen, in view to maintain and optimize the relations with citizens and encourage new forms for their participation.

The main objective of innovative public marketing is to support the public organizations in order to use ICT resources and competences of the public employees in light to understand and acquire new perspectives on the citizens' behaviour and their perception related to the concept of social value (for public goods or services). Innovative public marketing enables the public organizations to introduce ICT, to integrate and use in a smart way the available instruments within the relationships with citizens, providing the opportunity of a quite personal link with the organization.

In this case study, we refer to public relations services in the public administration only from the perspective of the following processes: communication with the citizen and creation of social value for the citizen.

3.1. Communication with the citizen

The communication with the citizen refers to the process of transmitting information, ideas, as well as decisions, working instructions etc., in a transparent and equitable way. In view to optimize the relations with clients, respectively to increase their satisfaction, the employees with responsibilities in this field communicate continuously with citizens concerning: information about the required services; solving the complaints; information about the citizens' degree of satisfaction.

In view to enhance the efficiency of the communication process with citizens, from the perspective of the two parties involved – the public organization providing services and the service beneficiary – he/she should use the following main communication tools:

- verbal communication;
- **online communication (website, social media, forum, chat);**
- nonverbal communication;
- phone communication;
- other communication tools: radio, TV, fax etc.

The concrete actions of innovative public marketing leading to improvement of efficiency and effectiveness of the communication process in view to enhance the innovation in public relations services with customers refer to:

- extending the modalities of communication with citizen, also through the possibility to address online demands and solve them in the same way:
- providing comprehensive information on the website and ensuring transparency for all parties involved;
- implementing an adequate software and monitoring: citizen orientation, citizen satisfaction, citizen loyalty (according to the model of private companies);
- increasing the quality of public relations services, evaluated according to the indicators of satisfying the needs and expectations (competence, responsiveness, accountability);
- increasing the efficiency of marketing processes by achieving a relevant communication for citizen;
- increasing the efficiency of operational process through IT.

3.2. Creating social value for citizen

The social value for citizen is expressed in the benefits obtained directly by citizen further the interaction with the service provider, as well as indirect benefits determined by improvement of the service quality.

The direct benefits obtained by citizen are directly determined by the competences of the public employees holding responsibility in this field.

The indirect benefits are influenced by the degree of computerisation and automatization of the required service (for example: low waiting time for solving the requirements/problems; reducing the distance between citizen and civil servant (*click distance*), reducing the barriers of communication, transparency).

CONCLUSIONS

The innovative public marketing represents the response to the dynamics of citizens' requirements. Such an innovation derives from the flexibility and wish of public organizations to try new approaches, to take advantage of opportunities and competitive advantage.

The activities of innovative public marketing should not be necessarily original, they should be new and susceptible to be an adaptation of the existing marketing concept, thus innovation consists in its unique application by the public organizations. It means creativity, newness, solutions to uncommon problems and social value added.

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FINANCE

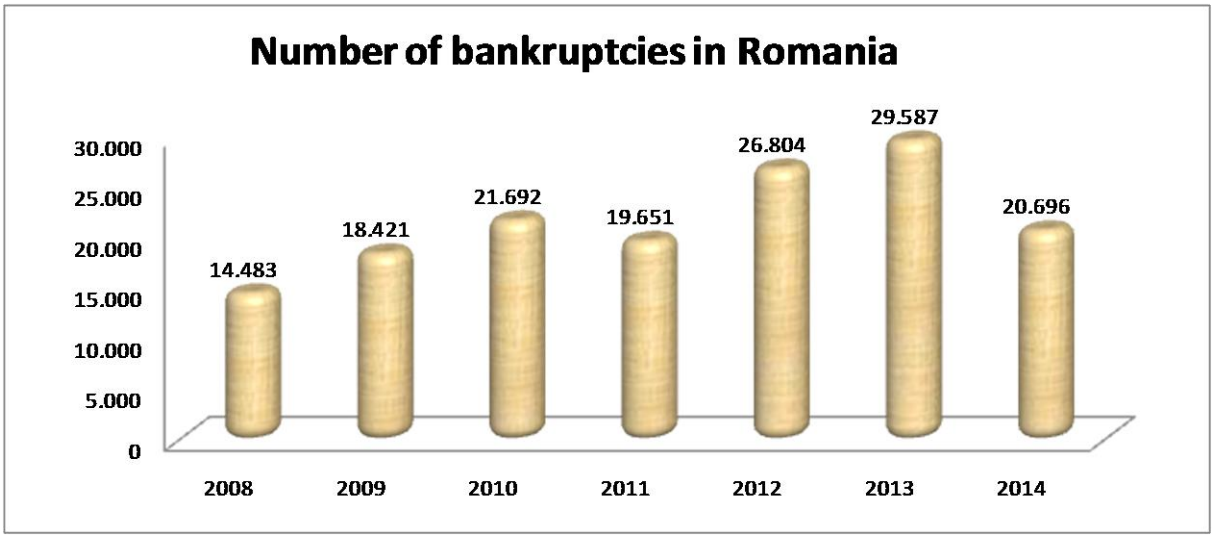
THE POTENTIAL OF THE DEBT RATIO IN THE PREDICTION OF CORPORATE BANKRUPTCY

Daniel BRÎNDESCU-OLARIU
West University of Timisoara
contact@levier.ro, www.levier.ro

***Abstract**: The current study evaluates the potential of the debt ratio in predicting corporate bankruptcy. The population subjected to the analysis included all companies form Timis County with yearly sales of over 2200 Euros. The interest for the debt ratio was based on the recommendations of the scientific literature, as well as on the availability of information concerning its values to all stakeholders. The event on which the research was focused was represented by the manifestation of bankruptcy 2 years after the date of the financial statements of reference. All tests were performed over a paired sample of 1424 companies. The methodology employed in evaluating the potential of the debt ratio was based on the general accuracy ensured by the ratio (61.8%) and the Area under the ROC Curve (0.644). The results suggest limited practical utility of the debt ratio in the prediction of bankruptcy within a simple univariate analysis. This conclusion shows that, although the general belief is that high debt ratios are the main cause of corporate bankruptcy, the use of the debt ratio alone for the prediction of corporate bankruptcy leads to relatively poor results. It is expected that the inclusion of the debt ratio within multivariate models for bankruptcy prediction would exploit its potential more fully.*
***Keywords**: Corporate finance, Risk, Failure, Financial ratio, Financial analysis, Classification accuracy.*

INTRODUCTION

In the context of the economic crisis, as well as that of the changes generated by the entrance of Romania in the European Union, the annual frequency of bankruptcy cases has increased at national level since 2007, reaching almost 3% by the end of 2013 (Brîndescu-Olariu, 2014a). Although the number and frequency of bankruptcy cases have registered an important decrease in 2014, this was mostly due to the legislation changes witch restricted the possibilities of filing for bankruptcy (law 85/2014).
Figure 1 Number of bankruptcies in Romania



Source of data: Romanian National Registry of Commerce

The increased frequency of the annual bankruptcy cases was accompanied by an increase in the loan default ratio, Romania topping in this regard at the end of 2012 the 4th place within the European Union and the 6th place worldwide (Brîndescu-Olariu, 2014b).

Before 2007, the importance of the bankruptcy phenomenon from a macroeconomic perspective was limited in Romania, as there was little culture for bankruptcy filing at microeconomic level.

With the bankruptcy not representing a concerning phenomenon in the past, limited efforts were made at national level for the development of specific bankruptcy risk assessment tools. Instead, the scientific interest for the assessment of the bankruptcy risk was purely theoretical, with most researchers settling for testing foreign models for bankruptcy prediction over small isolated samples of Romanian companies. Several national models were elaborated over time, but most of the development methodologies were relatively superficial, as the public interest for the subject was low. The increase of the annual bankruptcy frequency has made the public significantly more aware of the phenomenon. As the state of bankruptcy affects all the stakeholders of the company, the existence of instruments for bankruptcy prediction becomes important.

Under these circumstances, there is a need for the development of methodologies specific to the current characteristics of the Romanian companies. Recent studies (Brîndescu – Olariu, 2014a, Brîndescu – Olariu, 2014b, Brîndescu – Olariu, 2014c, Dima et al., 2011) have reconfirmed the potential of financial ratios in the prediction of the bankruptcy risk, financial risk, financial performance or stock prices. The present paper is focused on testing the potential of the debt ratio for corporate bankruptcy prediction, 2 years prior to the possible event. The hypothesis of the research is that the debt ratio is positively correlated to the bankruptcy risk and thus can represent a useful tool for the assessment of the bankruptcy risk.

Only publically available data was used. If the research would prove the usefulness of the debt ratio in the prediction of corporate bankruptcy, it could be

continued with the development of a methodology of analysis for the assessment of the bankruptcy risk based on public data (and thus accessible to all stakeholders).

POPULATION AND METHODOLOGY

The population initially subjected to the analysis included all the companies from the Timis County that submitted financial statements to the fiscal authorities in the period 2001 – 2011 (247,037 yearly financial statements).

Financial ratio analysis was not considered applicable for companies with no yearly income, as the continuity of the operating activity represents a fundamental hypothesis of the financial ratio analysis.

Three phenomenons with national impact were also considered for their potential of changing the profile of the companies that declare bankruptcy:

- The changes brought to the laws concerning bankruptcy through the adoption of law 85/2006;
- The entrance within the European Union in 2007;
- The manifestation of the economic crisis starting with the last quarter of 2008.

Under these circumstances, it was concluded that the initial population shows important problems of homogeneity, which do not recommend a unitary treatment:

- The companies with no activity cannot be evaluated based on the same methodology as the companies with a financial history;
- The companies that became bankrupt after the issue of law 85/2006 show different characteristics compared to the companies that went bankrupt before 2007, under different laws;
- The cases of bankruptcy registered after 2009 have different causes compared to the cases appeared before the beginning of the economic crisis.

Taking all the aforementioned differences into account, the initial population was adjusted:

- all the yearly financial statements that reported sales under 10,000 lei were excluded;
- only financial statements from the period 2007 – 2010 were retained.

The research targeted the risk of bankruptcy after 2 years from the date of the financial statements taken as reference in the analysis. As the interest was focused on the phenomenon of bankruptcy during the crisis period, the first financial statements included in the study were from 2007.

The last year for which data concerning the status of the companies was available was 2012. Under these circumstances, the last financial statements included in the study were those from 2010.

Holding all the above into account, the target population included all companies from Timis County that submitted yearly financial statements to the fiscal authorities during the period 2007-2010 and that registered yearly sales of at least 10000 lei (aprox. 2200 Euros).

In accordance, 53,252 financial statements from the period 2007-2010 were included in the analysis. The companies of which financial statements were included for

one year were not necessarily included for the following periods. As the study did not target a dynamics analysis, the yearly financial statements can be regarded as individual subjects.

The source of the data was represented by the online publications of the Ministry of Public Finances of Romania.

Of the entire target population, 712 companies went bankrupt in the period 2009 – 2012, two years from the date of the financial statements of reference:

- of the 12,570 companies included with financial statements for 2007 in the research, 30 went bankrupt in 2009 (0.24%); the rest of the companies continued their activity under normal conditions at least until the end of 2012.
- of the 13,037 companies included with financial statements for 2008 in the research, 94 went bankrupt in 2010 (0.72%); the rest of the companies continued their activity under normal conditions at least until the end of 2012.
- of the 12,574 companies included with financial statements for 2009 in the research, 159 went bankrupt in 2011 (1.26%); the rest of the companies continued their activity under normal conditions at least until the end of 2012.
- of the 15,071 companies included with financial statements for 2010 in the research, 429 went bankrupt in 2012 (2.85%); the rest of the companies continued their activity under normal conditions at least until the end of 2012.

An important hypothesis circulated in the theory and practice of bankruptcy risk analysis is that the overuse of leverage is one of the main causes of bankruptcy (Brîndescu-Olariu, 2015). The overuse of leverage involves low autonomy ratios and high debt ratios, which would sustain the hypothesis of a positive correlation between the debt ratio and the probability of bankruptcy.

Previous studies (Brîndescu-Olariu, 2015) conducted over companies from the Timis County confirmed the existence of a negative correlation between the autonomy ratio and the probability of bankruptcy within a 2-year span, as well as the statistical utility of the autonomy ratio for the valuation of the bankruptcy risk. Under these circumstances, the current study targets to test the existence of the presumed positive correlation between the debt ratio and the probability of bankruptcy and to evaluate the capacity of the debt ratio to predict the state of bankruptcy two years prior to its occurrence.

The debt ratio employed in the study had the following form:

$$\text{Debt ratio} = \frac{\text{Total debt}}{\text{Total financing sources}} \times 100\%$$

The data employed in the calculation is taken from the year-end balance sheets of the companies and is easily accessible online to all stakeholders. In accordance with the current accounting rules, "total debt" includes long-term and short-term debt. Long-term debt includes liabilities that the company employs as financing sources at the end of the year and are payable in more than one year (from the date specific to the balance sheet). In most of the cases, these liabilities consist of bank loans, financial lease contracts or

loans from the shareholders. Less frequently, the long-term debt may include liabilities form the operating activity.

Short-term debt includes liabilities that the company employs as financing sources at the end of the year and are payable during the following year (in less than 1 year from the date specific to the balance sheet). These commonly include trade payables, wages owed to employees, short-term bank loans or short term debt service for long-term bank loans or lease contracts, due taxes.

The term "total financing sources" includes equity, provisions, unearned revenues, long-term and short-term debt. The value of the financing sources inevitably equals the value of the total assets, as no assets can exist in the property of the company without correspondent financing sources. In the same manner, all financing sources are inevitably found under some form of assets.

Thus, mathematically, the debt ratio can also be calculated using the following formula:

$$\text{Debt ratio} = \frac{\text{Total debt}}{\text{Total assets}} \times 100\%$$

Although the mathematical result would be the same, the approach of the analysis could be different: while the first formula focuses the attention on the structure of the financing sources (showing the percentage of the debt), the second formula is focused on the measure in which the assets of the company are financed through debt.

In accordance with many of the approaches from the international literature, the ratio was tested over a paired sample. In order to build a paired-sample, each of the 712 companies that went bankrupt in the period 2009 – 2012 was associated with the company from the same economic field that had the closest turnover in the year of reference for the financial statements included in the analysis.

The data was processed by using the SPSS software. The state of the company two years from the date of the financial statements of reference was defined as the dependent variable, a binary variable that can take the following values:

- 1, for the companies that went bankrupt 2 years after the date of the financial statements of reference;
- 0, for the companies that continued their activity under normal conditions at least until the end of 2012.

In order to simplify the explanations, the companies that went bankrupt 2 years after the date of the financial statements of reference will simply be referred to as „bankrupt", while the companies that continued their activity under normal conditions at least until the end of 2012 will be referred to as „non-bankrupt".

When defining the target population, the companies that close their activity for other reasons than bankruptcy during the period of analysis were excluded.

As an example, the value of the variable „State" was „1" for all the companies that went bankrupt in 2011 and it was associated with the financial ratios of the respective companies from 2009. These companies were not included in the analysis for

the following years (for 2010 with the financial statements and for 2012 with the state variable), even if they still existed.

Initially, the performance of the ratio as predictor of bankruptcy was tested through the Area under the ROC Curve over the entire paired sample of 1424 companies. The ROC Curve reflects graphically the relationship between the sensitivity and the specificity for all possible cut-off values (van Erkel, Pattynama, 1998). The area under the ROC Curve thus isolates the classification performance of a classifier with no connection to a specific cut-off value, which makes it one of the most viable solutions for measuring the classification performance and for comparing classifiers (Hanely, McNeil, 1982, Faragi și Reiser, 2002).

The area under the ROC Curve (AUC), can take values between 0 and 1 (Skalska și Freylich, 2006). An AUC of 0.5 corresponds to a "by chance" classification accuracy, while an AUC of 1 corresponds to a perfect accuracy.

The evaluation of predictors by their AUCs is usually based on the following grid (Tazhibi, Bashardoost și Ahmadi, 2011):

- 0.5 – 0.6: fail;
- 0.6 – 0.7: poor;
- 0.7 – 0.8: fair;
- 0.8 – 0.9: good;
- 0.9 – 1: excellent.

In a second step, sould the ratio be confirmed as a possible predictors by its AUC (over 0.6), the general classification accuracy would be determined.

The general accuracy of the classification represents the percentage of companies correctly classified, a weighted average of the sensitivity and the specificity. The sensitivity represents the accuracy of the classification of bankrupt companies. The specificity represents the accuracy of the classification of non-bankrupt companies.

The optimal cut-off value for the 2010 sample was used for out-of sample tests (over the 2007-2009 samples). The optimal cut-off value for the 2010 sample was determined through the inspection of the coordinating points of the ROC Curve.

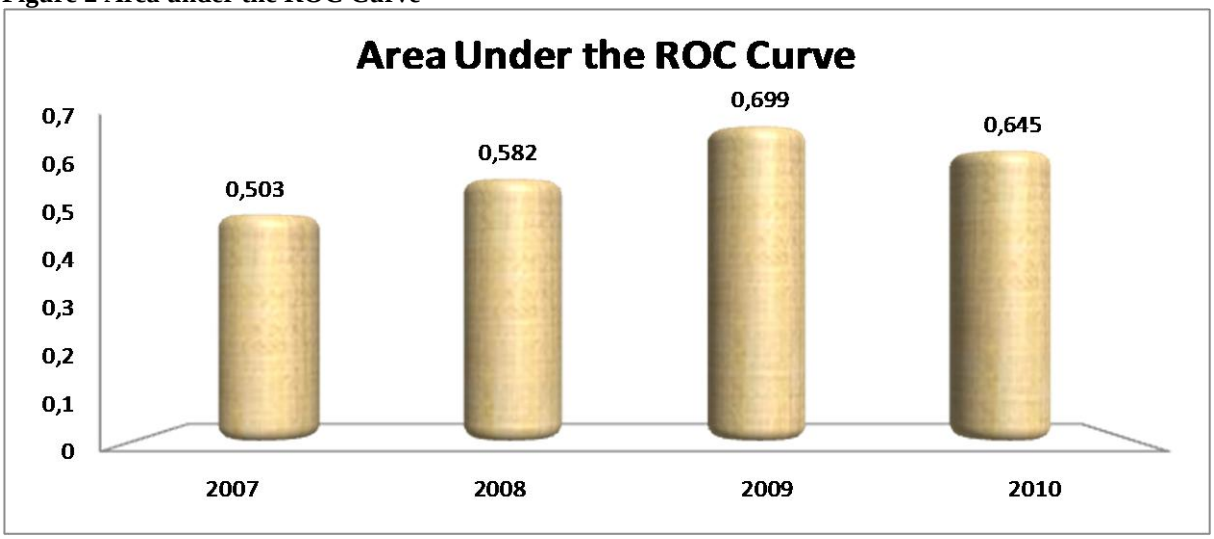
As the samples used were paired, the weight of the bankrupt companies was equal to the weight of the non-bankrupt companies (50%). For such a sample, the „by chance" accuracy is 50% (by classifying all 1424 companies as bankrupt, the analyst would be correct in 50% of the cases). A ratio is considered a useful classifier if it allows for a general accuracy at least 25% higher than the „by chance" accuracy (Chung, K., Tan, S., Holdsworth, D., 2008).

Based on this benchmark, the ratio would be considered as potentially useful if it would offer an accuracy of at least 62.5% (a = 50% x 125%).

RESULTS

The Area under the ROC Curve over the 2007-2010 paired sample specific to the debt ratio was of 0.644, which can be evaluated as relatively poor, but valid classification accuracy (Tazhibi, Bashardoost and Ahmadi, 2011).

Figure 2 Area under the ROC Curve

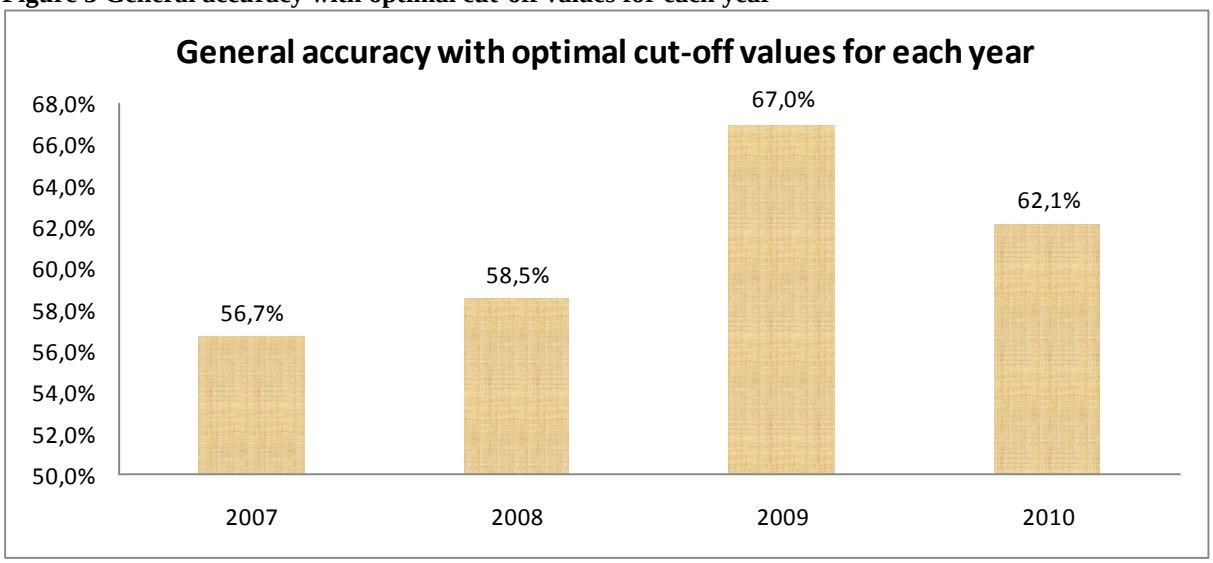


Under these circumstances, the ratio was submitted to additional tests. The AUC was determined for each of the 4 yearly paired samples. The AUC remains over 0.6 for the last 2 years of analysis (figure 2), the period in which the majority of the population is concentrated.

Based on the coordinating points of the ROC Curve for 2010, an optimal cut-off value was determined (debt ratio = 86%). By classifying all the companies from the 2010 paired sample that registered debt ratios higher than 86% as bankrupt and all the companies from the 2010 paired sample that registered debt ratios lower than 86% as non-bankrupt, the general classification accuracy would be of 62.1%. Thus, the in-sample general accuracy just underlaps the 62.5% benchmark.

Out of sample accuracy tests were performed over the 2007-2009 paired samples. The optimal cut-value for 2010 was used. The general accuracy reached its peak level for the 2009 sample (64.5%), but decreased to 54.8% for 2008 and to 51.7% for 2007. The out-of-sample general accuracy for the entire 2007-2009 sample was of 59.9%. The variations of the general accuracy registered in 2008 and 2007 are partly generated by variations of the cut-off value (and partly by the reduction of intrinsic classification capabilities of the debt ratio). The general accuracy levels correspondent to the optimal cut-off values for the 4 yearly paired samples are reflected in figure 3.

Figure 3 General accuracy with optimal cut-off values for each year



The general accuracy for the entire sample of 1424 companies was of 61.8% at a cut-off value of 90.3%.

CONCLUSIONS

The Area under the ROC Curve for the entire paired sample shows that the debt ratio can be used as a tool for the assessment of the bankruptcy risk, although with relatively poor accuracy levels. This conclusion is sustained by a general classification accuracy of 61.8% over the entire paired sample of 1424 companies. Commonly used in this field, the paired sample was useful in evaluating the potential of the debt ratio. Nevertheless, as the structure of both the base-sample and the test-sample are significantly different from the structure of the target population, an optimal cut-off value for the entire population cannot be determined. The research proves the some potential of the debt ratio in the prediction of bankruptcy and underlines the need for determining an optimal cut-off value through research over the entire population (or a sample with the same structure). Considering the relatively low accuracy levels showed over the pair-sample, a limited classification performance over the entire population is expected also. Under these circumstances, a univariate methodology of analysis based only on the debt ratio could be useful for a quick and simple evaluation. It is expected that the debt ratio would be even more useful in a more complex analysis, included within a multivariate model.

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MONITOR AND CONTROL IN COMPANIES: AN AGENCY THEORY APPROACH

Dumitru-Nicușor CĂRĂUȘU
Alexandru Ioan Cuza University of Iași
Iași, Romania
nicusor@live.com

Abstract: *The aim of this paper is to survey what are the potential benefits and drawbacks of the most common mechanisms a shareholder can use to monitor and control a manager according to the agency theory. Despite the wide array of policies and instruments shareholders have at their disposal, all the mechanisms exhibits inherit flaws which limit their applicability. From the powerful boards to the ownership structure, management compensation plans, capital structure and market for corporate control, all are able to some degree to mitigate the conflict between shareholders and managers but raise others dilemmas regarding applicability and effectiveness, inquiring additional consideration. Ultimately there isn't a single solution for every environment but rather a specific mix according to the specific environment of each company, so policy makers need to take into consideration all the characteristics of the firm and only after issue recommendations, norms and laws.*
Keywords: *shareholders, managers, agency theory, agency costs, monitoring and control*

1. INTRODUCTION

One of the most important aspects in modern corporate finance is the relationship between manager and shareholders. Agency theory tries to explain the mechanism through which shareholders and managers interact, requiring a permanent monitoring and control of the manager on behalf of the shareholder. While the agency theory might not be the solely theory explaining the relationship between the manager and the shareholders, it is the most widely accepted and influential.

Regardless of the theoretical point of view corporate governance can act as a controlling, supervising and counseling mechanism in a company. By means of certain instruments or policies corporate governance can ensure boundaries and relations between *insiders* like managers and workers or *outsiders* such as shareholders, creditors, local community or government. The most important and widely used mechanisms for corporate control are: the board, ownership structure, remuneration schemes for the managers, institutional investors, market for corporate control and capital structure.

Because of the complexity of the economic environment there isn't a single controlling mechanism optimal in every single environment, but rather a particular mix of corporate instruments specifically designed according to the nature of the firm, shareholders or economic environment (Claessens & Yurtoglu, 2013). The aim of this paper is to provide a brief introduction into the specifics of the mechanisms of corporate

control that shareholders have at their disposal in order to align the manager's interest of the company: shareholder value. Our aim is to provide a brief list of potential benefits and drawbacks that every corporate control mechanism has.

The rest of this paper is organized as follows: Section 2 provides a brief introduction behind the theoretical views behind agency theory, Section 3 presents the main controlling mechanism in corporate governance, Section 4 concludes.

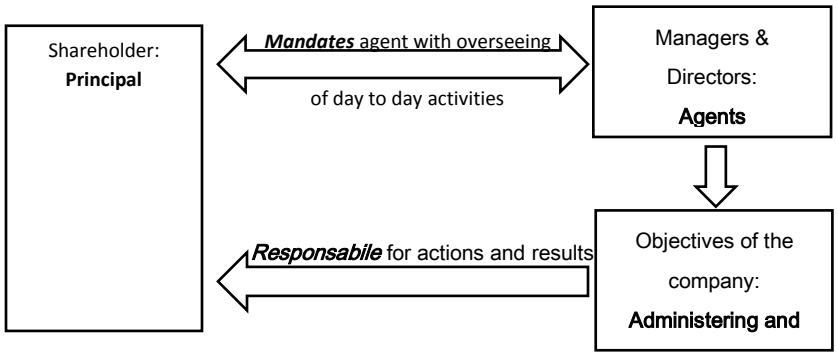
2. THEORETICAL CONSIDERATIONS

The concept of corporate governance is perceived at different levels at different levels of interest and significance. At the *micro-economic level*, the individual company, corporate governance "deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment" (Shleifer & Vishny, 1997:737), while at the *macro-economic level* corporate governance is "the complex set of constraints that shape the *ex-post* bargaining over the *quasi rents* generated by the firm" (Zingales, 1998:499).

In the corporate environment, at the micro-economic level, corporate governance deals with the way the corporations are structured and operates aiming certain aspects like: performance, efficiency, development, capital structure and other aspects but especially the relationship between shareholders and manager. At the higher level corporate governance deals with the legal environment that sets the cornerstone in which corporation act namely: statutory corporation laws, judicial system or financial market regulations. These two different levels of understating and applicability have ultimately the same goals ensuring a better relationship between shareholders, managers and stakeholders. In the end corporate governance and corporate control must use certain instruments or policies in order to achieve its goals.

Modern principles and instruments of corporate governance and corporate control are intertwined with the *agency theory*, which asserts that a company's manager doesn't always engage in the best interests of the shareholders (Jensen & Meckling, 1976). Shareholders or creditors because of their limited accessibility to all the information are unable to monitor closely the managers, who can abuse their key position and engage in detrimental behavior for the company or shareholders. Consequently shareholders or *principals* need to establish control and monitoring systems which are able to ensure that managers or *agents* act on in the interests of the company's interest instead of their own.

Fig.1: The principal agent relationship



Source: Author image

The key aspects in shareholder and manager relationship, according to the agency theory are developed in fig. no.1. The shareholder or *principal* doesn't have the time, experience or knowledge to administer a company so he *mandates* the manager or *agent* to run day to day activities of the company in order to achieve the company's ultimate goal: *shareholder value*. Managers and shareholders can have different objectives and priorities so a permanent conflict arises between these two types of stakeholder categories.

The direct result of the conflict between managers and shareholders is the *agency cost*: the difference between the actual value of a company and theoretical maximum value of the firm if there wasn't any conflict between shareholders and managers. (Jensen & Meclikng 1976) consider two types of agency cost one resulting from the conflict between manager and shareholders and the other from the conflict between shareholders and creditors.

The first category of agency costs, between shareholders and managers, is made up from: *the monitoring expenditures* by the principal (shareholder), *the bonding expenditures by the agent* which include salary, bonuses, stock options or any kind of bonuses offered by the shareholders as an incentive for managers and *residual loss* which are additional cost that shareholders bear because of ill-fated decisions made by managers that don't increase corporate value (Jensen & Meclikng 1976).

Agency theory has shaped the modern corporate environment, because it implies a permanent monitoring and control of the manager on behalf of the shareholder. The monitoring is required because managers tend to: *abuse their position* and spend company money in their favor (Hart, Moore, 1990), *build empires* because managers want to control large companies not small ones (Jensen, 1988), use *entrenchment investments* in fields where the manager has experience but the potential benefit is lower than the expected risk (Shleifer, Vishny, 1989), *irrational behavior towards risk* engaging in riskier investments if their compensation is related to performance or take no risk when their compensation it's not related to performance, *earning retention conflicts* by keeping profits at company disposal and not distributing cash to shareholders, *time horizon differences* managers want short performance because their compensation is depended upon it and shareholder need long term development and *abusive behavior* related to

shareholders by manipulating the accounting information, lack of transparency, using golden parachutes and poison pills etc.

The relationship between manager and shareholders it's a pivotal point in corporate governance, because ensuring a better relationship between these two categories allows the development of a better corporate environment, which ultimately leads to a better stakeholder satisfaction.

While the agency theory it's not the solely theory which tries to explain the intricate relationship between shareholders, managers and stakeholders, the agency theory seems to be the most widely accepted. The other important theories regarding corporate governance mechanisms in a corporation such as: *transaction cost theory* (Coase, 1960), *stewardship theory* (Donaldson, 1990 & Barney, 1990), *resource dependent theory* (Pfeffer & Salancik, 1978), or *stakeholder theory* (Donaldson & Preston, 1995) offer a different perspective, but all try to establish the mechanism through which shareholders, stakeholders and managers interact.

While acknowledging the contributions and importance of each individual theory to economic landscape, the following analysis will focus predominantly on the agency theory, which emphasizes the analysis from the shareholders point of view rather than from stakeholders. We need to make this assessment now, because developing the analysis regarding key issues such as stakeholder's benefits instead of shareholder benefits might change the whole analysis.

Consequently we will refer during this analysis that better corporate environment imposes certain mechanisms and policies through which the *principal* (shareholder) monitors and controls the *agent* (manager), which ultimately leads to a better stakeholder environment. Good corporate governance enhances performance, reduces cost of capital and contributes to sustainable economic development, so a proper analysis of factor that can help mitigate the shareholder and manager divide is beneficial.

3. CORPORATE GOVERNANCE MECANISMS

Investors can use several tools in order to ensure that managers act in the best interests of the firm such as: (1) the board; (2) ownership structure; (3) management compensations mechanics; (4) capital structure; (5) the market for corporate control. Each of these major instruments have a certain applicability, and due to the complexity of the economic environment are sometimes efficient only in a certain set of conditions. In the following section we will try to emphasize the potential benefits and drawbacks of each of the major instruments.

3.1. The board

The size and the composition of the board it's one of the most important instruments that a shareholder can use in order to ensure the alignment of the managers interest in line with the companies best interest. The key role of the board in the corporate environment is guaranteed because of the two key functions that a board has: *monitoring*

and *advising* managers. As a monitoring instrument the board must ensure that every action of the manager is in the best interest of the company and shareholders, while as an advisor the board must provide the required strategic counselling needed in order to achieve the company's long term plans and strategies.

The dilemma regarding what is the main function of the board it's an ongoing debate between scholars, practitioners and policy makers because of the diversity of the economic environment. Despite the ongoing debate there are some best practice rules that can help improve the efficiency of the board: the monitoring function should focus more on the analysis of initial stage on implementation of new projects rather than old ones (Coles, *et. al*., 2012) and the focus should rely more on the advisory function rather than monitoring, because the latter encourages empire building (Aggrawal, *et. al.*, 2011).

When assessing the efficiency of the board several key aspects need to be taken into consideration when selecting the composition and size of the board. Some of the key characteristics that need to be accounted for are: (1) size, (2) expertize and attendance, (3) number of independent members and (4) the type of the board.

The ***size of the board*** can guarantee a higher level of expertise and independence but it also implies a higher cost for shareholders. One of the main factors that undermine the efficiency of the board is the "*free rider*" phenomenon, which implies a lack of monitoring by board member because there are already enough people monitoring the managers (Jensen, 1993). Another factor can be attributed to high cost for obtaining information and monitoring which can lead to disinterest from board members (Persico, 2004). These factors have led to a general perception that today smaller boards are more effective.

Despite theoretical superiority of smaller boards empirical results reveal mismatching conclusion and we can assess that there isn't a one size fits all board.

Expertise and attendance at board meetings can be used to assess how effective are the monitoring and advisory functions of the board. The advisory function can only be as effective as the experience that the board member attained in past positions either as manager or board member. The monitoring function can only be effective if the board members are actually attending the meetings, and analyze the development of the company as it unfolds.

Expertise and attendance are perceived as beneficial, because they allow for a better monitoring of managers, but revealing how effective they are in practice it's hard to determine. In general, we notice in financial corporations an inverse relationship between performance and attendance mostly because of the "free rider" effect (Adams, Ferreira, 2012), while in companies that have high research and development expenditures, expertize is required for high efficiency (Coles, *et. al*, 2008).

One of the factors that hiders the efficiency of expertize are *busy members* who are at the same time in two or more boards, from different companies. The "busy" board members can be viewed either as beneficial or detrimental to the company. Some authors like (Fama, Jensen, 1983) argue that if a board member is in more than one board it's a signal of his expertise and exceptional abilities which is beneficial for the firm. Even if "busy" board members might possess such qualities recent empirical results point to

rather opposite effect, reducing performance and shareholder values because they doesn't have enough to complete their duties (Field, *et. al.*, 2013; Falato, *et. al.*, 2014).

Independent board members are another pivot point in the ability of the board to pertain its functions and role in the corporate environment. Theoretically any board member can be considered independent if he doesn't have any direct or indirect affiliation regarding financial evolvement, family or relationship with the managers of a company.

Common perception is that independent board members are focusing on long term company performance rather that short term because their compensation plan isn't related to company performance like it is for managers. Their ability to foresee long term investments, allows them to be invaluable for companies in a weak legal environment but they can also be detrimental if they lack the expertise required for strategic guidance required by managers (Wagner, 2010). In the end adding an independent board member in company should be done because of his ability enhances the management though expertize and counselling not just because he is an independent member. Expertize matters.

Independent board members, can be either beneficial or detrimental, empirical results are somewhat contradictory in this matter but rather point to an adverse effect of to many independent board members like: banks that had the most independent board had the lowest performance during the recent economic crisis (Beltratti, Stulz, 2012) and while independent board members might be beneficial in certain legal environments (Harris, Raviv, 2008), its counterproductive if the company engages in high levels of research and development expenditures or long manufacturing cycles (Coles, *et. al*, 2008).

Another key factor regarding the effectiveness of the board is ***the type of board*** who can be either: unitary, two tier board (or dualist system) and *mixed system*. A *unitary board* implies a single ruling body that is made up from both executive and non-executive board members. *A two tier board* implies two different control organisms a supervisory board made up from non-executive managers and an executive board which houses the CEO and executive members only. *A mixed system* implies the same two ruling entities supervisory board and executive board, but members can be in both ruling bodies at the same time.

At the global scale there isn't solely accepted board type but rather the most common type of board used in a country defers to the local establishment and culture or imposed by laws. For instance unitary boards are a common sight in the United Kingdom, Italy and Spain due to common practice, while a two tier board is imposed by law in Germany or Austria, and in France companies can chose to use either type of ruling body which is appropriate to the specifics of the firms.

The different types of board don't influence directly the efficiency and the performance of company, all of them have the required instruments to allow for achieving the boards specific functions. Nevertheless, some empirical tests point out that a unitary board might be more efficient if the managers wants to manipulate the economic reality while a two-tier board might be better suited for stopping the tendency of managers to extort additional benefits (Belot, *et. al.*, 2014).

One particular note regarding the type of the board or its composition related to other kind of ruling bodies that can be effective in a company such as: Audit committee, Nominee committee, Compensation plan committee, Risk committee etc. While most of these additional ruling bodies in a company are geared toward helping the board their influence on corporate performance is still a mystery, because of mismatching results that are abundant in the empirical literature. The debate is still opened regarding the effectiveness or the adequacy of certain committees in specific environments.

A s*taggered board* is generally considered to be detrimental because of the inability to change all the managers from a company that was just acquired via a successful takeover, reduces the value of the firm and reduces performance (Bebchuk & Cohen, 2005). A staggered board is powerful anti-takeover provision that incompetent managers use in order to protect themselves against a potential firing because of incompetence.

No matter the size, expertize and attendance, type of board member or actual board, the recent economic developments indicate that in most types of firms, and especially in financial institutions the board shouldn't focus solely on the best interest of the shareholders, because this kind of unitary engagement usually implies undertaking additional risks, increasing the possibility of failure (de Haan, Vlahu, 2015).

3.2. Ownership structure

Ownership structure is another powerful instrument able to align the interest of the manager with the interests of the company. In a regular environment, a shareholder who owns a small part in a company doesn't have the time, interest and expertize required to monitor a manager which causes unexpected behaviors such as: reduced shareholder protection or the "free rider" phenomenon which generates additional costs for the actively monitoring shareholders (Brown, *et. al.*, 2011). In general the "free rider" phenomenon it's more prolific in widely held firms and lest prevalent in concentrated ownership.

When assessing the importance and efficiency of the shareholder structure several key considerations need to be taken into consideration: (1) potential abuse by large shareholders against minority ones, (2) institutional investors, (3) family firms, (4) managerial ownership, (5) widely held firms and proxy voting.

A ***large shareholder*** or a ***block holder*** usually has the best interest to monitor closely the board and managers, but this can lead to a potential risk of abuse. If block holders engage in a dominant behavior, they can transfer assets or revenue from the company to their own personal benefit, they can distort the accounting information, encourage managers to undertake additional risk etc. all of which can be detrimental for the company in the long term. While a large shareholder might be a powerful tool against managers he can also be detrimental (de Haan, Vlahu, 2015).

Institutional investors are a particular type of ownership that helps mitigate some of the potential agency problems. Even though they could also be accounted as a block holder type we threat them separately, because of the specific characteristics of

institutional investors and due to the acknowledged key role they have in modern economics.

Institutional investors such as banks, insurance companies or investment funds because of their expertise and capability tend to be considered more influential and beneficial in a company. Institutional investors, unlike ordinary shareholders tend to poses greater knowledge in monitoring and supervising managers, tend to be more involved in the decision making process simply because investing and monitoring investments is one of their main goals.

While the potential benefit of having an institutional investor in a company cannot be neglected, in practice the influence of an institutional investor are somewhat mix-matched. Past experience has underlined that not all types of institutional investors actively monitor a company and while insurance companies, banks, venture capital funds or state funds tend to be involved in a company's decision making hedge funds tend to take a passive approach in this matter (Celik & Isaksson, 2013). Even if an institutional investor is involved in monitoring a company it's required that an *actual involvement* in monitoring the companies (by actually monitoring the management) rather than a *passive evolvement* (monitoring the company only via certain specialized monitoring shareholder institution such as ISS), because only an active monitoring can achieve better results (Hartzell, *et. al*, 2014).

Despite the potential risk of non-involvement, on a global scale institutional investors seem to be the source of spreading all over the world of better corporate governance standards, which enriches and enhances the level of compliance to better corporate governance standards all over the globe (Bris, *et. al.*, 2008).

Institutional investors, can help mitigate the potential agency problems, but their effectives is very dependent on an active and permanent involvement in the decision making process inside the corporate environment.

Family firms are companies that are under control of a single family, either by the founder's descendants or as new owners. Family firms are a unique category of firms because of the special governance environment they operate in, which enhances family firms with certain strengths and weaknesses (IFC, 2011).

The major advantages of family firms are: *commitment* in the wellbeing of a company as it's a symbol of power and prosperity for the next generation, *knowledge continuity* because past experience is shared between generations and *reliability* and *pride* because family business is associated with their name and they seek to enhance the quality of their products and company.

The major disadvantages of a family business are: *complexity* because many of the simple decision need to take into consideration another variable "the family" which can slowdown reaction time, *informality* in relationship between manager and shareholders which can lead to significant problems as the company grows and *lack of discipline* because family owners don't always consider succession management position planning if the manager is from the same family.

Despite their advantages and disadvantages, family firms seem to perform better than their counterparts in terms of performance but if the family evolvement goes beyond

a certain point family ownership is detrimental, because some family members lack the managerial expertise required (Cheng, *et. al.*, 2015).

Managerial ownership is a mixture between ownership structure and managerial compensation plans: which implies transforming a manager into a shareholder. The general idea behind this policy is that if a manager is a shareholder he will act more like a principal not like an agent, because now his own interests are in line with the ones of the firm.

In reality, empirical studies offer mix matching results because of the large number of variables that need to be considered. While some studies reveal that managerial ownership is usually associated with abnormal returns for up to 10% (Von Lilienfeld & Ruenzi, 2014) others find inconclusive results due to endogeneity concerns (Coles, *et. al.*, 2012). The field is still opened to debate.

Widely held firms and ***proxy voting*** are two interlining variables in the ownership structure environment. While widely held firms tend to exacerbate the potential risk of "free riding" and can reduce the effectiveness of company performance one way to counter it is via proxy voting, because the latter implies delegating a shareholder or third party person to monitor the activities of the manager closely.

In practice proxy voting it's difficult to use, because it's hard for a single shareholder to gather enough votes from the other shareholders in order to change the manager. Despite the inherent difficulties that proxy voting implies, empirical studies suggest proxy voting might an adequate mechanism to monitor managers, and adopting the proxy contest can even lead to career consequences for the incumbent directors (Fos & Tsoutsoura, 2014).

Ownership structure can be used as powerful instruments against managers, but we need to consider that ownership structure isn't as dynamic or capable of adapting to the continuous development of the economic environment. We need to take into account this issue when considering an optimal governance environment.

3.3. Management compensation schemes

Management compensation schemes are one mean which allows shareholders to ensure that the size of the benefits of managers is interlinked with the performance attained by the company. By interlinking the management compensation schemes with company performance, shareholders can align manager's interest with the companies either directly by voting the compensation plan or in an indirect manner trough the specific functions of the board, monitoring and advising.

The ***compensation plans*** can be made from different types of bonuses such as but not limited to: shares, stock options or specific bonuses related to performance (by ex. market value, P/E, PER, ROE etc.). The major disadvantage that all compensation plans have inherently built in is a potential appetite for riskier short term actions because the amount of compensation is directly connected with it, and not with long term development and performance. Even if compensation plans are shaped taking into consideration the company specifics, the place of residence or industry characteristics the risk is still inherent.

Despite the likely risk that compensation schemes might impose on a company, the potential of higher company performance makes the compensations plans a delicate matter, because you can usually either achieve resounding profits or resounding failures (Bebchuck & Weisbach, 2010). Thus, compensation plans need to be used with care especially in financial corporations where the potential downfall of company due to excessive risk taking can have systemic consequences (de Haan, Vlahu, 2015).

3.4. Capital structure

Capital structure can be a powerful instrument in controlling the managers of a firm. By selecting a specific level of debt financing forces the manager to act more responsible in his action because borrowed capital requires mandatory reimbursement.

If a company has a certain degree of leverage, the manager needs to reconsider his actions because debt requires mandatory reimbursement while equity does not. In practice, some studies reveal that the capital structure is effective in improving company performance (Jensen, 1986) and the monitoring and control exerted by banks can help reduces agency costs (Ang, *et. al.*, 2000).

If a company uses the ***capital structure*** as coercive measure against the manager it needs to be aware of the ***potential risks***. By selecting an certain capital structure in order to solve the shareholder manager conflict it opens up another conflict within the company: the conflict between shareholders and creditors (Jensen & Meckling, 1976), who stresses the free cash-flow of the firm (Jensen, 1986), because debt requires mandatory reimbursement while equity compensation depends on several aspects such as profit, required capital for investments, tax and dividend policies etc. The second potential risk is related to passing beyond a certain level of debt, a point that might have an opposite effect because the manager could use the additional capital to create empires (Jensen, 1986) or they might reduce their involvement if the bankruptcy risk is imminent (Berger & Banaccorsi, 2006). The risk needs to be acknowledged when using the capital structure as a coercive instrument for managers.

While capital structure can be used by shareholders as control mechanism for managers, achieving an optimal capital structure which allows optimal funding and management control is hard to obtain. If we only take into consideration one of the three most established theories regarding the capital structure: trade-off theory, agency theory and pecking order theory we find that in practice achieving an optimal capital structure, capable of both ensuring corporate control and corporate development is hard to achieve. For instance recent studies reveal that capital structure can mitigate agency cost (Morelec, *et. al.*, 2012) while other studies suggest that agency cost are not a key factor in a company's cash holdings and capital structure (Nikolov & Whited, 2014). Results are inconclusive and opened to debate.

3.5. The market for corporate control

The market for corporate control is perceived as a powerful instrument for enhancing manager performance, because of the danger of being fired after a successful

hostile merger and acquisition can encourage a more effective overseeing of day to day activities of a company. If a manager doesn't act accordingly, the market value of a company lowers dues to under-performance which ultimately leads to merger or takeover from a competing company.

The applicability of mergers and acquisition as corporate governance instrument is somewhat difficult to evaluate because, it requires a certain amount of prerequisites, which can hinder the efficiency if they are no available. For instance, the effectives of this corporate governance instrument, depends on an existing active and established market for corporate control, which also requires a developed corporate governance system in a country. (Martynova, Renneboog, 2008). So in effect, the market for corporate control requires preexisting strong governance systems in order to work.

Nevertheless, the market for corporate control is not only beneficial from the shareholders point of view, but it also improves the governance standards in acquiring companies all over the world by: adoption the better governance standards from the initiator in a cross-country merger, the increase in shareholders protection and the quality of management (Bris, *et. al.*, 2008).

Managers are aware of the risk that a potential hostile takeover might have on their job and security so they act accordingly by initiating protective measure against either the hostile takeover or against their dismissal after the takeover. Manager can use *poison pills*, *golden parachutes*, *staggered boards*, *super-majority* and many other protective measures that might shield them against hostile takeovers.

These protective measures are detrimental to the development of a company, as it was revealed by (Gompers, *et. al.*, 2003) in their seminal paper concerning the relationship between anti-takeover measures and company performance. Companies that had many protective anti-takeover provisions or a high value in the G-Index (also called *dictatorship* portfolio) experienced lower corporate valuation than companies that had fewer anti-takeover provisions or a low G-Index value (also called *democracy* portfolio). On average each point increase in G-Index translated into a 2.2% decrease into *Tobin's q* at the beginning of the 1990's, and up to 11.4% in the late 1990's, which underlines the importance of the market of corporate control, but it also implies the risk that it imposes.

While the market for corporate control can help mitigate agency risks by encouraging better involvement from managers, it can also be the actual cause of agency cost. Some scholars like (Jensen, 1988) argue that one of the main causes of merger and takeovers is the tendency of managers of *empire building* because managers want to control "large companies" not small ones. So the market for corporate control can either be a solution or the cause of shareholder and manager conflict.

The market for corporate control can be a powerful instrument against managers but shareholders need to be aware that a manager might establish protective measures against their dismissal, which ultimately hurts company performance. Nevertheless, by eliminating the protective measures initiated by managers, shareholders can ensure a better control of the management.

3.6. Final remarks

Shareholders can use a large array of policies in order to ensure that managers act in the best interest of the company instead of their own. Table no. 1 tries to summarize what are key potential benefits and drawbacks of all the major policies a shareholder can use.

We can assess that an adequate corporate governance controlling mechanism requires acknowledging the potential benefits and drawbacks of each individual policy and only after deciding what optimal policy is better suited for an individual company. There isn't a one size fits all solution but rather a special mix between firm characteristics and weighing down on all the potential benefits and drawbacks of each individual policy.

Table no. 1: Potential benefits and drawbacks of managerial controlling policies

Agency controlling policy	Potential benefits	Potential drawbacks
The Board	the main functions of the board are *monitoring* and *advising* the managers	rises issues regarding board *size, composition, expertize, independence, type* and *attendance*.
	can *mitigate* managerial abuse and increase company performance	board members *can work together with mangers* in the detriment of shareholders
	efficiency can be increased by *additional committees* such as: Compensation, Risk, Audit, etc.	costs associated with *large*, *passive* and *staggered* boards
Ownership structure	*block holders can monitor* closely the management	*block holders can abuse* their dominant position against minority shareholders
	institutional investors poses the required *expertise* and *knowledge* required	institutional investors can take a *passive approach* in management monitoring
	family firms poses: *pride* and *reliability*, *commitment* and *knowledge* continuity	family firms are *complex*, *informal* and *lack discipline*
	managerial ownership can help align managerial interests	potential reduction in *voting power*
	proxy voting can be effective in controlling managers	*difficult to implement* and potential risk of *shareholder activism*
Management compensation schemes	compensation *can interest the manager* in a better overseeing of the company	potential appetite for *riskier short term actions*, because compensation is linked to earnings
Capital structure	debt financing force the manager in a more *stringent capital management*	debt financing opens up another *conflict between shareholders and creditors*
	debt financing can potential *increase performance via debt leverage*	*high levels of debts are detrimental* to the company's performance, and managerial interest
	debt financing *assures* the capital required for *company development*	*hard to achieve* a capital structure, capable of providing the required funding and managerial restrains
Market for corporate control	the risk of potential hostile takeovers can *improve managerial overseeing*	managers can adopt protective measures such as: *poison pills*, *golden parachutes*,

		super majority, staggered boards etc.
	Mergers and acquisition can help *improve efficiency in a company*	One of the main causes of mergers and acquisition is *empire building* by managers

Source: Author image

4. CONCLUSIONS

The aim of this paper was to analyze what are potential benefits and drawbacks that each of the major instruments a shareholders has at his disposal in order to ensure that the manager of a company act on the best behalf of a company and not his own benefits.

In his endeavor, of monitoring and controlling the manager every investor can use a wide array of policies and instruments, but the most common ones are: the board, ownership structure, management compensation, capital structure and the market for corporate control.

If the board, can help mitigate some of the agency issues by monitoring and advising de manager, it can also raise complex topics like the size of the board, expertize and attendance or independence which ultimately undermines it's efficiency. Meanwhile management compensations schemes, ownership structure and institutional investors might be suited for corporate control but raise other issues such as tendency towards risk, abusive behavior from the controlling shareholder or a passive engagement from the institutional owner. Capital structure can help mitigate agency cost by increasing leverage, but achieving an optimal capital structure that is also capable of reducing agency cost, assuring capital and high levels of performance seem more hypothetical than feasible. The market for corporate control can mitigate agency risk, but it requires an active merger and acquisition market, and managers tend to protect themselves against hostile takeovers which ultimately hurt company value.

Despite the wide array of policy and instruments a shareholder has at his disposal, all of them exhibit certain advantages and disadvantages, which ultimately imply that there isn't an explicit solution for every environment but rather a unique mix according the specific environment of the company.

From a policy maker point of view this intricate mixture of pros and cons imply a proper analysis of the environment in which the company operates and try to take into consideration all the characteristics of a firm, and only after issue recommendations, norms and laws.

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THE ENGLAND REAL ESTATE MARKET – A QUANTITATIVE ANALYSIS

Sabina Andreea CAZAN
"Alexandru Ioan Cuza" University of Iasi
Iasi, Romania
sabinacazan@yahoo.com

Abstract: *In the last years, the real estate market has proven its importance due to the high level of the transactions and prices, the contribution to the gross domestic product and the overall positive effects to the economy. The main objective of the article is to create a view over the English real estate market and its functionality. Given the fact that England has the biggest real estate market within Europe, this paper analyses the activity of the financial institutions specialised in funding the residential sector in the last years. In the same time, we aim to identify the key factors that led to the growth of the housing prices. The findings are optimistic, the economic environment becoming more and more appealing for the investors and consumers. Although the investor's confidence has risen thus making the capital flows increasingly higher, the English real estate market is still in a process of recovery. Nonetheless, the trends are encouraging, the prices are rising and the mortgage applications are increasing, the real estate market regaining its performance and stability.*
Keywords: *English's real estate; housing policies; mortgage loans; price index;*

INTRODUCTION

Owning a house has become one of the main objectives in people's life. Given the high prices of the houses, the majority of the families apply for a loan. This study will focus on the English's real estate market and its lenders, the structure of the banking system and the governmental implications. Due to its importance and its benefits, the real estate market has become a very important mechanism in the England economic infrastructure.

The real estate market continues to recover, boosted by the government's "Help to Buy" programme and the economic overall improvements. The analysis will focus on the residential real estate segment and its trends from the last years. Furthermore, we will create an overview over the functionality of the real estate market, the prices of dwellings, the lenders, the banking system and the mortgage section, the government initiatives and the consumers' preferences. The statistical data were collected from the national and European authority's reports – European Mortgage Federation (www.hypo.org), The National Bank of England (www.bankofengland.co.uk), The Office for National Statistics (www.ons.gov.uk) and others institutions (Knight Frank, PWC, etc.). Basically, the paper is a quantitative analysis of the national real estate residential sector and its implication on the economy.

LITERATURE REVIEW

Over the years many studies and articles have tried to analyse the functionality and efficiency of real estate markets. There are authors who have focused on the European integration level, identifying some general directions in order to improve its functionality: strengthening competition, removing cultural barriers, improving the legal framework and risk mitigation. (C & H, 2003; D & R, 2011; A, 2012)

Another important subject within this field is represented by the housing price and the process of the evaluation of the buildings. (D., 2009; R., 2010) A large number of the articles focused on the factors that can conduct to a prices increase but also on the impact to the real estate markets. There is a strong connexion between the banking system, the regulations from the field of constructions, the economic environment and the development of the country. Another important aspect in this process of setting the price is the subjective influence between the seller and the buyer. Nevertheless, the buyer will not pay a price higher than the maximum market value of the property.

When it comes to the UK real estate markets, the studies are focusing more on the commercial sector rather than the retail one. Even so, there are a few papers which analyse the prices and the national authorities' involvement in the process. Williams and Whitehead (2015) studied the impact of the government programs to the real estate market. Their research sustain that there is no real evidence on the financial impact of the authorities' social measurements. On the contrary, these non-profit organisations like housing associations provide about 10% of the total buildings from UK, helping the disadvantaged families to own a house. Lately, the house pieces began to rise and the real estate assets regained their value.

ANALYSING THE ENGLISH RESIDENTIAL REAL ESTATE SECTOR

The economic recovery from the last year has had a positive impact over the English financial markets. Even so, property prices are relatively low compared to inflation or pre-crises period. Currently, activity remains below long-term forecasts but because of relatively low prices, there has been a slight increase on the volume of the transactions. In the last two quarters of 2014 the markets have consolidated, this strong performance continuing in 2015 – the gross lending value has risen, the house prices and the volume of the transactions have slightly increase and the interest rate appears to be converging. Overall, these positive signs led to a growth of 2.3% compared to 2014.

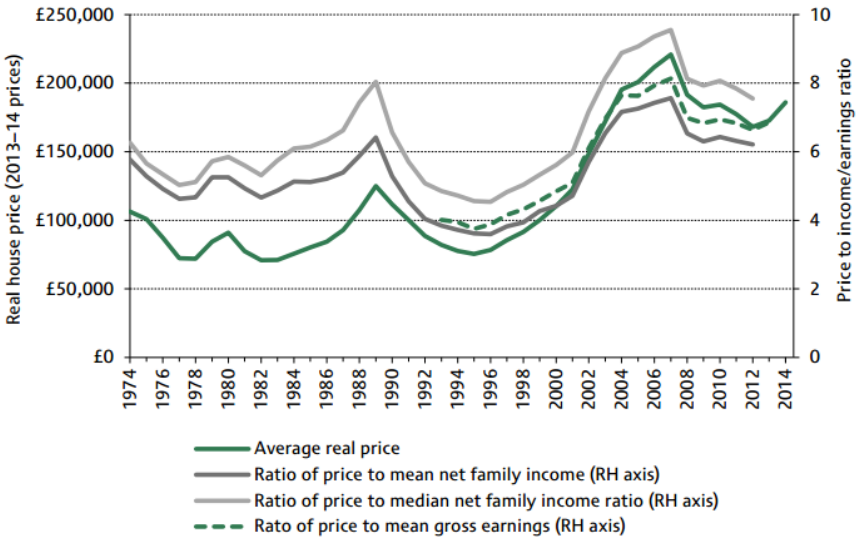
In November 2010, the English government began reforming the social policy by implementing certain measures: increasing the independence of local authorities granting them more power in the management of social housing, owners were given more flexibility regarding renting while at the same time protecting the tenants. Another measure was granting certain tax reductions when purchasing a property. At the moment the only tax levied is up to 5% of the dwelling by type of property purchased ("Stamp Duty Land Tax"). In 2008, the government announced a temporary dismantle of the tax for the purpose of housing market recovery. In this way, the buildings that were valued up to 175,000 GBP were exempt from that tax. In 2010 the limit was raised at 250,000

GBP and as of March 2012 the government has reapplied the single tax charge for absolutely all homes.

In order to support disadvantaged families, in 2011 was implemented the "Right to Buy Scheme" program which allows certain people to purchase a property at a lower price than the market. The main reasons of the initiative were to increase the volume of the real estate transactions and the market stability and efficiency. The lenders are becoming more advantaged because it enables them to establish a guarantee fund for each home that they sold, 3.5% of its value being redirected to that fund. The state contributes with another 5.5% of the sales price of each building, so if the amount is not repaid by the borrower the lenders can recover a small percentage of the lost amount.

Compared to 1990 when the rate of ownership of a property was 50% at the expense of leased homes, in 2005 the percentage rise to 70%. Real estate developers are responsible for the majority of newly built housing. Even so, compared to the EU average percentage of newly constructed buildings is low. Considering the international financial crisis effects, in 2010-2011 121,200 homes have been built parallel to the 2008-2009 period when property volume amounted to 207,370. (European Mortgage Federation, 2012) "The New Homes Bonus" was implemented in 2011 and was meant to increase housing supply. In this way, the local developers began offering substantial deductions for each newly built house or renovating an old building. 400 million GBP were made available to real estate developers in order to mobilize the residential real estate market.
House prices in England follow a perfect cyclicality. Demographic pressures and low supply on the market or the economy have caused prices to rise quite a lot. Since 1975, it has had a constant trend, the annual rate being approximately 2.9%.

Graphic 1. **England house prices 1974 – 2014**

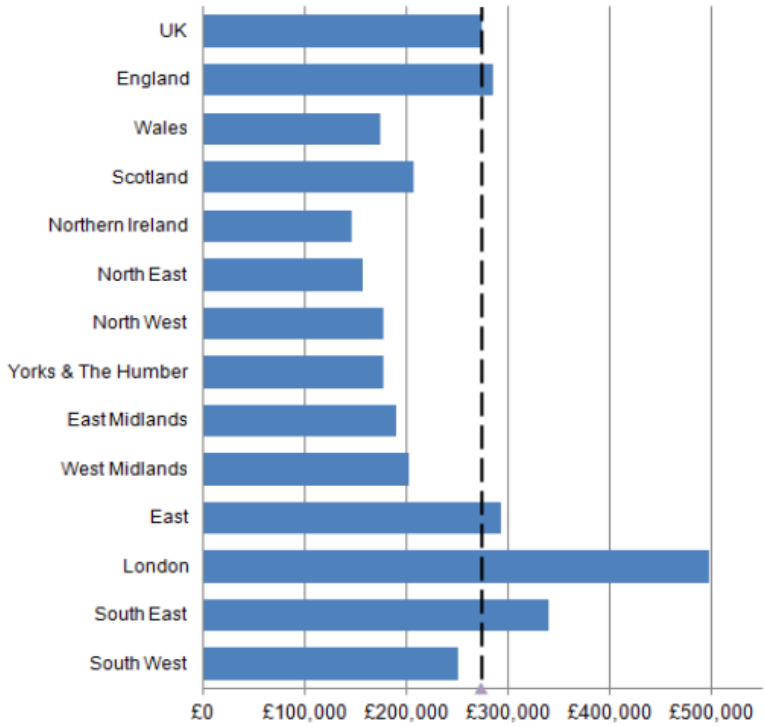


Source: Housing: Institute for Fiscal Studies, 2015, page 5

As it can be seen in the first graph, the England housing prices have increased by 8.1% in the last year. After the peak from 2007 when a house worth 221,000 GBP, the prices continued to fall until 2013 reaching 150,000 GBP. Still, the affordability remains a key concept and an issue from many points of view. It is a fact that the real house prices has grown faster than the real income from the rest of Europe.

Following the financial crisis, the real estate market's mobility was much lower, by 2009 the prices decreased considerably but after the economic downturn there has been seen a slight stabilization of the market. In 2014, the English housing prices were the second highest in the world, topped only by the small city of Monaco.

Graphic 2. Adjusted average house prices in England (by country and region)



Source: Office for National Statistics, 2015, page 10

Although the dwellings are smaller with 40% than the European average, the prices have always been greater than the rest of the European countries. When it comes to rental prices, the situation is the same, London being in top 5, among Monaco, Hong Kong, New York and France.

London is considerate the most active real estate market within Europe, with over 21 billion EURO in terms of transactions. This huge amount is greater than the volume of real estate transactions from the other cities – Paris 6 billion, Berlin, Moscow and Munich

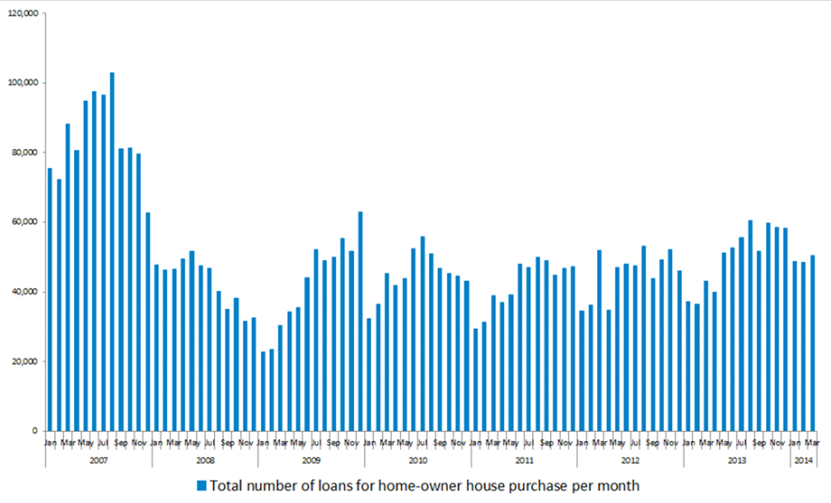
with 3 billion followed by Dublin, Stockholm, Hamburg, Amsterdam and Frankfurt with 2 billion.

English residential mortgage market is the largest in the European Union, with total assets of over 1.2 trillion GBP, numerous studies analysing its competitiveness and complexity. However, due to the difficult economic environment, until 2012 it can be seen a decrease in loans to households. In the early 2000s housing market has experienced massive growth due to the large amount of mortgage loans or refinancing. Automatically, the housing prices greatly increase but the 2008 real estate boom has affected negatively, the mortgage activity reaching only 40% of their 2007 peak.

However, the real estate investments are the greatest in England, reaching 47 billion for the last year, followed by Germany 30 billion, France 16 billion, Spain and Netherlands with 6 billion and Sweden and Russia with 4 billion.

As it can be seen in the third graphic, the amount of loans increased by 4% in March 2014 compared to February of the same year reaching 15.3 billion GBP, and by 14% compared to March 2013. The number of residential mortgage loans amounted to 50,500, by 24% more than in 2013. In terms of refinancing loans, these increased by 5% compared to March 2013. On a quarterly basis in the first three months of 2014, 147,800 mortgages were granted which clearly shows an increase over the previous year. Mortgage real estate market dynamics is much better, also due to economic improvement at national and European level.

Graphic 3. Evolution of UK mortgage loans 2007-2014



Source: 2014, http://www.cml.org.uk/news/press-releases/3898/

The interest rate was relatively low due to the favourable economic environment, with a decrease level of inflation and a stable real estate market. After 2008, LIBOR's level dramatically increased which led to a spike of bad loans. The number of those who

have contracted for the first time a mortgage amounted to 24,400, representing approximately 50% of the total loans in March 2014.

Table 1. The analysis of the mortgage loans

	Number of mortgage loans	Value of mortgage loans (millions GBP)	Number of refinancing loans	Value of mortgage refinancing (millions GBP)
March 2014	50.500	8	25.000	3,6
Percentage change *(February 2014)*	4%	2,6%	1,6%	1,2%
Percentage change *(March 2013)*	17,4%	27%	4,6%	16,1%

Source: 2014, http://www.cml.org.uk/news/press-releases/3898/

The loans totalled 3.4 billion GBP, showing an increase of 36% compared to March 2013. Overall there is an improvement in the residential real estate market over the same period as last year and this is due mostly to financial stability and growth per capita income. If in 2013 the borrowers have used 19% of the income to cover the outstanding instalments, in 2014 they used only 17.4% of their winnings. Mortgage loans ranging from Buy-to-let have also increased by over 50% compared to 2013 reaching an impressive number of 16.200, totalling over 2 billion GBP.

In the England residential property market there are many businesses responsible for its financing: financial institutions, mortgage banks, non-financial institutions or developers. At the end of 2011, 69% of the total loans were contracted through commercial banks and savings, 16% by institutions mortgages and 15% by other specialized lenders which indicate a decline compared to 2008 when they held more than 35% of the market share.

Currently, the situation is as follows:

- 20.2% - Lloyds Banking group (£35.5 billion mortgage loans)
- 15.3% - Nationwide (£26.9 billion mortgage loans)
- 10.4% - Santander (£18.3 billion mortgage loans)
- 9.6% - Barclays (£16.9 billion mortgage loans)
- 8.2% - HSBC (£14.5 billion mortgage loans)

Since 2004, most mortgages are regulated by the Financial Services Authority (FSA). Nowadays, the institution conducts a review of its real estate market in order to provide a sustainable and effective environment for all the participants.

Before the global economic crisis hit, the most of the loans were contracted through intermediaries (two thirds). After 2008 this method has lost popularity, consumers appealing directly to financial institutions. In terms of supply, financial and

non - financial institutions make available a wide range of products and services. In recent years an increase in "buy to let" type mortgage has been observed, the customer incurs a mortgage loan, renting the property after. In this way, the resulting rent is used to pay the bank. Fixed rate loans were the most popular lately, especially for periods between 25 and 30 years. Mortgage insurance is not included in the lending contract as they are being sold as a separate product.

Borrowers who receive other income in addition to salary can opt for SMI - Support for mortgage interest whereby 3.63% of the loan is redirected to a guarantee fund that operates on the same principle as the security insurance guaranteed by the state.

CONCLUSION

Owning a house is a key factor in the social wellbeing of the English people. Even if for the majority of the families a house is not affordable, the banking system and the government are trying to reduce the burden. This paper has analysed the structure and the functionality of the residential real estate sectors, the consumers' preferences, the most soled dwellings and the mortgage products. In this way, it has been done an overview of the English real estate market. The limitation of this study is represented by the lack of more recent statistical data.

Even if the real estate market has its back and forth, in the last year the situation is getting better, the prices are risen, the mortgage loans are increasing and the economic stability is much stronger. The residential sector remains the most productive from Europe, with earnings greater than the last 20 years, low inflation, constant growth and strong performance. 2014 has been a good year, the economy and the real estate market, both commercial and retail expect to be on a constant upward trend. Nevertheless, the government plan to reduce the deficit is only half way, the real estate sector continuing to be a key factor to achieve this object.

The England banking system is a specialised one, the commercial banks owning over 65% of the market. Along with the building societies, these are responsible for the majority of the contracted mortgage loans. Due to the big prices, the consumers are orientated after small apartments and buildings. They prefer short-term fixed rates on medium periods of time, 15-20 years. Over the years, the mortgage applications have slightly increased, the consumers faith in the national financial stability becoming stronger. The intense activity from the last two quarter of 2014 will continue in 2015 as well but in a moderate way. The analysts see the next few years as more of a period of stabilisation rather than a spectacular growth. The main objectives are keeping the inflation and the unemployment rate low and the economic growth constant.

ACKNOWLEDGEMENT

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AN ANALYSIS OF THE FACTORS INFLUENCING THE DEMAND FOR CATASTROPHE INSURANCE

Cristina CIUMAŞ
Department of Finance, Faculty of Economics and Business Administration, Babeş-Bolyai University
Cluj Napoca, România Country
cristina.ciumas@econ.ubbcluj.ro

Ramona Alexandrina COCA
Department of Finance, Faculty of Economics and Business Administration, Babeş-Bolyai University
Cluj Napoca, România Country
ramona.coca@econ.ubbcluj.ro

Abstract: *This paper approaches the issue of insurance demand for catastrophic risks. Given the impact of these extreme events, the upward trend both in terms of frequency and severity a low level of the degree of insurance coverage can be observed. This is not a characteristic for Romania but rather a global problem. Our goal is to identify the main factors that influence a person's decision to switch from uninsured to insured based on the analysis of the models already developed. Then we will focus on the Romania's situation when it comes to regulations of covering the three catastrophic risks: earthquake, flood and landslides. Based on data regarding compulsory household insurance, through a regression analysis we'll identify the factors that are taken into account by the clients when they decide to transfer the risk by buying an insurance policy. Furthermore we'll present some elements that can lead to a higher insurance coverage. An important aspect is a different premium for the compulsory insurance by considering the exposure to risk.*
Keywords: *Catastrophe insurance, PAID, insurance coverage, CRESTA zone, relativity factors*

INTRODUCTION

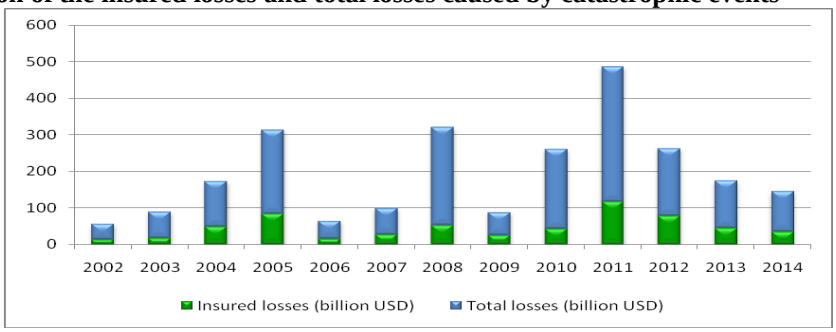
Catastrophes are also known as extreme events characterized by a low frequency but high severity. When such an event occurs it causes a deviation from normality, in a short period of time a large number of people being affected (dead, injured, missing). At the same time the financial capacity of the area is exceeded, the financial impact being significant and often in these situations financial support from Government and Public Authorities is needed. There are cases when a state that has been affected by a catastrophe needs financial aid from other countries, for example at the European Union level has been established the European Solidarity Fund, these amounts being used for disaster relief for affected Member States.

Depending on the trigger factor there are two main groups of catastrophes: natural catastrophes generated by nature force and technological catastrophes caused by human actions. In this paper we will focus only on the first category-natural catastrophes.

The records show that we are facing an increasing number of catastrophic events. After 1970 we can observe an upward trend of catastrophes frequency. Before the mid of 80s there were moderate fluctuations of the events number but after this period we witnessed a higher growth. Also, before 1970 the value of losses didn't exceeded 30 billion USD but after this year the situation was different, new records for the losses being observed due to major events that have occurred. These situations can't be considered isolated cases but rather a new trend: for example hurricanes Ivan, Charley and Frances in 2004 generated losses in amount of 45 billion USD. In 2005 the level of losses increased again to a new record of 80 billion USD after the hurricanes Katrina, Rita and Wilma. The peak was reached in 2011 when insured losses were in amount of 110 billion USD after New Zeeland earthquakes and Thailand floods. This year was the most expensive in history if we take into account the value of losses generated by earthquakes in a single year, only the Japan earthquake generated 35 billion USD losses and also losses caused by floods in Thailand have been the highest ever registered.

In the figure below the evolution of the ratio between insured losses and total losses caused by catastrophes worldwide can be observed. The average degree of insurance coverage is 32.79%, a relative low value contrary to the high impact and great exposure of households to catastrophes. We note that only in two years, 2009 and 2012 the percentage of insured losses in total losses exceeded 40%. The explanation for these cases can be people reaction after occurrence of significant events in 2008 and 2011 when catastrophes generated extremely high level of losses.

Fig. 1 Evolution of the insured losses and total losses caused by catastrophic events



Source: Authors'processing based on Natural catastrophes and man-made disaser Reports, Swiss Re, 2002-2014

When it comes to catastrophes that threaten Romania statistics show that two major risks can be considered: earthquakes and floods. Even if floods are more frequent the largest losses have been generated by earthquakes. For example the earthquake of March 4, 1977 caused damages of 2 billion USD.

From a seismic point of view Romania is characterized by a medium to high level of risk. However, if we make a comparison to Japan the energy released is about 400 times lower. Vrancea is the main seismic zone, with a clearly defined seismic activity form Europe. Earthquakes in this area occur at intermediate depth and affects 50% of the whole territory of the country.

Floods are the second risk that Romania is exposed to. If we refer to losses caused by these events we have to mention 2005 as a reference point, three major floods occurred in a single year and caused losses in amount of 1.3 billion USD.

Although the exposure to catastrophic events of Romania is significant the insurance coverage of households has a low value. Consequently, our purpose is to identify and analyse those factors that influence the consumer decision to conclude an insurance policy that cover catastrophic risks.

In order to analyse the demand for catastrophe insurance the starting point should be represented by objects exposed to risk.

Some of the reasons for a low insurance coverage of households are (Ionică M., et al 2009):

- Economic reasons: low income, the poverty rate in each country;
- Lack of education of people regarding insurance products and risks, the intangibility that characterizes financial services;
- Lack of actions and measures in order to sustain the implementation of legal regulation. Although household insurance became mandatory since 2009 no control actions were taken to monitor how this type of product functions. In addition a series of legislative changes have created some confusion among the population and a message of decision instability has been sent.

Aid for disaster relief in case of extreme events paid by Government also discourages the conclusion of insurance policies.

We also need to take into account the Romanian insurance market characteristics: a market dominated by motor insurance. To achieve the goal of a higher insurance coverage of properties a change of mentality is needed through people education, awareness campaign of risks and also different price of the insurance policy based on the exposure to risk.

REGULATION ON THE NATURAL DISASTER INSURANCE

At present household insurance is mandatory, the law being in force since July 15, 2009. The decision of introducing as a compulsory policy is based on a number of determining factors such as:

- Romania's high exposure to extreme weather events;
- Low level of insurance coverage through facultative policies, only 10% of total households being covered;
- Allocation of important amounts from the Intervention Fund at the disposal of the Government after floods in 2007: the initial value established has been increased about 50 times during the year, from 3.6 billion Euro to 174.9 Euro.

Once the law has been adopted a series of discussions regarding insurance companies that will issue such policies followed. Finally it was decided the constitution of Natural Disaster Insurance Pool (PAID) starting with September 23, 2009. At the beginning the shareholder structure consisted of 13 companies authorised by the Insurance Supervisory Commission even if 16 companies were interested to be part of the pool. Quite strict conditions have been imposed by the Insurance Supervisory

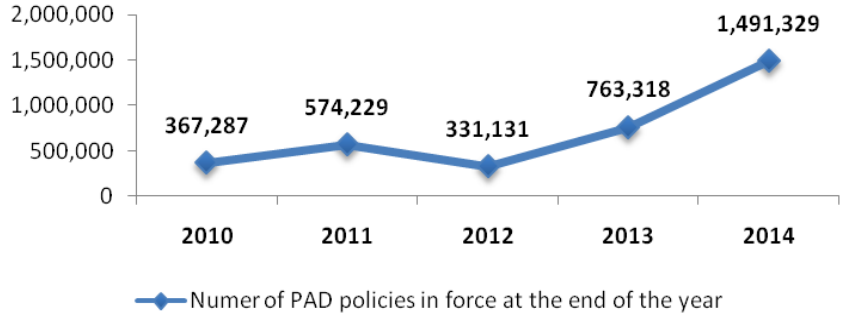
Commission and in this situation three companies have been rejected because these failed to meet all the requirements imposed.

The role of the PAID was to decrease social and financial pressure on the Government and public authorities when a natural catastrophe occurs.

Compulsory insurance policies cover three risks: earthquake, flood ad landslides. Numerous amendments have been issued in case of this law in order to stipulate how the compulsory insurance and the facultative policy works together in case of the same insured object. The last update was introduced by Law 191 of July 2, 2015: the main change is represented by the fact that insurance companies can issue a facultative policy for a household only if that one is covered by a PAD compulsory insurance.

Currently the level of insurance coverage through compulsory household policies is about 17%, still quite low. Even if in the figure below a rising trend can be observed a number of measures are needed in order to be achieved the purpose for constituting PAID.

Fig. 2 Evolution of the number of PAD policies during 2010-2014



Source: Authors'processing based on public data offered by PAID

Next we will focus on several possible explanations for the relatively low value of the insurance coverage:

- Many legislative changes that have created some misunderstanding among the population;
- Lack of functional measures for those people that have no insurance policy against natural catastrophes. In addition the financial aid offered by the Government to affected people discourages the insured people because they consider that could have received the value associated to damage without paying the insurance premium. On the opposite site those persons that have received different amounts without having an insurance policy can be encouraged to act in the same manner in the future;
- The unique value of the insurance premium regardless the exposure to risk. For example a person that has an apartment in Bucharest has a higher exposure to risk in comparison with one having an apartment in Cluj, but they pay the same premium for being covered if an event occurs;
- The three catastrophic risks are covered by a single insurance policy, even if in some areas of the country the exposure is insignificant to all these risks. A policy

for each catastrophic risk may lead to a higher degree of insurance coverage depending on the exposure of each zone.

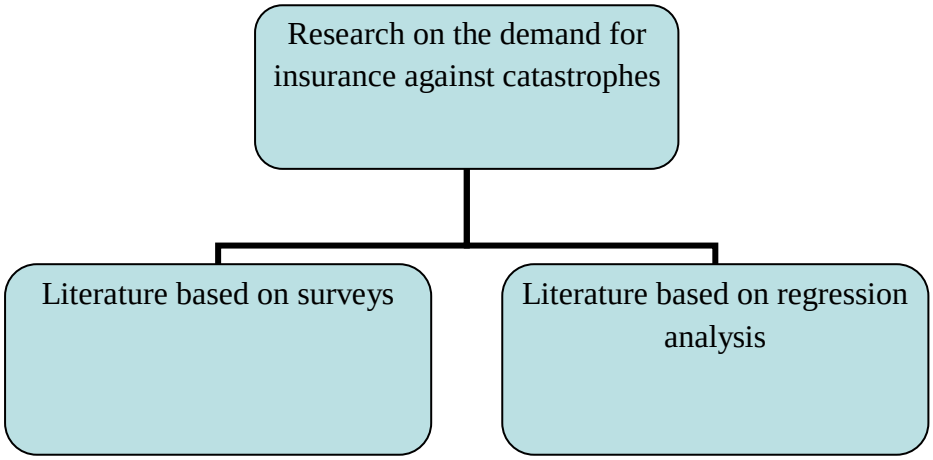
In the next section the main research studies regarding the demand for insurance coverage for catastrophic risks will be presented. Also the results obtained about the factors that influence the decision of a person to conclude or not an insurance policy will be discussed.

LITERATURE REVIEW

A large part of the literature addresses separately the factors influencing the insurance demand based on the policy type, covered risk (for example earthquake, flood). Results not give clues about some major differences in terms of approach. In this context, taking into account that in Romania the three catastrophic risks are included on the same policy we will address them together.

The low level of insurance demand for policies that cover catastrophic risks is not characteristic only for the Romanian insurance market but rather a global issue, so specialists form various areas such as economics, statistics, seismology, meteorology, geology addressed this theme in their research studies.

The research studies realised can be divided into two main parts:



The first studies developed had as central element questionnaire, and then being developed studies where the research method was regression analysis.

In the studies completed several factors that influence the demand for insurance against natural catastrophes have been identified:

- Political factors

In the first studies done in 1960 when the research on natural catastrophes started the problem of public policy and their implications has been addressed. The reference studies were elaborated by Kunreuther (1978), Camerer şi Kunreuther (1989), Kunreuther (1990). One of the main themes discussed was about the aid granted by the state in case a major event occurs. This action has a positive effect if we refer to help that population receive to return to the situation before the event but on the other hand when it comes to insurance demand we can talk about a negative effect because people are discouraged to buy protection through insurance policies. For example, after the 1964 Alaska earthquake

the owners of affected houses could get loans on advantageous terms in order to rebuild their homes, amounts that otherwise could not have accessed in these conditions. Then, these advantages have been replaced by an insurance granted by state for those areas that have taken some measures to limit the flood risk.

- Psychological factors

Psychological factors are important and these relate primarily to people's tendency to estimate the occurrence probability of an event through their memory. As we know catastrophes are rare events and as a consequence people have two approaches: assigning a zero probability of occurrence or a positive value but underestimated compared to an objective assessment.

- Social factors

The social networks of each person play an extremely important role, people being more responsive and influenced by the behaviour and the decisions taken by their friends. This factor is considered to be a critical one that makes the difference between an insured and uninsured person. Also it controls factors like income, education, and risk aversion of a person.

- Economic factors

In this category we can talk about income, unemployment rate, and insurance premium. If in case of consumer goods we can talk about a positive relation between income and demand, when it comes to insurance policies the situation is different. It was observed that as income increases the demand for insurance falls. A possible explanation for this situation is that when individual have certain welfare they consider unnecessary ceding the risk. The results on the relation between income and insurance demand are ambiguous, Browne and Hoyt (2000) identifying a positive relation but Grace et. al (2004) said that there is an ambiguous relation between these two variables.

- Risk perception factors

No relation between an objective assessment of the risk and the perception of individuals has been identified.

One thing is clear and supported through numerous surveys conducted by Kunreuther (1978) and others conducted by Risa Palm in 1989, 1990 and 1993: the insurance demand increases after a major event occurs. Furthermore households affected by such an event will be insured in the future. It was also noted that some aspects that objective capture the seismic risk, such as ground motion couldn't have been analyzed because these concepts are not familiar to property owners.

The results of surveys conduct us to conclude that clients' decision to buy an insurance policy is not based on calculations but the public policy had an influence on the long term insurance demand.

In studies based on regression analysis the endogenous variable it is considered to be the series of the number of policies issued, or the value of insured amount. As explanatory variables it has been considered: the income, the insurance premiums, the household value, damages in the previous year, the exposure to risk. If there were available information about education, the existence of mortgages, construction year of the house these also were taken into account and analyzed.

DATA AND METHODOLOGY

The data used in this study are obtained from several sources: Natural Disaster Insurance Pool (PAID), National Institute of Statistics, Solvency II Directive especially for the relativity factors of CRESTA zones.

Data will be grouped on CRESTA zones which represent a standard for the insurance industry in terms of associated risk. In Romania a number 41 CRESTA zones exists, these being in fact the counties. For each zone a relativity factor for earthquake and one for floods will be considered. In the table below the highest values for each type of relativity factor is presented:

Table 1 Extreme value on risk exposure

CRESTA Zone	Earthquake relativity factor	CRESTA Zone	Floods relativity factor
1.Vrancea	5.2	1.Braila	11.9
2.Buzau	4	2.Tulcea	7.9
3.Bucureşti	2.5	3.Ialomita	4.6
4.Calarasi	2.2	4.Teleorman	4.6
5.Prahova	2.1	5.Galati	4.6

Source: Annex Solvency II Directive

In the table above we can see which areas are most exposed to earthquakes and floods. In these circumstances we expect to have the largest number of issued policies in these areas, this being a truth in case of an objective assessment of the risk and not influenced by psychological factors. For example we have analyzed the areas with the highest insurance coverage through compulsory household insurance and these counties are: Bucharest (36%), Timiş (30%), Braşov (27%), Prahova (24%), Constanţa (23%). Areas that have been often affected by floods in recent years as Teleroman, Olt, and Vaslui are on the last positions. This fact can be explained by the aids received from the Intervention Fund at the disposal of the Government after major events and also by the relative low level of the income of the individuals in these areas.

Starting from the studies developed we'll test what factors influence the decision of an individual when he conclude an insurance policy covering catastrophic risk. An econometric linear model will be estimated:

$$yi=b0+b1x1+b2x2+...+bkxk$$

The coefficients will be determined through OLS method.

ESTIMATION AND RESULTS

Next we will perform a regression analysis using cross-sectional data considering all CRESTA zones and one single year.

Variables considered:

The dependent variable is the insurance demand and consists of the total number of PAD policies issued for the CRESTA zone i for natural persons. It gives us information on the number of individuals that have an insurance policy but we don't have information on the extent of coverage. Another option was to consider the insured amount per capita but taking into account that in case of compulsory insurance we have the same insured amount for all homes we decided to use the number of issued policies.

The independent variables are:

- Income, taking into account the average wage for each CRESTA zone i;
- Earthquake risk associated to CRESTA zone i, expressed by earthquake relativity factors defined by Solvency II Directive;
- Flood risk associated to CRESTA zone i, expressed by flood relativity factors defined by Solvency II Directive;

In 2014 a number of 1.491.239 PAD policies have been issued, in the table below the distribution on CRESTA zones can be observed, being presented the first and the last 5 positions. The biggest percentage in total policies issued is in Bucharest, the capital having a major exposure to earthquake risk, various actions being carried out for risk awareness of the population.

Table 2 Distribution of PAD policies on CRESTA zones

CRESTA Zone	% PAD CRESTAi zone in total PAD policies issued	CRESTA Zone	% PAD CRESTAi zone in total PAD policies issued
1.Bucureşti	24%	37.Călăraşi	1%
2.Timiş	6%	38.Gorj	1%
3.Prahova	5%	39.Mehedinţi	1%
4.Constanţa	4%	40.Bistriţa Năsăsud	1%
5.Brasov	4%	41.Sălaj	1%

Source: Authors' processing based on public data offered by PAID

The model is:

$$Ln(Demandi)=b0+b1Ln(Incomei)+b2EqRisk+b3FloodRisk$$

Table 3 The results of the model describing insurance demand for catastrophe insurance

Variable	Coefficient	Standard deviation	t-Statistic	Prob.
Constant	-17.28	3.94	-4.3816	0.0012
Income	3.80	0.54	6.9766	0.0000
EqRisk	0.09	0.06	1.4036	0.1688
FloodRisk	-0.02	0.03	-0.6478	0.5211

R-squared=0.5959
Source: Authors' processing

Although the household insurance is compulsory we started to analyze the factors influencing consumers based on the low level on insurance coverage. The results show a positive relationship between the insurance demand and the level of income. At the same time in zones where we have observed the highest level of insurance coverage: Bucharest

(36%) and Timiş (30%) we also find the highest values for the average wage. We have to note that an objective assessment of the risk has no influence on the buying decision of the consumer.

CONCLUSIONS

We can conclude that the demand for catastrophe insurance is influenced by relative factors, those psychological and social having a great impact on de consumers' decision. In addition we have observed that some factors have a different influence form one person to another. For example, a higher disposable income can determine a greater willingness for an insurance policy but at the same time for another person can lead to risk-taking, in this situation the person considering that has the capability to return to the situation before the event with his own resources. Additional factors interfere, like risk aversion, education and the confidence in insurance companies.

At the same time the reduced frequency of these events lead to underestimation of the risk. If we hear every day about accidents, we see such events on the road, when it comes to earthquake not many prospective policyholders have passed through an experience of such an event. Nevertheless lately the effects of floods cannot be neglected, and this upward tendency may be transposed into a better risk awareness.

In the future we consider that the stability of regulation will play an important role. Also the collaboration between PAID, the insurance companies and public authorities (local and central) in order to establish an efficient and functional flow for identifying those uninsured households and acting in consequence will be important. All these entities should action in order to increase the level of insurance coverage but at the same time an open view and willingness to improve this compulsory insurance policy is needed.

The study can be developed in the future by also taking into account other variables that can influence the insurance demand: the value of compensation paid in the previous year, the amounts allocated form the intervention Fund at the disposal of the Government.

Also, an important aspect regarding compulsory household insurance is establishing a different value of the insurance premiums based on the exposure to risk, the insured value. Being a compulsory insurance product probably it was considered that it has to be a simple one. We do not consider to be a complicated pricing method but adding some elements could lead to a positive effect on the perception about this insurance type among population.

In terms of exposure to risk, for example in case of earthquake risk, an important step will be considering peak ground acceleration (PGA) as a factor of risk. This is a measure of the ground motion and an important parameter influencing the damages in case of an earthquake.

Such a study would be useful for insurance companies to attract new clients by analysing the behaviour of the existing customers. According to factors that influence the insurance demand a customer categorization can be done in order to be carried some risk awareness campaigns, providing public information sessions.

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HOW SHOULD A FISCAL UNION FOR EMU LOOK LIKE?

Florin-Alexandru MACSIM
"Alexandru Ioan Cuza" University of Iași
Iași, Romania
florin.macsim1@yahoo.ro

Abstract: *The European Economic and Monetary union has never needed more a fiscal union than in current times. High levels of public debt and public deficits, weak soundness of public finances and argues between member states directly affect the long-run stability of the Eurozone. It was our goal to analyze the most recent papers on subject, as a small survey, and to identify the most important elements that a European fiscal union should include. Our research indicates that most out the authors pointed a larger common budget, stabilization and equalization mechanisms, fiscal transfer and coordinated fiscal policies as being the key elements that of a fiscal union. Other specific elements that we have identified are European taxes, a common unemployment system and common fiscal rules. Although the future European fiscal union may not include all the elements that we have spotted, most of them will surely be included, as some of them already exist in the current framework.*
Keywords: *Fiscal Union, fiscal integration, EMU, key elements*

1. INTRODUCTION

The key objective of the fiscal integration process is being represented by the formation of a fiscal union, even if this objective is expressly stated or not. The formation of a fiscal union implies taking some specific steps related to the fiscal integration process, which include the harmonization of fiscal legislation, tax rates, and also deeper fiscal convergence. Once the fiscal integration process is completed, we ca conclude that the states that worked together now form a fiscal union.

Economists have long recognized the fact that eventually the monetary union will have to incorporate a fiscal union, De Grauwe (2013) stating in this regard that the euro represents a currency without a country. To maintain a sustainable single currency, a new state should be created, suggests the concerned author. An essential component of this "country" lies in the formation of a central authority, able to collect taxes and spend pooled resources throughout the entire fiscal union. Unfortunately, a fiscal union of this kind is a bit far, so it would be wise for now to think of other procedures that would make the eurozone a formation whose durability and sustainability are for long terms. De Grauwe also suggest that these kind of procedures already exist, opinion to which we subscribe.

"Fires" lit by governments on the fiscal and economic fields cannot always and continuously be settled by the European Central Bank. This leads to the idea that some form of pooling government's debt is needed to eliminate this fragility. The pooling of governments debt would protect weaker states from the destructive panic and movements

that appear regularly on monetary union's financial markets and that can strike whenever any state.

In our point of view, in continuing on the path of constructing a fiscal union for EMU, the most important thing is to establish once and for all which are the desired key features of the future union, on other words, which are the pieces of the puzzle and how are we going to ensemble them.

It was our goal to critical analyzes some of the most recent papers on topic, and to identify the most common elements for a fiscal union that the literature has exposed in current times.

We organize organized our paper as follows. Section 1 marks our introduction, followed by Section 2 which marks our analysis. In Section 3 we presented our final remarks, followed by References.

2. ANALYSIS

A bold new perspective on the formation of a fiscal union in the euro area is that of authors Skilias, Roukanas and Maris (2014). Among other topics, the authors discuss the situation of the EMU members that in current times face numerous fiscal and financial problems. According to them, the problem may be moderate, but not solved. For the survival and stabilization of the euro area, the three authors stress the importance of fiscal transfers, EMU lacking in current days such a mechanism. Not having it implemented, in the context of domestic economic and financial issues, countries are obliged to borrow resources from international markets, these resources being sometimes accessed in a foreing currency. If a depreciation of the national currency is a long run one, both private and public borrowing could jeopardize the financial stability of states, Roman and Șargu (2012) stating that new measures are needed at a European level to regulate and curb lending in foreign currencies within EMU and EU members.

Another proposed solution by literature for the current sovereign debt crisis is better coordination of fiscal and monetary policies within EU and especially EMU. An effective mix of both policies leads to a reduction in public debt and deficits without jeopardizing economic growth. However, Cevik, Dibooglu and Kutan (2014), while analyzing the interactions between monetary and fiscal policies, noted that since the year 2000, at least in the case of emerging markets in Europe, monetary policies have been passive, while the fiscal ones where active, the mix being not a successful one. So, in this regard we state that after forming a fiscal union, the fiscal and monetary policies will have to become more correlated, in order to ensure the soundness of public finances. Also, it is necessary to implement new special designed mechanisms for more effective coordination, and also another mechanism or independent institution which aims to actively supervise monetary and fiscal policies. (Sehovic, 2014) A monetary union with strong connections between banking systems without a fiscal union is like an incomplete puzzle. Governments actions, not correlated with the evolutions from the banking systems, can easily disrupt financial activity and lead to a new crisis.

There are several ways by which a monetary union could advance towards creating a fiscal union. However, while the degree to which monetary unions have

common budgetary and fiscal instruments differs, all mature monetary unions have implemented a common function of macroeconomic stabilization in order to deal more effectively with shocks that cannot be managed at a country level. This natural evolution in EMU in a long term should be the culmination of a process of converges and common debates on making joint decisions regarding fiscal policies and the need for stability. So, the objective of the automatic stabilizers should not be the adjustment of the economic cycle. Instead, it should be focused on removing macroeconomic shocks.

An early stabilization function could be built basted on the European Strategic Investment Fund to start with, by identifying a group of funding sources and specific investments projects specific to the eurozone, to be operated according to business cycle developments. Among the principles or rules that could form the basis of such a stabilization mechanism we mention:

1) it should not lead to permanent transfers between states in a single direction. It must be designed as a method of equalizing incomes between member states;
2) it should not undermine incentives regarding the development of sound national fiscal policies. Therefore, in order to prevent moral hazard, it should be closely related to compliance with the EU governance framework and progress towards common standards;
3) it should be done in accordance with the existing EU fiscal and economic policy coordination procedures, transparency in relation to all member states being a key element;
4) it doesn't have to become a tool for crisis management, the European Stability Mechanism fulfilling this function. It's role should be geared towards crisis prevention interventions in order to reduce future interventions from ESM.

According to Angsar Belke (2013), asymmetric shock absorption at a central level would represent only a limited form of fiscal solidarity imposed on economic cycles, improving the resilience of an economy. Same author suggest that the use of a common currency also implies that in the future a common fiscal policy will be needed. However, if the fiscal policy itself is a source of shocks, it is assumed that it would be desirable an exercise of independent national fiscal policies, in order to allow a diversification of risks. The dispersion of shocks is reduced through the covariance between individual components. A prevention mechanism in the future fiscal union is all more necessary because, as Liviu Andrei (2012) suggested, European economies are not (yet) perfect converged, existing in different phases of the business cycle. Another part of the stabilization mechanism proposed as a part of a fiscal union would be the pooling of public debts from different states, as suggested by De Grauwe (2013). According to him, three fundamental principles should be followed in the design of a mechanism for pooling debt. First, the contribution of member states should be a partial one, a significant part still remaining the responsibility of the governments, as an incentive to reduce public debt and budget deficits, a proposal in this regard coming from Delpla and von Weizsacker (2010). Second, an internal transfer mechanism between members should provide an offset between the countries which do not present a high degree of solvency, and the countries that enjoy a high degree of solvency. (De Grauwe & Moesen, 2009) Third, a strict control mechanism on the progress of national governments in

achieving a sustainable debt level would be required to implement. The Tommaso Padoa-Schioppa Group (2012) proposed a gradual ceding of control over the national budgeting by countries that do not comply with the imposed fiscal rules.

An important ingredient for the mentioned mix above is the inclusion of a banking union. Such a union is necessary for two main reasons. First, because the European Central Bank is the lender of last resort for the eurozone banking system, regulation and supervision cannot be achieved and maintained at a national level. Risks arising as a manifestation of moral hazard must be controlled at the same level which they are created, ie the European one. This does not mean that ECB should be the only supervising authority. The creation of EBA (European Banking Authority) failed unfortunately due to insufficient resources to implement its role as supervisor. The second reason is the need to implement a common mechanism for resolving banking crises that may occur at a European level.

Previous explications make clear the fact that a functional fiscal union implies also the functioning of a banking union, and why not, the reverse we consider it to be viable. In times of crisis, there must exist one or more European institutions with sufficient resources that can be mobilized immediately to recapitalize the banks. Currently, the only existing path that can fulfill this role is the European Stability Mechanism (ESM), although there are some doubts whether this institution has sufficient resources to act in times of crisis. At an individual level, it is possible, but at systemic levels giving the fact that would involve a large part of the eurozone banking system, the situation becomes an uncertain one, as stated also by De Grauwe (2013).

Finally, on the long run, the current monetary union will have to incorporate a strong fiscal union. This is probably the most difficult part of the process of forming a viable and sustainable monetary union on long-term, although the willingness to cede significant powers to some European institutions on public spending and tax policies is a limited one at current date, fact that can be easily explained through the desire of states to maintain a high degree of national sovereignty. Without undertaking significant measures leading to the formation of a fiscal union, we can say that the future is a bleak one for EMU, the recent scandal that targeted the Greece situation being a perfect example in this regard. Also, to maintain a certain progress, we consider that there is a need for a firmer political commitment, current signals confirming the necessity to act in deepening fiscal integration.

So, another issue that arises on the formation of a fiscal union are the politics. Current proposals to resolve the sovereign debt crisis support forming a fiscal union complementary to the Economic and Monetary Union, but to achieve this it is required a strong commitment from political parties, parties that unfortunately do not wish to cede their fiscal autonomy to a supranational body. Some authors propose a solution to the failure of resolving this problem that implies countries to give away at least one fiscal policy instrument to a supranational body, the idea being not to encounter vehement political opposition. (Costain & de Blas, 2012) However, a fiscal union doesn't represent an obstacle to the formation of a political union, but rather, as stated by Amalia Fugaru (2015), an intermediate step towards a political union. Other authors emphasize the role of politics to support a wider scale fiscal cooperation, aiming to obtain a better dispersion

of shocks that affect tax revenues (Luque et. al., 2014). Same authors have shown how relative incomes and population levels, and also the interrelationship between states in tax revenues shocks, interact with political decisions in the formation of feasible reforms. Another issue for the contemporary political structures is represented by the institutional changes that are foreseen in the near future, in the context of taking steps forward in the European integration process. If in matter of fiscal policies, the Fiscal Compact is the latest treaty signed, the Lisbon Treaty is the newest treaty dealing with administrative modernization and structural issue. Although it is in force since 2009, it seems to have radical changed the institutional structure of the EU, its signature being related to the need for legislative adjustments within the European community (Onofrei & Boise, 2010).

An interesting opinion is provided to us by A.G. Solomon (2013), according to whom the European Fiscal Union is somewhere between myth and reality. The author has analyzed the fiscal and budgetary integration process and the development of taxation systems in member states of the European Union, the motivation being represented by the impact of the two elements that we previous mentioned on economic and social development. For the first time pointed, we appreciate the Solomon's vision that integrates in the analysis both budgetary and fiscal policies, and not just fiscal policy, often confused as being similar to budgetary policy in many papers. Beetsma and Jensen (2002) using a micro model of a monetary union, analyzed the interactions between monetary and fiscal policies. These two well know authors have pointed out the increasing pressure at European level in achieving a broader fiscal coordination, while stressing that in current fiscal policies, national interest prevails. Regulations such as the Stability and Growth Pact (SGP) solve only partial this problem, being necessary in this direction a stronger involvement of politicians, which should realize the advantages of a stronger coordination of fiscal policies, especially in terms of risk absorption. Of the states that oppose the intensification of fiscal integration, UK seems to be the main voice binding. This country has always expressed doubt about continuing progress on the monetary and fiscal integration paths. Despite UK's efforts to interrupt the process, the other UE members understood that the usage of a common currency must lead to a higher integration level of fiscal and budgetary policies. (Catrina, 2012) The achieved progress in establishing a common fiscal policy as a key part of a fiscal union is a relatively small one despite all the declarations of heads of states and commitments made by governments. For now, the EU budget is too small to allow a fiscal redistribution and economic and social cohesion.

Even if the political opposition manifested is a strong one, another solution could be represented by the introduction of fiscal governance standards or codes similar to corporate governance codes. If corporate governance is defined as the system by which business corporations are directed and controlled, through extrapolation we can say that fiscal governance is the way by which fiscal policies are directed and controlled. As the role of corporate governance codes is to implement a number of specific principles, we can assume that the future role of fiscal governance codes will be equivalent.

In current debates on reforming fiscal institutions, the fiscal union term plays a central role. However, it is not always clear what this term implies and why different

people use it with different explanations. If in our point of view, a fiscal union should have three key components (tax harmonization, the harmonization of tax legislation and the coordination of fiscal policies), Fuest and Piechl (2012) have a slightly different vision from ours, they characterizing a fiscal union thorough five integrated components that are mainly a part of what we appreciate as underpinning the fiscal integration process and fiscal union. So, according to the two authors concerned, the components of a fiscal union are:

a) *Fiscal rules, coordination and supervision of fiscal policies*. The first and most discussed element of a fiscal union is the set of rules that target fiscal policies pursued by Member States, but that can also be implemented at the same time for other policies. Within the monetary union, these rules were mainly imposed through the SGP. Along with these rules contained in the treaty, a supervisory mechanism has been introduced (through the Fiscal Compact), by which states that violate the rules can be penalized with a fine of 0,1% of GDP;
b) *A crisis resolution mechanism*. Given the fact that the default risk of Member States of the monetary union cannot be excluded, the question that arises is how should crises be treated and fought. The simplest solution for indebted states is the direct negotiation with creditors on debt restructuring. In this respect, an important and beneficial role is assigned to the European Stability Mechanism whose role is to assist the states that have financial difficulties;
c) *Ensuring (granting/pooling) common public debt*. The third element of the discussed fiscal union implies the need for a new a special mechanism. In establishing such a mechanism, a number of specific items are required to be established in advance: the amount of debt covered by guarantee or that will be pooled, the considered time horizon and the means to access funding;
d) Fiscal equalization and other specific mechanisms for cross-country transfers. A fiscal union should also include measures to transfer funds between countries only in the event of a crisis or when a member is unable to meet its payment obligations. Forming a fiscal union should not continue without a mechanism of implicit transfers of different sizes between members of EMU. These transfers are particularly necessary in the context of a small size EU budget that cannot be considered a viable source for temporary financing;
e) A larger EU budget and the establishment of European taxes. A huge financial resource gain for the EU budget would require in our point of view a significant change in the European political responsibilities.

Of the five mentioned components, we consider two of them as being unfeasible on a short and medium timeline in the European integration plan: ensuring a common public debt and the establishment of European taxes. First, putting together all debts and creating a new kind of bond for example, is not going to become a fact too soon because countries with low public debt levels will not agree to pay additional interest rate because of the weaker rated high indebted countries. Also, setting up European taxes should regard first of all, how the tax rates will be: fixed or progressive, not to mention the political disputes that will arise and public opposition. On the other hand, the establishment of a larger EU budget is an achieving goal, by simply increasing the

current contributions from approximately 1%, to 5% of GDP for example. (Catrina, 2012) But even this solution presents a fundamental problem: countries such as Germany, United Kingdom, Italy and France will "gain the quality of major donors", being disadvantaged in this regard. But, a larger budget would increase the transfer capacity to less economic developed members, increasing the economic cohesion level in the union, with positive effects for the entire group of members. We should not however ignore the fact that a larger budget will imply a clearer definition of administration levels, or in other words, a reform in fiscal decentralization, because it is important to know how it will work and what fiscal responsibilities will remain in the hands of national and local authorities (Catrina, 2012), and which will go to a supranational institution, a number of important questions regarding optimal and efficient provision of public goods being raised by Aronsson, Micheletto and Sjogren (2014).

A similar point of view as with the mentioned authors is that of Vetter (2013). According to him, a coordinated fiscal policy, such as those in federal states, has at least four specific features: a common set of fiscal rules, a fiscal intervention mechanism, a mechanism for fiscal equalization transfers and a common budget. Discussions on the formation of a fiscal union regarding the statement above also focus on the practical aspects aimed at implementing these four key features in the European and Monetary Union. A key issue was still ignored in most of current debates, namely the tax traditions in each member state. Fiscal rules and budgets are not simply imposed by governments. They are accepted by citizens and companies so far as they comply with certain specific conventions of each society, including the historical evolution of each state. (Fugaru, 2015) These conventions could explain the different level of acceptance of tax rates from a state to another.

A paper published by Eurofi Financial Forum in 2014 indicates a similar number of components that are needed in order to form a fiscal union: a common budget, an insurance mechanism against strong cyclical fluctuations, a common unemployment insurance system and the formation of a European debt agency. Common sources of funding should be distributed according to the document in a neutral way, in order to avoid "parasitic" behavior. At the same time, it highlights the need to equip European central institutions with a range of new powers aimed at decision-making on national budgets and their own tax capacities.

An interesting scenario on the future of the European Economic and Monetary Union and of the European Fiscal Union is proposed by the Friedrich Ebert Shiftung Foundation (2013). In this regard, the foundation suggests a completion of the fiscal union by the year 2020. The eurozone, based on a "consistent" economic and monetary union will coordinate its external position and it would be represented by a single institution. In such a scenario, the euro becomes a currency of reference in attracting financial resources from around the world. On to the road to a political union instead, a "two speed" EU will emerge. To overcome this impediment, non-euro zone members will be encouraged and assisted in satisfying preconditions for integration, referring here to the criteria established by the Maastricht Treaty. Stronger involvement of European states and citizens in the decision-making process will strengthen popular support for European integration, weakening the influence of anti-European parties. A revised version of the

SGP will put pressure on the member states to steadily reduce their public debt and structural deficit levels, the ultimate goal being the promotion of intelligent public and private investments. This culture of balanced budgets will pave the path for a more credible fiscal consolidation than the current one. An important role in this framework will be owned by keeping long-term sustainability of social protection systems. In parallel, the Euro Plus Pact will bring with it a series of commitments to promote the convergence of corporate taxes and social contributions.

Also, a European debt agency will ensure a common issuance of governmental bonds, with reasonable borrowing costs. In the event that certain states will face unusual financial difficulties, the European Stability Mechanism will be equipped to provide effective financial assistance and rapid help for programs of rebalancing and recovery. Macroeconomic surveillance will be coupled with stronger resources for the catching-up process. Also the dialogue and negotiation will be encouraged at a European level. Under the mentioned conditions, forming a fiscal union will be a clear and smooth road.

According to the International Monetary Fund (2013), the fundamental components of a fiscal union are: a stronger supervision and the introduction of stronger incentives in order to maintain sound public finances; implementing a system of temporary transfers in order to improve fiscal risks sharing; strengthening supervision of the financial system; the emergence of a new form of borrowing (supported by resources collected centrally), to finance risk sharing, and also to provide safety and trust to asset portfolios holders. (IMF, 2013) The rationality of risk sharing is based on the establishment of national fiscal buffers in the form of fiscal reserves and a package of emergency measures, thus eliminating the risk of a spillover effect event. Such national mechanisms will provide countries and effective method to smooth the effects of crises and economic shocks more easily on a medium-term timeline, the possible externalities of an intern shock being absorbed. The importance of these mechanisms is especially important in a monetary union in which countries cannot use exchange rates or other monetary policy tools to meet individual economic shocks. All these specific measures to fiscal integration also contribute to strengthening European cooperation and the internal economic shock absorption procedure.

Greece's situation in 2015 proved us how quickly states can turn against one another, as political views may conflict providing scenarios of a eurozone breakup. A strong fiscal integration eliminates many of the externalities that can extend to other types of integration, such as cultural, political, institutional and financial, not supplying ammo to euro-skeptics. The scope and final form of the fiscal union remains after all a matter of social and political preferences, but it must necessarily be designed by using current suggestions provided by the literature and the economists who are researching in this field. Nevertheless, sooner or later this union will become reality.

3. CONCLUSIONS

The objective of this paper was to analyze some of the most recent papers regarding the subject of forming a fiscal union in the European and Monetary Union and identify the components that a fiscal union requires in order to be established and

function, but also so provide our readers some personal reflections on the identified elements.

The fact that a fiscal union is indeed needed in the eurozone has long been recognized by economists, researchers and some politicians. But, taking this path to an end it takes more than initiative and ideas. Constructing a fiscal union in EMU, although we are talking about a monetary union, still faces a lot of obstacles, by which we mention the lack of unity, coordination and faith. Also, recent fiscal difficulties that hit the European continent have soured relations between some countries, as between Greece and Germany for example.

In order to deepen the fiscal integration process and take it to an end by forming a fiscal union, we need first to fully understand how does a fiscal union looks like, what is made from, what are its key elements, and how we put them together, similar to an puzzle.

Some authors suggest that a fiscal union should be designed through including fiscal rules, a supervision authority for fiscal policies, a crisis resolution mechanism, common issued European bonds for all countries, a fiscal equalization mechanism and a larger EU budget funded through European taxes. As we pointed, two of these elements are harder to implement: common bonds for EU states and European taxes. Implementing specific purpose mechanisms is already a practice at EMU level, and a larger EU budget is possible simply by increasing the contributions of each state. Other authors have suggest that a fiscal union in the monetary union should be based on a fiscal intervention mechanism, a common set of fiscal rules, a specially designed mechanism for fiscal equalization transfers and a common budget. Nevertheless, as suggested by the Eurofi Financial Forum, the European Fiscal Union should also have embedded an insurance mechanism against strong fiscal revenues and economic cyclical fluctuations, a common unemployment insurance system and a European debt agency. In our point of view, the least possible component to be found in a fiscal union in EMU or for the entire EU is the common unemployment insurance system, because it would most probably attract most of the critics. It is not the duty of developed countries to pay social insurances to third party citizens. We also believe that is the duty of each state to engage in maintaining sound economic policies and development in order to maintain a low unemployment rate.

Most of the authors pointed the need to implement a fiscal transfer mechanism, a larger common budget and a common mechanism to fight shocks and crises. In our point of view, these three components are the most urgent to be implemented now, in order to ensure a long-run stability in the monetary union. We don't know if all of the mentioned elements will be a part of the European Fiscal Union, but most of them will surely have a place.

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WORKING CAPITAL AND CORPORATE STRATEGY PATTERNS IN WORKING CAPITAL OF ROMANIAN PHARMACEUTICAL COMPANIES QUOTED ON BUCHAREST STOCK EXCHANGE

Alin Constantin RĂDĂŞANU
Alexandru Ioan Cuza University
Iaşi, Romania,
alin.radasanu@ropharma.ro

***Abstract**: The competitive nature of the business environment requires firms to adjust their strategies and adopt good financial policies to sustain growth. Most firms have an important amount of cash invested in current assets, as well a substantial amounts of current liabilities as a source of financing. This paper therefore analyses the working capital structure and financing pattern of Romanian Pharmaceutical Companies quoted on Bucharest Stock Exchange. Structural differences in working capital and the financing pattern of the sample firms are analysed and the results showed significant structural changes over the 2009-2014 period. The research revealed a decrease in current asset investment in relation to sales and a decreasing trend in the short-term component of working capital financing; in particular equity funds of Romanian producers financed the major part of working capital.*
***Keywords**: working capital structure, working capital financing, corporate strategy, liquidity ranks.*

GENERAL CONSIDERATION AND LITERATURE REVIEW

Success and survival of a business depends on how well its finance function is managed. The competitive nature of the business environment requires firms to adjust their strategies and adopt good financial policies to survive and sustain growth. Most firms have an important amount of cash invested in accounts receivable, as well as substantial amounts of accounts payable as a source of financing (Mian and Smith, 1992; Deloof and Jegers, 1999).

Financing of working capital has become a significant area of financial management, more specifically for the small and medium enterprises (Watson and Wilson, 2002). Given the changing economic conditions, which is more and more characterised by increasing competition, the area of working capital financing has assumed added importance as it greatly affects firm's liquidity and profitability (Shin and Soenen, 1998; Deloof, 2003; Padachi, 2006).

Generally working capital is financed by a combination of long-term and short-term funds. Long-term sources of funds consist of capital (equity from owners) and long-term debt, which only provide for a relatively small portion of working capital requirement. This portion is the net working capital; that is the excess of current assets over current liabilities. On the other hand, short-term sources of working capital finance consist of trade credit, short-term loans, bank overdraft, provisions and other current liabilities used to finance temporary working capital needs.

Sometimes, working capital deficit exists if current liabilities exceed current assets. In such a situation, short-term funds are used to finance also part of non-current assets and the firm is said to be adopting an aggressive working capital policy (Bhattacharya, 2001). No doubt, easy accessibility of finance is important factor to decide about the source of finance, but its impact on risks and return cannot be ignored (Gitman, 2000).

The financing preferences of firms are often explained using Myers's pecking order theory (1984). Though this theory was developed for large quoted companies, it is equally applicable to medium and small firms. Firms tend to use cash credit as a first choice for financing their working capital needs.

However, the excessive reliance on the banking system for working capital financing exerts some pressure on the banks and a significant part of available resources are first channelled to the large firms (Narasimbhan and Vijayalakshmi, 1999). They also noted that the long-term source of funds for working capital seems to be dominant in many industries and cash credit is the next major source of financing of working capital. Another source of funding working capital requirement is trade credit.

There are a few studies that have addressed the financing and capital structure of medium sized enterprises, mostly for developed countries (Hughes, 1997; Eatson and Wilson, 2002; Zoppa and McMahon 2002) and a few developing counties (Peterson and Shulman, 10987; Aidis, 2005; Abor, 2005).

Filbeck and Krueger (2005) highlited the importance of efficient of working capital management by carrying out analysis of working capital management policies of 32 non-financial industries in United States of America. The result revealed that significant differences exist between industries in working capital practice overtime.

However, Weinraub and Visscher (1998) have discussed the issue of aggressive and conservative working capital management policies by using quarterly data for a period of 1984 to 1993 of US firms. Their study looked at ten diverse industry groups to examine the relative relationship between their aggressive/conservative working capital policies. The authors concluded that the industries had distinctive and significantly different working capital management policies. The study also showed a high and significant negative correlation between industry assets and liabilities policies and found that when relatively aggressive working capital asset policies are followed, they are balanced by relatively conservative working capital financial policies.

Afza and Nazir (2007) conducted an investigation into the relationship between aggressive/conservative working capital for 17 industrial groups and a large sample of 263 public limited companies listed on the Karachi Stock Exchange for a period 1998-2003. The study revealed significant differences among their working capital investment and financing policies across different industries.

This paper attempts to examine the differences in working capital structure of medium-sized manufacturing and distribution companies operating in Romanian pharmaceutical, quoted on BVB. A second objective of the research is to analyse the working capital financing pattern of the sample firms and to investigate the role of short term funds as a source of financing. The next section provides support for the methodological approach and briefly elaborates on the data collection.

WORKING CAPITAL AND CORPORATE STRATEGY

Executive spend a great deal of time designing and planning their corporate and competitive strategies. The strategic plans typically focus on operational matters, leaving aside questions related to their financial consequences. Even in those cases in which some financial planning is performed, it is usual to see the forecast stop at the operational level, with a profit and loss estimate of earnings before interest and tax (EBIT), as it is usually argued that EBIT captures the operational performance of the firm. However, unless we consider the financial implications of a firm's operational plans, we cannot know whether a given strategic plan is financially feasible. It is not surprising, therefore, that this lack of balance sheet forecasting so often observed causes many firms to find themselves in a difficult financial situation.

To see how a firm's operational strategy can influence its financial standing, consider a firm pursuing an aggressive growth strategy. The firm will typically need to lower prices, offer extra days of financing, or promise a more aggressive schedule of deliveries. When customers are allowed to repay their bills over a longer horizon, the clients' accounts will grow; similarly, when firms agree to deliver goods under a more aggressive schedule, the inventory balance will grow. In either case, the firm's growth strategy will cause the firm's financial needs for operation (FNOs) to increase.

We can decompose the impact of growth into two components: an extra day component and a sales growth component. Even if the days of receivables or days of inventory are not expected to increase, an adequately forecast of the operational consequences of the projected sales growth has to be performed to make sure the firm has a complete and accurate estimate of funds needed to finance the proposed growth plan.

Once a firm has projected the financial implications of the proposed corporate strategy, it is imperative that top management makes decision regarding the level of working capital that it will commit in order to finance forecasted level of growth and its related investment in operational assets. The usual objective of matching asset and liability maturities implies that if the firm is forecasting a permanent increase in FNO's, then it will need to find a way to increase its working capital (increase working capital by raising long-term debt or equity or by divesting itself of fixed assets).

If we consider the case of some emerging economies and/or of some specific economic events, it may be difficult for a firm to issue long-term debt or equity even to finance profitable projects or growth strategies, given the absence of efficient capital markets. In these cases, increasing working capital might be more complicated or even impossible. Such difficulties, however, need to be considered at the corporate strategy planning stage. Otherwise, the firm might run into serious financial problems from increases in FNO's that cannot be adequately financed.

The theory indicates that a firm should measure the FNOs implied under the proposed corporate strategy, and then choose the appropriate level of working capital. Unfortunately, this decision is not always feasible, since in some illiquid and inefficient financial markets it is not always possible to establish a chosen level of working capital. While the strategy should determine the size and riskiness of assets, which should in turn

influence the size and type of optimal financing, markets or financial constraints might induce decisions to be made in the opposite direction.

Working capital management has several important implications for the implementation of a company's strategic plan. First, while FNOs depend in large part on the firm's activity level and the terms of trade agreed upon by the firm and its trade partners (suppliers and clients), these are not generally under the firm's control and hence it is difficult to anticipate FNOs exactly.

Trading conditions vary significantly over time in response to changes in market dynamics. Because such changes are outside a firm's control, they further complicate the firm's ability to forecast FNOs. Business experience should help manager's better forecast changes in market dynamics and their effects on firms' operating ratios. An industry is affected by the extent of competition among it is players, the competitive threat posed by potential new entrants to the industry, the existence of actual or potential substitute products, and firm's ability to negotiate with suppliers and clients.

The ability to negotiate with suppliers and clients, which depends on a firm's relative strength within the value chain, is the competitive force that has the greatest effect on the trade conditions of an industry. This negotiation capacity can be forecasted if management has a good understanding of the competitive market dynamics of the corresponding industry. This implies that even though FNOs are out of a firm's complete control it is not necessarily the case that they cannot be forecasted. The firm can forecast the level of FNOs and decide the corresponding level of working capital, by choosing the level of long-term capital in excess of fixed assets.

In addition to market dynamics affecting a company's operations, managerial decisions also have a potential impact on them. The sales manager increasing sales or changing the firm's commercial credit terms, the purchasing manager setting the level of purchases or changing the number of days taken to repay suppliers, and the production manager choosing a different production schedule are all examples of operating decisions that have an effect on the level of the firm's FNOs. The main problem with this is that managers are often not aware of the financial implications of their operating decisions. This is because they do not realize that every operating decision has an effect on the firm's operating investment.

Another potential problem that can arise when managerial decisions that increase FNOs are made is that they are simply not communicated to the financial department, resulting in unexpected cash shortages; the resulting shortages can be particular severe in the case of small firms. Some companies try to mitigate this problem by raising the topic during weekly manager meetings. Other companies require that certain actions receive approval form the financial department to help reduce such issues.

Implementation of a firm's strategic plan should start with managers forming the operational plan; in doing so, the managers should assess the plan's main implications and identity the tools to be used to achieve the plan's targets. Next, given this input, the financial department needs to forecast the firm's financial position by projecting all relevant statements making sure that the FNOs are adequately considered. Finally, with this information, and a recommendation from the finance department, the board should decide the level of working capital that will accommodate the firm's strategic plan.

Usually, volatility is not considered at this stage. However, good practices suggest that the effects of volatility be considered in these projections. The more common procedures for doing so include scenario analysis, Monte Carlo simulations, and stress testing at the planning stages. These methodologies can help managers analyse potential alternative plans that can help the firm solve problems that may arise as it moves forward. Finally, during the implementation stage, it is critical to establish specific controls on the execution of the plan. To do so, firms typically design ratios and control panels that help managers identify any deviations with respect to the planned scenario.

Firms that choose to have a low level of working capital, relying mostly on short-term debt and issuing long-term capital only when required, might capture some extra profitability as these firms are never overcapitalized. In this case, they avoid holding idle cash. However, this is sustainable if the need for funds does not appear during a period in which the market is illiquid; if that does happen, the firm might not be able to finance growth (through financing of FNOs) and hence might lose competitive position against more capitalized competitors.

The opposite position is one in which a firm has excess long-term financing (either long-term debt or equity). The firm is likely paying a high cost of capital for its financing, but that high cost buys the firm flexibility in the event that it need extra financing to support its FNOs. Such a firm would be able to obtain extra profits from predation in periods in which its less conservative competitors are forced into financial distress due to cash shortages that cannot be financed.

In some markets, securing high level of working capital with large level of long-term debt or equity financing, or developing an ongoing relationship with the capital markets, facilitates access to adequate financing and can be used to attack a competitor's market position. This is especially valuable for firms operating in countries with unstable financial environments in which access to financing is usually severely curtailed, and is especially important in those cases in which FNOs are extremely difficult to forecast and control. In other words, firms knowing the market and their competitors' strengths and weaknesses might anticipate these opportunities by setting a more conservative working capital policy, which leaves them in a position to predate on their competitors' competitive position.

In economies where access to financing (especially long-term debt and equity) is likely to be limited, working capital management becomes more important than in countries with efficient capital markets. When long-term capital is not available, firms might revise their capital expenditure plans to reflect the lack of financing opportunities, but even in this case they may need to raise capital to finance their investment in current assets. Unfortunately, the increase in financial needs for operation might drag an undercapitalized firm into financial distress.

PATTERNS IN WORKING CAPITAL OF ROMANIAN PHARMACEUTICAL COMPANIES QUOTED ON B.V.B.

This section analyses the medium-sized manufacturing and distribution pharmaceutical firms' working capital structure to examine the structural changes over

the period of study. It also analyses the pattern of working capital financing and to establish whether short-term funds have a major role in the financing of working capital, as confirmed in the literature.

The scope of the study was limited to see the impact of working capital on the liquidity of Romanian pharmaceutical distributors (Remedia and Ropharma) and producers (Antibiotice, Biofarm and Zentiva) quoted on Bucharest Stock Exchange.

The objectives of the study:

- To find the change in working capital for 2009-2014 period
- To measure the overall efficiency of working capital
- How much is the fluctuation in working capital
- To identify the strategies in terms of working capital

The study used aggressive investment policy as measuring variables of working capital management.

Aggressive investment policy (AIP) results in minimal level of investment in current assets versus fixed assets.

In contrast a conservative investment policy put a larger proportion of capital in current assets with the opportunity cost of lesser profitability.

In order to measure the degree of aggressiveness, following ratio will be used:

AIP = Total current assets (TCA) / Total assets (TA), where a lower ratio means a relatively aggressive policy.

Aggressive financing policy utilizes higher level of current liabilities and less long-term debt. In contrast, a conservative financing policy uses more long-term debt and capital. The degree of aggressiveness of a financing policy adopted by a firm will be measured by:

AFP = Total current liabilities (TCL) / Total assets (TA), where a higher ratio means a relatively aggressive policy.

For measuring the overall efficiency of working capital one parameter namely Working Capital Utilisation Index has been used, calculated as follows:

$$UI\ (wcm) = A\ (t\text{-}i) / A\ (t)$$

Where: A = Current assets / Sales in period

According with the table 1 and 2, distributors' current assets constitute on average 76% of total assets and 66% of total assets' producers which confirms the importance of trade credit as a source of financing for firms.

Stocks, another major component of current assets are on average 19% from current assets for distributors (15% of total assets) and 14% of current assets for producers (9% of total assets).

However, in the case of distributors, on average 64% of assets are financed with short-term financial debt and another 7% is granted as cash credit by banks.

The share of long-term debt used to finance working capital is insignificant for distributors and thus confirm that firms face difficulties to secure long-term financing and it accords with pecking order hypothesis. Average long-term distributors' debt is about 1% of total assets.

Table 1: Summary statistics for distributors: Remedia & Ropharma

	2.009	2.010	2.011	2.012	2.013	2.014	Average	Mix %
Assets								
Fixed assets	64.659.429	88.432.153	106.417.465	125.610.127	133.939.444	136.085.292	109.190.652	24%
Current assets	233.745.597	335.735.291	440.930.036	431.717.482	368.000.425	301.274.257	351.900.515	76%
Total	298.405.026	424.167.444	547.347.501	557.327.609	501.939.869	437.359.549	461.091.166	
Sources of funds								
Short-term funds	219.053.240	309.585.842	413.470.938	396.276.392	342.592.068	270.715.587	325.282.345	71%
ST financial debt	186.462.424	268.799.749	378.327.570	363.050.572	313.599.621	258.564.121	294.800.676	64%
ST bank debt	32.590.816	40.786.093	35.143.368	33.225.820	28.992.447	12.151.466	30.481.668	7%
Long term Funds	79.351.786	114.581.602	133.876.563	161.051.217	159.347.801	166.643.962	135.808.822	29%
LT financial debt	5.082.938	5.584.286	5.599.393	12.158.570	4.889.141	2.317.204	5.938.589	1%
Equity	74.268.848	108.997.316	128.277.170	148.892.647	154.458.660	164.326.758	129.870.233	28%
Total	298.405.026	424.167.444	547.347.501	557.327.609	501.939.869	437.359.549	461.091.166	
Investing policy	78%	79%	81%	77%	73%	69%	76%	
Financing policy	73%	73%	76%	71%	68%	62%	71%	

Source: author's computation based on published financial statements.

Table 2: Summary statistics for producers: Antibiotice, Biofarm and Zentiva

	2.009	2.010	2.011	2.012	2.013	2.014	Average	Mix %
Assets								
Fixed assets	311.247.951	308.925.949	329.068.339	362.395.645	367.311.935	366.835.098	340.964.153	34%
Current assets	549.463.103	648.334.327	653.030.714	673.529.440	714.945.360	733.804.192	662.184.523	66%
Total	860.711.054	957.260.276	982.099.053	1.035.925.085	1.082.257.295	1.100.639.290	1.003.148.676	

Sources of funds								
Short-term funds	167.004.136	180.775.925	255.403.636	246.034.912	242.455.741	235.167.182	221.140.255	22%
ST financial debt	92.258.407	111.474.320	172.987.060	153.744.618	169.619.611	180.383.841	146.744.643	15%
ST bank debt	74.745.729	69.301.605	82.416.576	92.290.294	72.836.130	54.783.341	74.395.613	7%
Long term Funds	693.706.918	776.484.351	726.695.417	789.890.173	839.801.554	865.472.108	782.008.420	78%
LT debt	33.656.760	28.760.364	32.145.402	26.945.003	43.198.454	35.668.637	33.395.770	3%
Equity	660.050.158	747.723.987	694.550.015	762.945.170	796.603.100	829.803.471	748.612.650	75%
Total	860.711.054	957.260.276	982.099.053	1.035.925.085	1.082.257.295	1.100.639.290	1.003.148.676	
Investing policy	64%	68%	66%	65%	66%	67%	66%	
Financing policy	19%	19%	26%	24%	22%	21%	22%	

Source: author's computation based on published financial statements.

For the study period, for distributors the average current assets to total assets was 0.76 and current liabilities to total assets was 0.71 that correspond with a moderate strategy in terms of working capital management (average liquidity, return and risk).

Producers are maintaining a low level of short term liabilities and a high level of current assets in total assets (total current assets to total assets 0.66 and total current liabilities to current assets 0.2) that correspond with the conservative strategy for working capital management (low return and risk and high liquidity).

There are now fluctuations in working capital strategies for 2009-2014 periods. Table 3 and 4 analyses the trends in gross working capital and net working capital for sample firms and also to see whether over six year period, the firms have adopted different working capital financing policies by calculating the ratio current liabilities to current assets. The period 2009 to 2014 displayed a positive working capital, the ratio of current liabilities to current assets shows that nearly 80% of the current assets are met out of current liabilities in the case of distributors and 20% in the case of producers.

Table 3: Trend in current assets, current liabilities and NWC for distributors: Remedia and Ropharma

Year	Current assets	Current Liabilities	Net working capital	CL/CA
2009	233.745.597	186.462.424	47.283.173	0,8
2010	335.735.291	268.799.749	66.935.542	0,8
2011	440.930.036	378.327.570	62.602.466	0,9
2012	431.717.482	363.050.572	68.666.910	0,8
2013	368.000.425	313.599.621	54.400.804	0,9
2014	301.274.257	258.564.121	42.710.136	0,9

Average	0,8

Source: author's computation based on published financial statements

Table 4: Trend in current assets, current liabilities and NWC for producers: Antibiotice, Biofarm and Zentiva

Producers	Current assets	Current Liabilities	Net working capital	CL/CA
2009	549.463.103	92.258.407	457.204.696	0,2
2010	648.334.327	111.474.320	536.860.007	0,2
2011	653.030.714	172.987.060	480.043.654	0,3
2012	673.529.440	153.744.618	519.784.822	0,2
2013	714.945.360	169.619.611	545.325.749	0,2
2014	733.804.192	180.383.841	553.420.351	0,2
Average				0,2

Source: author's computation based on published financial statements

A firm may be said to have managed its working capital efficiently if the proportionate rise in sales is more than proportionate rise in current assets during a particular period.

For distributors for each year from 2009-2013 period, as it is presented in table 6, the growth trend index for current assets it was above the growth trend index recorded in net sales. In contrast, in 2014 growth trend index for current assets was 129% inferior with the growth trend index for net sales that was 151%.

More on that, working capital utilization index was calculated for each year, to indicate the ability of the firms in utilizing its current assets as a whole for the purpose of generating sales. If an increase in total current assets is coupled with the more than proportionate rise in sales, the degree of utilisation of these assets with respect to sales is said to have improved and vice versa.

Starting with 2012 the working capital utilization index were greater than one (maximum in 2014 it was 1.25) which correspond with an efficient management of working capital for distributors.

Working capital gap as a % of net sales for distributors, exhibits an overall decreasing trend from 13% in 2010 to 6% in 2014.

Table 5: Trend in Working Capital Utilization Index

		2.009	2.010	2.011	2.012	2.013	2.014
Total current assets / Net sales	Distributors	0,53	0,63	0,75	0,67	0,57	0,45
Working Capital Utilization Index	Distributors		0,84	0,84	1,13	1,18	1,25
Total current assets / Net sales	Producers	1,19	1,11	1,07	1,03	1,00	0,87
Working Capital Utilization Index	Producers		1,07	1,04	1,03	1,03	1,15

Source: author's computation

Table 6: Pattern of working capital finance: distributors (Remedia and Ropharma)

		2.009	2.010	2.011	2.012	2.013	2.014
Net Sales		442.686.448	534.559.680	588.637.657	649.036.441	650.790.192	667.047.138
Total Current Assets		233.745.597	335.735.291	440.930.036	431.717.482	368.000.425	301.274.257
Financed by:							
	Trade creditors and other payables	186.462.424	268.799.749	378.327.570	363.050.572	313.599.621	258.564.121
Working capital gap	Current assets - current liabilities	47.283.173	66.935.542	62.602.466	68.666.910	54.400.804	42.710.136
	as a % of current assets	20%	20%	14%	16%	15%	14%
	as a % of net sales	11%	13%	11%	11%	8%	6%
Met by:							
	Bank borrowings: Short-term	32.590.816	40.786.093	35.143.368	33.225.820	28.992.447	12.151.466
	Bank borrowings: Long-term	5.082.938	5.584.286	5.599.393	12.158.570	4.889.141	2.317.204
	Net WC from equity	9.609.419	20.565.163	21.859.705	23.282.520	20.519.216	28.241.466
	Total	47.283.173	66.935.542	62.602.466	68.666.910	54.400.804	42.710.136
Growth trend index							
	Net sales	100%	121%	133%	147%	147%	151%
	Total current assets	100%	144%	189%	185%	157%	129%
	Trade creditors and other payables	100%	144%	203%	195%	168%	139%
	Bank borrowings: Short-term	100%	125%	108%	102%	89%	37%
	Bank borrowings: Long-term	100%	110%	110%	239%	96%	46%
	Net WC from equity	100%	214%	227%	242%	214%	294%

Source: author's computation based on published financial statements.

The working capital to sales ratio for distributors has reduced from 13% in 2010 to 6% in 2014. The overall average is 10% which indicates efficient use of short term financial resources of the companies.

For producers, the working capital to sales ratio has reduced from 99% in 2009 to 66% in 2014 but the average was 80% that representing a sign of inefficiency in the use of short term financial resources by the companies.

Table 7: Pattern of working capital finance: producers (Antibiotice, Biofarm and Zentiva)

		2.009	2.010	2.011	2.012	2.013	2.014
Net Sales		462.628.514	585.565.324	610.938.711	651.548.748	713.522.103	841.525.757
Total Current Assets		549.463.103	648.334.327	653.030.714	673.529.440	714.945.360	733.804.192
Financed by:							
	Trade creditors and other payables	92.258.407	111.474.320	172.987.060	153.744.618	169.619.611	180.383.841
Working capital gap	Current assets - current liabilities	457.204.696	536.860.007	480.043.654	519.784.822	545.325.749	553.420.351
	as a % of current assets	83%	83%	74%	77%	76%	75%
	as a % of net sales	99%	92%	79%	80%	76%	66%
Met by:							
	Bank borrowings: Short-term	74.745.729	69.301.605	82.416.576	92.290.294	72.836.130	54.783.341
	Bank borrowings: Long-term	33.137	0	0	0	0	0
	Net WC from equity	382.425.830	467.558.402	397.627.078	427.494.528	472.489.619	498.637.010
	Total	457.204.696	536.860.007	480.043.654	519.784.822	545.325.749	553.420.351
Growth trend index							
	Net sales	100%	127%	132%	141%	154%	182%
	Total current assets	100%	118%	119%	123%	130%	134%
	Trade creditors and other payables	100%	121%	188%	167%	184%	196%
	Bank borrowings: Short-term	100%	93%	110%	123%	97%	73%
	Bank borrowings: Long-term	100%	0%	0%	0%	0%	0%
	Net WC from equity	100%	122%	104%	112%	124%	130%

Source: author's computation based on published financial statements.

Table 8 and 9 also exhibits an increasing trend in the use of long-term funds for producers as a source of working capital during the period. It rises from 36% in 2011 and 2012 to 38% in 2014.

For distributors, it is generally believed that short-term borrowings finance the major portion of working capital needs and long-term funds may be employed for this purpose in case of necessity only. As an average only 17% of long term funds are used to finance working capital gap.

Table 8: Financing patterns of working capital finance for distributors (Remedia and Ropharma)

	2.009	2.010	2.011	2.012	2.013	2.014	Average
1. Gross Working capital	233.745.597	335.735.291	440.930.036	431.717.482	368.000.425	301.274.257	351.900.515
2. Sources of wc:							
(i) Short terms funds	219.053.240	309.585.842	413.470.938	396.276.392	342.592.068	270.715.587	325.282.345
ii) Long term funds	14.692.357	26.149.449	27.459.098	35.441.090	25.408.357	30.558.670	26.618.170
3. Total long term funds	88.961.205	135.146.765	155.736.268	184.333.737	179.867.017	194.885.428	156.488.403
4. % of LT funds used to finance WC	17%	19%	18%	19%	14%	16%	17%
5. Owners equity	74.268.848	108.997.316	128.277.170	148.892.647	154.458.660	164.326.758	129.870.233

Source: author's computation based on companies 'published financial statements

For producers, as an average, 37% from long-term funds are used to finance working capital gap.

Table 9: Financing patterns of working capital finance for producers (Antibiotice, Biofarm and Zentiva)

	2.009	2.010	2.011	2.012	2.013	2.014	Average
1. Gross Working capital	549.463.103	648.334.327	653.030.714	673.529.440	714.945.360	733.804.192	662.184.523
2. Sources of wc:							
(i) Short terms funds	167.004.136	180.775.925	255.403.636	246.034.912	242.455.741	235.167.182	221.140.255
ii) Long term funds	382.458.967	467.558.402	397.627.078	427.494.528	472.489.619	498.637.010	441.044.267
3. Total long term funds	1.042.509.125	1.215.282.389	1.092.177.093	1.190.439.698	1.269.092.719	1.328.440.481	1.189.656.918
4. % of LT funds used to finance WC	37%	38%	36%	36%	37%	38%	37%
5. Owners' equity	660.050.158	747.723.987	694.550.015	762.945.170	796.603.100	829.803.471	748.612.650

Source: author's computation based on companies 'published financial statements

An attempt has been made to assess the liquidity of the 5 sample firms, using a comprehensive test based on liquidity ranks. This is calculated first by assigning individual ranking to the four main components of current assets of the distributors and for five components of current assets of the producers and then sum up the individual scores to arrive at an ultimate rank.

The five criteria as showed and table 9 and 10 are stock to current assets ratio (STCR), debtors to current assets ratio (DTCR), cash and bank balances to current ratio (CRCR), short investments to current assets ratio (ITCR) and other current assets to current assets ratio (OTCR).

Investment in the various categories of current assets has an incidence on the liquidity of an enterprise. The category of current assets which forms the largest component in total current assets will, therefore, affect liquidity of the enterprise in a significant way. A comprehensive test based on the sum of scores (liquidity ranks) of the separate individual ranking under the five criteria are given in table 9 and 10.

A high value of DTCR, CTCR, ITCR and OTCR indicate greater liquidity and ranking has been done in that order. On the other hand, a low STCR shows a more favourable position and hence ranking has been done in that order. In 2013 and 2014 for bowth distributors and producers, stock of raw materials, finished goods and merchandises are a significant item and a large proportion of current assets in stock means the business enterprise will face liquidity problems.

Table 10: Statement of ranking in order of liquidity for distributors (Remedia and Ropharma)

					Liquidity ranks					
Year	Stocks	Debtors	Cash	Other	STCR	DTCR	CTCR	OTCR	Total rank	Ultimate Rank
2009	22,9%	71,0%	5,8%	0,4%	5	4	4	1	14	4
2010	14,2%	79,8%	5,8%	0,2%	1	1	4	2	8	1
2011	15,2%	75,5%	9,2%	0,2%	2	3	2	2	9	2
2012	17,0%	78,3%	4,6%	0,1%	3	2	6	3	14	4
2013	18,9%	62,7%	18,2%	0,1%	4	5	1	3	13	3
2014	32,0%	60,6%	7,2%	0,2%	6	6	3	2	17	5

Source: author's computation based on published financial statements

Table 11: Statement of ranking in order of liquidity for producers (Antibiotice, Biofarm and Zentiva)

						Liquidity ranks							
Year	Stocks	Debtors	Cash	Short term investments	Other	STCR	DTCR	CTCR	ITCR	OTCR	Other	Total rank	Ultimate Rank
2009	13,3%	61,0%	23,8%	1,7%	0,2%	4	4	3	3	14	3	31	6
2010	11,6%	45,6%	32,4%	10,2%	0,2%	1	6	1	1	9	3	21	1
2011	13,7%	62,3%	23,7%	0,0%	0,2%	2	5	2	2	11	3	25	3
2012	12,7%	77,2%	9,9%	0,0%	0,1%	3	1	6	0	10	4	24	2
2013	16,4%	69,5%	13,8%	0,0%	0,3%	5	3	4	0	12	2	26	5
2014	16,4%	69,8%	13,3%	0,0%	0,4%	5	2	5	0	12	1	25	4

Source: author's computation based on published financial statements

The values from tables, shows that the year 2010 recorded the soundest position for bought distributors and producers followed by 2011 for distributors and 2012 for producers.

It indicates that the overall liquidity of distributors in the last year is worse than in the early years of the study due to high level of STCR (32%).

CONCLUSIONS

Using a sample of 5 medium firms operating in 2 different sectors for the period 2009-2014 period, the results confirmed that short-term sources more particularly trade credit and other payables play a significant role in financing working capital. Trade credit is primarily used to finance short-term assets (84% for distribution companies and 22% for manufacturing companies).

Short-term and long-term bank credit plays not only a significant but also a dominating role as a major external source of financing working capital requirement (10% for distribution companies and 11% for manufacturing companies).

For Romanian pharmaceutical producers, aggressive working capital asset policies are followed and are balanced by conservative working capital financial policies.

From the present study it can be concluded that distributors have performed well as far as the performance of working capital, utilisation of current assets to generate sales and efficiency of working capital for producers is concerned (in 2014 working capital utilization index for distributors was 1,25 versus 1,15 working capital utilisation index for producers that was 1,15). The distributors have high indexes comparing with the producers. Keeping larger current assets not doubt increases the liquidity of the firms but it has been observed that producers have been able to utilise the increased current assets in generation of the sales in those years. Thereby, such firms need to put in efforts to utilise the current assets properly to as achieve effective management of working capital.

The study suffers from certain limitations which are stated as follows:

- The study has been conducted over a limited period of six years only
- The study is limited to 5 companies. Hence, it will reflect only a partial view of the overall working capital management in the Romanian pharmaceutical sector.
- The study is based on annual financial statements on the selected companies, which may leave some error in context those annual positions to be different from monthly positions.

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APPLICABILITY OF VALUE AT RISK ON ROMANINAN CAPITAL MARKET

Paula Andreea TERINTE
Faculty of Economics and Business Administration,
"Alexandru Ioan Cuza" University
Iași, Romania
paula.terinte@yahoo.ro

Abstract: *This paper illustrates the applicability of value at risk in the case of a stock portfolio, from the Romanian Financial Market. The possibility of market risk quantification in higher volatility conditions of the stock market is especially significant for the investment processes in emerging markets. Thus, this paper, investigated the performance of Value at Risk (VaR) methods with the daily returns series of five stocks that are in the portfolio from the Romanian stock market. The originality of this paper is to demonstrate the applicability of the methodology value at risk for a stock market from the perspective of emerging country. The main goal of the research is to test the performance of the historical, variance-covariance and Monte Carlo methods VaR with 95% and 99% confidence level estimates as functions of determining the maximum possible loss from investment activities on Romanian capital market*
Keywords: *Value at Risk, stock portfolio, Monte Carlo method, historical method, variance-covariance method.*

1. INTRODUCTION

Financial markets in general and capital market in particular are characterized by uncertainty manifested through continuous price volatility of stocks, bonds and other financial instruments as well as the rate of return and the exchange rate. Because of the capital market variability, the future incomes generated by the financial assets traded in different time-period are difficult to estimate and are extremely volatile.

The capital market of Romania is a frontier capital market that aims towards an emergent capital market. The difference between a frontier capital market and an emergent capital market is the quality and the volume of the offers of shares and the variety of the investment opportunities.

The frontier capital market is attractive when the initial offerings are made and the emergent capital market offers more opportunities for future incomes.

Value at Risk (VaR) is the representation of the total risk of a portfolio in a single number. Value at Risk (VaR) is the maximum loss not exceeded with a given probability defined as the confidence level, over a given period of time. The applicability of Value at Risk on the frontier and emergent markets has some particularities that are demonstrated in this paper.

This paper analyzes the methodology Value at Risk, the theoretical part, then this paper estimates the Value at Risk for a specific portfolio from the Romanian capital

market (Bucharest Stock Exchange) using Microsoft Excel and we conclude with some particularities that the market and the methods used in calculating VaR have.

2. THE METHODOLOGY VALUE AT RISK

Value at Risk is the most used methodology in international banking system and the purpose of VaR is to measure and diminish the negative effects of market risks. The history of Value at Risk is connected to the president of the J.P.Morgan Investment Bank. The success of Value at Risk resides on the importance given to the Group of Thirty in 1993 and the Basel amendment in 1996. In these two documents resides the recommendation made for the Central Banks to use the methodology Value at Risk as a measure to determinate the minimum limit of the capital necessary for a commercial bank to defray the market risk to which it is exposed to.

Value-at-Risk represents the maximum possible loss of holding a portfolio a period of time, for example h days, and this loss cannot be exceeded whit a certain probability p (Jorion P., 2007:17)

Value at Risk indicator measures the risk of all financial instruments that are in the competence of the portfolio it can be options, stocks, currency etc. Value at Risk must respond to the following question: How high can the maximum potential loss of a specific investment be? The loss is calculated with a given probability, x% and a specific period of time, h days. Value at Risk (h,α VaR) measures the maximum potential loss of an financial instruments portfolio for a specific period of time (h days) and with a specific probability (x%) or a specific confidence level (1-α), (Dowd K., 2002: 19).

Value at Risk indicator depends on the period of time selected to determine the maximum potential loss. The P/L of the portfolio during a certain period of time "h" days is calculated as the difference between the value of the portfolio after the "h" days and the initial value of the portfolio. The formula is (Dowd K., 2002: 20):

$$\Delta\Pi h = \Pi h - \Pi 0,$$

Π_0 = The initial value of the portfolio, that is known,

$$P(\Delta\Pi < -VaR) = \alpha$$

Πh= The value of the portfolio after the "h" days (random variable)

$$P(\Delta\Pi > -VaR) = 1 - \alpha$$

$\Delta\Pi$ = P/L (Proft/Loss) for the next "h" days.

Calculating Value at Risk means establishing two parameters: the period of time in which we want to estimate the risk and the percentage of tolerance at risk (1-p) or the probability of confidence for which we want to estimate de risk (Anton S., 2009: 77).

The purpose of Value at Risk is not to describe the most unfavorable scenario, but rather to estimate a range of possible losses or profits. Value at Risk has three main aspects regarding risk management: the distribution of the probability regarding the

future value of the portfolio (defined by volatility and mean); the aversion towards risk by the portfolio manager (specified by the level of confidence) and the holding period of the portfolio for the manager (Anton S., 2009: 78).

The methods used in this paper to calculate Value at Risk are (Mutu S., 2012: 96):

a) Historical Simulation Method;

b) Variance-Covariance Method;

c) Monte Carlo Method.

The historical simulation method represents the theoretical value of the current portfolio modified by the historical risk variation. The advantage of the method is that there is no hypothesis about the return distribution. This method uses the empirical distribution generated by the historical spreadsheet; it's relatively simple to calculate VaR using this method. The disadvantage is that it needs a high quantity of historical data and is based only on the historical data, thus, if the past doesn`t repeat itself the estimation is imprecise.

The variance-covariance method has the hypothesis that the return distribution of the financial instruments in the portfolio is a normal distribution. This method considers that the returns are independent and uninfluenced by each other. The main disadvantage of variance-covariance method is that has the hypothesis that the return distribution of the financial instruments in the portfolio is a normal distribution and most of the financial instruments don`t have a normal distribution (Anton S., 2009: 77).

The Monte Carlo method is based on generating different scenarios based on the historical data to determine the nature of the return distribution. This method is very flexible; it can be used for all types of portfolios. When Monte Carlo simulation is used, there are ways of extending the model building approach so that market variables are no longer assumed to be normal. The drawback of the Monte Carlo simulation is that it tends to be computationally slow because a company's complete portfolio (which might consist of hundreds of thousands of different instruments) has to be revalued many times (Hull, J., White A., 1998: 9-19).

Choosing the method for calculating Value at Risk depends on the financial instruments that are in the portfolio, the accurate measurements of risk, the hypothesis of the methods, the understanding of the methods and the results generated by the methods etc (Codirlasu A., Chidesciuc N., 2007: 105).

3. CALCULATING VALUE AT RISK FOR A STOCK PORTFOLIO FROM THE ROMANIAN CAPITAL MARKET

Value at Risk has become a standard market risk measurement instrument in the financial-banking system. There are many international research papers regarding the applicability of Value at Risk on developed capital markets but the emergent capital markets have been studied less from this point of view.

On a national level there is little research on the subject of our paper, one example being that of Codirlasu (2007), who tested Value at Risk for three portfolios – stocks, currency and options using EWMA and GARCH. (Pele&Armeanu 2008) have tested the applicability of Markowitz model on the Romanian capital market.

Emergent capital markets have low dealing values; the liquidity risk, the currency risk, the interest rate risk and the regularity risk are the basis of the excessive volatility on the emergent capital market (Gençay R., Selçuk F., 2003: 2).

The emergent capital markets have short historical data and the standard deviation of Value at Risk rises with the confidence level. (Su&Knowles, 2006) demonstrated that at a 99% confidence level the standard deviation of VaR is higher using Monte Carlo and variance-covariance than at the 95% confidence level.

In this paper we estimate VaR for a portfolio of 5 stocks from the Romanian capital market. The stocks that are in the portfolio are selected from companies in different economic sectors, having the same historical data and presenting a higher liquidity than other companies listed on the Bucharest Stock Exchange.

Table no.1: The data regarding the portfolio for calculating Value at Risk

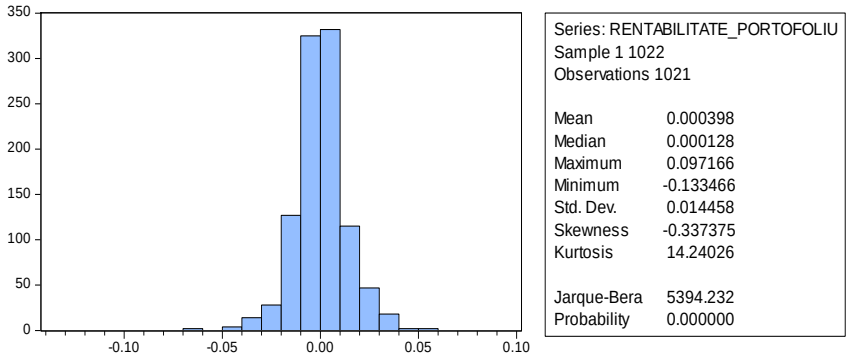
Number of stocks	5
Companies	TLV (Banca Transilvania), SIF 2 Moldova, ATB (Antibiotice), TEL (TransElectrica) și SNP (Petrom).
Historical data	2011-2015
Number of observations	1022 days
Period of time	1 day
Level of confidence	95%, 99%
Nature of observation	Daily prices
The investment	100.000 RON

Table no.2: Descriptive statistics

Discriptive Statistics Portfolio

	ATB	SIF_2	TEL	TLV	SNP	PORTOFOLIU
Mean	0.487518	1.306239	17.71538	1.416829	0.407377	21.33334
Median	0.470000	1.302500	16.86000	1.411500	0.415000	19.89600
Maximum	0.637000	1.741000	32.47000	2.219000	0.490000	37.38360
Minimum	0.340000	0.718000	10.84000	0.831000	0.275000	14.17080
Std. Dev.	0.085786	0.197068	5.078835	0.288894	0.051086	5.377755
Probability	0.000000	0.000000	0.000000	0.000001	0.000000	0.000000
Sum	498.2434	1334.976	18105.12	1447.999	416.3393	21802.68
Sum Sq. Dev.	7.513777	39.65136	26336.25	85.21239	2.664575	29527.57
Observations	1022	1022	1022	1022	1022	1022

Table no.3: Normality Test



The descriptive statistic table illustrates the minimum value of the portfolio as 14.17 RON and the maximum value of the portfolio as 37.38 RON that can be achieved a day. After the normality test our data-set is not modeled by a normal distribution, is modeled but rather a leptokurtic distribution which the majority of financial instruments have.

In a leptokurtic distribution the probability that an extreme event can take place is higher than in a normal distribution.

4. RESULTS AND CONCLUSIONS

Table no. 4: The variation of P/L of the portfolio historical data

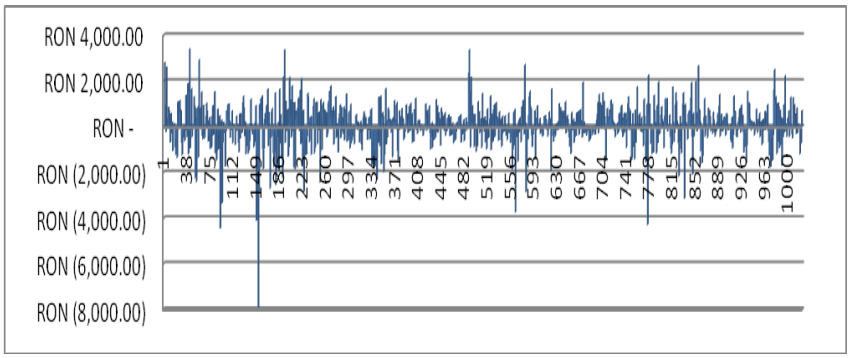


Table no. 5: Value at Risk results

Confidence level	Historical simulation	Monte Carlo	Variance-covariance
95%	1 381.60 RON	4 253.87 RON	2 527.67 RON
99%	2 666.60 RON	3 713.13 RON	3 574.93 RON

Value at Risk in this paper responds to one question: What is the maximum loss of a portfolio investment on the capital market for a specific period of time with a specific probability?

For a 95% confidence level the historical simulation has a result of 1 381.60 RON, Monte Carlo 4 253.87 RON and variance-covariance method 2 527.67 RON. There are different results for each method. However, the ideal result must be obtained following the establishment of a basic methodology/method. According to the specialty literature the basic method considered for the calculation of VAR is the Monte Carlo method, but this must be combined with the other two methods of the value at risk, as well as other methods such as the extreme values theories (which calculates the market risk of the tail behavior), the stress conditions tests (which estimate the potential losses in the abnormal market conditions) and the historical testing. The Value of Risk measures the potential loss in the normal market conditions, determined by the change in the assets' price.

The maximum possible loss in one day for a portfolio investment of 100 000 RON analyzed at a 95% confidence level is 4 253.87 RON.

The maximum possible loss in one day for a portfolio investment of 100 000 RON analyzed at a 99% confidence level is 3 713.13 RON.

(Andjeli G. *et al*, 2010) analyzed VaR for an emerging capital market and concluded that a 99% confidence level is characteristic to a volatile market. The Romanian capital market is volatile market thus as a result of VaR in this paper we conclude that the maximum possible loss for portfolio investment of 100 000 RON in the portfolio analyzed for a 99% confidence level in one day is 3 713.13 RON.

We conclude with some limitations regarding the Romanian capital market such as:

- low liquidity on the market;
- limited access to historical data;
- limited historical data;
- limited financial instruments;
- limited number of listed companies.

Given the high volatility that exists on the international and national capital markets the accurate quantification of the market risk represents an indispensable condition for the risk management. Value at Risk is the most used methodology to measure and quantify the financial risks on developed capital markets.

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LAW

AN INVENTORY OF SOME CRIMINAL PROVISIONS OF MITIGATING VALUE REGULATED BY THE ROMANIAN CRIMINAL SPECIAL LAWS*

Mihai DUNEA
The Faculty of Law,
„Alexandru Ioan Cuza" University of Iaşi
Iaşi, Romania
mihai.dunea@uaic.ro

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Abstract: *The purpose of this article is to establish a presentation of several legal provisions of mitigating trend, regulated in the Romanian criminal law, not in the Criminal Code itself, but in some separate laws – generally regarded, in comparison with the Criminal Code, as "special laws". The author realizes not only an inventory of those provisions, but also proposes a classification method for them, based upon the criterion of the reasons on which the mitigating tendencies expressed in those legal dispositions where founded. Also, the article indicates the legal provisions in relation to whom these dispositions reveal their mitigating value, regardless of the (sometimes controversial) juridical nature who can be attributed to them: either mitigated forms of other incrimination norms, or special causes of reduction of punishment in relation to some particular offenses, or autonomously regulated criminal acts, initially developed by modifying (in a mitigated way) some other separate regulated offenses..*
Keywords: *Romanian criminal law; special legislation; provisions and reasons for of punishment; classification.*

INTRODUCTION

At the moment, the Romanian criminal legislation is not composed by a singular, monolithic regulatory act, but by several law sources. As a constitutional rule, criminal provisions are to be regulated in normative acts represented by "laws" (*per se*), meaning a legislative will voted by the Parliament. Furthermore, taking into account the procedure established for adopting them, the laws (*stricto sensu*) are classified, in the present Romanian system, in three types: ordinary laws, organic laws and constitutional laws.

Ordinary laws cannot contain criminal regulations, the legislation in the criminal domain being restricted only to the higher quorum conditions imposed for passing of the organic laws thru the Parliament (art.73 par.3 lett. *h* and *i* from the Romanian Constitution). The most important of these organic laws containing criminal regulation is, of course, the Criminal Code (Law no.286/2009). Separately, there are, though, several other organic laws also containing criminal regulations, either being solely dedicated to

this purpose (e.g.: Law no.143/2000, regarding the prevention and deterrence of illegal trafficking and consumption of drugs), or combining criminal dispositions alongside other law provisions (e.g.: Law no.571/2003, representing the Fiscal/Tax Code, or Law no.46/2008, representing the Forestry Code).

Also, as an exception, the Romanian Constitution allows the executive central authority (the Government, *stricto sensu*), to enact urgent provisions in the domain reserved to organic laws, when there is an extraordinary emergency, and the normal enactment process (carried out by the Parliament) is expected to be to slow to solve the crisis in proper time. That means that, under condition of motivating the emergency, the executive Government may also enact provisions in the criminal domain, by means of a Governmental Emergency Ordinance, which is to be sanctioned or rejected, at a later time, by the Parliament, through an organic law (art.115 par.4-8 from the Romanian Constitution).

The criminal dispositions contained in both the special laws and in the Government Emergency Ordinances (to which we will refer to as "G.E.O." from now on) are referred to - by doctrine [among others, see – Mitrache & Mitrache, 2014: 57, 58, 67, 68; Streteanu & Niţu, 2014: 76] and jurisprudence, in comparison to the provisions regulated in the Criminal Code (which is regarded as the general criminal legislation of Romania) - as "special criminal legislation", or "special criminal provisions".

As well as in the case of many of the offenses regulated by the Criminal Code, some criminal acts described by these special provisions also reveal a mitigating criminal policy tendency, by comparison with certain statutory incriminations provided either by the Criminal Code, or by these special laws themselves. The present article aims to reveal several of these provisions, indicating the relation between them and the dispositions in regard to whom their mitigating value is emphasized, also attempting to classify them based on the criterion of the reason who determined the mitigating stance of the legislator.

GENERAL CLASSIFICATION OF MITIGATING PROVISIONS REGULATED IN THE ROMANIAN SPECIAL CRIMINAL LEGISLATION, BY REASON OF MITIGATION

Although in the Romanian special criminal legislation there can be identified many provisions that can be regarded as carrying a mitigating value, by comparison to some other incriminations (the norms of reference), it can be observed that they present the ability of being categorized in accordance with the criterion of the reason (the motive) that determined the legislature to express such a mitigating tendency. This mitigating tendency is manifested by the provision of a more lenient legal punishment than that of the incrimination of reference, as such: either a punishment of a less severe nature (e.g.: a fine, instead of imprisonment), either a punishment of the same type, but with lower limits (only one of the special limits - either the minimum or the maximum - may be lower than the value of the similar limit of the incrimination of reference, or both limits may be lower, at once).

It is true that some of those legal dispositions have a more difficult (complex) structure, or highlight not one, but several reasons for mitigation of punishment, but even in such cases, a principal mitigating motive can be (arguably) identified, thus allowing the classification of such dispositions to still take place, under this criterion.

According to our observations, the most obvious categories of incriminating provisions with mitigating value, enacted in the Romanian special criminal legislation of the moment, are based upon the following reasons: the perpetration of the offense with a less intense type of guilt (fault / negligence, instead of intention); the adoption of a certain conduct, by the perpetrator, *post-delictum* (either engaging in a certain behaviour of judicial cooperation and deletion, specially provided by the law, either compensating the victim in a certain way and in a certain period of time); the perpetration of the offense in certain time circumstances (after a certain event or after the passing of a certain period of time since some event has taken place); the type (field) of activity in which the offense was committed.

MITIGATING PROVISIONS REGULATED IN THE ROMANIAN SPECIAL CRIMINAL LEGISLATION, BASED ON THE FORM OF GUILT

The perpetration of the offense with a less intense type of guilt than that legally requested by the incriminating provision of the reference norm is, by far, the most frequent reason for the Romanian legislature to create mitigating dispositions in the special criminal laws (*lato sensu*). In the Romanian criminal law (art.16 par.2-5 of the Criminal Code), there are expressly (legally) recognized three types of guilt: intention, fault / negligence and a mixed form, called exceeded intent (*praeter-intentionem*, in Latin). The latter is composed by combining the initial intention in perpetrating some less severe offense, with fault / negligence in what regards the final result, more severe than the one intended by the perpetrator [for this subject see more in – Michinici, 1996: 80-84; Michinici & Dunea, in Toader et al., 2014: 52; Streteanu & Nițu, 2014: 340-346; Mitrache & Mitrache, 2014: 139]. The rule emphasized by art.16 par.1 of the present Romanian Criminal Code is that the perpetration of an act described by criminal law does not constitute an offense if it is not committed with the form of guilt requested by law. According to art.16 par.6 of the same Criminal Code, the form of guilt usually requested by law in order to transform an act described by the criminal law into an offense is intention. Thus, no such act will be considered as offense when committed by fault / negligence, unless there is a legal provision that indicates that fault / negligence is also a valid form of guilt, able to activate the criminal liability of the perpetrator. Usually, when they exist, such provisions stipulate a lower punishment for the offense committed by fault / negligence, than for the similar offense committed by intent.

In Romanian special criminal legislation there can be identified numerous mitigating provisions based upon this reason. We indicate, for *example*, the following dispositions:

- art.49 par.2 of Law no.17/1990, regarding the legal status of internal waters, territorial waters, contiguous zone and exclusive economic zone of Romania, according to whom, if the offense described in par. 1 of the same article (discharge of pollutants in any of those

waters) is committed by fault / negligence, and not with intent, the punishment will only be imprisonment from one month to one year, or the payment of a (smaller) fine, instead of imprisonment from 3 months to 2 years, or the payment of a (larger) fine. Also, according to par. 4 of the same article, if the act described by par.3 – an aggravated form of the offense in par.1, on the account of the result: a grave deterioration of the water quality or damages to the marine life – is committed by fault / negligence, instead of a punishment between one and 5 years imprisonment, there will be applied only a punishment between 6 months to 3 years imprisonment, or a fine.

- art.64 par.2 of Law no.94/1992, regarding the organization and function of the Court of Auditors, according to whom, the lack of recovery of the prejudice, because the management of the audited entity did not follow the measures disposed by the Court of Auditors, if this is committed by fault / negligence, and not with intent, will be punished only by criminal fine, instead of imprisonment between 3 months and one year, or the payment of a (larger) fine (as par. 1 provides for the intentional act).
- There are many other similar mitigating dispositions that we identified in the Romanian special criminal legislation (and, probably, some other ones, for our study did not include any special criminal laws enacted in 2015), that – for concern of space – we will only indicate by number of article and number / year of the law containing them, without further specifying their substance. They are as follows: art.49 par.2 of the Government Ordinance (we will refer to this type of normative act as "G.O." from now on) no.39/1996 (regarding the establishment and functioning of the Deposit Guarantee Fund in the Banking System), by comparison to par. 1 of the same act (a note is necessary here: a G.O. is not a valid normative act for the enactment of criminal provisions, in Romanian law system; nevertheless, after its enactment, a G.O. may be subject to additions and alterations by normative acts able to enact criminal provisions, and thus, such dispositions may be sometimes found even in normative acts that normally do not have the capability of being sources of criminal law; this is the case here, as well, as the dispositions of art.49 from G.O. no.39/1996 where modified in their current form by art.62 of Law no.187/2012, a organic law, able to contain criminal provisions, being the law enacted in order to secure the insertion into action of the new Romanian Criminal Code and the transition between the former code and the current one); art.45 par.2 of Law no.111/1996 (regarding the safe deployment, regulation, authorization and control of nuclear activities), by comparison to par. 1 of the same article; art. 98 par. 2 of the G.O. no.29/1997 (the Civil Air Code; art. 98 was modified by Law no. 187/2012), by comparison to par. 1 of the same article; art. 32 par. 2 of the G.O. no. 43/2000 (on the protection of the archaeological heritage; art. 32 was modified by Law no. 187/2012), by comparison to par. 1; art. 25 par. 5 of Law no. 78/2000 (on preventing, discovering and sanctioning of corruption), by comparison to par. 4 of the same article; art. 31 par. 2 of Law no. 656/2002 (on preventing and sanctioning money laundering, and the establishment of measures to prevent and combat terrorist financing), by comparison to par. 1 of the same article; art. 10 par. 2 of Law no. 191/2003 (on the regime of offenses committed in shipping – naval transport), by comparison to par. 1; art.23 par.2 of Law no.64/2008 (regarding the safe operation of pressure vessels, lifting equipment and fuel-consuming devices), by comparison to par.1 of the same article; art.11 of Law

no.101/2011 (on preventing and punishing some acts who produce environmental degradation), in relation to art. 52 par. 1 lett. *c* and *d* of the G.E.O. no. 57/2007 (on the regime of protected natural areas, conservation of natural habitats, wild flora and fauna); art. 16 par. 2 of Law no. 194/2011 (on combating operations with products likely to have psychoactive effects, other than those stipulated by already applicable laws), by comparison to par. 1 of the same article (in this case, there is to say that the legal phrasing of the text is extremely questionable; thus, the norm speaks about persons who "should OR could" have predicted that certain substances have psychoactive effects; this is in contradiction with the legal definition of fault / negligence, prescribed by art. 16 par. 4 of the Romanian Criminal Code; according to this text: "An action is committed with fault / negligence, when the perpetrator: a) foresees the outcome of his / hers actions, but does not accept it, believing without reason that such outcome will not occur; b) does not foresee the outcome of his / hers actions, though he / she should AND could have done so").

Sometimes, the mitigating effect is not expressed as in the above indicated cases, but by the specific legal stipulation of a certain fraction or percent of reduction which is to be applied to the sanction indicated by law for the offense of reference, in order to determine the legal punishment for the mitigated criminal act. As a result, the legal sanction is not directly indicated by the legislature; it is to be strictly determined thru a mathematical calculation, applying all the data that the law puts at the interpreter's disposal, thus indirectly prescribing the penalty (procedure thought to be in accordance with the principle of legality of criminal sanctions). For example:

- art.31 par.1 of Law no.10/1995, on construction quality, provides that the design, verification, evaluation, development of a building or the performance of changes to a building, without the observance of technical regulations on stability and strength, if in this way is endangered the life or bodily integrity of one or more persons (act committed with intent), will be punishable by imprisonment from one to 5 years; par. 3 indicates that, if this act is committed by fault / negligence, the limits of punishment will be reduced by half.
- Because this type of provision is no exception, as well, we will proceed as we already deed above, and indicate other similar cases we discovered only by number of article and number / year of the normative act including them, without further presentation of their substance. They are as follows: art. 92 par.4 of Law no.107/1996 (the "water's law"), by comparison to par.2 of the same article, and also art.93 par.3 by comparison to par. 1 and 2, and art.95 par.3 by comparison to par.1 and 2; art.23 par. 2 of the G.E.O. no.244/2000 (on the safety of dams), by comparison to par. 1 of the same article; art.9 par.1 of Law no.101/2011 (on preventing and punishing some acts who produce environmental degradation), by comparison to art.3, 7 and 8 of the same normative act, and also art.10 of the same law, in relation to art.271 of Law no.86/2006 (Customs Code).

In some cases, the mitigation tendency expressed by the legislature is not so obvious, and can only be determined by corroboration of multiple provisions from separate laws. Such is the case of the disposition inserted in art.12 par.3 of the G.E.O. no.55/2002, on the regime of holding dangerous or aggressive dogs. Thus, according to par. 1 of the indicated article, failure - by the owner of the dog or its temporary holder -

to take the necessary measures in order to prevent canine attack on a person (...) if the attack occurred, is punishable by imprisonment between 6 months to 3 years, or by payment of a fine. According to par. 3, if this act is committed by fault / negligence, there are to be applied the provisions of art.192 or 196 of the Criminal Code. Art.192 of the Criminal Code refers to manslaughter (homicide committed by fault / negligence), and the punishment is higher (at least imprisonment between one to 5 years, and higher for the aggravated forms) [for more details regarding manslaughter, see – Toader, in Toader *et al.*, 2014: 337-339]. On the other hand, art. 196 of the Criminal Code regulates the offense of involuntary bodily injuries, for which the first two paragraphs provide a less severe punishment than that indicated by art. 12 par. 1 of the G.E.O. no. 55/2002 (namely: imprisonment between 3 months and one year, or payment of a fine – for the act described by par. 1 of art. 196 of the Criminal Code; imprisonment between 6 months and 2 years, or the payment of a fine – for the act described by par. 2 of the same article). Thus, in situations were the act provided by art. 12 par. 3 of the G.E.O. no. 55/2002 is to be found, in some particular cases, as suitable with the provisions of art. 196 par. 1 or 2 of the Criminal Code, there is to be retained a mitigation effect in comparison with art. 12 par. 1 of the G.E.O. no. 55/2002 (there is to say, however, that the juridical nature of the provision does not appear to us to be extremely clear), based on committing the same act not with intent, but by fault / negligence.

MITIGATING PROVISIONS REGULATED IN THE ROMANIAN SPECIAL CRIMINAL LEGISLATION, BASED ON THE ADOPTION OF A CERTAIN CONDUCT, BY THE PERPETRATOR, FOLLOWING THE COMMISSION OF THE OFFENSE

Although not as numerous as the previously described mitigation provisions, there are certainly some legal norms in the Romanian special criminal legislation that emphasize a mitigating trend of criminal policy conditioned by the adoption of a certain legally required conduct, by the perpetrator of some offenses, into a predetermined post-delictual period of time. Usually, the lawmaker aims to secure, by the promise of a more lenient criminal treatment, the cooperation of the perpetrators, in order to better and faster solve the social and juridical repressive relation born by the act of committing the offense. In other occasions, the law tends to be concerned by the victims situation, and provides a mitigated criminal responsibility for the offenders who take due measures in order to compensate, with celerity, the persons to whom they produced some damage by committing the criminal act.

We consider that the following provisions from Romanian special criminal laws can be found compliant with the first category thus indicated:

- art.143^1 par.2 of Law no.8/1996 (on copyright and related rights); according to this text, the person who committed one of the offenses stipulated in art. 139^1 of this law, and who, during the criminal investigation by the prosecutor's office, *denounces and facilitates the identification and the engagement of criminal liability* of other persons who have committed crimes related to pirated merchandise or pirate access control devices, benefits from a reduction by half of the penalty limits provided by law for the offense he / she

committed (it is interesting to observe that the acts subject to the denunciation are not required to be part of the same criminal enterprise committed by the beneficiary of the mitigation treatment, but any other criminal infringements of the provisions of the copyright law, related to pirated merchandise or pirate access control devices, no matter how the denunciator became aware of them);
- similar provisions can be found in: art.63 par.3 of Law no.21/1996 (the Competition Law), in relation to the dispositions in par. 1 of the same article; art.15 of Law no.143/2000 (on the prevention and deterrence of illegal trafficking and consumption of drugs), in relation to the provisions of art.2-9 from the same Law; art.30 of Law no.656/2002 (on preventing and sanctioning money laundering, and the establishment of measures to prevent and combat terrorist financing), in relation to art.29 from the same Law; art.22 of Law no.104/2008 (on preventing and combating illicit production and trafficking of doping substances with high risk), in relation to art. 19 of the same normative act;
- a slightly different formulation can be encountered in art. 3 par. 4 of the G.E.O. no. 31/2002 (regarding the ban of organizations, symbols and acts who have a fascist, legionnaire, racist or xenophobic character and the ban of worship of persons guilty of crimes of genocide, crimes against humanity and war crimes); the text indicates that the person who committed any of the offenses provided by par. 1 and 2 of the same article will benefit from the reduction by half of the penalty limits, if it facilitates, during the criminal investigation by the prosecutor's office, *the pursuit of truth* and the engagement of criminal liability of one or more persons who are members of a organized criminal group (although the text does not indicate this expressly, we assume, in a rational manner of interpretation, that it has to be a organized criminal group whose activity is tied to the criminal acts incriminated by this particular normative act, and not just any other criminal organization).

For what concerns the second category of mitigating provisions based on adoption, by the perpetrator, of a certain conduct, after committing the offense, we refer to the following legal dispositions:
- art.143^1 par.3 of Law no.8/1996 (already indicated above); the text stipulates that if the persons who have committed any of the offenses regulated by this Law have remedied the injury (compensated the damage) produced to the rights holders, until the end of judicial investigation in front of the first court, than, the special limits of the penalty will be reduced by half;
- art. 10 of Law no. 241/2005 (on preventing and combating tax evasion), who provides that if a person who committed one of the offenses described by art. 8 or 9 of this Law, fully covers the claims of the person constituted as civil party in the judicial process, during the criminal investigation by the prosecutor's office, or after this period, but before the first hearing in front of the court, than he / she will benefit from a reduction by half of the penalty's limits prescribed by law for those offenses.

MITIGATING PROVISIONS REGULATED IN THE ROMANIAN SPECIAL CRIMINAL LEGISLATION, BASED ON THE PERPETRATION OF THE OFFENSE IN CERTAIN TIME CIRCUMSTANCES

This type of provision, who allows a legal deviation of punishment from the statutory limits ordinarily prescribed for a certain genre of criminal conduct, based on the fact of committing the offense after a certain event has taken place, or after the passing of a certain period of time since some event has taken place, is usually encountered more often when it comes to aggravating the criminal liability of some perpetrators. Nevertheless, we identified in the Romanian special criminal legislation at least one legal disposition who takes into account this reason, in order to create a cause of mitigation of the penalty prescribed by law for a certain offensive behaviour.

We refer to the provision of art.11 par.2 of Law no.78/2000 (on preventing, discovering and sanctioning of corruption). Thus, according to art.11 par.1 of this Law, any person who, with task of supervision, control, reorganization or liquidation of a private economic operator, fulfills for it any task, intermediates or facilitates the conducting of commercial or financial operations, or participates with capital to such an economic operator, if the act is likely to bring to him / her an undue advantage, directly or indirectly, commits an offense punishable by imprisonment between one and 5 years and the interdiction of some rights. Par.2 of the same article states that if the act described by par. 1 is committed within a period of 5 years from the termination of entrusting with such a task (supervision, control, reorganization or liquidation of a private economic operator), the penalty will be (only) imprisonment between 6 months to 3 years, or even only the payment of a criminal fine.

Of course, it can be argued that by this provision, the Romanian legislature extends the time frame in which the perpetrator of such an act has criminal significance, which can hardly be appreciated as a less drastic situation for the perpetrator, in comparison to the reference norm, as a mitigating provision should be. By this point of view, the disposition in case is not at all a mitigating provision (it can be argued even that it is an aggravated one). But, looking only from the point of view of the sanction prescribed by law for a certain conduct, it comes out that if the exact behaviour described in par. 1 of the article is adopted under the terms indicated by par. 2, then the penalty is less severe. Personally, we are reserved in approaching such a situation upon this latter process of thought, regarding it as a proper legal mitigated provision. But, nevertheless, we are aware that such a perspective exists, and it was even given credit by the binding jurisprudence of the supreme Court of Romania, when it pronounced a mandatory decision (decision no.1/2015 of the panel of judges able to solve some law issues in criminal matters, of the High Court of Cassation and Justice), regarding the interpretation of provisions contained by art.308 from the Criminal Code; the question of law in that case was not similar, per se, with the one we presented here, but one line of the argumentation – of the process of thought – was basically the same (for more on this topic, see – Dunea, 2015).

MITIGATING PROVISIONS REGULATED IN THE ROMANIAN SPECIAL CRIMINAL LEGISLATION, BASED ON THE TYPE (FIELD) OF ACTIVITY IN WHICH THE OFFENSE WAS COMMITTED

Under this category, we only found one provision during our research. The situation is, as well as in the case of the previous category, more often used by the legislature in order to aggravate, and not to mitigate criminal liability. Thus, sometimes, the particular circumstances of enactment of a certain activity may present into a more lenient manner, or, on the contrary, in a more drastic manner, some type of behavior, who has or has not a (more potent) criminal value outside the boundaries of that particular genre of activity.

We take into consideration, at this point, the provision of art.23 par.1 of the G.E.O. no.77/2009, on the organization and operation of gambling, in relation to art.348 from the Criminal Code. The latter text describes as a criminal offense the exercise, without legal right, of any profession or activity for which some special law requires a permit or the exercise of such a profession or activity in any other conditions than the legal imposed ones, if some special law provides that committing such acts are punishable under criminal law. The punishment prescribed for such an act is imprisonment between 3 months to one year, or the payment of a criminal fine.

Numerous special laws contain provisions who refer to this disposition and to the penalty thus stated; e.g., the laws regulating the exercise of some professions or activities such as that of lawyer (art. 26 of Law no. 51/1995), architect (art. 17 of Law no. 184/2001), private detective (art. 17 of Law no. 329/2003) and many others.

In this context, art. 23 par. 1 of the G.E.O. no. 77/2009 provides that the carrying out, without any license or authorization, of any activity of gambling, constitutes an offense and it is punishable by imprisonment between one month to one year, or by payment of a criminal fine. It is easy to observe that the special minimum limit of the penalty is lower in this provision than in the one regulated by art. 348 of the Criminal Code; thus, we are in the presence of a mitigated incrimination norm, by comparison with the (more) general text included in the Criminal Code. It is possible that the legislature took into consideration, in order to enact this mitigated disposition, the popularity of gambling in some social environments, or the fact that, by comparison to the other types of activity where this conduct is also criminalized, in this case the damage to others is somewhat minimal (there is not at stake neither one's life, nor one's freedom or bodily integrity), and that the potential victims are also somewhat to blame (for accepting to enter into such type of relations with another). But, regardless of the real motivation behind this legislative's choice, the indisputable fact is that the provision in question marks a mitigated stance by comparison to the related article from the Criminal Code, and that the formal reason for this resides in the particular type of activity in the exercise of which the offense is committed.

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CONSIDERATIONS ABOUT DRAFTING ARBITRATION CLAUSES

Diana-Loredana HOGAS

University "Alexandru Ioan Cuza", Faculty of Law
Iasi, Romania
diana_hogas@yahoo.com

Abstract*: In this article we analyzed the necessary aspects on drafting an arbitration clause correctly. Thus, we identified and debated the major mistakes that can be made in drafting arbitration agreements, namely, equivocation, inattention, omission, over-specificity, unrealistic expectations, litigation envy, overreaching, and the items that cannot miss when drawing a arbitration agreement.*
Keywords: *International Arbitration; arbitration clauses; arbitration clauses.*

INTRODUCTION

The arbitration agreement plays a capital role in the governance of arbitration. The parties have the freedom to draft the clauses of the arbitration agreement based on the universal principle of the contracting parties' autonomy, so, "freedom of contract, therefore, is at the very core of how the law regulates arbitration. What the contracting parties provide in their agreement generally becomes the controlling law" (Carbonneau, 2003, pp. 1.189–1.232.). Given the importance of the terms of the arbitration agreement, the parties or their attorneys must be cautious and wise in their writing.

The arbitration clause must fit to the circumstances of the parties' needs and not the clause that will solve the almost every problem inherent in arbitration. Why is so difficult to draft a universal arbitration clause who has the role to fit in any circumstances? Stephen R. Bond (1989, pp. 14-21), the general secretary of the International Court of Arbitration from Paris, answers to this question with three arguments: most drafting of this agreement is capital; second argument, "the other party may have very different ideas as to what constitutes an ideal clause'', so will begin a negotiation of the arbitration clauses and the contracting party must know what is really important for her; the third and the final argument, "the all-purpose clause may not, in fact, be suitable for all situations", in this sense, there is no "miracle clause". So, I can conclude that a good drafted arbitration clause is the "miracle clause" for the contracting parties.

THE SEVEN DEADLY SINS by JOHN M. TOWNSEND

An arbitration clause has to avoid the "seven deadly sins", as John M. Townsend (2003, p.1) states. He says that "while is so difficult to generalize about what will make a "perfect" clause, it is not nearly as difficult to identify some of the features that make for a bad one."

Townsend identifies seven deadly sins of an arbitration clause: equivocation, inattention, omission, over-specificity, unrealistic expectations, litigation envy, overreaching.

The sin about equivocation refers to the failure to state as clearly as possible that the parties agreed to solve their problems through arbitration. This clause is also called **pathological** and is found very frequently at the ICC International Court of Arbitration from Paris (Carbonneau, 2003, p. 1.190).

The UNCITRAL Model Law provides the writing requirement of the arbitral agreement in article 7 (2), "the arbitration agreement shall be in writing."[1] The second article of New York Convention on Recognition and Enforcement of Foreign Arbitral Award states that the arbitral agreement has to be in writing and the parties have to undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration. So, we cannot speak about arbitration in the absence of the contract.

The next clause is an example of an equivocation clause: "In case of dispute, the parties undertake to submit to arbitration, but in case of litigation the Court of Seine shall have exclusive jurisdiction" (Townsend, 2003, p. 1).

The sin about inattention is the next that can damage the arbitral agreement. This sin refers to the insufficient attention to the circumstances of the parties when the arbitral clause is drafted. Townsend states that the contracting parties or their attorneys should answer a few questions when the arbitral clauses are drafted: *What type of dispute resolution process is best in our circumstances? If arbitration is selected, we (the parties) understand that the arbitration clause will commit us to a binding process that involves certain trade-offs? Can we mediate or negotiate before we take the path of arbitration? We will want to enforce the award or a judgment based on the award?*

It is considered that the key in drafting a good clause is to pay sufficient attention to the underlying transactions so that the arbitration clause can be tailored to the contracting party's special requirements and to possible difficulties that may judiciously anticipated (Townsend, 2003, pp. 3-5).

[1] UNCITRAL Model Law on International Commercial Arbitration adopted in 1985, with amendments as adopted in 2006. http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf
See CLOUT case No. 44 - *William Company v. Chu Kong Agency Co. Ltd. and Guangzhou Ocean Shipping Company*, High Court-Court of First Instance, Hong Kong, 17 February 1993, http://www.hklii.hk/eng/hk/cases/hkcfi/1993/215.html; CLOUT case No. 365 - *Schiff Food Products Inc. v. Naber Seed & Grain Co. Ltd.*, Court of Queen's Bench, Saskatchewan, Canada, 1 October 1996, http://canlii.ca/t/1nsm0; *Jiangxi Provincial Metal and Minerals Import and Export Corporation v. Sulanser Co. Ltd.*, High Court—Court of First Instance, Hong Kong, 6 April 1995, http://www.hklii.hk/eng/hk/cases/hkcfi/1995/449.html; *Great Offshore Ltd. v. Iranian Offshore Engineering & Construction Company*, Supreme Court, India, 25 August 2008, http://www.indiankanoon.org/doc/394001/ (4.09.2015).

Omission is the sin that makes the arbitration clause incomplete, like the following statement: "Any disputes arising out of this Agreement will be finally resolved by binding arbitration" (Townsend, 2003, pp. 3-5). It is obvious that this clause is too weak in content and this fact will affect the parties' interests. If the parties will not draft the details concerning their arbitration, the court will decide these details, but this will cost time and money.

If the sin of omission is over passed, the opposite of this – **the over-specificity**, is good to be also exceeded. This sin refers to the clauses that have too many details and becomes hard to put into practice. Townsend gives an example of this kind of clause: "The Arbitration shall be conducted by three arbitrators, each of whom shall be fluent in Hungarian and shall have twenty or more years of experience in the design of buggy whips, and one of whom, who shall act as chairman, shall be a expert on the law of the Hapsburg Empire." All the details drafted in this arbitration clause are threatening the execution of this clause, so it's widely not to add so many criterions that may became obstacle in the process of arbitration.

Townsend ads a companion sin to over-specificity, **the sin of unrealistic expectations**. This sin refers to tight time limits in the arbitration process. These limits can turn against those who have drafted them. A good example is the following: "The claimant will name its arbitrator when it commences the proceeding. The respondent will then name its arbitrator within ten days, and the two so named will name the third arbitrator, who will act as chair, within ten days of the selection of the second arbitrator. Hearings will commence within seventy days of the selection of the third arbitrator, and will conclude no more than five days later. The arbitrators will issue their award within ten days of the conclusion of the hearings." I agree what Townsend says about these short limits of time that can "cripple the process before it gets started", because if the arbitrator fails to meet the imposed deadline he will be deprived of arbitration jurisdiction.[2]

The last deadly sin that harms the arbitral agreement is **the sin of litigation envy**. In this case, the contracting parties want that their problems be solved through arbitration, but following the court rules. Townsend gives the following example: "The arbitration will be conducted in accordance with the Federal Rules of Civil Procedure applicable in the United States District Court for the Southern District of New York, and the arbitrators shall follow the Federal Rules of Evidence" or "The award of the arbitrators may be reviewed for errors of fact and law by the United States District Court for the District in which the arbitration is held" (Townsend, 2003, p. 4).

Regarding the United States, this clause creates procedural inaccuracies and, like Townsend (2003, p. 4) says: "The arbitrators had to decide whether and how to apply the local rules of the Southern District, whether a pre-trial order was required, whether the parties were obligated to make the mandatory disclosures required by the Federal Rules, and other controversies about discovery of the sort that people resort to arbitration to escape."

[2] See CLOUT case No. 101 *Private Company "Triple V" Inc. Ltd. v. Star (Universal) Co. Ltd. and Sky Jade Enterprises Group Ltd. , 27 January 1995 - http://interarb.com/clout/clout101.htm.* (4.09.2015)

În Europe's case, most of the states used the Napoleon Codes as an inspiration source; this kind of clause affecting the speed and the costs of the arbitration, two of more advantages of this form of alternative dispute resolution.

3. "SINE QUA NON" OF AN ARBITRATION AGREEMENT

Until now I analyzed what we have to do to avoid drafting an inoperative arbitration clause. But what this agreement should contain? What are the *sine qua non* clauses?

I join the opinion of other authors (Bond, 1989; Bishop, 2000; Carbonneau, 2003; Townsend, 2003; Smit, 2003) and I believe that the most essential and important clauses of an arbitration agreement are the following: **(1) the clause in which the arbitration is choosing to be the method to resolve the disputes between contracting parties; (2) the clause in which the parties choose between Ad-hoc or Institutional Arbitration; (3) the clause in which is defining the scope of arbitration; (4) the clause in which the parties desire that the arbitral award should be "final and binding" for them; (5) the clause in which the parties choose the place of arbitration; (6) the clause in which the parties choose the language of arbitration; (7) the clause in which the parties choose the composition of the Arbitral Tribunal; (8) the clause in which the parties choose the applicable law;** and the last clause, applicable only for the United States, (9) **the clause in which the parties choose to Entry of Judgment Stipulation.**

I believe that these nine clauses are the essential clauses of an arbitration agreement with the condition to be tailored by the parties' circumstances. The arbitral agreement cannot fail if it contains these essentials provisions. I will analyze these clauses one by one.

The first clause, in which the arbitration is choosing to be **the method to resolve the disputes between contracting parties**, requires from the parties the clearly and expressly intend that they do agree resolving their problems through arbitration. It's so important to do so because there are other methods of dispute resolutions, like mediation, conciliation, expert determination. This agreement can be a clause into another contract between parties, clause compromissoire or a separate agreement, compromis; it is a must to be in writing, like I discuss at the beginning of this article, in the paragraph of the equivocation sin.

The second clause, **the clause in which is defining the scope of arbitration** is very important too because "the words make the difference". The parties should be aware about what they are drafting - what types of disputes they want to be arbitrated: all potential disputes, including tort claims, fraud-in-the-inducement claims, statutory claims and any others types that arise from their contractual relationship or only the disputes regarding the contract. The parties should express their desire clearly, avoiding misinterpretation of the clause.

The standard clause of ICC is simple and clear, contains all the ingredients to be an effective arbitral clause: "**All disputes arising out of** or **in connection with** the present contract shall be **finally settled** under the Rules of Arbitration of the International

Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules." This one can be a good model to start drafting a similar clause.

The third clause, **the clause in which the parties desire that the arbitral award should be "final and binding" for them, meaning** : "that issues joined and resolved in the arbitration may not be tried de novo in any court," like United States courts held.[3] This is one of the advantages of arbitration, issuing arbitration procedure and its outcome, the arbitration award, the court interference, which here cannot review its substance.

The leading arbitral organizations provide a clause in this meaning: the International Chamber of Commerce and the London Court of International Arbitration Rules state in art.29 (1), respectively in art.29 (2), that any award shall be binding for the parties and the parties should waive the right to any recourse, the American Arbitration Association Rules provide in art.30 (1) that the award is final and binding for the parties and they will carry it out without delay.

The following clause is the clause in which the parties choose between Ad-hoc and Institutional Arbitration. Many authors (Bond, 1989; Bishop, 2000) believe that this is a fundamental clause because the parties have to agree on what kind of arbitration – ad-hoc or institutional, will be administer their disputes.

If the parties choose ad-hoc arbitration, they will avoid the administrative fees charged by arbitral institutions, but the parties have to handle with the administrative part of arbitration. Bishop agrees that in the case of ad-hoc arbitration "there is no quality review by an institution like ICC", "in the absence of a administrator, the parties may have to apply to the courts to resolve procedural problems on which they cannot agree" and "ad hoc awards do not receive the same deference as institutional awards when they are presented to courts for enforcement" (Bishop, 2000, p.31).

The choice of an institutional arbitration will cost parties more money, but instead the arbitration institution will resolve the most of administrative problems of arbitration, will provide quality control. There are many arbitral institutions worldwide: the International Chamber of Commerce (Paris) and the London Court of International Arbitration, the American Arbitration Association, the International Centre for the Settlement of Investment Disputes, the Stockholm Chamber of Commerce, the Inter-American Commercial Arbitration Commission, the Arbitration Court of the World Intellectual Property Organization and many more.

Stephen R. Bond argues that "in international arbitration, the arbitration clause should provide for institutional arbitration. You pay an administrative charge, but with good institution you get value for the money" (Bond, 1989, p.68).

One of the essential clauses is the clause in which **the parties choose the place of arbitration**. Why is this clause so important? Bishop gives seven arguments related to the importance of the place of arbitration: first argument is that it is especially important to select a forum whose arbitral awards will be enforceable in other countries like a

[3] See M&C Corp. v. Erwin Behr, GmbH & Co., United States Court of Appeals, No. 04-1557, April 28 2005. https://bulk.resource.org/courts.gov/c/F3/411/411.F3d.749.04-1557.html (4.09.2015);
Iran Aircraft Industries v. Avco Corp., United States Court of Appeals, September 29 1992.
http://www.leagle.com/xmlResult.aspx?page=6&xmldoc=19921121980F2d141_11101.xml&docbase=CSLWAR2-1986-2006&SizeDisp=7 (4.09.2015).

country that has ratified the New York or Panama Conventions recognizing arbitral awards); the following argument is that it is important for the forum's law to recognize the agreement to arbitrate as valid. We should have in minded that in Article V (1) (a) of the New York Convention, the validity of an arbitration agreement may be determined by the law of the country where the award was made, so compliance with local laws is important. The third argument takes into account that the place of arbitration is usually the country whose courts will hear an action to vacate an award, so it is important to consider the scope of awards' review available in that country. The next argument focuses on the interference of national courts, so Bishop says that the national courts of the arbitration place should not unnecessarily interfere in ongoing arbitral proceedings, thereby creating an incentive for dilatory tactics and expensive procedural disputes. In the fifth argument he agrees that the forum's courts should, however, assist the proceedings when necessary. In the last two arguments, Bishop argues that the host country should allow non-nationals to appear as counsel in international arbitration proceedings and the situs should not unduly restrict the choice of arbitrators (Bishop, 2000, p.31).

The studies on arbitration clauses provide that the clause that involves the arbitration place, is, along with the choice of applicable law, the element most often added to the basic ICC arbitration rules (Bond, 1989, p.18).

The following important clause of an arbitral agreement is **the clause in which the parties choose the composition of the Arbitral Tribunal**: how many arbitrators will compose the Arbitral Tribunal, how should they be selected, what qualifications should they have. This clause is linked to clause in which the parties choose between the institutional and ad-hoc arbitration.

In ad-hoc arbitration, the parties have to provide the procedure by which will be appointed the arbitrators. Most often, each party appoint an arbitrator and these two arbitrators will choose the third one. The parties have to be cautions and provide a supplementary mechanism if eventually things go wrong: one of the parties does not appoint the arbitrator or the two arbitrators cannot appoint the third one. There is the possibility that the parties may choose an authority with powers to appoint the missing arbitrator. It is wisely recommended for the parties to agree on the number of the arbitrators, the qualifications and the requirements to be met by them, avoiding so future problems that need to be solved.

In institutional arbitration, these tasks also belongs to the parties, but can be successfully substituted by arbitration institution chosen. The Rules of the Arbitration Institution generally contain provisions that are applied if the parties have not been agreeing to the contrary.

Stephen R. Bond (1989, p.18) argues that "the ICC's experience has been that parties from developing countries and Eastern European countries have a strong preference for three-person arbitral tribunals. They seem to believe that even though coarbitrators must be independent of the party proposing them, pursuant to the ICC Rules, a coarbitrator of the same nationality can explain to his fellow arbitrators the legal, economic and business context within which the party operates."

The following essential clause of an arbitral agreement is **the clause in which the parties choose the language of arbitration.** It is very important that the parties agree on

the language of arbitration because through this agreement they will avoid expensive and time-consuming translation of documents, interpretation at hearings.

If the parties do not agree on the language of arbitration, in the case of an ad-hoc arbitration, the arbitral tribunal will resolve this problem and, in the case of an institutional arbitration, the institution choice will provide the solution of this lack of agreement.

The clause in which the parties choose the applicable law is very important for the parties because once they have decide on the law applicable to the contract, they don't have to face any "surprises", like the decision of the arbitral tribunal in this matter, that cannot reconcile both sides. One more argument for drafting this clause is related to money and time; the parties will have to wait until the arbitral tribunal will decide in this situation.

Stephen R. Bond (1989, p. 19) says that this clause is the element most often added to the contract, often drafted directly in the arbitration clause.

The last essential clause is applicable only for United States **- the clause in which the parties choose to Entry of Judgment Stipulation**. In the United States, the Second Circuit Court of Appeals held in the cases Varley vs. Tarrytown Ass., Inc. (1973), Splosna Plovba of Piran vs. Agrelak Steamship Corp. (1974) that, in the absence of a clause in the meaning that a court may enter judgment on an arbitral award, courts may not do so. Few years later, courts changed their opinion and held that the conduct of the parties can authorize the entire judgment of a court on an arbitral award (Bishop, 2000, p. 31).

It is important to say that the model clause of the American Arbitration Association provides that judgment may be entered upon the award in any court or competent jurisdiction. This clause is essential if enforcement may be required in the United States.

4. CONCLUSIONS

In conclusion, I can say that an universal arbitration clause as a solution for every problems does not exist, but there are some essential ingredients, "key clause" of an arbitral agreement that may avoid spending a lot of money and time in the arbitral process: the clause in which the arbitration is choose to be the method to resolve the disputes between contracting parties; the clause in which the parties choose between Ad-hoc or Institutional Arbitration; the clause in which is being defining the scope of arbitration; the clause in which the parties desire that the arbitral award be "final and binding" form them; the clause in which the parties choose the place of arbitration; the clause in which the parties choose the language of arbitration; the clause in which the parties choose the composition of the Arbitral Tribunal; the clause in which the parties choose the applicable law and the last clause, applicable only for United States, the clause in which the parties choose to Entry of Judgment Stipulation.

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GOOD FAITH IN GREEK CIVIL CODE

Emanuela IFTIME
The Faculty of Law,"Alexandru Ioan Cuza" University of Iaşi
Iaşi, Romania
ema.iftime@yahoo.com

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Abstract: *The study examines the most important articles of Greek Civil Code regarding the concept of good faith. The Greek Civil Code adopted a verbatim translation of the german good faith provisions which was inserted at the same place within the structure of the code. From the perspective of good faith provisions Greek Civil Code fits into modern european civil codes. Moreover, the article seeks to provide a comparative and comprehensive analysis of the concept of good faith in Greek Civil Code and in Romanian Civil Code. Also, good faith is analyzed in the United Nations Convention on contracts for the international sale of goods (1980) and in Unidroit Principles, with reference to the provisions of the Greek Civil Code.*
Keywords: *good faith, civil law, international sales, Greek Civil Code, Romanian Civil Code, the United Nations Convention on contracts for the international sale of goods (1980).*

1. INTRODUCTION

The introduction of the notion of good faith in Roman contract law would undoubtedly have been impossible without inspiration from the Greeks. This new concept opens the contractual system to the ethics of what is just and equitable, the latter, according to Cicero's dream, linking all men, citizens or pagans, in a universal society of *boni viri*, of good men (Rampelberg, 2005). Cicero has left the most complete definition of good faith: these words, good faith, have a very broad meaning. They express all the honest sentiments of a good conscience, without requiring a scrupulousness which would turn selflessness into sacrifice; the law banishes from contracts ruses and clever manoeuvres, dishonest dealings, fraudulent calculations, dissimulations and perfidious simulations, and malice, which under the guise of prudence and skill, takes advantage of credulity, simplicity and ignorance (De Off, 3, 17).

Although Roman law in its beginnings, does not distinguish between moral and legal norms, eventually, after delimitation between law and morality, Roman law separated the legal concept of good faith (bona fides) from the notion of honesty

(honestum); in this way the concept of good faith falls under the law, becoming a concept with its own legal content (Dobrilă, 2012: 180).

The components of good faith, as a notion belonging to the matter of law, is based on honesty, as a manifestation of conscience within moral norms, translated as a value that entails the compliance of individual life with the moral norms. In order to invoke good faith, all its attributes must be found both anterior and simultaneous with the moment when the agreements meet to perfect a legal act, and subsequently for its execution (Dobrilă, 2014: 231).

Most European civil codes contain general provisions on good faith, as a concept and, also, as a concrete application in contractual relations. Good faith is provided by these codes in both objective and subjective meaning (Dobrilă, 2014). Unidroit Principles and the Principles of European Contract Law establish a objective version of the concept of good faith in contractual relations, considered close to the classical Roman vision of bona fides.

2. GOOD FAITH IN GREEK CIVIL CODE

In Greek civil law the provisions of good faith are firmly grounded in the Germanic tradition. The Greek Civil Code adopted a verbatim translation of the german good faith provision which was inserted at the same place within the structure of the code. In German law, the concept of good faith is governed by the German Civil Code (Bürgerliches Gesetzbuch) in Article 242 which states that the debtor has to perform his obligation according to the requirements of good faith, taking customary practice into consideration. The correspondent article in Greek Civil Code is Article 288 which stipulates that the debtor shall be bound to fulfill the performance in accordance with the requirements of good faith taking also into consideration business usage. Even if the source of inspiration of Article 288 is german law, this article goes further than Article 242 of German Civil Code, stating that the debtor shall be bound to fulfill the performance in accordance with the requirements of good faith. In other words, this means that the contractual obligations are not to be only interpreted in good faith, but, moreover, each contractual obligation has to be adapted according to the demands of good faith. Therefore, the provision of Article 288 is mandatory law. Consequently, the observance of good faith in the performance of obligations cannot be limited or excluded in advance by a waiver or an agreement. According to Article 174 of Greek Civil Code such a waiver or an agreement is null and void.

The definition of good faith, as is stated in Article 288, is equivalent to the meaning of objective good faith. Objective good faith, which is used as a behavioral standard, is distinguished from subjective good faith, which refers to the conviction of the contracting party that his action is based on the existence of a right that he has. That is to say, subjective good faith refers to the contracting party's inner disposition, whereas objective good faith refers to the objectively honest behavior of the contracting party, regardless of what his inner frame of mind might be (Agallopoulou, 2005: 181).

Article 288 can be found after the first article on the Law of Obligations of the Greek Civil Code, exactly after Article 281 which provides that the exercise of a right is

prohibited where it manifestly exceeds the bounds of good faith, morality or the economic or social purpose of that right. The position of Article 288 in the structure of the code shows both capital importance of the provision and its binding character. Article 288 can be regarded as a general and basic rule concerning good faith. Article 281 of the Civil Code is a general provision preventing abuse of right in any field of the law. Article 281 has been inspired by the doctrinal developments in France since the beginning of the twentieth century. But the significance of Article 281 is also in accordance with the german doctrine of Verwirkung. The german correspondent of Article 281 is Article 226 of German Civil Code (prohibition of chicanery) which states that the exercise of a right is not permitted if its only possible purpose consists in causing damage to another. Greek Civil Code follows the objective doctrine of abuse of right, which means that a right should not be exercised in a unreasonable manner in order to harm others. In the light of Article 281 abuse of right is not dependent on the existence of fault. In order to invoke abuse of right there is only necessary to prove the objective harmful effects.

Taking into account the place of Article 281 and Article 288 in the Greek civil code structure it is important to underline the connection between the notion of abuse of right and the concept of good faith. Nevertheless, this connection is only apparently, because in most cases the concept of abuse of right goes beyond the principle of good faith. The concept of abuse of right it is stronger than the principle of good faith and it has a broader meaning. As mentioned above, abuse of right is not dependent on the existence of fault. The breach of principle of good faith means bad faith. And bad faith is considered to be a form of guilt, expression of deception, fraud and serious misconduct.

While the abuse of right is equivalent with objective harmful effects, good faith can mean different things depending on the context of the contract. In order to be abusive, the exercise of the right needs to exceed the limits set by good faith, this meaning that the abuse of right, as a concept, embodied the principle of good faith.

Article 288 also refers to business usage, which will be taken into account when it is not contrary to morality. In fact, good faith is the only binding criterion in assessing the conduct of the contracting parties. In case the business usage leads to a solution unacceptable by good faith, the court follows solely the principles of objective good faith, given the fact that the latter has greater force (Stathopoulos & Karampatzos, 2014).

Greek civil code recognizes the requirement of good faith during the pre-contractual phase. According to Article 197 of the Greek Civil Code in the course of negotiations for the conclusion of a contract the parties shall be reciprocally bound to adopt the conduct which is dictated by good faith and business practices. Article 197 represents a statutory version of theory of culpa in contrahendo. Good faith, as provided in Article 197, concerns the objective good faith and constitutes fair standards in negotiations. In stage of negotiations, good faith not only protects the parties, but especially reinforces the contractual freedom of negotiating parties.

According to Article 200 of the Greek Civil Code, article complementary to Article 288, contracts shall be interpreted in conformity with the requirements of good faith taking into consideration business usage. This provision, using objective good faith and business usage as criteria, offers a balanced interpretation method where both the true will of the parties and the objective meaning of the contract wording are taken into

account. Objective interpretation means that in every concrete case it should be examined what the average honest man could and should have gathered from a declaration of will made by the declarant.

Article 388 states that an unforseen change of the circumstances on which the formation of a contract has been based may allow the reduction of the debtor's performance or dissolution of the contract. This article, which represents a special application of the principle of good faith (Article 288), originates from the classic theory clausula rebus sic stantibus. For Article 388 to apply some requirements must be met: the contract must be a reciprocal one; a chance must have occured in the circumstances on which the parties based their original agreement taking into consideration good faith and business usage; the change in circumstances must have taken place after the conclusion of the contract; the change in circumstances must have been due to exceptional and unforeseen causes; the performance of the contract must have become excessively onerous for the debtor. Besides these conditions, it is necessary to mention that Article 388 takes effect through judicial intervention and not by operation of law. If these requirements are met, then the court may, at the request of the debtor, reduce his obligation to perform to the appropriate extent or rescind the contract (Gordley *et. al*, 2001: 208). It seems that the judge has an option, either to adjust the contract or to rescind it, but he is not obliged to adjust the contract in such a way that the prejudice is fully covered.

When the conditions stated in Article 388 are not met, there is still the possibility to recourse to the provisions of Article 288, when the fulfillment and the maintenance of the contract breach the principle of good faith. It is important to underline that Article 288 would not eclipse the practical value of Article 388 and applying Article 288 would not lead to the same solution that would be achieved if the requirements provided by Article 388 would be fulfield. Article 288 is less drastic than Article 388 and has a broader application.

3. DISTINCTIONS BETWEEN GOOD FAITH IN GREEK CIVIL CODE AND GOOD FAITH IN ROMANIAN CIVIL CODE

Good faith, traditionally analyzed as a principle specific to civil law, is elevated to the rank of constitutional principle as it finds its place in the Constitution of Romania revised in 2003, in Article 57 (respectively in Article 54 before revision), article which states that romanian citizens, foreign citizens, and stateless persons shall exercise their constitutional rights and freedoms in good faith, without any infringement of the rights and liberties of others. The principle of good faith had been enshrined in the constitutional texts even before it received specific regulation in the new Civil Code, although the principle of good faith has always been recognized as a general principle applicable to the whole system of law. In addition to the express consecration of the principle of good faith, Article 57 of the Constitution establishes an outward limitation regarding the exercise of rights and constitutional freedoms by the express enshrining of the principle of respecting the rights and liberties of others. It may be inferred that the

principle of good faith acquires a social dimension, by relating a person's own behavior to society in general and to other individuals in particular (Dobrilă, 2014: 180-181).

In Greek Constitution, in Article 5 paragraph one; there is a similar provision with Article 57 of Romanian Constitution. Thus, the article of Greek Constitution provides that all persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good morals. But the article of Greek Constitution does not expressly refer to good faith. The concept of good morals, embodied in Article 5 of Greek Constitution, refers to a code of conduct which was outlined in the consciousness of a society and whose observance was imposed by necessity, through experience and long practice. The content of this concept varies in time and space. Good morals have a broder meaning than good faith, but almost the same power in law filed, because good faith is based on the equity, being some certain psychological facts of moral conscience with the external manifestations under the form of words and commitments, asserting that honesty, form of manifestation of the conscience, within moral norms, enters the structure of bona fides; there were materialized a number of four virtues (moral values) components of honesty: loyalty, prudence, order and temperance (Gherasim, 1981: 9-10). Consequently, there is no difference between Article 57 of Romanian Constitution and Article 5 of Greek Constitution, the application of these articles will lead at the same results.

The Romanian Civil Code, as an innovative element brought to the romanian civil law system, provides in Article 14 paragraph one, that any natural or legal person shall exercise their rights and perform their civil obligations in good faith, in accordance with the public order and good morals, good faith being presumed until proven otherwise. Article 970 of former Romanian Civil Code (Civil Code of 1864) provided that agreements must be performed in good faith and oblige not only to what it is expressly stated, but to all the consequences that equity, custom or law can give to an obligation, according to its nature. The actual Civil Code does more than to transpose the text of Article 970 of the former Civil Code into a equivalent text, because by express regulation, as a text of general application (Article 14 of actual Civil Code), the principle of good faith, which, based on broad interpretation, was already admitted as a general rule in the romanian system law before the entry into force of the actual Civil Code, acquires autonomy and the value of a general rule (Dobrilă, 2015: 69).

Starting from bona fides praesumitur principle already applicable in our legal system, following the model of the provisions set by Article 2805 of the Civil Code of Quebec according to which good faith is always presumed, unless the law expressly requires that it be proved, the new Romanian Civil Code in Article 14 paragraph (2) expressly provides that good faith is presumed until proven otherwise (Dobrilă, 2013: 147).

Neither Greek Civil Code nor Romanian Civil Code defines the concept of good faith. But the enshrinement of good faith does not automatically imply its definition. Good faith relates to all types of contractual relationships and contracts; it can take different forms, depending on the specifics of each contract. By simply enshrinement the principle of good faith is raised to the level of public order.

In the Romanian Civil Code, the counterpart of Article 288 of Greek Civil Code is Article 1170, which defines the notion of good faith and the effects it has on a contractual level. According to Article 1170 the parties must act in good faith both regarding negotiation and conclusion of such contract and throughout its execution, without being able to remove or limit this obligation. Article 1170 contains a mandatory rule, without the ability of the parties to cancel or bring amendments to it. Moreover, Article 1170 outlines a certain type of good faith conduct, during the performance of contracts, the imperative of good faith requiring an obligation for initiative, cooperation or collaboration, in order to allow an efficient contract performance, and behaviours that affect these aspects are forbidden. However, the obligation of good faith does not require the protection of someone else's interests to the detriment of their own. As in Greek civil law, by the regulation of Article 288, in Romanian civil law the general principle of good faith becomes an important governing principle of the contract theory through the provisions of Article 1170. At a first glance one can note that Article 1170 is more restrictive and powerful than Article 288, because the first one expressly provides that the parties are not able to remove or limit the obligation of good faith. But this is only a natural consequence of the fact that the principle of good faith is mandatory to the parties. In fact, as legal force Article 288 of Greek Civil Code and Article 1170 of Romanian Civil Code are equal. But there is still a difference between these two articles, a difference which does not change the legal power of Article 288 and Article 1170. In Greek Civil Code, pursuant to Article 288 the performance must be fulfilled in accordance with the requirements of good faith taking also into consideration business usage. Article 1170 of Romanian Civil Code requires to the parties to perform only in good faith, being silent regarding business usage. This difference means that the scope of Article 288 is broader than its Romanian counterpart.

As Greek Civil Code does in Article 197, Romanian Civil Code recognizes good faith during the contractual negotiations. Thus, a special innovative element of the Romanian Civil Code regarding good faith in negotiations is the provision contained in Article 1183. The text of Article 1183 is an application of the more comprehensive principle of good faith, which aims at the exercise of rights and performance of obligations (Article 14) and contractual relationships in general (Article 1170). According to Article 1183 the parties have the freedom of initiation, performance and termination of negotiations and cannot be held responsible for their failure. The party who undertakes a negotiation is required to comply with the requirements of good faith. The parties cannot agree the limitation or exclusion of this obligation. It is contrary to the requirements of good faith the conduct of a party initiating or continuing negotiations with no intention of concluding the contract. The party who initiates, continues or terminates negotiations contrary to good faith is liable for the damage caused to the other party. To establish this damage the costs incurred in the negotiations, the waiver by either party of the other bids and any similar circumstances shall be taken into account.

Good faith in contractual negotiations is mandatory for parties in both Greek Civil Code and Romanian Civil Code. In this regard Article 1183 of Romanian Civil Code is more explicitly than his Greek counterpart. Thus, Article 1183 states that the parties cannot limit or exclude the obligation of good faith, provision which does not exist in

Article 197 of Greek Civil Code. Moreover, unlike Article 197, Article 1183 relatively outlines the concept of good faith by indicating what standards of conduct are excluded from the notion of good faith (it is contrary to the requirements of good faith the conduct of a party initiating or continuing negotiations with no intention of concluding the contract). Also, Article 1183 refers in the last paragraph to a situation which is contrary to the principle of good faith. Thus, the party who initiates, continues or terminates negotiations contrary to good faith is liable for the damage caused to the other party. In this case, the damages caused to the other party may consider the expenses incurred for the negotiations, any waiver by the damaged party from other offers or any other similar circumstances, which determine the existence of an injury. It is to be noted that Greek Civil Code does not contain any provision regarding the situation when if the aspects required by good faith for the initiation, continuation or termination of negotiations are breached, the guilty party may be liable in tort for the caused damage.

From the perspective of Article 1183 the pre-contractual negotiations are grouped around two main principles, good faith and contractual freedom. Such a regulation regarding the negotiations stage is inspired from both the Principles of European Contract Law and the Unidroit Principles and does not exist in Article 197 of Greek Civil Code, which requires in the contractual negotiations a conduct in accordance with good faith and business usage. The duty of good faith must always be subsumed to the principle of contractual freedom.

4. DISTINCTIONS BETWEEN GOOD FAITH IN GREEK CIVIL CODE AND GOOD FAITH IN THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (1980) AND IN UNIDROIT PRINCIPLES (2010)

The United Nations Convention on contracts for the international sale of goods provides in Article 7 paragraph one that in the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade. This is the only article which expressly refers to good faith. The placement of the good faith principle in the context of an operative provision dealing with the interpretation of the Convention creates uncertainties as to the principle's exact nature, scope, and function within the Convention.

The reference in Article 7 paragraph one to the observance of good faith in international trade does not carry a normative value. It is addressed to the interpretation of the Convention's provisions and seeks to describe good faith in international trade as it is used. The mentioned article does not give any further details on what the concept of good faith should mean.

In international trade the principle of good faith must not be applied according to the standards ordinarily adopted within the different national systems and must be observed in light of the special requirements of international trade. Nevertheless, it should be noted that the articles of Greek Civil Code concerning good faith, which are pure domestic regulations, are more comprehensive and efficient than Article 7 paragraph

one of the United Nations Convention on contracts for the international sale of goods. Unlike Greek Civil Code, Article 7 paragraph one does not refer to the application of good faith in negotiation, conclusion and performance of the contract, but only to the interpretation in good faith of the Convention. Also, in the United Nations Convention on contracts for the international sale of goods good faith is neither a general principle, nor a general obligation, like it is stated in Greek Civil Code. This means that the United Nations Convention on contracts for the international sale of goods does not impose a positive duty of good faith on contracting parties in order to be observed in the negotiation, conclusion and performance of the contract.

The provisions of Article 288 of Greek Civil Code resemble more with some articles of Unidroit Principles. It is true that under Unidroit Principles no specific national good faith concept can be applied but only one which fits for international trade relations. The most important article regarding good faith is 1.7 of Unidroit Principles, which states that each party must act in accordance with good faith and fair dealing in international trade. The parties may not exclude or limit this duty. Limited to the negotiations, art.2.1.15 states that a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party. Moreover, paragraph 3 of the same article is indirectly referring to good faith by defining its opposite, bad faith. Thus it is bad faith for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.

4. CONCLUSIONS

Good faith is a general principle with an important role in every contractual phase in both Greek Civil Code and Romanian Civil Code, although the last one is more comprehensive and, even, more restrictive.

Good faith can mean different things depending on the context of the contract and, consequently, there simply cannot exist a global doctrine of good faith. The positive role of good faith in contractual relations depends both on the interpretation and application of the concept of good faith by the courts.

Good faith remains an open concept, subject to interpretation, which will strengthen and will protect the contractual relations.

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THE CONTRIBUTION OF LEGAL FORMALISM IN THE CHANGES OF THE ROMANIAN LEGAL SYSTEM PAST 1989

Mihai LUPU
Romanian Academy, Iasi Branch,

Abstract*: An analysis of what formalism means for the Romanian legal system in the transition from a totalitarian to a democratic state is proposed here. In democratic states, theorists and practitioners of law habitually ponder between formalism and realism. Formalism involves framing the general situation (for regulation purposes) as well as the individual one (in the application or enforcement of the law) on the rule of law. In realism, the point of departure is the situation and by complex interpretations of it, often exceeding its legal aspects, a resolution is being sought for, in the situation of apparent or explicit conflict, aiming at more than the implementation / enforcement of the law - namely an extra-judicial end. Although formalism promises to reinforce objectivity, too zealous applications of the principle can, especially in a disjointed regulatory system, be compromising to the very purpose of the law. The approach will be more theoretical, without excluding some possible examples of how the system works, whilst reminiscent of excessive formalism prior to 1989 practices of law.*
Keywords*: formalism, legal system, the goals of law, post-totalitarianism*

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COULD PERSONAL CONVICTION BE A RELEVANT FACTOR FOR THE LEGAL SYSTEM?

The issue was raised before the Romanian Constitutional Court in 2001. The Constitutional Court resolved the exception of unconstitutionality of art.63 (2) of the Criminal Procedure Code, now repealed. The text of the law provides that evidence may be judged by the intimate conviction of the magistrate, judge or prosecutor. The author of the plea maintained that the terms "their conviction" and "after leading the conscience" in the second part of the text of the law, contradict the meaning of article 123 in the Constitution, according to which "justice is carried out in the name of law" and "judges are independent and subject only to the law".

After examining the plea, the Court considered that the provision is unconstitutional, based on the text of the Basic Law invoked (Decision no.171/2001,

Official Journal of Romania, Part I no. 387 of 16.07.2001). The intention of the legislator has emerged from analysis of the debates on articles of the draft Constitution and the report of the Drafting Commission (Official Journal of Romania, Part II, no. 35 dated 13 November 1991 and no. 36 dated 14 November 1991) discussing the proposed amendment on completing the final thesis par.(2) art.123 of the Constitution by "[...] and their intimate conviction". After the debate, the Constituent Assembly with a majority the amendment, expressing in this way, willingness for judges to submit "only to the law", and not "their intimate conviction".

The decision can be analyzed from several perspectives, but the approach initiated in this article concerns only the appearance of excessive formalism, leading to missing the very purpose of justice, namely the administration of justice. Formalism is also explored in terms of the links with the totalitarian system in place before 1989, exercising powerful centralized and ideological influences.

Albeit addressing but one of the state's activities, the conception on court action is that of not involving personal law by those who contribute to the creation, implementation and enforcement. Extrapolating, formalism spreads in all activities of the public authorities, and the consequences of this are multiple: legislative inflation, a reluctance of civil servants called to execute and enforce the law, limiting access to justice through excessive formalism of the courts.

The premises from which we leave are two: first the legal system is understood here as a system of activities; secondly, it is claimed the significance of checking for explicit exercises of personal convictions of those involved in this system as legislators, public officials or judges.

The law can be defined as a unitary and coherent, structured system of activity formed of legal subjects (participants in legal relations) who are using certain tools (interpretation skills), according to predetermined rules (normative legal acts or individual), to work on a specific object of activity and measurable results (Lupu 2011, 231-238). Activity systems may include sub-systems. Some elements of the system activity have greater stability than others, as it is the Constitution in relation to the law.

In order to ensure cohesion, a community is governed by a set of rules included in the concept of ethics. Applied ethics constitute the moral practices. In outlining the first ethical reflexes, an important role is played by the family and the immediate community. In time, moral practices framing the activities of family and community are expected to infuse the human personality and function as an intrinsic element of it. Only later in life, individuals as community members become increasingly aware of their fundamental rights and freedoms. With the change of political regime, what was once the rule of law melts within the moral practices framing a morality system clashing with the changes in the new system of law? While the legal system can radically change very quickly, moral practices stand the test of time and therefore resist changes in law (Lupu 2015, 36).

Under the system of law, the manifestation of will has a particular relevance. A simple internal process, reasoning or impulse has no effect. However, the manifestation of will of a legislator, or of a civil servant called to enforce the law or to organize law, or that of judges applying the law, is preceded by an argument called interpretation. Purely objective interpretation is an unattainable ideal. Juridical intervention on social relations

and the ways in which this intervention is carried on, remains an issue with a strong subjective component. This component emerges from the legal requirements regarding the quality of persons that may hold positions or public offices [for access to a magistrate, candidates must "have no criminal record or fiscal record and enjoy a good reputation" - art. 14 para. (2) c) of Law no.303/2004, republished in the Official Journal of Romania, Part I no. 826 of 13.09.2005] or from the principles governing the exercise of fundamental rights and freedoms ("Romanian citizens, foreign citizens and stateless persons shall exercise their rights and freedoms in good faith, without infringing the rights and freedoms of others" - Art. 57 Constitution, Official Journal of Romania, Part I no. 767 of 31.10.2003). The fact that a particular conduct is a moral criterion for the choice / appointment to public office signifies the important role that "conviction" / "awareness" maintains within the legal system.

THE SYSTEM OF LAW IS, IN ITS NATURE, FORMALIST

Hans Kelsen' pure theory of law has notoriously coined the notion of legal formalism. Other sciences' specific causality (if A then B is / will be) shall not apply to science of law. Law awards its' specific relationships to attribution (if A, then must B). The number of items in a string of attributions is not the number of items in a causal chain, unlimited, but limited. There is a final point of the attribution.

The principle used is the release of law from all foreign elements of it. The legal provision works as interpretation scheme. The one ordering, enabling or empowering wants, and the one to whom the order, permission or authorization is addressed *must*. *Must* is being used in a wider sense than the current one.

A norm is neither true nor false but only valid or invalid. Constrained behavior is not mandatory; mandatory is the sanction.

Law-making should be seen as applying the Constitution, the general rules of which empower people to establish general rules that states coercive acts.

The basic norm delegated the first constitution in history to establish procedures for the purpose of issuing norms stating coercive acts.

The requirement to separate the right moral and therefore entitled justice, it just means that if an order of law is judged as moral or immoral, right or wrong, it expresses the relationship of legal order with one of the many moral systems possible and not single moral report will be issued in this way a value judgment only relative, not absolute, and that the validity of an order of positive law is independent of correspondence or lack of correspondence in relation to a certain moral system. Where morality is not a consideration, two conditions are necessary for a legal system to exist: to be widespread, though not necessarily universal; to recognize as a moral obligation of obedience required by law.

Production of general rules of law, that the legislative process is regulated by the constitution and the laws regulating formal or procedural materials law enforcement through the courts and administrative authorities.

HLA Hart in Kelsen's theory further, claiming that moral examination of the law is the only instrument that can protect citizens in the face of authority abuse of power.

The principle of justice is based on two ideas: metaphysical premise of the existence of the original balance between good and evil; when this balance is broken by human intervention, it must be restored; premise metaphysics, ethics and equality of individuals: being equal by nature, people should be treated equally. The principle can be formulated as: treating likely cases that are alike and differently cases that are different. Also, when the moral character of a law is being analyzed, the law's rightness should clearly distinguish from the righteousness in law enforcement.

Superior Law is taken as axiomatic. But what happens when it confirms the severe curtailment of fundamental rights or a totalitarian system? The legal positivism theory can justify such a regime. Giving legal value to the totalitarian ideology, fascist or communist, next formalism compromise the very idea of constitution as law designed to stop abuse.

The Pure Theory of Law (system adjusts itself through normal reporting to upper norm) only addresses a normative analysis system, extra-judicial considerations eviction. The system is not open, but closed. The closed system provides a legal purpose when it should provide an extra-legal one (Dănișor 2013, 14).

FORMALISM - A POSSIBLE OPTION FOR THE LAWYER DURING THE TRANSITION FROM A TOTALITARIAN REGIME TO A DEMOCRATIC POLITICAL REGIME

Change of political regime generates hope for a smooth transition to a society structured on principles fundamentally opposed to those who led to the revolt against the old system. The transition, however, in most countries that have experienced a totalitarian regime has proved difficult.

If the establishment of a totalitarian regime is due to exceptional circumstances or only aware of people as exceptional, with the promise of a better society, but only after a period of sacrifices made and the elimination of those who induced the crisis, revolt against totalitarian regimes strives for an immediate creation of a society designed to ensure a life of rights and fundamental freedoms, including, primarily, changing the regulatory system.

In developing a post-totalitarian legal system, in terms of the objective pursued, there have been outlined three main areas: regulation of redress against the former regime abuses; developing a regulatory framework to ensure the transition; legislative measures specific to the new regime. Understanding this new reality was quite difficult for lawyers educated and trained in the legal system previously. The solution could be only formalism, anchoring more the letter of the law than its' spirit.

In order toensure the shift from a totalitarian to a democratic society, new constitutional laws are relatively easy and quickly adopted. Typically, the Constituent Assembly borrows, sometimes without prior censorship, the constitutions of democratic states with richer traditions. Consultation of people in adopting the Constitution, in the immediate aftermath of regime change, does not pose big problems. The revolutionary enthusiasm, objective criticism, especially without a prior exercise, it's doable. Contradictions arise with and application of constitutional government.

More problematic, it seems, is "building" infra-constitutional legal system. Social division specific to the totalitarian regime, with all its' personal and group "purchases", is felt only now. The trend is for a large part of society to maintain the status quo - community. Expressed formally, this trend involves renouncing of the first two directions mentioned above and adopting specific legislative measures focusing on the new regime. The motivations may be unable of repairing mistakes of the past and the need for immediate changes designed to blur the differences from countries with established democracies. Infra-constitutional law making process reveals conspicuous contradictions between constitutionally enshrined democratic values and specific manifestation of totalitarian ideology above. The contradictions will increase with execution and application of laws and law enforcement by justice.

Communism was not just a certain species of political regime, one of the many forms of dictatorship that mankind has experienced since antiquity. It was unique in trying to shape the human psyche, in its' hubris myths and in its' perseverance to enrol people and force them to behave after some Pavlovian recipes for happiness. The myth of a classless society where all political and economic tensions will be abolished in favour of a paradise of equality and human dignity functioned as an excuse for voluntary retirement from militant communists use of reason (Tismaneanu, 1997: 23, 42).

Education in the spirit of the values proclaimed before 1989 required the formalistic approach to the right. The new realities (private property, market economy, political pluralism) were more difficult to close in objective terms and, therefore, the incipient solution was formalism. Adopting fundamental law in 1991 gave expression by regulating the supremacy of the Constitution and by institutionalizing constitutional review exercised by the politico-judicial authority which does not fall within any of the three traditional powers, legislative and judicial, Kelsian normativism, essentially formalist.

The moral character of a rule of law is one of the criteria for its validity. In the words of Kelsen, this is the thesis that social order after the law is one that does not conflict with accepted moral norms, if it does not impose a kind of morally prohibited conduct, or does it rejects an action morally commendable.

Since the values enshrined in the communist period corresponded with heavy interests of the majority population, there is a considerable cleavage between the legal system and society. Cleavage could be covered only by exaggerating formalism. Passing over Kelsen' s axiom (fundamental law includes moral values essential for strengthening community over many generations, expression, while human nature), right, component imperative of State (included in the concept of sovereignty) It happens to be, often, as in the case of communism, set at the highest level of values contrary to fundamental rights.
Communists tried not only to impose a conducive view of human nature, but to change this nature in a fundamental way. And it could not do that by essentially formal means: no education, but physiotherapy; not persuasion but coercion often transformed into abuse.

The lack of juridical value of Constitution's provisions stems out of regulating virtually anything that deprives it of efficiency and finality. The individual is unable to understand the social mechanisms that should protect him/her from abuses of power.

Totalitarianism is reinforced by transforming the human being into an object to be handled, even created in the exercise of power (Dănişor 2012: 10).

Before 1989, the communist ideology influenced everything about creation, implementation, and enforcement law. After 1989, the new system is nearly incomprehensible to lawyers and the only alternative in practicing law was strict adherence to the letter. Or, the rule of law means formalism. Hence the hesitation many judges to directly apply the constitutional norm (Constitutional Court Decision no.1 of 12.01.1993, Official Journal of Romania, Part I no. 129 of 17.06.1993).

If in the case of formalism, the judges may further lead to a solution that expresses at least part of the idea of justice (under the guise strictly applied) in totalitarianism, the very idea of justice may be compromised. The scope of possibilities is much higher. In addition, the judge is himself relieved of the burden of sanctions. The best example is the evolution of the concept of the constitution. If the first constitution could not be conceived in the absence of regulation of rights and freedoms and the principle of separation of powers, later became the fundamental law, the supreme value, which regulates the most important relations in the state, relations on the establishment, maintenance and exercise. Setting limits to the exercise of power has not been addressed by the Constituent Assembly.

The educational system has compromised the development of legal education. Many of the great teachers, also politicians of the forefront post 1989, were removed from education. Unlike other areas, for which there is particular interest (sciences and engineering) as the country's industrialization interest are rising in a new economical order, social sciences experienced a striking involution. Many of the well-recognized lawyers in the country, some politically active, were even forbidden to practice (Vespasian Pella, Angelescu, Octavian Ionescu Paul Negulescu, lieutenants, Nicolae Steinhardt, Victor Fall Emil Haţieganu, Istrate Micescu).

Law school programs were overwhelmingly targeted due to drastic restriction of fundamental rights, only to strictly legal matters. The system was preserved after 1989. If in the prestigious universities in the world are trying interdisciplinary education for an institution to be understood in its complexity, first in extra-science perspectives (economics, psychology, political science, sociology) and then from a legal perspective, in Romania, openness to a profound understanding of legal phenomenon is still insular (Organic Law School, 2012).

The judge, according to current regulations, obeys the law. Removing from the law of „consciousness" as a court of justice can turn reporting into a simple exercise in formal logic. Several magistrate qualities such as courage and empathy are annihilated by a purely formal enforcement. The solution is anchored in the law strictly. The text gives such satisfaction and no extra-judicial solution designed to bring social balance. Justice becomes easy to judge, but the situation remains basically an unresolved conflict. Often, judicial decisions are not implemented aspect sanctioned European Court of Human Rights - Bogdan Voda Greek-Catholic Parish v. Romania (2627/2004).

Possible consequences of excessive formalism are: legislative inflation, almost unknowable and harder, executed or implemented; reluctance of government officials to

resolve the demands of their competence, which generates promoting legal actions thus unduly loading the courts to change property titles; inapplicability judgments.

Excessive formalism generates the need to regulate when it is not. As I notice a familiar doctrine, referring to the inclusion in the Constitution of institutions such as "democratic values of the Romanian people" or "the ideals of the 1989 Revolution," "The Constitution loses the legal form by the need to regulate anything what practical a lack of efficiency and finality. The individual is unable to understand the social mechanisms that should protect it from abuses of power.

However, it should be noted that, in some cases, excessive formalism was sanctioned. In 2003 (Art. I pt. 9 of the Emergency Ordinance no. 58/2003, Official Journal of Romania, Part I no. 460 of 28.06.2003) was introduced into the Civil Procedure Code art. 3021; by that mandatory elements of the appeal were set unconstitutional in relation to art.21, art.24 para. (1) and Art.129 of the Constitution. Taking into account the European practice, the Constitutional Court found (Decision no.176 of 24.03.2005, Official Journal of Romania, Part I no.356 of 27.04.2005) that the provisions of that article, which is sanctioned by absolute nullity failure specify the contents of the appeal elements (domicile or residence of the parties or, for legal entities, name and registered them and, if applicable, registration with the Trade Register, or registration in the register of legal entities, registration code or where appropriate, the tax code and bank account and - if the appellant lives abroad - an address in Romania, which is to be made all communications regarding the process), which also are found in the folder background, appearing as a formality unacceptably rigid, seriously endangering the effectiveness of the remedy and exercise unduly restrict access to justice. Moreover, in the system of the Civil Procedure Code, the appeal is conceived as an extraordinary remedy, i.e. as a last level of jurisdiction in which litigants can defend their subjective rights. Establishment sanction of invalidity for lack of such formal requirements without any possibility to remedy the omission, deprives the appellant, without reasonable justification, the opportunity to examine the path of appeal, its arguments based on how illegal settlement dispute which is part of the judgment under appeal.

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PRESENT STATUS OF FREEDOM OF EXPRESSION UNDER THE NEW ROMANIAN LEGAL ORDER

Carmen MOLDOVAN
"Alexandru Ioan Cuza" University of Iași
Faculty of Law
Iași, Romania
carmen.moldovan@uaic.ro

Abstract: *Freedom of expression constitutes a sine qua non element of a democratic society and of the European legal order. The European Convention on Human Rights and its interpretation by the European Court of Human Rights is considered as jus communis for the Member States who, directly or indirectly, must comply with the principles stated in its case law. Over the recent years, an intense debate took place in Romania concerning the imperious need to decriminalize libel and slander, which were deemed an exaggerate interference in the exercise of freedom of expression. The main argument of this point of view was that the case law of the European Court of Human Rights imposes such an obligation for the Member States. The New Criminal Code entered into force in 2014 and decriminalized libel and slander. The present article aims to analyze if there are substantial changes in the Romanian legal framework of freedom of expression, if the changes were necessary under the influence of the European Court of Human Rights case law and to identify the restrictions that may be imposed o its exercise.*
Keywords: *Freedom of expression, national interferences, legal status, limits.*

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THE CONSTITUTIONAL FRAMEWORK ON FREEDOM OF EXPRESSION

Freedom of expression is enshrined in Article 30 of the Romanian Constitution (Republished in 2003), which reads as follows: "(*1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, whether by spoken words, in writing, in pictures, by sounds or any other means of communication in public, is inviolable. (2) Any kind of censorship is prohibited. (3) Freedom of the press also involves free founding of publications. (4) No publication may be suppressed. (5) The law may require that the mass media disclose their financing sources. (6) Freedom of expression shall not be prejudicial to dignity, honour, privacy of person, nor to one's right for his own image. (7) Defamation of Country and Nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morals are forbidden by law. (8) Civil liability for any information or creation released for the public falls upon the publisher or producer, author, producer of an artistic performance, owner of copying*

facilities, or radio or television stations, subject to the law. Indictable offences of the press shall be established by law."

These constitutional provisions establish a synthesis fundamental right (Deleanu, 2006: 503) with a complex content and scope (Moldovan, 2012: 86) having a series of components: freedom of speech, press freedom, freedom of broadcasting and cinema. The Basic Law provides the legal framework of what constitutes admissible discourse and expression irrespective of the concrete externalized form: by words, in writing, images or sounds. Also, the reading of the provisions mentioned above clearly describes a limited freedom of expression. The Romanian Constitution does not guarantee an absolute freedom of expression. Instead, its abusive exercise may justify interferences from the State bodies in order to protect individual rights (such as honour, human dignity, private life, the right to protect its own image) or general interest (such as the unity of the country, interdiction of defamation of the nation, incitement to a war of aggression, incitement to hate based on reasons such as nationality, race, religion, incitement to discriminate, to territorial separatism, public violence or to obscene manifestations).
An abusive exercise of freedom of expression by breaking the boundaries set in these provisions may open the issue of legal liability in two forms: civil and criminal.

The possibility of imposing limits to the exercise of freedom of expression is well known and established by all the international instruments that guarantee fundamental rights – Universal Declaration On Human Rights, International Covenant on Civil and Political Rights, European Convention on Human Rights, Charter of Fundamental Rights of the European Union.

Article 10 of the European Convention on Human Rights provides in its paragraph 2 the restriction clause of the freedom of expression and the legality requirements of the national interference. Firstly, the national law must prescribe the interference. Secondly, the interference must pursue a legitimate aim which may consist in protecting a public interest - "the national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals", or "for maintaining the authority and impartiality of the judiciary" – or an individual right – "the protection of the reputation or rights, for preventing the disclosure of information received in confidence".

A comparison of the two legal texts reveals the evident similarities in setting the limits to the exercise of freedom of expression. This situation is due to the high influence of the European Convention for the national legal systems of the Member States (van Dijk et al., 2006).

The Strasbourg Court has a very rich case law concerning freedom of expression and its limits proving to Member States substantial principles in solving the conflict between this value and other fundamental rights. The approach of this court is of a great importance due to the lack of an express hierarchy between different fundamental rights and liberties. However, its interpretation can not be seen as absolute and must be applied case by case.

THE STATUS AND LIMITS OF FREEDOM OF EXPRESSION FROM THE CIVIL PERSPECTIVE

As a novelty of the present legal order, the right to free expression is guaranteed by the 2009 Civil Code that entered into force at 1 October 2011. Article 70 [Freedom of expression] is contained in Section 3, Chapter II of Title II and it reads as follows: *"(1) Everyone has the right to freedom of expression. (2) The exercise of this right can not be restricted except in the cases and limits laid down in Article 75 ".*

This clause has a declaratory nature; it does not contain a definition of the freedom of expression nor elements that could be used to identify its cope. Therefore, this concept should be interpreted in the most extensive manner, taking into consideration the terms of the Basic Law as interpreted by the Romanian Constitutional Court including all forms of communication of ideas and information and also, the interpretation given to Article 10 from the European Convention by the Strasbourg Court.

By analyzing the topography of the legal provisions of Title II [The individual], Chapter II [The respect due to the human being and its inherent rights], Section 3 [Respect of privacy and human Dignity] and the fundamental rights mentioned after Article 70 – the right to privacy in Article 71, the right to its own image in Article 73, one could draw the conclusion of an hierarchy between freedom of expression and the other fundamental rights mentioned, having on top of it the freedom of expression. The reasoning behind this wording and normative architecture could be that the legislator acknowledged the thorough relationship between free expression and other fundamental rights inherent to the individual and decided to regulate them in the same section.

The solution adopted by the Romanian legislature is an interesting one. However, we can not consider that this status is a direct consequence of the interpretation given by the European Court, by which it constantly avoided to establish a relationship between freedom of expression and other fundamental rights and affirmed that "defending the reputation and rights of others" constitutes a legitimate restriction provided by Article 10 paragraph 2 of the European Convention (Tournacheau and Jully v. France).

The Romanian Civil Code contains a general clause of limitation, in Article 75, which reads as follows: *"(1)It is not a violation of the rights provided in this section the interference that is permitted by law or international conventions and covenants on human rights to which Romania is a member. (2)The exercise of constitutional rights and freedoms in good faith and in compliance with the covenants and conventions on human rights to which Romania is a member does not constitute a violation of the rights provided under this section".*

These provisions basically make reference to the principles to be applied to restrict the exercise of fundamental rights established by international legal instruments and interpreted by international bodies, the most direct link being with the European Convention on Human Rights. There are also differences, as paragraph 2 of Article 75 explicitly makes reference to the requirement of good faith in exercising fundamental rights, which is not found in Article 10 of the European Convention, instead it has been developed in the Court`s jurisprudence (Bladet Tromsǿ and Stensaas v. Noway).

Being a general limitation clause, it has the criticisable disadvantage of permitting restrictions on the right to human dignity, which is seen as an absolute right in the European Convention. On the other hand, in contrast to the European instrument, the Romanian legislature chose to provide protection for the memory of the deceased person in Section 4 [The respect due to the person after his death].

One can easily observe that the Civil Code does not contain special provisions concerning press freedom, the coordinates of journalists` work and conditions on their liability, as mentioned in Article 30 paragraph 8 of the Basic Law. Therefore, a vacuum continues to exist in this regard, creating favourable conditions for the abuse of freedom of expression by the media. However, the hypothesis of an unlimited free speech in this case has no legal support since the press activity cannot be conceived as being outside the law, general rules and principles applicable to all subjects should be applied in its case (Moldovan, 2013).

THE LIMITS OF FREEDOM OF EXPRESSION FROM THE CRIMINAL LAW PERSPECTIVE

4.1 Decriminalizing libel and slander

Currently, the Romanian Criminal Code [Law no.286 of 17 July 2009, entered into force at 1st February 2014] decriminalized libel and slander, leaving human dignity, honour and reputation to be protected only by civil means, despite the wording of Article 1 of the Basic Law that considers human dignity as a supreme value of the Romanian legal system. The previous recent history of libel and slander under the 1968 Criminal Code which regulated libel and slander in Articles 205-207, took an interesting twist in 2006. By Article I of the Law no. 278/2006 amending the Criminal Code, Articles 205-206 were abolished. The Romanian Constitutional Court by Decision no. 62/2007 (published in the Official Gazette no.104 of 12 February 2007), held that Article I of the Law no. 278/2006 was unconstitutional. According to the Romanian Basic Law, the rulings of the Constitutional Court are generally applicable and compulsory. This finding was overturned by the High Court of Justice, which held by Decision no. VIII of 18 October 2010 (published in the Official Gazette no. 416 of 14 June 2011) that Articles 205-206 of the Criminal Code were no longer in force. This situation determined intense academic debates on the relationship between the rulings given by the Constitutional Court and those of the High Court of Justice, debates that completed with the entry into force of the new Criminal Code.

In reality, by adopting this solution, the legislature did not comply with a positive obligation stated by the European Court of Human Rights. A thorough analysis of its case-law on this aim of restricting freedom of expression reveals that this court established in many cases that deprivation of liberty for insult and slander constitutes a disproportionate sanction (Cumpănă and Mazăre v. Romania). However, the Court did not impose the obligation to modify the Romanian legal order by decriminalizing these offences.

In the recent Case of *Morar v. Romania* (7 July 2015- Case no. 25217/06), the European Court ruled that the conviction for slander of the Applicant, who was a satirical journalist constituted an unnecessary interference in the exercise of the press freedom, taking into consideration all the circumstances of the case (the satirical nature of the journal, the general interest of the issue addressed in the article, the high amount of the civil damages to which he was convicted by the national courts). In its judgement, the Court did not analyze the opportunity of the existence of the legal provisions. Therefore, sustaining the idea of a necessity to decriminalize these offences as a result of the constant interpretation of the European Court may be surprising.

The Romanian legislature chose to defend by criminal means the right to magistrates` reputation, as a part of the direct protection of authority and impartiality of the judiciary (expressly provided as a legitimate aim in Article 10 of the European Convention). The control exercised by the European Court for this type of limitation is more severe than in case of protection of morality or national security (Oberschlick v. Austria).

Article 278 of the Criminal Code regulates the *violation of the hearing solemnity* which consists of "*the use of insulting or obscene words or gestures likely to disrupt the work of the court by a person who participates or assists in proceedings taking place in court*." The Explanatory Memorandum to the new Criminal Code notes that the existence of this offence is the result of decriminalizing libel and slander. Moreover, it is underlined that by primarily protecting the solemnity and proper conduct of court proceedings, the incriminating text does not aim to protect the honour and reputation of the judicial authority representatives.

Unlike the previous Criminal Code which in Article 271 -1 protected at a secondary level the dignity and honour of judicial bodies, the present provision seeks to sanction the insulting manifestations against any person – judge, prosecutor, registrar, parties, representatives of the parties, attorney - who is in a court room, whether or not directly participating in the procedures. From this perspective, it appears that the present normative text enjoys a more extensive scope.

4.2 Protection of privacy as a limit of the freedom of expression

The Criminal Code explicitly guarantees protection of privacy by criminalizing the offense of violation of privacy, in Article 226, Chapter IX [Criminal offenses affecting home and private life], as a result of the reception of the principles stated in the jurisprudence of the European Court in balancing the conflict between freedom of expression and privacy. Moreover, the same aim is pursued by criminalizing the offense of disclosure of legal professional privilege, in Article 227 and harassment in Article 208.

Under Article 227 (1) of the new Criminal Code the offense of disclosure of professional secrets consists in "*the illegal disclosure of data or information on the private life of a person likely to cause injury to a person, by the one who has knowledge of it by virtue of his profession or position and who has an obligation to maintain the confidentiality of these data*."

The text explicitly relates to data or information about a person's private life, on which there is an obligation of professional secrecy. The most important feature of this offence`s content is that it does not require harm or prejudice to occur to the person that provided the information or to the person to which the data or information relates to.

4.3 Secrecy of the criminal procedure

The new Criminal Procedure Code states the principle of benefit of the doubt in Article 4 paragraph 1. This relates to Article 285 paragraph 2 which states that *"The procedure during the criminal investigation is not public*", thus being created the framework to excludes the discloser to the public of information obtained in this phase of the criminal trial, as stated in the case law of the Strasbourg Court (Worn v. Austria).

This provision is strongly related to the offences of placing pressure on justice, contained in Article 276 and undermining justice, as defined by Article 277 of the Criminal Code. According to Article 276, the offence consists of "*The act of an individual who, during an ongoing legal proceeding, makes false public statements regarding the commission, by the judge or by the criminal investigation authorities, of an offense or of a serious disciplinary violation related to the investigation of the cause in question, in order to influence or intimidate them* (...)."

The offence of undermining justice refers to acts of unlawful revealing of confidential information concerning a criminal investigation, made by a magistrate or by another public servant who has become aware thereof by virtue of their office (paragraph 1) or unlawful disclosure of confidential information in a criminal case, by a witness, expert or interpreter, when a prohibition to do so is set out in the criminal procedure law.

5. CONCLUSIONS

The rich case law of the European Human Rights Court regarding the balance between freedom of expression and other fundamental rights includes principles to be applied in such circumstances. However, they cannot be considered as absolute and abstract and must be applied case by case. The recent changes in the Romanian legal system largely perceived these principles and set clearer requirements of the restrictions on the exercise of freedom of expression. A criticism to the present legal status of freedom of expression is that it may appear as an absolute fundamental right, as result of the exclusion of protection by criminal means of dignity through libel and slander and by the continuous lack of provisions on press activity. Such a hypothesis is contrary to the relative character of freedom of speech universally recognized and also to the interpretation of the European Court of Human Rights which does not provide positive obligations for Member States to decriminalize libel and slander.

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CONSIDERATIONS ON THE EUROPEAN ARREST WARRANT

Rodica PANAINTE
University "Alexandru Ioan Cuza" Iasi, Law Faculty
rodica.panainte@yahoo.com

***Abstract**: In this article we proposed to analyze the institution and also the procedure of the European Arrest Warrant, both regulated by the Council of European Union Framework Decision 2002/584/JHA of June 13th 2002. This instrument has been conceived in order o replace the existent and old extradition system of the member states, requiring that each national judiciail authority witj an executory role recognize the surrender request of another member state. In the first part we present the context in which the framework decision was adopted, focusing on the fact that the idea of an European Arrest warrant is based on the European Union s objective to create an unique space of freedom, security and justice, and for that purpose, the institution of the extradition, as a form of cooperation, was too slow and complex, so that it had proved to be inefficient in the actual context of social development. We also analyse if the warrant is a new form of cooperation or another form of the extradition system and also the elements of novelty brought by the warrant, such as the principle of reciprocical recognition, the judicial character of the procedure, the reason for the refusal of execution. In the last part we present the Romanian legal approach by the Law no. 302/2004, concerning the international judicial cooperation in criminal matters.*
***Keywords**: international crime, extradition procedure, European arrest warrant, mutual recognition, principle of double criminality.*

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FROM EXTRADITION TO THE EUROPEAN ARREST WARRANT

Globalization, the opening of borders, guaranteeing the freedom of movement, liberalization of trade in goods and services, as well as the continuous development of means of communication have given a new dimension to international crime. Free movement of people has opened new possibilities for criminals, who move easily and cooperate regardless of the borders and the different legal systems that still exist in the Member States. [1]

The only way one can meet the challenges of contemporary crime, characterized by the emergence of new ways of manifestations of the criminal activity, by the unprecedented mobility of criminals and also by the development of transnational criminal organizations and networks, is finding the most flexible means of international cooperation, as this phenomenon is beyond the response capacity of states considered

individually, so that it can not be countered effectively but through the united efforts of all states.

EU Member States practice has shown that the mere reconsideration of the traditional principles on extradition is a cumbersome approach, which is opposed by the states, and which is unable to provide effective and rapid solutions in judicial cooperation in criminal matters. EU reaction to this phenomenon was illustrated by the treaty of Amsterdam, which was an important step in the development of international judicial cooperation in criminal matters at the level of the Union. [2]

The idea of a European arrest warrant is based on the objective established by Title VI Art.29-42, former Art. K-K9, TEU, namely to provide citizens with a high level of protection, in an area of freedom, security and justice, by developing common action of the Member States in the field of police and judicial cooperation in criminal matters, and by preventing racism and xenophobia. It was clear from the beginning that this objective can only be achieved by preventing and combating organized and unorganized crime, through cooperation between police, customs and judicial authorities, both directly and through Europol and, where necessary, by harmonization of the criminal law in the Member States. [3]

Common action in the area of judicial cooperation in criminal matters is concerned, among others, with facilitating the extradition procedures between Member States by ensuring free and equal access to justice, as well as by guaranteeing the fundamental rights and freedoms.

Traditional judicial cooperation in criminal matters is based on a variety of international legal instruments that, in their majority, are characterized by the principle of request: a sovereign state addresses a request to another sovereign state, which then decides whether to grant it. This system is, however, extremely slow, because of its complexity, or for this reason, the European Council met in October 1999 in Tampere with the declared intention to create a Union of freedom, security and justice, for which purpose it proposed that the principle of mutual recognition of judicial decisions should become the cornerstone of judicial cooperation in both criminal and civil matters.

This is the reason why, taking advantage of the new instruments of cooperation introduced by the Amsterdam Treaty under Pillar III, the mechanism of surrendering a person within the territory of a Member State at the request of the judicial authorities of another Member State was completely reformed thorugh a framework decision. Thus, it was adopted a fundamental document in this field, namely the EU Council Framework Decision no. 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (published in the Official Journal of the European Communities No.190/1 /18.7.2002) thorugh which the Council's decision taken in Tampere in 1999 was materialized, namely that between the Member States, the formal extradition procedure is to be replaced by a simplified surrender procedure that runs between the issuing judicial authority and the executing judicial authority, which may be assisted by a central, appointed authority in the Member States, or by the contact points of the European Judicial Network. (The European Judicial Network in criminal matters was created by the Council Joint Action 98/428/JHA of 29 June 1998 consisting of contact points, designated by each Member State, intended to facilitate the judicial

cooperation between Member States, the provision of necessary legal and practical information to national judicial authorities and the coordination improvement of judicial cooperation).

The European Commission, after the European Council in Tampere, using the right of legislative co-initiative introduced in Pillar III by the Treaty of Amsterdam (Art. 34 para. 2 TEU) began drafting a European arrest warrant, which was almost completed when the terrorist attacks took place on 11 September 2001 in the USA. The events in the USA have led to the acceleration of the adoption procedure of the Commission's proposal, so that, only a week after the attacks, the European Commission presented the proposal for the Framework Decision on the European arrest warrant and the surrender procedures between Member States. Subsequently the European Council included the European arrest warrant in the European Counter-Terrorism Strategy, although its scope is not limited to terrorist offences.

The new system provided by the EAW has replaced since 1 January 2004 the traditional procedures of extradition between Member States, procedures that were no longer adapted to the requirements of a common space of freedom, security and justice, but exposed to crimes, in which national borders are becoming less important in order not to be impediments in the fight against crime.

THE DEFINITION OF THE EUROPEAN ARREST WARRANT

According to Art.1 of the Framework Decision, the European arrest warrant is a judicial decision issued by a competent authority of a Member State with a view to the arrest and surrender by the competent authority of another Member State of a requested person, for the purposes of conducting a criminal prosecution, standing trial or executing a custodial sentence or detention order. [4]

As it results from the definition, the Decision uses the term surrender for what was, in the classic procedure, considered to be extradition, which generated controversy between one part of the doctrine, which held that the European arrest warrant is merely a simplified form of extradition, and another party which claimed that it is a new institution, a new form of international cooperation between Member States. Although the majority claims that it is a new institution, it is interesting to note that this controversy is reflected even at legislative level. Thus, the interpretation that the European arrest warrant is not a new form of cooperation has already been assimilated by some Member States, which do not consider surrender a new and different mechanism than extradition or a sui generis procedure. Thus, the UK, in order to implement the Framework Decision, made the necessary amendments to the law on extradition - Part of the extradition act 2003 -, therefore without adopting a new law on the European arrest warrant.

But according to the European Court of Justice, the transition from extradition to the European arrest warrant constitutes a complete change of direction. Both are institutions that serve the same purpose - to surrender to the competent authorities of another state a person who has been accused of or convicted for an offence, so that he/she can be subjected to a criminal prosecution, a trial or an execution of a sentence. But the similarities between the two institutions stop here, since, with extradition the connection

is established between two sovereign states, the requesting and requested state, which act on independent positions, whereas with the European arrest warrant the connection is established directly between the competent judicial authorities in those two states. (Streteanu, op.cit., p.6). The transformation of the execution procedure of the European Arrest Warrant into a judicial one is proven by the fact that most Member States authorize direct contact between judicial authorities in different stages of the procedure.[2]

THE PRINCIPLE OF DOUBLE CRIMINALITY

It is the principle which entails that the act which is the subject of the extradition request be stated in the legislation of both states, the requesting State and the requested State. This does not require the act to have the same name or be part of the same category of offences in the two legislations, but what matters is that the act in its materiality to be stated in the criminal law of both states. The European arrest warrant brings a novelty in terms of this specific principle of extradition. Thus, the Framework Decision, in Article 2 paragraph 2 nominates 32 offences for which, if a European arrest warrant is issued, the surrender shall be granted even if the condition of double criminality is not met, and if that offence, regardless of its name in the issuing State, is sanctioned by its law with a custodial sentence of at least three years. The 32 offences include participation in a criminal organization, terrorism, trafficking in human beings, trafficking in narcotic drugs, weapons, explosives, sexual abuse and child pornography.

This list of offences can be at any time extended by unanimous vote of the Council. As for the other offences that do not meet the two conditions mentioned above, the executing authority may refuse the request for surrender, when it considers that the guarantees for the protection of the rights of the extradited person provided by the issuing State are not sufficient. The main argument for removing double criminality refers however to the need to check for this requirement. It was considered that, in some cases, this verification can cause an extension of the duration of the extradition procedure.

THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION

As stated in the Preamble of the Framework Decision, the European arrest warrant is the first concrete measure in criminal law implementing the principle of mutual recognition. Besides, the Council of Europe met in Tampere in 1999 for the creation of a Union of freedom, security and justice, enshrined the principle of mutual recognition as the cornerstone of judicial cooperation in the EU. This principle was originally developed in the common market, in criminal matters being applied first with the regulation of the European arrest warrant. [4]

The principle of mutual recognition consists of each national judicial authority ipso facto recognizing the request for surrender of a person made by other judicial authority belonging to another Member State with a minimum of formalities. For example, if a judge or prosecutor in Paris requests the arrest and surrender of a person for an act falling under the European arrest warrant, that person may be arrested in Rome or

Budapest and is to be surrenered to the judge in Paris, following a minimum control. According to this principle, the European arrest warrant is the object of a simple review of legality in all Member States without being subjected to some conformity conditions under the legal system of the executing State. For this reason, the Framework Decision contains an exhaustive list of grounds for refusal to execute a European arrest warrant.

Theoretically, this is the way this system should operate, as the judge in Budapest or Rome can have full confidence in that in Paris, being convinced that the French judge will comply with all principles of human rights and fundamental freedoms, as well as with the fact that the requested person will have a fair trial, conducted in a reasonable period of time and judged by an independent judge. Therefore, the principle of mutual recognition has been associated, since its consecration, with the concept of mutual trust and with the protection of human rights. In other words, as expressed in the doctrine, "there can be no recognition without mutual trust, which in turn means quality, efficiency and independence of the legal systems in different Member States." [1]

Based on the decisisons taken in Tampere, the European Commission drew up a program of measures to implement the principle of mutual recognition in criminal matters, which contained 24 specific measures, among which the European arrest warrant. The program also stated that mutual trust between Member States is based on the common obligation to respect the principles of liberty, democracy, respect for fundamental rights and freedoms and the rule of law, obligation stated in Art 6 TEU.

This principle is not an absolute one, its application being limited to a determined number of offences - Art.2 para.2 - and is taken into consideration against the grounds the executing judicial authorities must or may have, in some cases, to refuse to execute a European arrest warrant.

As regards the application of the European arrest warrant, according to Art.31 paragraph 4 of the Framework Decision from 1 January 2004, between Member States, the European arrest warrant replaces all previous instruments concerning extradition. Also, according to Art.32 of the Framework Decision, the European arrest warrant has unlimited retroactive applicability. [4]

THE EXECUTION OF THE EUROPEAN ARREST WARRANT

With regard to the execution of a European arrest warrant, the doctrine speaks of "the judicialization" of the execution procedure of the European arrest warrant, as, according to Art.6 of the Framework Decision, the authorities involved in the procedure of the arrest warrant, both the issuing and the executing ones, must be competent judicial authorities to issue or execute an arrest warrant under the law of the issuing State or of the executing State. The Framework Decision does not define the term judicial authority, allowing the Member States the freedom and competence to designate these authorities. [4]

Article 5 para. 4 of the ECHR guarantee the arrested person the right to bring an appeal before a court. According to the ECtHR case law, a court is any body which is independent and impartial and which has the competence to take a binding decision on the situation of the detained person. The prosecutor was not considered court within the

meaning of Art. 5 paragraph 4 of the ECHR, and therefore, if the issuing judicial authority may be a prosecutor or a judge, the execution one must always be a judge or other authority that can take a decision on keeping into detention the person in question.

Concerning the refusal to execute a European arrest warrant, the grounds for non-execution of a European arrest warrant are exhaustively provided by the Framework Decision. Thus, it divides the grounds for refusal into two categories, namely the category of those mandatory provided in Art. 2 and that of those optional, which are listed in Articles 3 and 4 of the Framework Decision. The grounds for refusal are basically identical to those of extradition, with some specificity. Unlike extradition, in the case of the European arrest warrant it is not possible the non-surrender of foreigners who enjoy jurisdiction immunity in Romania, of persons who have committed military or political offences, as the (alleged) mutual trust no longer justifies their existence. At the same time, the removal of the double criminality condition has also consequences on the restructuring of the grounds for refusal, some disappearing altogether, some becoming optional.[4]

A major change occurred with the introduction of the European arrest warrant is the problem of extradition - or in the new phrasing, the surrender – of one's own citizens. Extradition in its classical sense, did not allow, as a rule, the extradition of one's own citizens, most states only accepting this as an exception, in some restrictive conditions. In the case of surrender through a European arrest warrant the principle of non-extradition of one's own citizens was waived, starting from the idea of European citizenship. Nationality is at most an optional ground for refusal which can be exercised only in some restrictive conditions. According to Art.4 paragraph (6), the State may refuse the execution when the requested person is a national or resident of the executing State and the State undertakes the enforcement of the punishment under domestic law. Moreover, according to Art.5 para.(3), when a European arrest warrant was issued in order to pursue a citizen or national of the executing State, then the state can execute the warrant provided that, if the concerned person will be sentenced to a custodial sentence, he/she is to be returned to the requested State to serve the sentence in that state, assuming that this way the person's social reintegration is favored. Regarding extradition, most countries have imposed additional conditions on the extradition of their own citizens, of which the most important is the condition of reciprocity. The reason lies in the diversity of legal systems of the Contracting Parties to the European Convention on Extradition of 1957, "parties that share a number of common principles, which does not however exclude the existence of significant differences in terms of standards applicable between these states", especially regarding the protection of human rights. Thus, for example, in France or in Italy respecting human rights is a priority and it is far more developed than in Armenia or Azerbaijan. This precaution is no longer justified, according to the authors of the Framework Decision, with the European warrant, as the citizens of the Member States are also European citizens, and therefore are not considered "foreign" on the territory of other European Member States, as the countries share the same social and moral values.

DOMESTIC REGULATIONS

In the national law, the provisions of the Framework Decision were transposed in the provisions of Law no.302/2004 published in the Official Gazette no. 377/31.05.2011, amended by Law no. 224/2006 published in the Official Gazette no. 534/21 June 2006 and by Law no. 300/2013 published in the Official Gazette no. 772/12.11.2013. According to Art.77 of Law no. 302, the European arrest warrant is a judicial decision issued by a judicial authority of a Member State of the European Union, called issuing State, with a view to the arrest and surrender by another Member State, named executing State, of a requested person for the purposes of conducting a criminal prosecution, standing trial or executing a custodial sentence or detention order.

Strictly analyzing the regulation of the European arrest warrant issued by the competent Romanian judicial authority, one can speak of the European warrant as a court decision, because, according to Art.78 para.1 of the law, in Romania the courts are designated as issuing judicial authorities. According to Art.189 para.2 of Law no. 302/2004, on 1 January 2007, when Romania acceded to the European Union, the provisions in Title III of this regulation would replace the statutory provisions on extradition. On 9 February 2007 the first Romanian citizen was surrendered under a European arrest warrant, a woman accomplice in the murder of a Belgian citizen. [2]

CONCLUSIONS

The most important modification brought by the introduction of the European arrest warrant has been the transition from a judicial-administrative cooperation to a purely judicial cooperation. Thus, according to Art.6 of the Framework Decision, the authorities involved in the procedure of the European arrest warrant, both the issuing and the executing ones, must be competent judicial authorities to issue or execute a European arrest warrant under the law of the issuing or executing State. But as the Framework Decision leaves to the Member States the designation and selection of these judicial authorities, one will consider the criterion laid down by the ECHR through Art.5, as a selection criterion. Thus "Art.5 guarantees the person's right to bring an appeal before a court. According to the ECtHR case law, by 'court' one means any body which is independent and impartial and which has the competence to take a binding decision on the situation of the detained person. The prosecutor was not considered 'court' within the meaning of the ECHR and therefore, if the issuing judicial authority may be a prosecutor or a judge, the execution one must always be a judge or other authority that can take a decision on keeping into detention the person in question." However, some States, such as Denmark, Switzerland, Finland and Sweden, have involved executive authorities in the procedure of issue or issue and execution of the European arrest warrant, a choice that caused certain impediments in the execution of some European arrest warrants. [1]

The simplification and accelaration of the surrender procedure under a European arrest warrant resulted in the effectiveness of the procedure. The reports of the European Commission on the implementation of the European arrest warrant show that, in the new procedure, the surrender of the requested person takes between 13 and 43 days, unlike the

extradition procedure that sometimes takes more than 9 months. Although the report has identified some shortcomings in the implementation of Framework Decision by the Member States, the overall conclusion is that the impact of the European arrest warrant is positive, since the indicators of judicial control, effectiveness and speed are favorable, and the fundamental rights are equally controlled.

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CONSIDERATIONS REGARDING THE DECLARATION OF ENFORCEMENT

Nicolae-Horia ȚIȚ
Faculty of Law, „Alexandru Ioan Cuza" University
Iași, Romania
horia.tit@gmail.com

***Abstract**: This article analyses some theoretical and practical issues concerning the procedure of the declaration of enforcement according to the Romanian Civil procedure Code and Law no. 138/2014. Also, some considerations are made regarding the difference between this procedure and the procedure applicable to European Enforcement Orders, i.e. the certification regulated by Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.*
***Keywords**: enforcement, declaration of enforcement, enforcement order, judgement, European Enforcement Order*

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ENFORCEMENT ORDER SUBJECT TO THE PROCEDURE OF THE DECLARATION OF ENFORCEMENT. THE DIFFERENCE BETWEEN JUDGEMENT AND OTHER TITLES. THE EUROPEAN ENFORCEMENT ORDERS

With reference to the provisions of art.632-643 Civil Procedure Code, and from an exclusive formal perspective, enforceable orders can be divided into two broad categories: judgments and other documents or orders that the law gives enforceable character, the essential difference from a procedural point of view between them being that the first are not subject to declaration of enforcement, while the others are (art.641 Civil Procedure Code, respectively, in case of arbitral judgments, art.615 Civil Procedure Code). As a separate category, the notion of European Enforcement Orders is individualized, in their regard being unnecessary to perform any other prior formalities (art. 636 Civil Procedure Code).

The distinction between judgments and other documents to which the law grants this character arises from several legal texts: art.622 para.1 Civil Procedure Code, which states that the obligation established throughout a judgment or another enforceable order is executed willingly, art.626 Civil Procedure Code which provides that the state is obliged to ensure, through its agents, the promptly and effectively enforcement of judgments and other enforceable orders.

As noted above, the relevance of this distinction lies in the formal conditions that must be fulfilled by the enforcement order: in case of judgments, given that they are

rendered in judicial contentious proceedings before the Court, it is not necessary to perform any other formalities in order to start the enforcement procedure, in other words, the declaration of enforcement is not necessary; in case of other documents that the law grants enforceable character, as they are not the result of a trial, it is necessary to deploy a non-contentious procedure of verifying their enforceable character, which is achieved through the declaration of enforcement (art.641 Civil Procedure Code).

Also, there is no need of any other formalities prior to enforcement in case of European enforcement orders (art.636 Civil Procedure Code), including in this category the European enforcement orders for uncontested claims (Regulation 805/2004), the European payment procedure (Regulation 1896/2006), orders emitted in the European procedure on small claims (Regulation 861/2007). Also, due to the application from January 10, 2015 of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast of Regulation 44/2001), the possibility of certificating as a European enforcement orders extended over all the decisions adopted in a Member State, no longer being needed their recognition in the Member State wherein the enforcement is to be performed. The free movement of enforcement orders in the entire European Union`s space is guaranteed by the inclusion in national legislation of some legal texts, as it is the case of art. 636 Regulation 1896/2006, according to which the enforcement of European enforcement orders on the territory of a specific state is not subject to any prior formality that is to be accomplished before the court or administrative bodies of the State. This applies only if that decision is accompanied by the certificate of the European Enforcement order issued according to art.42 para.1 letter b) and Art.53 of Regulation 1215/2012 (Boroi, Stancu, p.950).

The provisions concerning the enforcement character of the European judgments extend to authentic documents and court settlements, according to art.58 and 59 of the same Regulation. In what concerns judgments, the European enforcement character is conferred by issuing the certificate contained in Annex 1 of the Regulation, and in case of authentic documents and court settlements, in Annex II. Therefore, given that both judgments and authentic instruments and court settlements become European enforcement orders only after issuing the certificate, means that they must meet a formal condition prior enforcement, but it is not subject to regulation by national law but results directly from the Union`s legislation; the national law may not impose additional formal requirements to the Regulation, as it cannot provide a different procedural legal regime for the enforcement of European orders to the national ones. Therefore, it guarantees the freedom of movement of European enforcement orders, which contributes to the development of the procedural law and, in particular, to uniform enforcement procedures.

THE DECLARATION OF ENFORCEMENT IN THE CIVIL PROCEDURE CODE, AS IT HAS BEEN MODIFIED BY LAW NO.138/2014

As a general rule, enforcement orders, other than judgments can be enforced only if they are declared enforceable (art.641 par.1 Civil Procedure Code). In the original version of the Civil Procedure Code, the declaration of enforcement was not needed for any enforcement orders prior to seizing the enforcement body. The enforcement

declaration was contained in the final part of the enforcement court`s judgement on admitting the application of enforcement. By Law no. 138/2014, the jurisdiction of settling the application of enforcement was transferred from the enforcement court to the judicial bailiff and the declaration of enforcement has been regulated as a preliminary procedure to the enforcement itself required only if the enforceable order is not a judgment. The aim was to decongest the courts of the deadlock created due to the large number of applications on enforcement, in parallel with the creation of a jurisdictional control prior to the enforcement, regarding the enforceable character of the order, if it has not been issued by a court (Oprina, Gârbuleț, p. 69-70).

The declaration is not required for a European Enforcement Orders, as it is accompanied by a certificate of the European Enforcement (art. 636 Civil Procedure Code provides that they are enforceable by law without prior formality). The certificate is a European „passport" allowing the title to be recognized and enforced in all Member States without the need for a prior recognition from national courts. Therefore, the title will be enforced like a national judgement or writ, without the need for any other declaration of enforceability or other formality in front of the authorities of that Member state.

The declaration of enforcement, as a condition stipulated by law so that the enforcement orders may be enforced, may not be purged by the will of the parties. Thus, even if, for example, in the contents of an authentic document issued by a notary would be mentioned the clause according to which it is enforceable without fulfilling any formality, it does not produces effects to the imperative legal nature of art.641 para.1 Civil Procedure Code.

The procedure regarding declaration of enforcement is a non-contentious one, which not aims to establish a averse right to another person, but obtaining a court`s authorization regarding an enforcement order. The enforceable character of the order is granted by law, the court seized with the declaration of enforcement doing nothing else but verifying if, in that specific case, the conditions laid down by the law for that document submitted by the creditor constitute, in particular, an enforceable order that can be enforced. The court shall not consider the merits of the claim of the creditor, not even if the claim is certain, liquid and payable, but only the formality of the presented document with reference to the legal requirements for it to be enforceable. For example, in accordance with art.1798 Civil Code which states that the tenancy agreements concluded by document under private signature which have been registered with the tax authorities are considered enforcement orders for the payment of rent to the dates and in the manner specified in the contract or, if they are missing, by law. The court will verify only whether the document submitted by the creditor meets the requirement of registration with the tax authorities, without regard to any issues related to substance of the legal relationship between the creditor and the debtor (for example, the execution of the debtor`s obligation by payment or by legal compensation). Any substantial defence may be subject to opposition on enforcement under art.713 para.2 Civil Procedure Code and the opposition throughout which the debtor asserts factual or legal reasons relating the substance of the right contained in the enforcement order, other than a judgment, insofar as the law does not envisage its abolition by a specific legal procedure.

As a general rule, the application regarding the declaration of enforcement is submitted to the lowest ranking court in whose circumscription is located the residence or the headquarters of the creditor or of the debtor, as applicable. If the domicile or, where appropriate, the headquarters of the creditor is abroad, the creditor may apply for declaration also at the lowest-ranking court in whose jurisdiction is located his chosen residence (art.641 par.2). The law, therefore, establishes an alternative territorial jurisdiction regarding settling the declaration of enforcement, being the creditor`s right to seize one of the courts indicated as being competent by art.641 para.2 Civil Procedure Code. If neither the creditor, nor the debtor does not live in the country and the creditor does not have a chosen address in Romania, and the Romanian courts are competent to settle his application regarding the declaration of enforcement of a specific order, it is competent in this matter, according to art.1072 par.2 Civil Procedure code, the District 1 of Bucharest lowest-ranking court.

It is noteworthy that the application of declaration of enforcement is not rendered to the court of enforcement, because before seizing the enforcement body, we cannot talk about an instance of enforcement (Oprina, Gârbuleț, p.73). Furthermore, the territorial jurisdiction of the enforcement court takes into consideration, as a general rule, the debtor`s domicile or, where appropriate, the headquarters at the time of the judicial bailiff`s notification. Or, the application of declaration of enforcement is formulated before the demand for enforcement; the creditor can seize the judicial bailiff only after his order is declared enforceable, if it is another order than a judgment. From this perspective, we note an inconsistency of the legislator, which, in art. XII par. 2 of Law no. 138/2014 provided that ”Whenever an normative act provides that the approbation of the court of enforcement orders, other than judicial decisions, they will be enforced after declaring it enforceable by the enforcement court and after the approval of the application for enforcement by the judicial bailiff competent by law”. Or, as mentioned above, the declaration of enforcement cannot be done by the enforcement court since at the time of the application; the court of enforcement does not exist, as the enforcement procedure has not begun.

The law provides some exceptions to the general rule laid down in art.641 para.2 Civil Procedure Code, both in terms of substantive competence and the territorial jurisdiction.

According to art.615 para.2 first sentence of Civil Procedure Code, the application of declaration of enforcement of an arbitral decision is to be settled by the tribunal in which jurisdiction the arbitration took place. In case of ad-hoc arbitration, we are interested in where occurred the juridical procedure before the arbitral tribunal, respectively the place chosen by the parties in this regard, and in the absence of agreement, the place chosen by the arbitral tribunal (art.569 Civil Procedure Code). In what concerns the institutionalized arbitration, the court which will declare the order enforceable shall be determined by reference to the place of the institutionalized arbitral tribunal, to the extent that the juridical procedure took place there. The court`s competence of declaring enforceable arbitral decisions is covered by art.95 pt.4 Civil Procedure Code (any other applications are given by law to the tribunal).

Also as an exception to the rule laid down in art.641 para.2 Civil Procedure Code, according to art.31 para.5, second sentence of Law no.51/1995 on the organization and the exercise of the profession of attorney at law, the declaration of enforcement of an legal assistance contract is in the competence of the lowest-ranking court in whose jurisdiction the registered the attorney at law`s professional headquarters.

According to art.181^1 par.1 of Law no.71/2011, as it has been amended by art.VI of Law no.138/2014, the declaration of enforcement of a mortgage contract in order to enforce the movable mortgage by selling the mortgaged property under art.2445 of the Civil Code is to be issued by the lowest-ranking court in whose jurisdiction the creditor has his domicile or, as applicable, his headquarters, and according to art.21 of Law no.190/1999 on mortgage loans for real estate investment, the jurisdiction to settle the application for declaration of enforcement of the contract on mortgage loans for real estate investment, and also the real and personal guarantees subsequent, belongs to the court where the property is situated. In the absence of any express mentions regarding the material competent court, it is applicable the general rule from art.641 para.2 Civil Procedure Code, according to which the lowest-ranking court is always the competent court, and not the court determined by the value criteria laid down in art.94 pt. 1 lit. k) Civil Procedure Code.

The court seized with settling the application of declaration of enforcement will verify its jurisdiction *ex officio*, even if it is of private nature, according to the rules regarding the non-contentious procedure (art.529 par.1 Civil Procedure Code). The court may require the parties any explanation necessary to verify, according to the law, its jurisdiction, for example the court may ask the creditor to submit evidence of his residence or, where applicable, headquarters or of the debtor`s. The verification of jurisdiction is performed on the rules laid down in art.131-132 Civil Procedure Code. If the court considers that it is not competent, it will automatically invoke the exception of lack of jurisdiction and, if it is admitted, it will decline, *ex officio*, its jurisdiction and send the file to the competent court (art.529 par.2 Civil Procedure Code). The dismissal through which the court declares itself not competent is not subject to appeal, the file being sent immediately to the competent court (art.132 par.3 Civil Procedure Code).

The application of declaration of enforcement is settled in closed session without summoning the parties. Being a non-contentious proceeding, the application is resolve without debate. However, the court may, *ex officio*, order any measures useful to the case (art.532 par. 2 first sentence of Civil Procedure Code). Related to the provisions of art.12^1 of Law no.76/2012, introduced by art.VII pt.1 of Law no.138/2014 (according to which "Unless the law provides otherwise, the provisions of art.200 of the Code of Civil Procedure on the verification of the application and its regulation does not apply to procedural incidents and to any special procedures that are not compatible with those provisions"), the application of declaration of enforcement is not subject to the regularization procedure. The juridical tax of the application is 20 lei for each enforceable order, according to art.10 para.1 letter a) of Government Urgency Ordinance no.80/2013 on judicial stamp taxes, as amended by art.IX pt.1 of Law no.138/2014.

In case the declaration of enforcement regards arbitral decisions, art.615 para.2 Civil Procedure Code refers only to par.3-6 of art.641, excluding, therefore, par.2, which

provides, *inter alia* that "the application of declaration of enforcement is settled ... in closed session without summoning the parties". Without these provisions, the application of declaration of enforcement of arbitral decisions will be settled by the ordinary court non-contentious procedure. This states that the application is examined in closed session, summoning the petitioner and the persons shown in the application, only is the law requires, otherwise the proceedings will be carried out with or without summoning the parties, at the discretion of the court. In other words, the rule in non-contentious matters is that summoning the parties is voluntary, not compulsory unless the law expressly provides it. In the case in art.615 para.2 Civil Procedure Code, respectively in the declaration of enforcement procedure of arbitral decisions, even if there is no reference made to the provisions of art.641 para.2 CPC, though the law does not require summons, therefore it is voluntary, being up to the court to decide whether to summon the creditor and the debtor. It is noted, therefore, an essential difference between the declaration of enforcement procedure of other orders except judgments, which is always without summoning the parties, and the procedure of declaration of enforcement of arbitral decisions, which, follows the rules of the common law on non-contentious procedure, with the optional summoning of parties, or, more specifically, the parties will not be summoned, but the court may consider necessary to do so.

In settling the application of the declaration of enforcement, the court will verify whether the document meets all the formal requirements demanded by law in order to be an enforceable order, as well as other requirements in cases specifically provided by law (art. 641 par. 3 Civil Procedure Code). As noted above, the court will be limited to a formal verification of the enforceable order, taking into consideration exclusively the legal provisions in this regard, without examining the substantive conditions relating to the claim (Răileanu, p. 74). The judge analyses only the external regularity of the document, which creates a presumption of internal regularity. Therefore, any substantive defences raised in this procedure are inadmissible, even if they regard the validity of the act, perceived as *negotium*. For example, the court cannot reject the application of declaration of enforcement because the document is void, but it can reject is when it does not fulfil the formal requirements of the law which gives it enforceable character. For example, according to art.96 para.1 and 2 of Law no. 36/1995 on notaries and notarial activity, "those who, because of their infirmity, sickness or any other cause, cannot sign, the notary, fulfilling the document, will only take their consent in the presence of two assistant - witnesses, this formality supplying the lack of the party`s signature. The assistant - witnesses will be identified and will sign the document and in the dismissal of authentication shall be mentioned that they were present at the reading of document by the parties or, where appropriate, by the notary and at the taking of consent". If in the contents of the notarial document are not mentioned the aspects required by the law regarding the assistant – witnesses, the application of enforceable shall be rejected because, due to its vices resulting from the authentication procedure, the document has not authentic character and cannot, therefore, be an enforceable order.

In what concerns the court`s verification, in proceedings regarding the application of declaration of enforcement, of other requirements of the law, these may refer to checking certain extrinsic requirements on the legal operation registered through that

document, without checking the substance of the legal relationship between the parties. For example, in case of declaration of enforcement of arbitral decisions which relate to a dispute concerning the transfer of ownership and / or the establishment of another real right on immovable property, during the proceedings of declaration, the court will verify the compliance of legal provisions regarding the transfer or the establishment of ownership or other real right and the payment of taxes on the transfer of property by the interested party (art. 603 par. 3 Civil Procedure Code).

In regard to this verification, the question whether it is necessary to summit to the court the original enforcement order has been raised. To the extent that which it would be necessary to verify the compliance with the legal requirements relating to the enforceable character, the creditor will be obliged to submit the original document, if it is possible, and otherwise, he will submit a duplicate or a certified copy. For example, in case of credit orders, given that they have a literal and autonomous character, encompassing virtually the claim, their submission in original is an essential prerequisite to the declaration of enforcement; in what authentic documents emitted by the notary are concerned, relating also to the provisions of art.639 para.1 second sentence Civil Procedure Code. (if the original order is missing, the enforcement order may be represented by the duplicate or certified copy of exemplary from the notary`s archive), as well as those of art.97 para.1 and 4 of Law no.36/1995 on notaries and notarial activity (according to which the notarial authentic documents shall be drawn up into a single original exemplary, which is kept in the archives of the notary and the parties shall be provided with a duplicate of the original document), as the original document`s submission would be impossible, the only original exemplary of the document being at the notary, so the declaration of enforcement will be based on the duplicate or on the certified copy. If the court orders the submission of the original exemplary and the creditor does not comply with the request, the settling of the application shall be suspended, according to art. 242 Civil Procedure Code, and it shall be resumed, at the creditor`s request, if he brings out the obligation to submit the original order, by paying half the juridical stamp tax prescribed by law for the original application (art. 9 letter g) of Government Urgency Ordinance 80/2013 on judicial stamp taxes).

In case the court rejects the application of declaration of enforcement, the dismissal can only be challenged by appeal to the creditor, within 5 days from communication. The appeal is settled in closed session, according to art.534 para.5 Civil Procedure Code. Unless the law provides otherwise, applying the general rules on non-contentious procedure, the appeal against the dismissal of rejecting an application for declaration of enforcement is settled with summoning the parties.

Regarding the situation in which the application of declaration of enforcement is admitted, the dismissal is not subject to appeal, but its legality can be subject to the opposition to enforcement (art.641 par.5 Civil Procedure Code). In this respect, art.713 para.3 Civil Procedure Code provides that after the commencement of the enforcement, those interested or harmed may request, through opposition to enforcement also the avoidance of the court dismissal of declaration of enforcement if it was given without fulfilling legal requirements. A request of avoidance of a court`s dismissal submitted before the commencement of enforcement proceedings will be rejected as inadmissible.

The deadline for submitting the enforcement contestation provided by art.713 para.3 Civil Procedure Code is that from art.715 para.1 pt.3 Civil Procedure Code, respectively 15 days from the day in which the debtor has received the court`s dismissal of admitting the enforcement or the notification or the date when he became aware of the first act of enforcement in cases in which he has not received the court`s dismissal of admitting the enforcement or the enforcement is made without notice.

The declaration of enforcement is the following (art. 641 par. 6 Civil Procedure Code): "We, the President of Romania, empower and order the judicial bailiffs to enforce the order (Here follows the enforceable order identification information) for which has been issued this dismissal of declaration of enforcement. We order the agents of the public force to support the prompt and effective fulfillment of all acts of enforcement and the prosecutors to insist on the fulfillment of the order of enforcement, according to the law. (Follows the signature of the panel`s president and the court`s clerk.)". The enforcement declaration will be included in the court`s dismissal of admitting the application, which will be attached to the enforcement order. Some authors consider that the declaration of enforcement must also be stamped on the original title (Boroi, Stancu, p. 943; Răileanu, p. 76). In our opinion, this practice is not advisable, mainly because the wording of article 641 par. 6 Civil Procedure Code, which is that the formula is contained by the court order and not stamped on the document provided by the creditor. With the European Enforcement Order, the certificate is not a part of the title itself, but a different document, accompanying the writ that is to be enforced (art.42, Regulation 1215/2012). In the case of a document that is subject to the enforcement after the declaration regulated by art. 641 Civil Procedure Code, the title will be accompanied by the minutes of the court containing the enforcement formula provided by art.641 par.6 Civil Procedure Code (Țiț, p. 319; Dinu, Stancu, p. 45).

If the application for enforcement is submitted on the basis of an order which has not been declared enforceable, although, according to the law, this formality is required, the judicial bailiff will reject it, according to art.666 para.5 pt.3 Civil Procedure Code. If, however, unlawfully, the enforcement is accepted and it has begun, the absence of the declaration of enforcement voids the entire enforcement procedure, as the requirement of the declaration of enforcement is one of public order. The nullity may not be covered by obtaining a declaration after the commencement of the enforcement procedure, but the creditor may submit a new application for enforcement, provided that in the meantime it has not been reached the statute of limitations for the right to obtain enforcement. In this context, it should be noted that the application of enforcement, even if it is admitted, does not interrupt statute of limitations.

CONCLUSIONS

According to the Civil Procedure Code, as it has been amended by Law no. 138/2014, the difference between judgements and other enforcement orders is made by a formal procedure, aimed to verify the conditions provided by law for the enforcement of a document or writ, other than a judgement. This procedure is not applicable for European Enforcement Orders, because the certificate issued in accordance to the

European regulations regarding this instrument makes it recognizable and enforceable in all member states without the need for a recognition or declaration of enforcement in front of foreign courts. However, in all cases, for the enforcement of a judgement, writ, document or European Enforcement Order in Romania, the bailiff invested with the application for enforcement will verify if the conditions to commence the procedure are met and will issue a minute in this regard. Thus, the declaration of enforcement, which is a procedure in front of a court aimed at checking the enforceability of the title, must be distinguished from the declaration of the bailiff regarding the commencement of the enforcement procedure, based on the application of the creditor.

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THEORETICAL OUTLINES OF COMPARATIVE LAW METHODOLOGY

Ionuț TUDOR
Al. I. Cuza, Faculty of Law
Iași, România
Nt_tudor@yahoo.com

***Abstract**: In the following paper, we will be mapping comparative law as an enterprise directed towards the differences between legal systems. This recent epistemological trend corresponds to similar tendencies in other sciences. Comparative law adapted to a hermeneutic imperative- to interpret legal rules according to the relevance in their proper local context. This requires flexibility in analysis, a propensity to accept various contingencies, even regarding the interpreter's own legal system. This model might be connected with what in political sciences is called post-foundationalism, an acceptance of principles, but only as a contingency, not like a immutable criterion.*
***Keywords**: comparative law, legal order, post-foundationalism, legal epistemology, tort law, common law*

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THE PLURALITY OF LEGAL ORDERS

Comparative law is subjected to multiple influences, especially extra-legal and extra-judiciary. Many legal, statutory, judicial and jurisprudential contingencies shape law. That is why, when invoking comparative law, the interpreter must take into account these features, much more than its own legal tradition. This one becomes a contingency on its own. In this manner, the interpreter overcomes his own self-limitations imposed, making an important step towards the elimination of "legal isolation" [10]. This tendency to invoke foreign legislations, solutions, jurisprudence and so on represents a relative recent trait in the world of the law.

A national order is somehow an "illusion", comparative law underlying, as a hermeneutic discipline, the existence of a "plurality of legal orders connected through comparisons" [7]. The comparatist imposes to himself a momentary suspension of his own legal formation. This is due to the desire to eliminate reductionism, in the sense that one legal order is considered a reference point for the others. Reductionism distorts the object of analysis because it only interposes an abstract scheme to the difference incumbent into a foreign legal system and its own life form. The Western world had to pass through the stage of Eurocentrism (or ethnocentrism) [9] to be able to interrogate

critically the tendency to impose its own way of life on other cultures. Colonialism (with the recent version, neocolonialism) is an old European trait: to occupy the territories of less developed populations and subjugate them economically in the name of civilization. In the last two centuries, Eurocentrism takes the form of imposing the capitalist mode of production and extending this economic model to pre-industrial countries. The process was facilitated by the national movements in the XIXth century, which led to the adoption of the bourgeois way of life and the legal paradigm that it sustained it. Napoleon's Civil Code, no doubt one of the most significant legal and cultural documents in European history, became the model for almost all European countries (and not only). Significant for the French and their stage of development, it represented a fast-emulated model for less developed countries, e.g. the ones in the Eastern Europe. The local law of these provinces appeared very inadequate for the emerging economic paradigm. From that moment, the impetus was towards the imitation of the general type law embodied in the Code civile, ancient institutions disappearing due to feudal origins.

Recently, comparative law tries to reconnect to the features relevant in local contexts. Sometimes, small and apparently unimportant local details must be taken into account to understand a statute, a social trait or a certain mentality. The epoch of an all-encompassing legal framework for a cluster of states is almost impossible to ascertain. A European jus commune cannot take the form of an imperial scheme, as imagined by Roman jurists but must recognize multiplicity and plurality. The European project must have rules, but these rules cannot be the embodiment of natural law precepts, unless they are agreed upon or open for revision.

This is why comparative law is not a "systematic and rational enterprise", understood as a chain of rational successive steps allowing the legal mind to conceive and understand, through an orderly, methodical and progressive process, the sameness and the difference between legal orders, their structures and functions proper to each of them [2]. Understood in this manner, comparative law would not be able to cope with the task of representing a world of meanings in which a rational order is only a contingency, not a mathesis universalis for understanding.

THE EPISTEMOLOGY OF COMPARATIVE LAW

Comparative epistemology is not based on a methodological unity, on a pre-given structure of ways to follow, but on a multiplicity of methodologies, each one adapted to the institution it wants to analyze. Due to specificity of an institution, the comparatist chooses from his toolbox a certain type of instrument, e.g. a research on tort law will be different from a research on trust or labor contract. The inconvenience regarding the absence of a unitary corpus of methodology is in fact an advantage, since one can easily eliminate the forcing of the interpretation on the track imposed by the method. In other words, between the comparative methodology and the analyzed institution there is a bi-univocal relation. This dependency will have consequences on the entire legal system because, if a norm cannot be separated by the normative context in which it appeared and developed, then any critique can purport effect on the entire context. If comparative hermeneutics would only describe a legal system and mirror a rule from one system with

one from another, then we would be simply engaged in contrasting, just a particular moment in comparative enterprise. We could engage in pragmatic researches based on contrasts, but the stakes of comparative law is much more than that. It is rather oriented towards differences, not sameness. To understand differences, one must understand the context: the comparatist must understand and describe the foreign element before proceeding to elaborating a system of similarities and differences to serve as a base for further analyses [5]. The foreign law, and implicitly their norms, must be related to economic, political, social, moral and cultural background of that society, in their proper historical development.

THE PARADIGMS OF EUROPEAN LAW

For the European researcher, the horizon of comparative interrogations is shaped by two modes of thinking, each with its own principles of memory, reproduction and extension: on the one hand, the Roman nomothetic tradition, and on the other hands the ideographic common law tradition [8]. Educated in a certain tradition, the jurist will consider the other one under the sign of alterity- the differences seem far greater than the similarities, and the dialogue is not as smooth as it should be. By comparative law, we try to establish "bridges" and create the conditions of possibility to understand other legal systems.

Even if sometimes the comparative endeavour does not seem to have a practical purpose, like explaining a rule or de lege ferenda proposals, the task is to create a certain familiarity, a proper channel for a real dialogue between cultures. At least after the Roma Treaty, the European legal landscape could not relate only to a particular system and interactions became a common denominator.

LEGAL SOURCES AND CULTURES

One of the main concerns of comparative law is to underlie the specific setting of legal sources in a certain context. Two meanings encompass the concept of legal source. On the one hand a material meaning, determined by the totality of material, spiritual and cultural conditions that determine the emergence of a legal rule at a certain moment in a specific form, and on the other hand a formal meaning dependent on the expression of a will, no matter the form it takes, a law, a rule, an edict, doctrine, jurisprudence [1].

This is why any comparative endeavor is simultaneous an interrogation on the legal culture in which an institution appeared and developed. Regardless of the connections we take into consideration, law and language, law and social organization, economics and politics, law and history, law and philosophy, what we consider as culture remains a relevant aspect for our understanding of what we consider technically relevant to law [8]. We can say that the rule of law becomes less important than the social phenomenon that justifies it.

THE CONTINGENCY OF FOUNDATIONS

In the history of humankind one could easily remark a deeply connection between law and morals. Of course, for a natural law supporter, the issue is already concluded: law springs necessarily from morals. However, recent historiography showed that original phenomena, like instituting rules from morals, do not remain fixed or immutable. Initial principals are reevaluated according to a variety of historical, social or cultural factors. Customs, convictions, beliefs from the "childhood" of law form rules and legal formulae that shape legal systems that in turn become independent from the material source they spring from. The initial customs and beliefs disappear, but the rules remain and due to the lack of historical proofs, the initial reasons that determined these rules are forgotten.

However, through historiographical research, the researchers try to re-describe these initial phenomena and advance explanations for the manner the rules of law evolved in time. In fact, this historical investigation, which comparative law integrated it organically, becomes essential for the understanding of every rule. This is because the tendency is to reconcile the ancient rule with the present state of facts. An ancient rule gets a new content and, in time, even the old form changes to overlap with the meaning it received [4].

The claim regarding a clear connection between a rule of law and its foundation is not certitude, but many times the "decision" of the interpreter. We choose from history what is convenient for us, regardless of the lack of proofs, and underlie our legal rules on actual necessities, not venerable tradition.

CONTINGENCY AND POST-FOUNDATIONALISM

The continental lawyer usually sustains a claim by invoking a legal rule. In addition, sometimes this legal rule is related to a general principle considered immutable. Let us consider tort law in continental tradition. When someone claims recovery from a damage, he may invoke contractual or delictual liability, but not both at the same time. If the rule will be delictual, a variety of possible foundations will be invoked to sustain the applicability of the legal rule. Either fault, risk or guarantee, the tendency is to relativize the idea of foundation. Fault as multi-faced an all-encompassing foundation for tort law is over.

A similar trait we can find in political sciences under the name of post-foundationalism [6]. The reflex of underlying tort law on only one moral aspect-individual responsibility forged in the internal consciousness is similar to foundationalism-based strategy. In political science, foundationalism supposes that society/politics are based on principles 1) undeniable and immune to review; 2) outside society and politics. In other words, what is searched is a principle to underlie politics form outside, transcendentally. Similarly, tort law is conceptualized in the same manner, an outside criterion being invoked to justify the recourse to this institution. The same epistemological model works here: to each institution corresponds a principle, exterior to law through its moral source, but immanent to law by the manner in which it is applied.

Post-foundationalism supposes a continuous critique of the idea of ultimate principle. Post-foundationalism does not deny the recourse to principles or the idea of principle. Anti-foundationalism is only a masked foundationalism after all, but it rather supposes a multiplicity, a plurality of contingent foundations. Here, contingency means a priori the impossibility of an ultimate principle. In fact, a principle becomes contingent due to the impossibility of an ultimate criterion- this impossibility makes possible the use of one principle.

CONCLUSIONS

Under the scope of comparative research, one cannot take anything for granted. So long revered legal principles, precepts, statutes are not the starting point of an investigation, but the end of it. Do they really stand after thorough scrutiny? The dynamics of modern world imposes such an adaptive capacity. The physical and mental borders incumbent in national legal systems make room for multi-faced interaction between international agents. On a global scale, one order is just an entity among others and this multiplicity is already acknowledged. The recourse to natural law precepts is no longer sufficient for the challenges we face. Global warming cannot be addressed through classical agreements, but must surpass particular arrangements. The divide between common law and continental law must not be taken for granted, as legal families separated by insurmountable differences. The setting of legal sources, sometimes the starting point for comparative endeavour, might grasp not irreducible differences, but convergent goals and shared tendencies.

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THE FORMATION OF INSTITUTIONAL FOUNDATIONS OF LOCAL SELF-GOVERNMENT AUTHORITIES FUNCTIONING IN UKRAINE AS THE ENTITIES OF CIVIL PROTECTION[4] IMPLEMENTATION

Sergey Andreev
The National Academy for Public Administration
Under the President of Ukraine, Kyiv, Ukraine
andreyev.s@mail.ru

Abstract: *Based on the analysis of the fundamental special laws and regulations that govern the issues of civil defense, protection of population and territories as well as other objects from emergencies, and also local self-government, which were adopted throughout the period of Ukraine's independence, the article explores the process of formation of the institutional foundations of local self-government authorities functioning in Ukraine as the entities of civil protection implementation. The article focuses on the peculiarities, inconsistencies and trends in the development of the regulatory framework for the local self-governments activity and their capacity as local civil protection authorities, their functions and responsibilities.*
Keywords: *civil protection; civil defense; the unified state system of civil protection of Ukraine; protection of population and territories from emergency situations; local self-government authorities; village, township, city councils and their executive bodies, an emergency situation*.

INTRODUCTION

Generalization and analysis of the experience of the developed foreign countries in formation and functioning of national systems for counteraction to emergency situations of man-caused, natural and the other character show that local self-governments (further – LSG) in the democratic states with high level of social, economic, political, scientific, and technical development play an increasingly important role in planning and implementation of civil defense and civil protection measures.

Thus, the model at which the most effective way of integration of local self-governments in the state systems of ensuring civil protection, definition of their functions and responsibilities in the sphere of protection of the population, territories and other objects from emergency situations, implementation of mechanisms of interaction and

[1] Definition of the term "civil protection" appeared for the first time in the Ukrainian legislation in 2004 with adoption of law Ukraine "On Legal Foundations of Civil Protection" of 6/24/2004 No. 1859-IV [1, Art. 1]. Today the statutory definition of the term "civil protection" appears in Art. 4 of the Code of Civil Protection of Ukraine, which came into force on 7/1/2013 where the said notion is interpreted as the function of the state directed at protection of the population, territories, environment, and property from emergency situations through prevention of such situations, elimination of their consequences and assistance to their victims in a peace time and during special period [2]. In turn, the term "subject of ensuring civil protection" is used in a number of articles of the Code of Civil Protection of Ukraine, but its meaning is not defined.

coordination of activity of municipal bodies with public authorities of the national and regional level is provided, each country chooses independently depending on various internal and external factors (in more detail see, e.g.: [3, page 276-295; 4, page 63-100; 5, page 538-561]).

Behind the ongoing military conflict that is taking place in the East of Ukraine, and also unsatisfactory social and economic situation as a whole, in our state the processes of the European integration, reforming of executive authorities and LSG, and also search of optimum model of the territorial organization of the state power became more active.

In the light of the above, and also that institutional bases of the unified state system of civil protection of Ukraine (further – USS CP) functioning are not still created finally, the research of the questions connected with features of formation of LSG as the entities of civil protection implementation is actual both with scientific-theoretical, and from the practical point of view.

Consideration of the matters can be of interest for the foreign experts who are engaged in comparative researches on a perspective of civil defense and ensuring of civil protection within sciences of public administration, jurisprudence, political science, sociology, and also at carrying out interdisciplinary researches.

In the former Soviet Union the perspective directions of development of the state systems of civil defense and the guarantee of civil protection, questions of improvement of their tasks, functions, forms and methods of work, transformation of organizational structures, etc. constantly stay in sight of scientists, such as V. Akimov, V. Vladimirov, Y. Vorobyov, N. Dolgin, S. Dombrovskaya, L. Zhukova, N. Klimenko, S. Kuznichenko, S. Mosov, O. Ostroverkh, V. Petkov, B. Porfiryev, A. Romin, V. Tishchenko, A. Trush, M. Faleev, V. Fedorenko, G. Fedulov, A. Filipenko, R. Tsalikov, L. Shevchenko, Y. Shpakovskiy) and others.

Dynamic processes of the state construction, social, economic, scientific, technical and political development, and also comprehensive processes of globalization and increase of natural man-caused, military, social and other threats demand continuous search of effective models of creation of national systems for counteraction to emergency situations and the organization of effective interaction between public authorities, local governments and other institutions during completing the tasks of civil protection.

INSTITUTIONALIZATION OF THE LOCAL SELF-GOVERNMENT AUTHORITIES IN UKRAINE AS THE ENTITIES OF CIVIL PROTECTION IMPLEMENTATION

The examination of the question that was initiated in the article is expedient for beginning with ascertaining of that fact that else since Soviet period, LSG of Ukrainian Soviet Socialist Republic (village, settlement, city, district and regional councils of people's deputies, their executive committees), no less than other former Soviet republics, were actively involved in the solution of problems of civil defense, carrying out the essential volume of functions and responsibilities in this direction.

However, despite the domination of a territorial and production principle of the organization and implementation of civil defense and, as a result, its universal character, the system of civil defense in essence was the centralized militarized interdepartmental state system, but the state and imperious functions in this sphere were concentrated mainly in the system of state authorities and, first of all, at the Headquarter of civil defense of Ukrainian Soviet Socialist Republic and its territorial bodies (headquarters of civil defense of districts, regions, cities, up to the city carried to category on civil defense) which acted as the key entities of management in this sphere at the appropriate administrative-territorial levels.

It should be noted that at the beginning of the 90th of the 20th century the term "civil protection did not receive such wide circulation yet as it occurred at a boundary of 20-21 centuries and later therefore in the majority foreign, in particular the European countries, for designation of a complex of actions for protection of the population, territories, material, cultural values and other objects from emergency situations of peace and a wartime, the unified term "civil defense used in the Additional protocol No. 1 from 08.06.1977 to the Geneva conventions from 12.08.1949 [6, page 382] was traditionally used.

After disintegration of the USSR, the independent states formed in its territory, along with formation of institutional, legal, economic and other bases of the statehood, started to create own national systems of civil defense which continued to function as a subsystem of civil defense of the USSR at legislative level, being guided by acts of the international humanitarian law (The Geneva conventions) and the relevant allied legislation.

Not casually that the first fundamental acts concerning the civil defense, accepted by the sovereign states formed on the former Soviet Union, became by a principle of analogy to the legislation of the USSR and, in particular, kept the approaches extended before to scoping and character of tasks in the sphere of civil defense of public authorities and LSG.

These approaches are connected, first of all, with well-known to experts shortcomings of the state systems of civil defense as a whole, namely their functional limitation in view of orientation exclusively on realization of actions for protection of the population, territories and other objects from the emergency situations of a war character connected with a use of weapons of mass defeat, and also insufficiency of the measures directed on prevention of emergency situations of a man-made and natural origin.

In spite of the fact that in the Soviet Union in April, 1986 there was a Chernobyl accident, and in expert community of countries of Western Europe and the USA in ten years prior to it, after accident in 1975 on a nuclear power plant in Browns Ferry (the USA, the State of California) (more detailed see [7, pp. 64-66]) actively started talking about need of reconsideration of a role and problems of civil defense towards wide introduction of the preventive actions directed on safety of the person and the state from emergency situations of a peace time (man-made and natural character), active use of methods of management by risks in natural and man-made spheres, systems of civil defense of the majority of the post-soviet countries, in particular Ukraine, unfortunately, still a long time kept the shortcomings mentioned above.

In the contemporary history of our state which has begun, as we know, 24.08.1991 with the adoption of the declaration of independence of Ukraine, the Law of Ukrainian Soviet Socialist Republic "About local Councils of People's Deputies of Ukrainian Soviet Socialist Republic and local self-government" since 07.12.1990 No. 533-XII [8] was the first status law defining organizational and legal bases of activity of LSG.

The system of local government in Ukraine at that time included, in particular, rural, settlement, regional, city, regional in the cities, regional councils of People's Deputies and their bodies which were called as "state authorities of local government". Thus Councils of People's Deputies were allocated with the right of creation of the executive, administrative and other bodies [7, Art. 21].

In Art. 32 of the mentioned law "Responsibilities in the sphere of defensive work" situation that the city council directs civil defense in the city imperatively was fixed.

The system analysis of other standards of the Law of Ukrainian Soviet Socialist Republic "About local Councils of People's Deputies of Ukrainian Soviet Socialist Republic and local government" shows that this act carried the solution of the single questions which are functionally relating to subject domain of civil protection to responsibilities of the LSG insurances, but these responsibilities were formulated is incomplete and is fragmentary among other, larger blocks of branch competence of appropriate bodies.

For example, such function belonged to responsibilities of executive committee of village, settlement, city council of People's Deputies as implementation in cases of natural disaster, ecological accidents, epidemics, epizooties, fires, violations of a public order of the special measures provided by the law connected with rescue of life of people, protection of their health and the rights, preservation of material values, order maintenance; organization of carrying out fire-prevention actions [8, Art. 30 item 3].

That in the aforementioned law of responsibilities of LSG in the sphere of civil defense not only were not allocated in separate category of branch responsibilities, but also such terms as "civil protection", "protection against emergency situations" is remarkable, "emergency situation" in the relevant normative legal act were not used.

In turn, the Law of Ukraine "About Civil defense of Ukraine" from 03.02.1993 No. of the 2974-XII (further – the Law No. 2974-XII) in which civil defense of Ukraine was defined as state system of governing bodies, forces and the means, created for the organization and guarantying the protection of the population from consequences of emergency situations of man-caused, ecological, natural and military character was the first special act adopted in independent Ukraine concerning civil defense.

Actions of civil defense extended on all territory of Ukraine, all segments of the population, and distribution on volume and responsibility for their performance was carried out by a territorial and production principle.

The chief of Civil defense of Ukraine was the Prime-minister of Ukraine or other official; at other administrative-territorial levels of function of chiefs of civil defense heads of appropriate bodies of executive power carried out; in the ministries, other state bodies and on objects of a national economy chiefs of civil defense were their heads.

It should be noted that the Law № 2974-XII did not carry compulsory LSG to governing bodies civil defense as the system of civil defense included, in particular, the central and local executive authorities [9].

However, in a year after adoption of law No. 2974-XII the Cabinet of ministers of Ukraine the resolution № 299 from 10.05.1994 "About the adoption of Provision on Civil defense of Ukraine" which, first, allocated the heads of executive committees of Councils of People's Deputies with the status of the chief of civil defense at the appropriate administrative-territorial level was accepted, and, secondly, fixed norm that in the cities, areas in the cities (except Kiev and Sevastopol), settlements and villages the management of civil defense is carried out by executive committees of the relevant Councils of People's Deputies [10].

In the 28th of June, 1996 the Constitution of Ukraine was adopted, and its chapter XI is devoted to questions of local government. That is, at level of the main law of the state legal bases of local government in Ukraine were fixed, in particular, is defined that to such bodies village, settlement, city councils and their executive bodies, and treat the LSG representing common interest of villages, settlements and the cities, – regional and regional councils [11, Art. 140].

In a context of a subject of this scientific article it is necessary to pay attention to a number of the constitutional provisions concerning organizational, legal and financial bases of activity of LSG.

So, in parts 3, 4 of the Art.143 of the Constitution it is defined that LSG can be conferred by the law separate powers of executive authorities. The state finances implementation of these powers in full at the expense of means of the State budget of Ukraine or by reference in the local budget in the order of separate nation-wide taxes established by the law, transfers to LSG the corresponding objects of state ownership.

LSG concerning implementation of powers of executive authorities by them are under control to appropriate bodies of executive power.

According to the Art.146 of the Constitution of Ukraine other questions of the organization of local government, formation, activity and responsibility of LSG are defined by the law [10].

In the 21th of May, 1997 in Ukraine for No. 280/97-VR the status law "About local government in Ukraine" (further – the Law No. 280/97-VR) was passed which defined the system and the guarantees of local government in Ukraine, bases of the organization and activity, legal status and responsibility of bodies and officials of local government.

The specified law, in particular, fixed some powers of LSG on protection of the population and territories against emergency situations which were fragmentary stated in some articles devoted to determination of delegated powers of executive bodies of village, settlement, city councils in different branches: ground relations and protection of surrounding environment; defensive work; law enforcement, law and order, protection of the rights, freedoms and legitimate interests of citizens.

So, competence of executive bodies of village, settlement, city councils treats:

– implementation of necessary actions for elimination of consequences of ecological accidents, natural disaster, epidemics, epizooties, other emergency situations,

informing about them of the population, attraction in the order established by the law to these works of the enterprises, establishments and the organizations, and also the population;

– the organization and participation in implementation of the actions connected with mobilization preparation and civil defense, in the respective territory;

– acceptance of necessary actions for providing the state and public order, activity of the enterprises, establishments and the organizations, rescue of life of people, protection of their health, preservation of material assets in case of natural disaster, ecological accidents, epidemics, epizooties, fires, other emergency situations [12, Art. 33, 36, 38].

During the period since 1997 till 2015 the responsibilities of LSG established by the Law No. 280/97-VR in the sphere of the citizen protection practically did not change, except that with adoption of the Code of civil protection of Ukraine changes in item 3 of Art. 36 of this law were made and is fixed that such delegated power belongs to maintaining executive bodies of village, settlement, city councils as the organization and participation in implementation of the actions connected with civil protection in the respective territory (before as we noted, it was used the term "civil defense" – *author's note*).

Due to the adoption of law of Ukraine "About rescue services" from 14.12.1999 No. 1281-XIV (further – the Law No. 1281-XIV) to number of the delegated responsibilities of LSG was added a number of the responsibilities connected, including, with activity of rescue services, namely:

– creation in accordance with the established procedure municipal rescue services;

– creation of reserve fund for elimination of emergency situations of man-made and natural character;

– development and implementation of actions for material support of activity of municipal rescue services;

– organization in accordance with the established procedure training of staff of municipal rescue services and rescue services of public organizations [13, Art. 38].

The very important guarantee of independence of compulsory health insurance is the standard of Art. 67 of the Law No. 280/97-BP according to which, the state financially provides implementation of compulsory health insurance of the powers of executive authorities provided by the law in full, and decisions of public authorities which lead to additional expenses of LSG, are surely accompanied by transfer of necessary financial resources by it. The specified decisions are carried out by LSG within the financial resources transferred to them [12].

The following stage on the way of formation of institutional bases of LSG functioning in Ukraine as the entities of civil protection implementation should be connected with adoption of the law of Ukraine "About protection of the population and territories against emergency situations of man-caused and natural character" from 08.06.2000 No. 1809-III (further – the Law No. 1809-III) [14] and the resolutions of the Cabinet of Ministers of Ukraine "About the adoption of Provision on unified state system

of the prevention and emergency response of man-caused and natural character" from 03.08.1998 No. 1198 [15].

So, according to the specified resolution of the Cabinet of Ministers of Ukraine for the purpose of ensuring realization of a state policy in the sphere of prevention and emergency response, civil protection of the population in our country the unified state system of the prevention and emergency response of man-caused and natural character (further – single state system) was created.

This system represented the set of the central and local executive authorities, executive bodies of councils, the state enterprises, establishments and the organizations with the corresponding forces and the means, carrying out supervision of ensuring man-caused and natural safety, organizing work according to the prevention of emergency situations of a man-made and natural origin and reaction in case of their emergence for the purpose of protection of the population and environment, reduction of material losses.

The permanent bodies of management of the unified state system at local level were the executive bodies of councils, and coordinating bodies – the commissions of the relevant councils on questions of man-caused and ecological safety and emergency situations [15, pars. 2, 3, 10, 13] acted.

The Law No. 1809-III passed through two years carried LSG within the responsibilities defined by the law, to category of state authorities of management in the field of protection of the population and territories against emergency situations of man-made and natural character, and also more fully and specifically defined responsibilities of LSG in this sphere, namely:

– participate in implementation of realization of the state's policy in the field of protection of the population and territories against emergency situations of man-caused and natural character;

– exercise administration through the corresponding territorial subsystems of the unified state system;

– guarantee the realization of evacuation actions in case of emergency situations of man-caused and natural character;

– carry out preparation of the population for actions in emergency situations of man-made and natural character according to the powers;

– carry out collection of information and an exchange of it in the sphere of protection of the population and territories from emergency situations of man-made and natural character, provide the timely notification and informing of the population on threat of emergence or emergence of emergency situations of man-made and natural character;

– create financial and material reserves for elimination of emergency situations of man-made and natural character and their consequences according to the legislation;

– provide the organization and carrying out rescue and other urgent works, and also maintenance of a public order during their carrying out;

– promote steady functioning of objects of managing in a zone of emergence of emergency situations of man-made and natural character;

– carry out other responsibilities defined by laws of Ukraine, acts of the President of Ukraine [14, Art. 32].

It is necessary to pay attention to that fact that formulations of responsibilities of LSG in the field of protection of the population and territories against emergency situations of the man-made and natural character, fixed in Law No. 1809-III Art. 32, were identical competences of local public administrations (that is, local bodies of the state executive power – *author's note*) that created legal preconditions for duplication of responsibilities between the mentioned bodies.

In the 24th of June, 2004 the Law of Ukraine No. 1859-IV "About the legal basis of civil protection" (further – the Law No. 1859-IV) [1] was passed, which defined legal and organizational basis in the sphere of civil protection of the population and territories from emergency situations of man-caused, natural and military character, responsibility of executive authorities and other governing bodies, an order of creation and use of forces, their acquisition, service, and also a guarantee of social and legal protection of staff of bodies and divisions of civil protection.

The mentioned law entered for the first time into a national legal framework the term "civil protection" and its normative definition as "system of organizational, technical, sanitary-and-hygienic, antiepidemic and other actions which are carried out by the central and local executive authorities, *local government authorities* (our italics – *author's note*), the forces subordinated to them and means, the enterprises, establishments and the organizations irrespective of form of ownership, voluntary saving formations which implement the realization of these actions on the purpose of prevention and elimination of emergency situations which menacing to life and human health, Art. 4] cause a material damage in a peace time and during the special period" [1, Art. 4].

Besides, the Law № 1859-IV fixed the creation of one more unified system in Ukraine intended for counteraction to emergency situations, namely the unified state system of civil protection of the population and territories as sets of governing bodies, forces and means of the central and local executive authorities, *local government authorities* (our italics – *author's note*) to which realization of a state policy in the sphere of civil protection [1, by Art. 1] is assigned.

Besides, this normative legal act carried local government authorities to the category of local governing bodies of civil protection [1, Art. 35].

THE CURRENT STATE OF ORGANIZATIONAL AND LEGAL BASIS OF LOCAL SELF-GOVERNMENT AUTHORITIES FUNCTIONING IN UKRAINE AS THE ENTITIES OF CIVIL PROTECTION IMPLEMENTATION

The most important milestone on a way of formation of the Ukrainian state system of counteraction to emergency situations was acceptance 02.10.2012 the Code of civil protection of Ukraine (further – CP Code) [2].

The Code of CP included the most necessary and actual provisions of all main industry special laws existing before making a legal basis of civil protection, in particular laws No. 2974-XII, 1809-III, 1281-XIV, the 2974-XII which terminated since 01.07.2013 in connection with coming into effect of the relevant code.

As a result of the introduction in action of the CP Code juridical were abolished: the system of civil defense of Ukraine, the unified state system of the prevention and emergency response of man-caused and natural character, the unified state system of civil protection of the population and territories, and on their base is legally created by USS CP.

USS CP represents the set of governing bodies, forces and means of the central and local executive authorities, Council of ministers of the Autonomous Republic Crimea, executive bodies of councils (our italics – an author comment), the enterprises, establishments and the organizations which provide realization of a state policy in the sphere of civil protection [16, par. 2].

Ensuring realization of a state policy in the sphere of civil protection is carried out by USS PC which consists of functional and territorial subsystems and their links [2, pt. 1, Art. 8].

By the Code of CP it is also established that links of territorial subsystems are created, in particular, by LSG, – in the regional centers, in the cities of regional and regional value [2, pt. 3, Art. 10].

It should be noted that with adoption of the Code of CP the LSG received the responsibilities concentrated in one act in the sphere of civil protection, and after acceptance of the resolution from 09.01.2014 No. 11 "About the adoption of Provision on the unified state system of civil protection" [16] were legislatively integrated by the Cabinet of Ministers of Ukraine into USS PC as its components.

Part 2 of the Art.19 of the Code of CP "Responsibilities of Council of Ministers of the Autonomous Republic Crimea, local public administrations, and local governments in the sphere of civil protection" contain 30 positions of responsibilities of LSG in the sphere of civil protection [2]. Besides, this list is not exhaustive, as in par. 3, pt. 2, Art. 19 of the Code of CP need of providing LSG of implementation of other responsibilities for the sphere of the civil protection, provided by the present Code and other acts [2] is fixed.

Concerning civil protection it is possible to illustrate the character and competence of LSG volume with some responsibilities, namely:

– implementation of civil protection in the respective territory;

– development and ensuring implementation of programs and the plans of measures in the sphere of civil protection, including directed on protection of the population and territories against emergency situations and prevention of their emergence, man-made and fire safety;

– the organization of works on elimination of consequences of emergency situations in the respective territory of the cities, settlements and villages, and also radiating, chemical, biological, medical protection of the population and engineering protection of territories against consequences of such situations;

– organization and guide of carrying out recovery operations to elimination of consequences of emergency situations;

– ensuring performance of tasks with the links of territorial subsystems of SSS CP created by them;

– the organization and implementation of evacuation of the population, property to safe areas, their placements and population life support;

– control of a condition of surrounding environment, sanitary-and-hygienic and epidemic situation;

– creation and use of material reserves for prevention and elimination of consequences of emergency situations;

– preliminary accumulation and maintenance in constant readiness of means of individual protection for the population living in predicted zones of chemical pollution and zones of supervision of subjects of managing of radiating danger of I and II categories, and formations of civil protection, and also devices of radiation and chemical control and investigation;

– the organization and ensuring activity of victims of emergency situations, and also when conducting military (fighting) actions or owing to such actions;

– the organization of implementation of requirements of the legislation on creation, operation, maintenance and reconstruction of fund of protective constructions of civil protection [2, pt. 2, Art. 19].

The analysis of functions and responsibilities in the sphere of the civil protection, legislatively assigned today on LSG, shows that they act at the appropriate administrative-territorial levels as the main entities of public administration in the specified sphere.

However, hardly such approaches used in the Code of CP, will be coordinated with standard of par. 3 of the Art. 36 of the Law of Ukraine "About local government in Ukraine" according to which executive bodies of village, settlement, city councils will organize and participate in implementation of the actions connected with civil protection in the respective territory [12].

On discrepancy of volume and nature of powers of LSG in the sphere of the civil protection, defined, on the one hand, in the Law No. 280/97-VR, and with another, in CP Code attention experts of Public service of Ukraine in emergency situations [17, p. 386] fairly focus.

Moreover, the approaches used by the legislator to scoping of responsibilities of LSG in the sphere of civil protection implementation, in our opinion, break one of the main the management law – "The law of proportionality of an object and entity of management" which as Mamonova V. V. notes, reflects the need of a certain compliance of the managing director and operated subsystems and their elements, the entity providing ability to carry out administrative impacts on the object [18, p. 37]. Also, in our opinion, one more of fundamental laws of management – "The law of association of centralization and decentralization" (in more detail about this law see, e.g. [18, pp. 38-39]) is not observed.

It is worth to remember that civil protection, as well as civil defense is the especially state tasks which performance substantially is not peculiar to the nature of local government. Besides, in our country two central bodies of the state executive power, urged to implement the formation and realization of a state policy in the sphere of

civil protection – the Ministry of Internal Affairs of Ukraine and Public service of Ukraine on emergency situations respectively now are formed.

So, for example, one of the main objectives of Public service of Ukraine on emergency situations is realization of a state policy in spheres of civil protection, protection of the population and territories from emergency situations and prevention of their emergence, elimination of emergency situations, saving business, suppression of fires, fire and man-made safety, and the service carries out the responsibilities as directly, and through the territorial bodies created in areas, areas, areas in the cities, the cities of regional value [19, par. 3].

Stated, of course, at all does not mean that LSG should not be involved in questions of realization of a state policy in the sphere of civil protection at territorial level at all as at existing system of the territorial organization of the power in country, and also territorial and functional principle of creation of USS CP, without participation of LSG effectively to solve questions of ensuring civil protection at level of areas, areas, areas in the cities, the cities, villages, settlements is not obviously possible.

In this context it is impossible to avoid that fact that in the Concept of reforming of local government and the territorial organization of the power in Ukraine (No. 333-r) approved by the order of the Cabinet of Ministers of Ukraine on 01.04.2014, among the main responsibilities of LSG performance of tasks in the sphere of ensuring civil protection is not mentioned at all. At the same time, (which village, settlement, city councils and their executive bodies treat – author's note) is offered to refer suppression of fires and ensuring public safety to powers of LSG on a basic level [20].

CONCLUSIONS

Summing up the national features of formation of institutional basis of LSG functioning as the entities of civil protection implementation, it is necessary to ascertain the following.

Throughout the contemporary history of the independent Ukrainian state (1991-2015) the steady tendency to decentralization of public administration in the sphere of civil protection implementation that proves to be true successful legislative attempts of gradual, methodical delegation by the state to LSG with the increasing responsibilities in the specified sphere is observed.

At the same time, these processes, as a rule, are not accompanied by necessary financial support that will not be coordinated with par. 2 of the Art. 9 of the European Charter of local government [21] (according to this point the volume of financial resources of local authorities corresponds to the functions provided by the constitution or the law – author's comment), the Art. 67 of the Law No. 280/97-VR [12] and, finally, leads to essential decrease in efficiency of public administration in the sphere of civil protection implementation, both at territorial level, and in the country as a whole.

Similar domestic administrative practice, in the conditions of extreme limitation of resources at LSG and their wide general competence, eventually, leads to that in the sphere of civil protection are carried out by some such bodies of function by a residual principle (it is indicative practice of financing of expenses on creation of material

reserves for prevention and elimination of consequences of emergency situations) confirms, or are carried out formally (as, for example, such a fundamental task as ensuring civil protection in the respective territory), or not carried out at all (the direction of civil protection as preliminary accumulation and maintenance in constant readiness of means of individual protection for the population living in predicted zones of chemical pollution, and also devices of radiation and chemical control and investigation can be an example of that such problem in scales of all country).

Today Ukraine is in process of formation of effective institutional model of functioning of the state system of counteraction to emergency situations, in particular in the course of search of effective mechanisms of differentiation of functions and powers, the rights and duties in the sphere of civil protection between the central and local executive authorities and LSG.

In this regard, for Ukraine real scientific and practical interest represents studying and the analysis of progressive experience of formation and ensuring effective functioning of the state systems of civil defense and analogues in the developed foreign countries, including the countries of Western and Eastern Europe on what it is necessary to concentrate attention at carrying out further scientific researches in this area.

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FORMATION OF STATE REGIONAL POLICY IN UKRAINE SUBJECT TO EUROPEAN EXPERIENCE

Mykola IZHA
ORIPA NAPA under the President of Ukraine, Odessa, Ukraine,
director@oridu.odessa.ua

Andrii MAIEV
ORIPA NAPA under the President of Ukraine, Odessa, Ukraine,
ua197307@ukr.net

Abstract: *The article considers the main stages of formation and development of the state regional policy in the independent Ukraine, taking into account the European experience. The research includes the most important tasks of the regional policy, the prerequisites for its formation in Ukraine, legislative and institutional basis as well as various instruments of realization.*
Keywords: *regions, regional policy, depressed areas*

INTRODUCTION

Regional policy is currently being implemented in all countries of the World, as an integral part of state policy. It regulates the relations between the centre and the regions and seeks to organize the territory in accordance with the adopted state development strategy.

The main objectives of state regional policy peculiar to almost all countries consist in the integrity and the unity of the territory, the balance of national and regional interests, reducing the differences in socio-economic development and living standards, the creation of equal conditions for all citizens, regardless their place of residence. Developed countries put more narrow and specific tasks, mainly in the field of Economics. They are: smoothing of the differences in employment and per capita income, stimulating economic activity in crisis and backward regions etc.

By definition, of a well-known Ukrainian scientist in the field of regional policy M. Dolishnii: «regional policy in its broad sense is a system of goals and actions aimed at implementation of the state interests in the regions and the internal interests of the regions themselves, which is implemented using methods that take into account historical, ethnic, social, economic and environmental specificity of territories» (Долішній, 2006).

Objective preconditions for regional policy consist in structural heterogeneity of the territory in natural, geographic, resource, economic, social, ethnic and political aspects. In this regard, any action should take into consideration regional interests and characteristics.

MAIN DIRECTIONS, LEGAL BASIS AND DEVELOPMENT OF REGIONAL POLICY

Experts identify in the state regional policy a number of key areas, including: economic, social, demographic, scientific-technical and environmental.

The economic area of regional policy is aimed at achieving an integrated socio-economic development. Social activities include state assistance in the development of social infrastructure in the regions with low level of social protection of the population. Demographic direction should contribute to the improvement of the demographic structure of the population, the birth rate, mortality decreasing and so on. Scientific-technical aspect of the state regional policy should stimulate the development of scientific research, modern technologies, efficient use of energy resources. Environmental area aims at comprehensive state activities concerning environmental protection, rational use of recreational resources and the creation of favourable conditions for vital activity of the population.

The regional policy was born as a direction of state policy in leading states of the World in the 1930ies. However, at that time it was seen merely as a tool to smooth over imbalances in social and economic development of regions and provided a simple redistribution of subsidies among the territories, which had certain problems in their development.

According to T. Golikova, as a rule, it was about overcoming the problems of certain industries (in particular coal, steel, shipbuilding). Most of the problems were solved using direct state investments in the manufacturing sector with specific incentives (including benefits) for the support of enterprises of various problem areas. At the same time, in the 1980ies - early 1990ies, the vast majority of European countries passed to new principles of regional policy implementation. The concentration of financial resources in problem areas, the transition from a project to a program option for regional development and the implementation of the foundations for subsidiarity became the main principles. (Голікова, 2009).

In the XXI century internal borders in Europe have practically ceased to act as barriers between the countries. In fact, European integration or re-integration is no longer following the model that individual European countries have adopted and developed in the past for their internal standardization, which results also in forms of political centralization and cultural homogenization. A major challenge of today's European reality is represented by the attempt to give solid bases for social, economic and political integration in conditions of cultural diversity, subsidiarity and multi-level governance. (Bufon & Markelj, 2010).

Therefore, with the lapse of time, the goals of regional policy have changed and become more versatile. There are new principles, focused on decentralization of power and partnership between different levels and branches, as well as cooperation with private and nongovernmental sectors.

In the Soviet period regional studies were conducted in the context of centralized approach to the administration of economy, where the state was the only active subject.

The place and role of the state in shaping regional policy have been defined via command-administrative management paradigm.

The State strategy of regional development for the period up to 2020 has identified the following stages of regional development in the independent Ukraine:

- the transition economy (1991-1999)
- the phase of economic growth (2000-2007)
- the stage of the world financial-economic crisis (2008-2012)
- the deepening of the negative trends (2013-2014). (Постанова № 385, 2014).

After Ukraine gained its independence in 1991, it was expected that regional policy will attract more attention, because the differences between the regions in economic and social development were very significant. The urbanized regions - especially those that have large cities with the population about 1 million people - Kyiv, Dnipropetrovsk, Odessa, Kharkiv were among the most developed. At the same time, weakly urbanized parts of Northern, Central and Western Ukraine had the worst results.
The significant disparities in poverty rate between the regions of Ukraine have existed for a long time. So, in 2001, the highest poverty rate was observed in the Zakarpatska region (46,6%), in 2012 – in Rivne region (46,7%). The lowest level of poverty traditionally was typical for Kiev (7,8%), which is 3.3 times lower than in the whole country (25,5%). In 2012, compared with 2001, the trend of increasing poverty rate remained in 13 regions. The highest growth of this rate was considered in Rivne (from 21,9 up to 46,7%), Ternopil (from 25,7 up to 44,9%) and Kirovograd (from 22,8 up to 35,9%) regions (Постанова № 385, 2014).

However, the existence of economic disparities between the regions is not critical, because traditionally, such differences exist in most countries with large territories. At the same time, researchers pay attention to some Ukrainian "special features" that cause anxiety. Among them, for example, there is mismatch between the economic power of the region and its indicators of social well-being and life quality. This phenomenon is rarely observed in Europe. The leaders of industrial development that have the highest GDP per capita, industrial production and exports, have at the same time pressing social problems - the highest levels of depopulation, mortality (especially among able-bodied men), emigration, disease, alcoholism, unfavourable criminal and environmental situation, etc. The system, when all revenues are first accumulated in Kiev, and then distributed to the regions, does not allow regional authorities to use their money and solve urgent social problems.

If we assess the economic situation in Ukraine, in comparison with European countries, we will see that average GDP per capita in Ukraine constitutes 15.5% of the average rate in the EU. It should be noted that GDP per capita in Hungary, Poland, and Czech Republic is 2.4 - 3.3 times higher than the official Ukrainian indicator. Even in the years when Ukraine showed GDP growth, there were no qualitative changes in the above-mentioned ratio with the countries of Europe.

The first steps of the Central government, which can be attributed to the economic direction of the state regional policy, were aimed at stimulating economic development of territories. In the 1990ies such instruments for regional development, as the use of tax incentives were introduced in some areas. Since 1998 9 laws and 8 decrees of the

President of Ukraine concerning the establishment of Exclusive Economic Zones (EEZ) and the organization of special regimes for investment activities in the Territories of Priority Development (Industrial Parks) had been adopted. The EEZ and Industrial Parks provide benefits for investors, and under specified conditions, exemption from certain taxes for a defined period.

It was legally allowed to create 11 EEZ and the special regime was introduces in the territories of the Autonomous Republic of Crimea, Volyn, Donetsk, Zhytomyr, Zakarpatska, Luhansk and Chernihiv regions as well as the cities Kharkiv and Shostka. The industrial parks included more than 90 administrative districts and cities, which is about 10% of the territory of the country. The main purpose for the introduction of a special investing regime in these areas consisted in attracting investment in the most depressed regions with acute social problems, as well as in the regions affected by the Chernobyl disaster. Exclusive zones were created first of all in order to increase export orientation of the industry in certain areas and to make favourable conditions for the development of Ukraine as a transit country.

Since the beginning of their activity EEZ and industrial parks attracted investments of more than 825 mln. USD. According to preliminary data, the growth rate of investment was more than twice higher than the average national indicator. Over 80% of investments were done in the manufacturing: especially steel, chemical and food industry. At the same time, the overall effect of such zones throughout the country was not significant and did not lead to the equalization of existing economic disparities.

However, some experts say that the gaps in social and economic development of Ukrainian regions remain within the imbalances peculiar to some European countries. At the same time, it is impossible to ignore the presence of socio-mental differences between the people in different Ukrainian regions and their self-identification in connection with the belonging of different parts of Ukraine to the various states. These differences may adversely affect the development of the country as a whole, especially when they are used in political struggle. These contradictions are the most striking between the Western and South-Eastern regions of Ukraine, while the central region balance and moderate them (Ткачук А. & co-authors, 2013).

In our view, socio-mental differences manifested themselves very clearly during the presidential election campaigns in 2004 and 2010, when Viktor Yanukovych, received support in the regions of Ukraine where Russian-speaking population dominated (Autonomous Republic of Crimea and Sevastopol, Dnipropetrovsk, Donetsk, Zaporozhye, Lugansk, Nikolaev, Odessa, Kharkiv and Kherson regions) (Інтернет-портал ЦВК, 2010).

So, having got the state independence in 1991, Ukraine has actually become a country, where a variety of regions belonged to different centres of influence outside Ukraine. At the same time, economic and social processes at regional and local levels have evolved so rapidly that further delay in the formulation of an effective state regional policy would threaten economic and social stability in the country.

Thus, according to the European experience, the implementation of state regional policy is not easy task even for the countries with developed market economics. Its formation in Ukraine occurred in the conditions of a lack of relevant experience,

incompleteness of creating viable central government institutions, severe economic crisis, and slow transformation of the old model of relations between central and local authorities. So, there were enough of objective and subjective difficulties.

The key approaches to the principles of national regional policy at the constitutional level are laid down in several articles of the Ukrainian Constitution, in particular: Article 132 says that "the territorial structure of Ukraine is based on the principles of unity and integrity of state territory... balanced social and economic development of the regions, taking into account their historical, economic, environmental, geographic and demographic characteristics, ethnic and cultural traditions" (Конституція України).

The first legislative act that laid the foundation of the legal framework for the state regional policy was "The Concept of the State Regional Policy" approved by the Decree of the President of Ukraine № 341/2001 on the 25th of May, 2001.

The creation of the conditions for dynamic and balanced socio-economic development of Ukraine and its regions, improvement of living standards, compliance with state-guaranteed social standards for every citizen regardless of place of his residence, as well as deepening of market transformation process on the basis of regional potential, improving the effectiveness of administrative decisions and activities of state and local self-government bodies were declared the main objectives of the state regional policy (Указ Президента № 341/2001).

The concept also included the main principles of the state regional policy, including: the constitutionality and legality, ensuring unitarity of Ukraine and the integrity of its territory, the combination of the processes of centralization and decentralization of power, promotion of close cooperation between the executive authorities and local self-government.

The concept gave rise to the formation of normative-legal support of state regional policy. The principal legislative act in this context was the Law № 2856-IV dated 08.09.2005 "On stimulation of regional development". This law determines legal, economic and organizational principles for the implementation of state regional policy to stimulate the development of regions and overcoming the phenomenon of depressed area. According to the law, the state promotion of regional development is carried out in accordance with the principles of the state regional policy. The basic documents to ensure these principles are:

- State Strategy for Regional Development (SSRD) that is approved by the Cabinet of Ministers of Ukraine;
- Regional Development Strategy (RDS) - approved respectively by the Verkhovna Rada of Crimea, regional, Kyiv and Sevastopol city councils. (Закон «Про стимулювання розвитку регіонів, 2005).

The regional development strategy is a set of actions undertaken by the state or region to achieve the objectives of effective development of the territory with regard to its own resource potential, environmental factors, legal, financial, structural, economic, institutional measures and other. The strategy is the basis for preparation of operational programmes and plans, specific projects aimed at the achievement of assigned goals.

In addition to the mentioned law, the foundations of domestic policy in the sphere of local self-government development, and encouraging the development of regions are contained in the Law of Ukraine "On fundamentals of domestic and foreign policy" and some other normative documents.

The legislation in the field of regional development, which was formed during the years 1991-2013, has created a system including strategic and planning documents in the field of regional development, defines the institutions responsible for state regional policy and also assigns the sources for the funding of regional development. At the same time, the existing laws and regulations of the government and the President of Ukraine are not harmonized among themselves. They are based on different concepts, with different priorities and different ways of legal regulation (Ткачук А. & co-authors, 2013).

In particular Ukraine had no special law "On the principles of state regional policy" until 2015. Projects of this law were passed in Parliament in 2010 and 2012, but were not supported. Finally on the 5th of February 2015 the document was adopted by the Verkhovna Rada and on the 1st of March it was signed by the President. The law defines legal, economic, social, environmental, humanitarian and institutional framework for the state regional policy as a part of the internal policy of Ukraine. (Закон України «Про засади державної регіональної політики», 2015). In particular, the document contains the definition of the objectives, principles and priorities of the state regional policy, defines the power of its subjects as well as instruments for financing and monitoring. New features include a paragraph regulating the participation of non - governmental bodies - regional development agencies - in the development and implementation of state regional policy. The adoption of this law is stipulated by the Agenda of Association between the EU and Ukraine.

This long-awaited law should contribute to the creation of real effective regional policy in Ukraine, as well as form basic legislative framework for its implementation.

State regional policy should take into account the peculiarities of each region, to provide them with relevant resources - primarily the financial ones. The regions have to retain up to 70% of their revenues, while now the issues of financial subsidies to them are decided by the central authorities via the corruption schemes. Largely the absence of effective regional policy led to the loss of the Autonomous Republic of Crimea and the city of Sevastopol, as well as to the tragic events on the Donbas.

KEY INSTRUMENTS FOR REGIONAL POLICY REALIZATION

One of the tools to overcome the economic and social inter-regional disparities is the State program for overcoming a phenomenon of depressed areas. The concept of "depressed area" has been used in the post-Soviet space, including Ukraine, since the mid-1990ies, while in Europe it has existed since the mid-twentieth century.

For the first time the notion "depressed area" was employed in Britain in the interwar period. This term concerned mainly the old industrial areas within the carboniferous basins of the country, which considerably suffered from unemployment caused by the cessation of production in some heavy industry sectors. Now foreign

scientific literature mainly uses the term "depressed areas" as an equivalent of "territory in decline".

Depressed areas are characterized not by individual crises, but by comprehensive, systematic and prolonged stagnation of basic socio-economic parameters.

The program for overcoming a phenomenon of depressed areas is designed by central executive body responsible for the state regional policy together with other central executive authorities, relevant local public and self-governments authorities and is approved by the Cabinet of Ministers of Ukraine.

The researchers point out that each Ukrainian region has problem areas. Unfortunately, according to Ukrainian legislation, they cannot be localized, and therefore are not allowed to get state support guaranteed by legal texts.

In accordance with the Law of Ukraine "On stimulation of regional development" and other regulations the Ministry of Economy monitored socio-economic performance of the regions. However, this evaluation showed that none of the monitored areas can be treated as depressed, i.e. criteria for determining depression prescribed by the law are very strict, and therefore need to be improved (Вакуленко & co-authors, 2012).

State regional targeted development programs could become another instrument for implementing state regional policy. According to the Law of Ukraine "On State Targeted Programs" from 18.03.2004. № 1621-IV "State targeted program is a set of interrelated tasks and measures aimed at solving the major problems in the development of the state, some sectors of the economy or administrative units using the State Budget of Ukraine". Article 3 of the Law says that "State targeted program can be directed to the solution of other problems, including regional development with national significance". (Закон «Про державні цільові програми», 2004). The initiative of such program and its public debate can be launched by central government authorities as well as regional administrations and councils. Every year dozens of state programs in different sectors of socio-economic activities are implemented in Ukraine. However, none of the targeted program has been concluded successfully. Their implementation is hindered by the lack of sustainable manpower policy, human resources confusion in central and regional bodies, change of the leaders depending on the political situation and the results of elections. Mr. Arsenii Yatseniuk is the eighteenth Prime Minister in the whole short history of independent Ukraine, and the average duration of the government work is about 16 months. The implementation of any program in such conditions becomes a complicated task.

More and more researchers pay attention to the fact that the state has not only to support the weakest regions. A large number of experts emphasize that the state regional policy should be directed to the creation and maintenance of all-embracing conditions for regional development. The state should not solve problems; it has to create background for the full development of territories. It should act together with the regions and to provide them with instruments of influence on regional development and the responsibility. The regions themselves should solve their problems on the basis of well-defined state policy, comprehensive legal framework, appropriate resources and logistics. (Бабінова, 2011).

We should note the fact that direct budget support for all regions is impossible, sources of growth have to be found at regional and local level basing on local communities, their associations, local self-government, business and creating favourable conditions for them. Therefore, the region according to its dualistic nature is simultaneously subject and object of administration at the regional level. (Іжа, 2011).

Among the main administrative instruments for the development of regions specified in the National Strategy for Regional Development 2015 there was preparation and implementation of pilot projects in the sphere of Agreements on regional development between the central government (the Cabinet of Ministers of Ukraine) and the regions.

Agreements on regional development were conceived as a radical instrument to stimulate the development of certain regions through contractual relations, where each party agrees to perform definite actions and to provide funds in specified amounts. The need for implementation of contractual relations between the government and the regions was caused by the inefficiency of subvention mechanisms for the support of depressed areas.

Although projects of such documents were approved by many regional councils, the agreements were concluded only with Donetsk (15.09.2007), Volyn (12.01.2010), Lviv (25.06.2009), Vinnitsa (26.01.2010), Ivano-Frankivsk (06.10. 2010) and Kherson (19.10.2010) regions.

In general, the conclusion and implementation of the agreements had the following positive features:

- The possibility of extensive implementation of strategic regional planning;
- Concentration of regional and national resources for solving the most pressing problems; reconciling the interests of executive bodies and local self-government to implement the strategic objectives of regional development;
- Diversification of resources for regional development, including the possibility of wide involvement of private capital to finance joint projects of regional scale;
- Increasing the responsibility of local authorities for the effective use of resources intended for the solution of socio-economic problems in the region;
- Clear definition of the obligations of the parties, the joint responsibility of the government and local authorities for the resulting effect of implementation of prescribed tasks, etc.

At the same time, experts note that the practice of conclusion and implementation of agreements on regional development proved their specific features:

- Considerable duration of the procedures for elaboration and conclusion of the agreements;
- Dependence of elaboration and conclusion of the agreements on the political situation;
- Priority to the regions with high and medium level of development, because of relatively small amount of required financing of projects under the agreement, and the ability to attract local capital;
- The agreements concluded were preferentially aimed at the solution of the problems of housing and communal services, utilities and local infrastructure, as

well as serious attention to infrastructure projects of national importance, including those associated with the preparation and holding of finals of Euro 2012;

- Different structure of financial sources under the agreements.

Among the obstacles to the effective use of the agreements as an instrument for regional development there are:

1) Faults and shortcomings of strategic planning for regional development.
2) Conflicts between regional administrations, regional councils and groups of influence at the regional level, as well as different visions of development priorities in the region, which are in the way for preparation of appropriate regional strategies in time.
3) Central authorities passivity concerning preparation and conclusion of the agreements. (Підвищення ефективності реалізації угод, 2009).

Analyzing the results of the implementation of the agreements we should pay attention to the fact that the identified priorities for cooperation are mainly situational. There is no doubt that these projects and programs have a significant impact on the territorial development, but all of them foresee only one part of the investment - capital contributions - without taking into account the need to develop human capital, which is always defined at the highest level as the main driver of progress in the country. Moreover, the final results are presented as "units", adopted by-laws, built networks, repaired flats, etc. There is no analysis concerning the final impact of these measures on the local economy and community.

For example, within the analysis of programs to support the depressed mining towns the final result should be not only the number of renovated apartments that were in accident condition (the agreement with the Donetsk region), but analysis of the number of the families which otherwise would have left their place of residence. (Регіональний розвиток та державна регіональна політика, 2014).

If we consider foreign experience, we will see that, for example, in France, the agreement between the government and the region has the character of the planning document approved and signed by both parties, and thus it serves as a "regional development strategy" in Ukrainian understanding.

In addition, the similar regional level in France has significant independent sources of income allowing to form own expenses and to plan the implementation of joint activities with the state. The financial resources of the regions in Ukraine de facto are limited and do not allow to provide even two-year planning. Besides this, the law does not guarantee the financing of measures established by the agreement in the medium term.

So, the experience has shown that in Ukraine the Agreements have not achieved the desired results, primarily because of insufficient and sometimes very low level of funding. Their institutional context also raises a lot of questions, most of which are related to inequality of parties signing the agreement and rather symbolic role of local self-government bodies as a major actors in the framework of their implementation.

One of the main reasons for their failure is lack of concentration of resources for the implementation of priority tasks, non-fulfillment of the defined actions, which made

impossible real increase of financial income for state and local budgets and didn't allow creating the conditions for providing quality services to people in social sphere.

The mechanism of the agreements on regional development requires significant improvements regarding, in particular, the establishment of clear responsibility of the parties for improper performance of the agreement and creating a schedule for the realization of priority measures. Also, it is necessary to develop a complex of measures aimed at increasing the financing of such agreements by private sector by providing some preferences for its representatives (Іжа, 2012).

Another important element of regional policy in Ukraine should be the development of investment and the use of international technical assistance in regional projects. Regional policy and regional development are the priorities for many international foundations and donor agencies working in Ukraine. The success of international technical assistance projects in the field of state regional policy largely depends on both sides - donor and beneficiary.

The beneficiaries, which mainly are state and local self-government authorities, have to show their pragmatic attitude to technical assistance as a complementary developmental resource, which is potentially more flexible. This will allow to use some administrative innovations, which would be difficult to introduce in the framework of rigid Ukrainian legislation and financial system. (Ткачук А. & co-authors, 2013).

Regional development agencies (RDAs) - contract form of cooperation between the central and regional authorities are also an important instrument for regional development, which is actively used in Europe. The RDAs operate as semi-autonomous entities outside mainstream government. This implies that a new generation of regionally based development bodies, networked RDAs, has become a conspicuous feature in regional policy in Europe. (Halkier, 2012). Such agencies can be a valuable source of experience for Ukraine.

Vasyl Kuibida notes that the state regional policy of Ukraine should include the development of cross-border and interregional cooperation and active participation of Ukraine in international projects and programs as important innovative forms of international cooperation permitting to facilitate the efficient solution of socio-economic development issues. That will significantly expand representation of Ukrainian regions in the European economic and political space. (Куйбіда & co-authors, 2010).

Cross-border cooperation has been actively developed on the territory of the European Community for dozens of years. In order to balance excessive disparities and promoting social and territorial cohesion on the Eastern borders of the EU, the European Commission launched the European Neighbourhood and Partnership instrument, and cross-border cooperation programs for border regions. Legal basis of cross-border cooperation is determined first of all by European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (adopted in Madrid in May 1980). According to this Convention «transfrontier co-operation shall mean any concerted action designed to reinforce and foster neighbourly relations between territorial communities or authorities within the jurisdiction of two or more Contracting Parties and the conclusion of any agreement and arrangement necessary for this purpose» (European Outline Convention, 1980).

The first Euroregion, the EUREGIO, was established in 1958 on the Dutch-German border, in the area of Enschede (NL) and Gronau (DE). Since then, Euroregions and other forms of cross-border co-operation have developed throughout Europe. Today, in more than 70 cases, municipalities and regional authorities co-operate with their counterparts across the border in more or less formalized organizational arrangements. (Perkmann, 2003).

In today's conditions, when the EU borders are very close to the borders of Ukraine the development of cross-border cooperation has to become an important element of regional policy. Geographical location of Ukraine in the South-East of Europe and its long border line, turn most of Ukrainian territories into the border regions. 19 regions of Ukraine are the border ones and occupy about 77.0% of the territory of the country.

Having proclaimed the course to European integration, Ukraine immediately expressed its interest to the participation in cross-border cooperation projects and in 1993 joined the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

In 1993 there was created the Euroregion "Carpathian", which firstly included the administrative units of three countries: Hungary, Poland and Ukraine. Today this Euroregion brings together 19 administrative units of Ukraine, Poland, Slovakia, Hungary and Romania. Its area is about 150 thousand km2 and its population is 16 million people. One of the most important conditions for the formation of this Euroregion is common historical past as its territory includes the area which belonged for a long time to the Habsburg Empire. In 1995 there was created the Euroregion "Bug" (Poland-Ukraine-Belarus) in 1998 – "Lower Danube" (Romania - Ukraine - Moldova), and in 2000 – "Upper Prut" (Romania - Ukraine - Moldova). Later Euroregions were established in the northern and eastern borders of our country with the participation of the subjects from the Russian Federation ("Dnepr", "Sloboda", "Yaroslavna", "Donbas") and Belarus ("Dnepr").

However, when creating Euroregions in European countries has been accompanied by political stability, economic growth and sustainable legislative traditions, the situation in Ukraine was significantly different.

The development of regional cooperation was influenced by several objective conditions fundamentally differing Ukraine from most of European countries:

- Very large size of the country, which raises the question of the need for closer cooperation and interaction between neighbouring regions, because of the need to save on transportation costs;
- Variety of climatic, resource, structural, demographic, cultural, ethnic and other conditions and factors of its subjects and the presence of significant asymmetry in the socio-economic development of regions;
- Lack of experience and mentality of cooperation among the regional political elites;
- Weakness of the regional policy in the Ukrainian state. (Макогон, 2010).

It should be objectively noted that local authorities in Ukraine have much less power than local authorities of neighbouring countries. In accordance with national

legislation the only subject of international law is the state. All the issues concerning the development and functioning of the Euroregions, implementation of regional projects in the interest of border areas are within the competence of the central government. At the same time, European countries have mechanisms of transferring power to the regions allowing them to sign agreements in the field of culture, ecology and tourism. Regional authorities in Ukraine should coordinate such matters with the Ministry of Foreign Affairs. That complicates the process, but does not make it impossible.

However, in many cases, passivity in the implementation of cross-border initiatives is caused by authorities' inertia, insufficient competence on the implementation of cross-border projects, lack of government funding and own financial sources for this purpose.

Therefore, for more efficient development of the Euroregions it is advisable to consider certain extension of power for regional and local authorities in order to provide opportunities to deal independently with the issues related to cross-border cooperation not only in cultural sphere but also in the field of economic cooperation, infrastructure development and tourism.

The National Strategy for Regional Development 2020 emphasized the need of its acceptance by changing external and internal conditions for regional development over the past seven years. Since the beginning of 2014 there were additional risks related to external influence of the Russian Federation concerning the Autonomous Republic of Crimea, Sevastopol and Eastern regions of Ukraine and internal factors caused by imperfect state policy. The events of early 2014 on the peninsula of Crimea and the South-Eastern regions of Ukraine are the result of failures and shortcomings of the state domestic and foreign policy, including regional policy and regional development.

As a result, in addition to the economic problems of these regions, a relatively high level of average wages in comparison with other areas was accompanied by increased internal regional disparities in infrastructure development, the provision of public services in education, culture, healthcare, environmental protection and other spheres. These trends caused significant stratification of the population by income level, unemployment and social discontent in the regions, establishing the basis for the manifestations of separatism. (Постанова № 385, 2014).

The strategy should provide the ability to define an integrated approach to the formation and implementation of state regional policy, combining sector, territorial and administrative components.

The Cabinet of Ministers of Ukraine firmly supports the EU approach to the implementation of regional policy, which combines the policies enhancing the competitiveness of the territories with the policies aimed at preventing the growth of regional disparities. However, the Ukrainian government at the moment has limited volume of resources for the implementation of effective measures in the framework of this approach.

The achievement of assigned goal will allow the regions to become until 2020 economically stronger, mutually integrated and more independent as a result of implementing an effective administrative model based on decentralisation, deconcentration and subsidiarity. (Постанова № 385, 2014).

CONCLUSIONS

The analysis first of all shows the necessity of the formation in Ukraine of the state regional policy based on new principles, involving the subjects of public relations at the regional and local levels: local communities, government authorities, NGOs, business and regional elite.

Despite some positive results, such as the establishment of regulatory and institutional framework for implementation of regional policy, during the years of independence there was neither significant reduction of interregional disparities nor creation and promotion of "growth points". The state's efforts did not lead to systemic solution of the problems in depressed areas.

Today the key challenges in the process of implementation of regional policy at all levels are:

- Unstable institutional environment, including the constitutional model of state-building. The power concerning regional policy and related areas (territorial-administrative reform, reform of the public sector, civil service, public-private partnership and so on) are moved from Ministry to Ministry, often due to fragmentation of tasks and their distribution between different ministries and agencies.
- High level of centralization and strong vertical of power with weak horizontal ties, including the relations between regions. Mutually beneficial economic relations between the regions of Western and Eastern Ukraine would quickly overcome the current "mental" breaks between them contributing to the unity of the state.
- Lack of a strong vision of the country development and prevalence of short-sightedness in making decisions in the field of state regional policy. This leads to incomplete implementation or non-implementation of generally applicable legislation and causes confusion of new legislative initiatives and regulatory acts.
- Absence of necessary financing for development projects in the regions. The majority of expenditures are related to current issues. Capital projects are realized only in the field of construction or repair of socially significant objects, such as utility infrastructure, schools, hospitals, etc.

Ukraine cannot remain in a situation when the state regional policy is just a nice slogan in the electoral campaign. This policy as well as personnel policy has to become the major one, especially for such a large country as Ukraine is, with its large-scale and very diverse regions. Later we will analyze the role of leading staff in the regions for the process of the state regional policy implementation and regional development.

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SOCIOECONOMIC INEQUALITIES IN SELF-PERCEIVED HEALTH IN ROMANIA

Andreea-Oana IACOBUŢĂ
Faculty of Economics and Business Administration
Alexandru Ioan Cuza University of Iaşi, Romania
andreea_iacobuta@yahoo.com

Livia BACIU
Faculty of Economics and Business Administration
Alexandru Ioan Cuza University of Iaşi, Romania
baciu_livia@yahoo.com

Alina-Măriuca IONESCU
alina.ionescu@yahoo.com

Gabriel Claudiu MURSA
Faculty of Economics and Business Administration
Alexandru Ioan Cuza University of Iaşi, Romania
mursa@uaic.ro

Abstract: Background: *Inequalities in health are a major problem worldwide. Most of these inequalities are strongly related to the social stratification of our societies, which makes them unfair. This study aims to investigate the inequalities in self-assessed health in Romania according to personal socio-economic characteristics such as gender, age, employment status, education and income level.* ***Methods:*** *Data were collected from European Quality of Life Survey 2011-2012 database. The survey in Romania used the random route method for selection of households and comprised 1542 participants. The sample was representative and included residents aged 18 or older. The exploration of the data set was performed using the Multiple Correspondence Analysis and comparative analysis. The statistical significance of the differences between the socio-economic subgroups was tested by* χ^2 *test and Somers' d ordinal directional measure.* ***Results:*** *Significant differences were found between seven occupational categories, the employed individuals clearly declaring a far better health than the unemployed ones (47.8% compared to 22.6%). The higher the education level, the higher the proportions of those who perceive their health as being very good and good: from 3.5% and 7.4% for respondents with primary education or less to 18.8% and 51.9% for respondents with tertiary education. The proportions of those who evaluate their health as very good tend to increase from lowest income quartile (6.8%) to highest income quartile (16.5%).* ***Conclusions:*** *Socio-economic factors play a significant role within the health inequalities in Romania. Health policy is social policy and, consequently, the principle of efficiency should be combined with the principle of equity when designing such policies.*

Keywords: Self-perceived health, Inequalities, Inequities, Multiple correspondence analysis, Romania.

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INTRODUCTION

The decrease in inequalities in health care has been in the forefront of public agenda in the last decades. Even if the indicators reflecting the population's health status have improved in most countries, inequalities still exist both between countries as well as inside them (Bahadori& Ravangard, 2013). According to the statistical data, life expectancy varies from over 80 years in Japan or Sweden, 72 in Brazil, to 63 in India and below 50 years in some African countries (CSDH, 2008).

The investments in health services has been a priority for a long time within the public policies in order to address the inequality issue, having a strong theoretical support in the human capital theories. This type of investment is considered justified from the perspective of the positive externalities since it is the type of investment which produces on a long term higher social benefits than costs. On the other hand, more recent empirical studies show that services determine 20% of the health status while other factors influence the other 80% (Buşoi et al., 2013).

The population's health status is influenced by many biological, economic and social factors which can be classified in four categories: biological or hereditary; lifestyle; socio-economic factors; and social capital (Dahlgren&Whitehead, 1991). Thus, in order to reduce the disparities between countries and substantiating the healthcare national policies, one should focus on the analysis of all specific determinants, both individual and contextual.

The causes of inequalities are to be found in all the aspects of everyday life and they ultimately reflect the inequalities within the society. They reside ″in the social, economic, and political mechanisms that lead to social stratification according to income, education, occupation, gender, and race or ethnicity″ (Beaglehole&Bonita, 2008, p.1991). In this context, they become unjust, turn into inequities since they are no more than the result of some social mechanisms that should be corrected by means of the welfare state.

The determinants of health which are known to influence inclusively the self-perceived health status are: education, income level and material endowments, including the access to different goods or services, occupational status, gender, rural/urban origin, dwelling quality, preventive behavior, food style, alcohol and tobacco consumption, regular practice of sports etc. Numerous studies from the literature, performed by groups of countries or at country level analyze the relationship between these factors and the self-assessed health. When they investigate the socio-economic inequalities at the level of 22 European countries, Mackenbach et al. conclude that the mortality rates and the rather poor self-assessed health are considerably higher at the level of groups with an inferior socio-economic status; even more, the differences between the rich and the poor are much higher in some countries (Mackenbach et al, 2008). On an average, the East-European citizens assess their health as being worse than those in the Western countries

(Mackenbach, 2008; Carlson, 1998). Kunst et al. (2005), in the end of a study concluded on a sample of 10 European countries, reach the conclusion that health inequalities persist at European level because they stem from the social stratification characterizing the modern societies. Using national statistical data for Serbia and the logistic regression analyses, Jankovic et al. (2012) identify inequalities in the self-perceived health according to the education level and occupational status.

The issue of health inequalities is of great importance for Romania, a country which since the collapse of communist regime, has undergone numerous systemic changes, including several attempts to reform the health care system. However, nowadays, Romania is one of the poorest European Union countries with a significant percentage of poor population and an increased level of social exclusion (41.7% in comparison with the European Union average of 24.8%, being surpassed only by Bulgaria), with an increased index of income inequalities of 6.3 (the European Union average being 4.8) (Eurostat) and high level of severe material deprivation (European Commission, 2013). In such context the inequalities in different socio-economic groups have increased during the last years.

Certain descriptive comparative studies highlight the impact of the socio-economic status on the access to health services in Romania (Olaru, 2013) and high inequalities between mortality rates in relation to gender, living environment, development regions and age groups (Pop, 2010). When analyzing comparatively Romania, the 10 non-European Union member states and the 15 European Union member states and taking into account both the individual and contextual factors which influence the inequalities in the self-rated health, Precupețu et al. show that the individual factors such as age, gender, education, occupational status and income are essential for the explanation of inequalities in the self-assessed health within the three groups of countries analyzed (Precupetu et al, 2013).

The Romanian health system has been ill for several decades, chronically sub-financed and unjust, incapable of meeting its citizens' health needs. The statistical data for the year 2013 highlight the weak results obtained in health care in comparison with the other European Union countries: in Romania, life expectancy at birth was 73.8 years, being among the poorest at European Union level and the under-five mortality rate of 12 per 1000 live births, the highest at the level of EU countries (UNDP-Human Development Reports, 2014).

As for the self-assessment of the health status, Romania, alongside Croatia, Hungary and Latvia are the countries with the highest number of respondents (4.2% - 5.6%, much higher than the EU-28 average, of 2.1%) who appreciated their health status as being very poor (Figure 1).

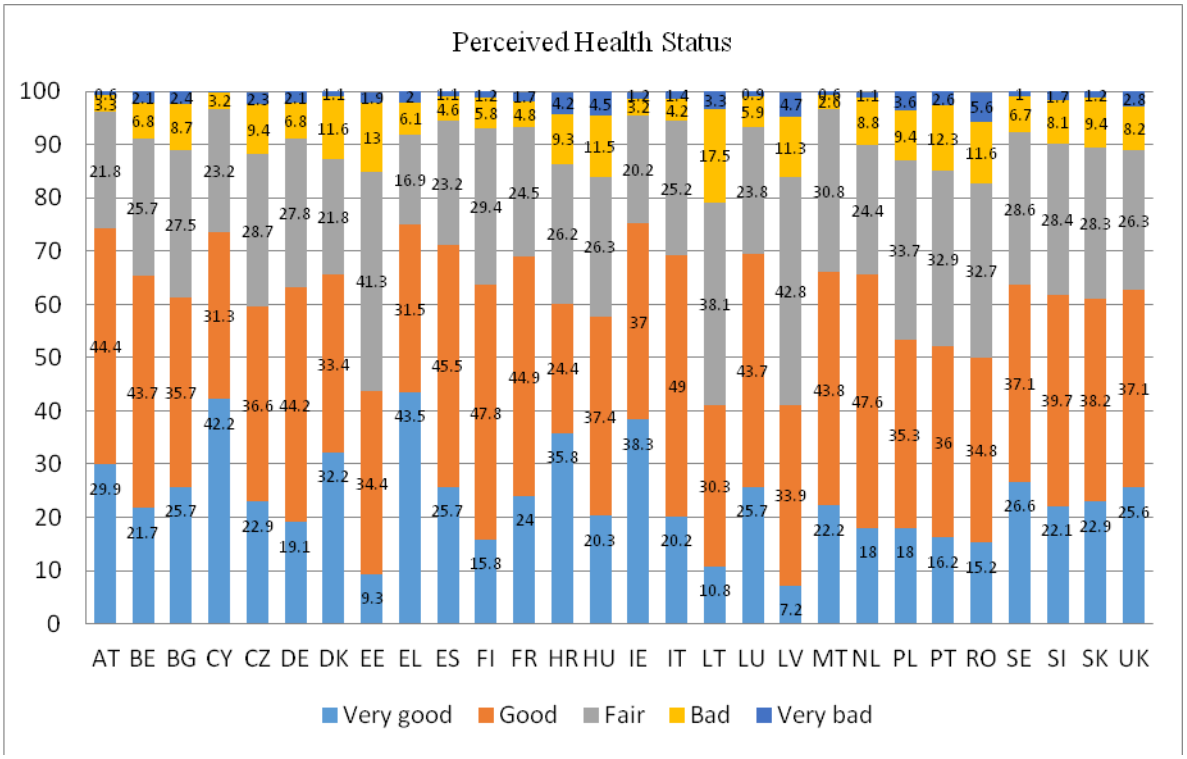

Figure 1: Self-perceived health at European level (%)
Source: European Quality of Life Survey EQLS 2011-2012

With a weight of 15.2% of persons who evaluate their health as being very good, Romania finds itself below the average proportion registered at the level of EU28, of 23.5%. Romania is also characterized by weights of those who assess their health as a bad (11.6%) and very bad one (5.6%) which are above the average values of EU28 of 8.0% and respectively, 2.1%.

Starting from the above considerations, the aim of this paper is to approach in a systematic manner the issue of health inequalities in Romania. Our analysis takes into consideration the individual determinants of health inequalities. We intended to investigate the inequalities in self-assessed health in Romania according to personal socio-economic characteristics such as gender, age, employment status, education and income level. Another aim of this study is to provide a comparative analysis of the several socio-economic subgroups regarding the manner in which they perceive their own health. We also discuss the results obtained in the context of existing literature studies and the measures to be taken to mitigate inequalities.

MATERIAL AND METHOD

Data source and sample

Data on self-perceived health status and its individual determinants were taken from *European Quality of Life Survey* EQLS 2011-2012 database. EQLS was launched

by *European Foundation for the Improvement of Living and Working Condition* (*Eurofound*) in 2003, when a sample of adult population randomly selected from 27 EU Member States and Turkey was surveyed. It took place every four years since then. Its geographical coverage was extended over time from 28 countries in 2003 to 34 states in 2011-2012 wave. This pan-European survey provides a comprehensive portrait of living conditions in European countries addressing issues such as employment, income, education, housing, family, health and work-life balance (*www.eurofound.europa.eu*). The target population is all residents of the countries mentioned above, aged 18 or older.

The basic sample is a multi-stage, stratified, random sample. Each country is divided into sections based on region and degree of urbanisation, in each of which a number of primary sampling units (PSU) is drawn randomly (Eurofound&GfK EU3C, 2012). Subsequently, a random sample of households is drawn in each PSU. Finally, in each household, the person chosen for interview is the one that has his or her birthday next.

In 18 countries, including Romania, a suitable sampling frame (covering at least 95% of the households/persons in a country) was not available. In those countries the random route method was used for selection of households (Eurofound&GfK EU3C, 2012). Samples of addresses were enumerated in advance by the national agencies.

Table 1 General characteristics of the Romanian sample

	Country: Romania
Parameter	(n = 1542)
Gender (%)	
female	56.4
male	43.6
Age (%)	
18-24	9.3
25-34	13.0
35-49	23.7
50-64	29.2
65+	24.8
Education (%)	
Primary or less	13.1
Secondary	69.6
Tertiary	17.3
Employment status (%)	
Employed	36.5
Unemployed	2.0
Unable	0.7
Retired	39.7
Homemaker	14.4
Student	3.9
Other	2.8
Rural or urban area (%)	
Countryside or village	53.4
Town or city	46.3

In 26 countries, the target number of interviews was 1000, and in the 8 countries with the largest population an increased sample size was used. The target sample size in Romania was 1500. The fieldwork for the EQLS 2011-2012 survey in Romania took place between 27th of September and 20th of December 2011. Upon completion of the fieldwork, the total number of completed interviews was 1542. General characteristics of the Romanian sample are presented in Table 1.

Questionnaire

The type of survey was questionnaire-based with interviews conducted face to face in people's homes in the national language of the country.

The survey questionnaire comprises 8 topics describing the quality of life, each topic being assigned between 13 and 21 questions.

In order to assess self-perceived health status, the respondents were asked to rate their health on a five degree scale: *very good*, *good*, *fair*, *bad*, and *very bad*. The question addressed was "*In general, would you say your health is …*".

Statistical analysis

Individual determinants of health refer to personal socio-economic characteristics: gender, age, employment status, education and income level, identified in literature as associated with inequalities in health (Kunst et al., 2005; Mackenbach et al. 2008; Pop, 2010; Olaru, 2013; Precupetu et al, 2013). Data on self-perceived health status were, therefore, analyzed by different subgroups corresponding to the categories of the above-mentioned characteristics. Table 2 presents selected individual determinants of health and their categories considered in the analysis.

The exploration of the data set was performed using the Multiple Correspondence Analysis (MCA), a multivariate technique appropriate when all the variables are categorical. The interpretation of correspondence maps is based on the proximities between points on a map with a reduced number of dimensions (two or three dimensions): the proximity between the modalities of different nominal variables means that these modalities tend to appear together in observations; the proximity between the modalities of the same nominal variable means that the observation groups associated with these two modalities are similar in their nature (Ionescu, 2008, p. 62).

Table 2: Selected individual determinants of health considered in the analysis

Determinant (individual characteristic)	Categories
Gender x Age	12 categories (female, male) x (18-29; 30-39; 40-49; 50-59; 60-69; 70-120)
Employment status	7 categories (employed, unemployed, student, homemaker, unable, retired, other)
Education	3 categories: (primary or less; secondary; tertiary)
Income quartiles based on equalized income	4 categories: (lowest quartile; quartile 2; quartile 3; highest quartile)

In order to deeply grasp the disparities in the perceptions on health status, existing between different socio-economic groups, findings of MCA have been completed through the comparative analysis of the percentages associated with each answer category to the question on how the person assesses his/her own health in general (*very good*, *good*, *fair*, *bad*, *very bad*) for each socio-economic subgroup considered in the study.

The statistical significance of the differences between the socio-economic subgroups was tested by χ^2 test and *Somers' d* ordinal directional measure. In both cases, a low significance value (typically below 0.05) indicates that there may be some relationship between the two variables. While the chi-square measures may indicate that there is a relationship between variables, they do not indicate the strength or direction of the relationship. *Somers' d* is an ordinal directional measure that indicates the significance, strength and direction of the relationship between two variables. This statistic is appropriate when both variables are ordinal, categorical variables.

All statistical procedures were performed with SPSS 13.0 for Windows.

RESULTS

Results of Multiple Correspondence Analysis

The values obtained through MCA highlight the first factorial axis which explains 56.7% of the total inertia of the variable group, while, for the other axes, a reduced explanatory power can be noticed (each explaining at the most 33.8% of the inertia) (Table 3).

Table 3: The model summary

Initial MCA				Final MCA			
Dimension	Cronbach's Alpha	Variance accounted for		Dimension	Cronbach's Alpha	Variance accounted for	
		Total (Eigenvalue)	Inertia			Total (Eigenvalue)	Inertia
1	0.809	2.836	0.567	1	0.807	2.820	0.564
2	0.510	1.690	0.338	2	0.492	1.649	0.330
Total		4.526	0.905	Total		4.468	0.894

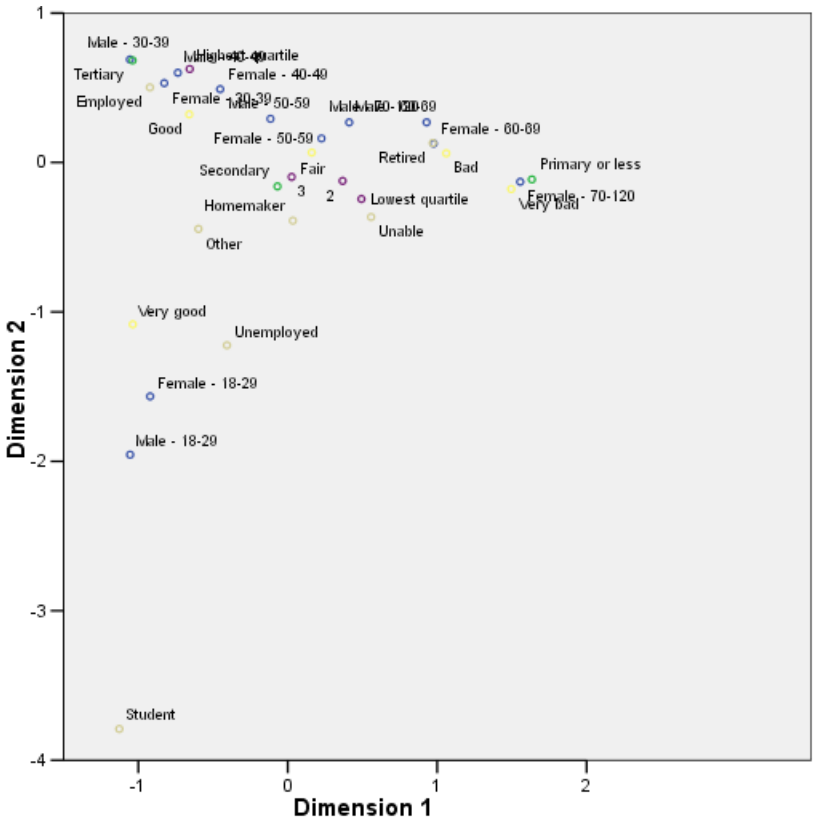

Figure 2: Joint plot of category points resulted from Multiple Correspondence Analysis

The graphical representation of categories on the first two factorial axes of initial MCA highlights the category *student* as being more strongly associated with the age group 18-29 years (both in the case of women and men) and with the assessment of health as being *very good* (Figure 2).

The position of this category on the correspondence map shows that it is far from the group of all other category points, which identifies it as an outlier. For a clearer image of the existing structure in the set of indicators under consideration, a new MCA was performed without introducing the category *student* in the analysis.

The final MCA applied to the set of indicators shows that the explanatory power of the first axis has been maintained to over 56% (Table 3) and at the same time, it has resulted in a clearer spread of the category points on the correspondence factorial map.

The position of the category points of the variable *Perceived health* (with the categories *very good* and *very bad* to the axis extremities and the category *fair* close to the origin) shows that this variable has the property of ordinal consistency with the first factorial axis, opposing the persons who perceive their health as being *good* or *very good* (in the left part of the axis) to those who evaluate their health as being *bad* or *very bad* (in the right part of the axis) (Figure 3).

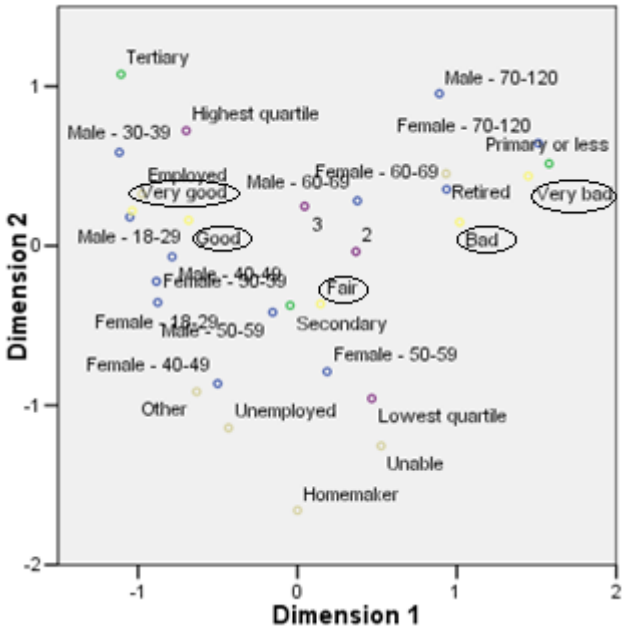

Figure 3: Joint plot of category points resulted from Multiple Correspondence Analysis (without *"student"* category)

Legend

○	Age of the respondent x Gender of the respondent (12 categories)	○	Income quartiles based on equivalised income (4 categories)
○	Education (3 categories)	○	In general, would you say your health is … (5 categories)
○	Employment status (7 categories)		

Another variable that has the property of ordinal consistency with the first factorial axis is the educational level. As we move along from right to left on the first factorial axis, the respondents' education level also increases. Thus, in relation to the first factorial axis, we can identify the following correspondences between the education level and the perceived health: the persons with primary or inferior training are inclined to assess their health as being *very bad* or *bad*, the respondents with secondary education tend to evaluate their health as being *fair* or *good*, while the tertiary-educated persons tend to perceive their health as being *very good*.

It can be also noticed that the second factorial axis opposes (from bottom to top) the first two income quartiles, corresponding to the persons with lower incomes, to the last two quartiles, corresponding to the persons with higher revenues.

Even if the variable of income does not meet the property of ordinal consistency with the first factorial axis, we can still identify a correspondence between the persons from the second quartile of incomes and the tendency towards appreciating the health status as being *fair* or *bad*, as well as that between the respondents from the third quartile and the assessment of the health status as being *good* or *fair*. At the same time, the persons who assess their health as being *very good* tend to be part of the two groups with the highest incomes (third and fourth quartiles).

The first factorial axis also opposes the aged persons (on the right), 60-69 years and 70-120 years, to those who are younger (on the left), 18-29 years, 30-39 years and 40-49 years.

The factorial map of correspondences highlights that the most deprived group as far as the perception on the health is concerned is represented by men and women with ages over 60, retired and holding at most a primary education. This category is the most inclined to perceive its health as being *very bad* or *bad*.

At the opposite spectrum there is the group of respondents represented by young males (18-29 years and 30-39 years) with tertiary studies and high incomes (the fourth income quartile), who are more inclined to self-perceive their health as a *very good* one.

The map allows the identification of some disparities between women and men. Thus, the category points corresponding to the women respondents tend to gravitate towards the occupational categories which are not employed (unemployed, homemaker, unable, retired, and other) and close to the groups with more reduced incomes (first and second income quartile). This situation deters them from assessing their health as being *very good*.

The comparative analysis of the proportions associated with each answer category (*very good, good, fair, bad, very bad*) to the question on how each person evaluates his/her health for each socio-economic category under study completes the results obtained through the MCA.

Employment status and perceived health

The analysis by employment status (Table 4) highlights the fact that among those employed, less than 20% (18.7%) perceive their health as being very good, while other 47.8% assess it as being a good one. Although both the occupied persons and the unemployed comprised in the survey register proportions close to 19% of those considering their health as being very good, in the case of respondents who assess their health as good there is a huge difference between the two occupational categories. Thus, the percentage obtained for the unemployed is more than two times lower (22.6% of unemployed comparing to 47.8% of employed). For the category of those unable to work one can notice that the proportions for those who assess their health as being bad or very bad are the highest in the sample. No person in this category evaluated his/her health as *very good* or, at least, *good*. Most of the retired persons (38.4%) evaluate their health as being fair. Besides the ones unable to work, the retired represent the category with the highest proportions of respondents who consider they have a bad (28.4%) and very bad health (14.4%) and the one with the lowest percentages of those thinking they have a very good health (2% of the total number of the retired) or a good one (16.5%). The more optimistic category in self-assessed health is represented by the students. Large proportions of the students assess their health status as being *very good* (36.7%) and *good* (43.3%). No person in this category evaluates his/her health as *bad* or *very bad*. The group of homemakers displays a distribution of the proportions similar to the unemployed.

The significance level of χ^2 test is 0, meaning that there are statistically significant differences between the seven occupational categories regarding self-perceived health.

Table 4 Employment status and proportions of respondents rating their health status as "very good", "good", "fair", "bad", and "very bad" (%)

Country: Romania	Employment status							Pearson χ^2 test
	Employed	Unemployed	Unable	Retired	Homemaker	Student	Other	Sig.
Very good	18.7	19.4		2.0	13.1	36.7	23.3	
Good	47.8	22.6		16.5	27.9	43.3	46.5	
Fair	29.1	45.2	54.5	38.4	40.5	20.0	25.6	0
Bad	3.9	6.5	27.3	28.4	11.3		4.7	
Very bad	0.4	6.5	18.2	14.4	7.2			

Age, gender, and perceived health

The analysis of the manner in which the Romanians perceive their health by age groups (Table 5) shows that the proportion of those who assess their health as being very good decreases once they grow old. Thus, more than one third (34.7%) of the respondents aged between 18 and 24 years and 27.5% of those aged between 25-34 years consider that they have a very good health in comparison with below 5% of the respondents aged 55-64 years (4%) and of those aged 65 years and over (2.1%). The negative self-assessment of the health status (bad and very bad) tends to be more spread with the age growth. If, for the age groups until 49 years, the proportion of those characterizing their health as being very bad is at the maximum 1.9%, for the last two age groups these proportion significantly increases to 6.7%, and respectively 18.6%. The self-assessment of the health as being good is a feature of the young to average age groups (18-24, 25-34 and 35-49 years), while health perception as being fair increases in intensity mostly once the persons get older.

The significance level of χ^2 test is 0, which means that there are statistically significant differences between the five age groups considered in the analysis regarding the way they perceive their health. The result is confirmed by the significance value of the *Somers'd* test, also equal to 0. The value of *Somers' d* statistic of 0.435 shows a positive and moderate to strong relationship between the considered variables, meaning that once they grow old the individuals tend to be more pessimistic when self-assessing their health.

Table 5: Age of respondent and proportions of respondents rating their health status as "very good", "good", "fair", "bad", and "very bad" (%)

Country: Romania	Age of the respondent					Pearson χ^2 test	Somers' *d*	
	18-24	25-34	35-49	50-64	65+	Sig.	Test value	Sig.
Very good	34.7	27.5	14.5	4.0	2.1			
Good	41.7	41.5	46.6	26.8	13.4			
Fair	21.5	28.0	31.0	43.7	35.3	0	0.435	0
Bad	1.4	2.0	6.0	18.6	30.4			
Very bad	0.7	0.5	1.9	6.7	18.6			

The analysis of the way the Romanians perceive their health by gender clearly shows a more pessimistic attitude of women compared to men. Only 7.9% of women assess their health as *very good*, compared to 17.1% of men. Large differences can also

be noticed in the proportions of those who perceive their health as *bad* (17.2% of women compared to 11.6% of men) or *very bad* (9.5% of women compared to 4% of men).

The significance level of χ^2 test is 0, confirming the existence of statistically significant differences between the two gender categories.

Table 6: Gender of respondent and proportions of respondents rating their health status as "very good", "good", "fair", "bad", and "very bad" (%)

Country: Romania	Gender of respondent		Pearson χ^2 test
	Female	Male	Sig.
Very good	7.9	17.1	
Good	28.5	35.3	
Fair	36.4	32.0	0
Bad	17.2	11.6	
Very bad	9.5	4.0	

The differences between women and men regarding the manner they self perceive their health can be also noticed if we comparatively analyze their answers by age category (Table 7). So, for all considered age groups, the proportions of those who evaluate their health as very good are much higher in the case of male population. At the same time, for all the analyzed age groups, the proportions of those who evaluate their health as very bad are much higher for women.

The significance level of χ^2 test is 0, which means that there are statistically significant differences between the 12 gender x age categories considered in the analysis regarding the way they perceive their health.

Table 7: Gender x age categories and proportions of respondents rating their health status as "very good", "good", "fair", "bad", and "very bad" (%)

Country: Romania	Gender x Age											
	Male 18-29	Male 30-39	Male 40-49	Male 50-59	Male 60-69	Male 70-120	Fem 18-29	Fem 30-39	Fem 40-49	Fem 50-59	Fem 60-69	Fem 70-120
Very good	47.3	30.1	13.1	5.0	6.3	3.1	21.8	19.0	5.6	3.1	2.0	0.6
Good	32.1	45.6	53.3	32.1	30.4	18.4	47.1	48.6	38.1	24.4	16.6	6.4
Fair	18.8	20.4	29.0	42.1	41.1	37.8	28.6	28.2	42.1	42.5	45.7	30.8
Bad	1.8	2.9	3.7	15.7	17.9	27.6	1.7	1.4	11.9	21.9	26.5	32.6
Very bad		1.0	0.9	5.0	4.5	13.3	0.8	2.1	2.4	7.5	9.3	29.1
Pearson χ^2 test Sig. = 0												

Education and perceived health

The higher the education level, the higher the proportions of those who perceive their health as being very good and good: 3.5% and 7.4% in the case of respondents with primary education or less, 11.8% and 30.9% in the case of those with secondary education, and 18.8% and 51.9% in the case of people with tertiary education (Table 8). The negative self-perception of the health status (bad and very bad) is more widespread as the education level is lower. Thus, 26.7% of the respondents with primary education or less assess their health as being very bad, in comparison with 4.9% of those holding secondary education and 1.1% of the respondents with a tertiary education. In the case of those evaluating their health as bad, the proportions are, in order, the following: 33.7%, 14.2%, and 3%.

The significance level of χ^2 test is 0, confirming the existence of statiscally significant differences between the three educational categories regarding the way in which people in these groups evaluated their own health. The result is confirmed by the significance value of the *Somers'd* test, also equal to 0. The value of *Somers' d* statistic of -0.427 shows a negative and moderate to strong relationship between the considered variables, meaning that with the increase of the educational level, the individuals tend to be less pessimistic when self-assessing their health.

Table 8 Education and proportions of respondents rating their health status as "very good", "good", "fair", "bad", and "very bad" (%)

Country: Romania	Education			Pearson χ^2 test	Somers' *d*	
	Primary or less	Secondary	Tertiary	Sig.	Test value	Sig.
Very good	3.5	11.8	18.8			
Good	7.4	30.9	51.9			
Fair	28.7	38.0	24.8	0	-0.427	0
Bad	33.7	14.2	3.0			
Very bad	26.7	4.9	1.1			

Income and perceived health

The study of the manner in which the Romanians perceive their health by income quartile highlights that the proportions of those who evaluate their health as *very good* tend to increase from lowest income quartile (6.8%) to highest income quartile (16.5%) (Table 9). The forth quartile, corresponding to the highest incomes, is the one for which significantly more reduced proportions have been obtained for the persons who evaluate their health as bad (7.9%) and very bad (2.4%) in comparison with the proportions of the other income quartiles (14.4%-21.4% and respectively, 6.1%-11.8%). Consequently, the proportion of those who assess their health as *very bad* or *bad* decreases with the increase of income, but this relationship is a fairly weak one.

The significance level of χ^2 test is 0, meaning that there are statistically significant differences between the four income groups regarding the manner in which people in these groups evaluated their own health. The result is confirmed by the significance value of the *Somers'd* test, also equal to 0. The value of *Somers' d* statistic of -0.216 shows a negative and moderate to weak relationship between the considered variables meaning that, with the increase of income, the individuals tend be less pessimistic about their own health.

Table 9 Income quartiles and proportions of respondents rating their health status as "very good", "good", "fair", "bad", and "very bad" (%)

Country: Romania	Income quartiles based on equivalised income				Pearson χ^2 test	Somers' *d*	
	Lowest quartile	2	3	Highest quartile	Sig.	Test value	Sig.
Very good	6.8	9.6	10.4	16.5			
Good	23.5	21.6	33.3	44.8			
Fair	36.2	39.9	35.8	28.4	0	-0.216	0
Bad	21.4	19.2	14.4	7.9			
Very bad	11.8	9.6	6.1	2.4			

DISCUSSIONS AND CONCLUSIONS

The present paper has aimed at analyzing the inequalities in the health status perceptions among the different socio-economic groups in Romania and has identified the individual socio-economic determinants of these inequalities. The results of the current study are in compliance with the outcomes of the literature research that tackles the issue of health inequalities and the socio-economic determinants; the people with a more reduced socio-economic status assess their health as being worse than those with a higher status (Mackenbach et al, 2008; Jankovic et al., 2012; Precupetu et al, 2013; Bauer et al, 2009; Sucur&Zrinscak, 2007).

This study is one of the few which empirically addresses the issue of health inequalities in Romania, a striking issue for the Romanian population. The method of MCA, used to analyze the patterns of relationship between self-perceived health and socio-economic individual characteristics allowed us to identify the most vulnerable categories in the society. The study also points to the preventive role of education for a better health status.

The analysis of the self-perceived health in Romania according to the main socio-economic features of the respondents (sex, age, occupational status, education level and income) highlights the inequalities among the different categories of respondents while identifying the groups with a more widespread negative self-assessment of the health status towards which state policies and support measures should be geared.

The results of the study show that a higher education level is associated with a better image of the health status. Our findings are in accordance with the results of numerous other European studies (Precupetu et al, 2013; Monden, 2005; Farkas et al., 2011) and confirm the preventive role of education for a person's health.

As for the occupational status, our results show that the unemployed rather than the employed perceive their health as being bad and very bad. The retired represent the category with the largest proportions of respondents who consider they have a bad and a very bad health. It is also the category with the lowest proportion of those evaluating their health as being very good. These results are in compliance with some studies performed in Serbia, Estonia, Finland, Sweden (Jankovic et al, 2012; Parna&Ringmets, 2010; Molarius et al, 2007). The relationship between occupation and health is a circular one (Pop, 2010), a poor health status affecting employment, on one side and unemployment having a negative impact on people' health, on the other.

A higher income is generally associated with a better health status. Our analysis on the relationship between the income level and the self-assessed health highlighted that persons evaluating their health as being poor or very poor tend to be part of the more reduced income categories. The relationship between the income levels and the self-assessed health is presented in the literature as a linear one, without decisive evidence in favor of the existence of significant disparities between the rich and the poor (Kunst et al, 2005).

The results obtained demonstrate the role of the socio-economic factors within the health inequalities as well as their fairly significant role in Romania. Up to now, the health care reforms in Romania have mostly been focused on the financial aspects, putting forward the idea of efficiency. This study underlines the fact that health policy is

social policy and the principle of equity should also be considered when designing such policies. Even more, any policy should rely on a bottom-up approach and make citizens′ needs the top priority. However, this study is not an exhaustive one; it only depicts a part of the reality. Individual factors are not the only ones causing health inequalities. Further studies should take into considerations the contextual factors which cause inequalities and inequities in society.

Decreasing inequalities and increasing equity can be obtained by improving the socio-economic status of the population. Economic policies tackling the most disadvantaged categories must be combined with the analysis of contextual determinants because only the growth of economic performance, in general, will lead to the increase of the standard of living and to the decrease of inequalities.

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