JOURNAL OF PUBLIC ADMINISTRATION, FINANCE AND LAW

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CONTENTS

PUBLIC ADMINISTRATION

THE AGRICULTURAL COOPERATIVES IN ROMANIA: FROM CONCEPTUAL FRAMEWORK TO PROFITABLE LOCAL PRODUCTION

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* This paper was elaborated within the project *"Dezvoltarea întreprinderilor sociale- expresie a schimbării sociale și inovării"("The Development of Social Enterprises- a dimension of social change and innovation")*, Grant Competition for Young Researchers 2014-2016, Faculty of Public Administration, National University of Political Studies and Public Administration and it was presented at the 11th Edition of the International Conference on Marketing *"The role of Marketing in upgrading producers' groupings and agricultural cooperatives: Convergences of international practices"*, February 2015, Cadi Ayyad University, Faculty of Juridical, Economic and Social Sciences of Marrakech, Morocco.

***Abstract**: More than 20 years ago, the agricultural cooperatives represented an economic engine of local development in Romania. Variations in demography and legislation can be considered factors in the change of direction within the agricultural sector (young people moving from rural to urban areas; the existence of two specific legal regulations for agricultural cooperatives). In 2013, the Romanian Institute of Social Economy (IES) announced that in 2010 there were approximately 150 agricultural cooperatives in Romania. Still, IES is very optimistic about the great potential of agricultural cooperatives for economic development at local level. They argue that due the current implementation of EU legislation, Romania has to take advantage of important financial support in agricultural sector. Thus, the current percentage of 37% of population working in agriculture is expected to increase and to spur the rebirth of the "old-fashioned" agricultural cooperatives. Through the spectrum of the current research, the authors address the problem of insufficiency in the exploitation of the local products in the agricultural sector. The paper aims at describing the conceptual framework of agricultural cooperatives in Romania and at identifying ways to profit from the local production within this framework. The paper will be structured in two main parts: the first part is dedicated to the analysis of the specific Romanian legislation and literature and the*

second part is dedicated to the analysis of some local experiences of agricultural cooperatives in Romania. The research methodology consists of observation method (documents analysis), method of data collection and interpretation (comparison and questionnaire). There are three research questions to be answered: 1) how is the agricultural cooperative defined within the national legislation? , 2) which are the ways to profit from the local production? and 3) can a marketing strategy contribute to a better exploitation of local products in the agriculture sector?
Keywords: *cooperatives, agriculture, marketing, Romania*

COOPERATIVES WITHIN THE SPECTRUM OF LITERATURE

The trend in Europe in cooperatives domain has its origins in the Italian law on social cooperative (cooperative sociale). The Italian law no. 381/1991 defines this type of organization by its mission of "following the general interests of community by promoting social and humanity integration through a) health and educational services management (social cooperative A type) and b) accomplish agricultural, industrial, commercial or services activities with the aim of work integration of disadvantaged people (social cooperative B type)" (art. 1 (1)).

The British literature mentions the fact that "cooperatives" are a "species" of social enterprises.

Martin Price (2009:16) considers that cooperatives represent a philosophical structure of social enterprise. The author refers to a philosophical structure in terms of *how the organization sees itself*.

How a cooperative can consider itself a social enterprise?

By analyzing the definition of social enterprise – "is a businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being riven by the need to maximize profit for shareholders and owners" (UK Department of Trade and Industry, 2002) - Martin Price (2009:1-3) highlights the key concepts:

- Business – they trade, they buy and sell products or services
- Use of surplus for a social benefit – the surplus is reinvested for the continuity of the organization, to achieve a social aim, such as employing people who are not attractive to other employers, developing business ideas that are not attractive to other businesses areas, developing specific under-developed local communities.

By analyzing the definition of cooperatives – "defined as an autonomous association of person united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly –owned and democratically controlled enterprise" (UK Cooperative Movement, 1995 in Price, 2009:21) - Martin Price highlights the values of: Self-help, Self-responsibility, Democracy, Equality, Equity, Solidarity and principles of Voluntary and open membership, Democratic member control, Member economic participation, Autonomy and independence, Education, training and information, Cooperation among cooperatives, Concern for community.

Through the spectrum of these values and principles, the authors of this paper consider that cooperative is the most active, autonomous, independent and democratic type of social enterprise. The target group of this type of organization is represented by

the members themselves, they get involved closely to trade, buy and sell products and services and to use the surpluses for their own and community social benefit.

This is the argument for the authors to undergo the following analysis within the current paper - *how can the local production be profitable within the framework of agricultural cooperatives?* Even they are considered to be an economic engine of Romanian local development, there is still a lot to exploit.

The challenges to identify some answers to this question rely on the changes within the insufficiency in the exploitation of the local products in the Romanian agricultural sector.

The paper will focus on the national specific legislation and on two case studies of successful agricultural cooperatives.

NATIONAL SPECIFIC LEGISLATION ON AGRICULTURAL COOPERATIVES

Currently, there are two legal regulation on agricultural cooperatives: Law 1/2005 on cooperation (cooperative societies) and Law 566/2004 on agricultural cooperation (agricultural cooperative societies).

"Cooperation" refers to a specific economy sector functional through cooperative societies and any other association modalities at territorial and national level (Law 1/2005, art. 2).

Thus, a cooperative society is an autonomous association of natural/legal persons, with the aim of promoting economic, social and cultural interests of its members, and being democratically governed by its members (Law 1/2005, art. 7(1)).

The cooperative societies can be handicrafts, consumers, agricultural, housing, fisheries, transports, forests cooperatives.

The *agricultural cooperative societies* are defined as the association of natural persons for the aim of exploiting in common the agricultural area of shareholders, to improve together the common land, to together the equipment and value the agricultural products (Law 1/2005, art. 4(d)).

But the "real" definition of agricultural cooperative is provided by the Law 566/2004 on agricultural cooperation. This law presents the exact term of agricultural cooperative (not cooperation or society).

In the eyes of this specific law, the *agricultural cooperative* is defined as the autonomous association of natural and legal persons, if the case a private legal person, created on the free agreement for the aim of promoting the cooperative's members' interests, according to cooperation principles, within the framework of this specific law (Law 566/2004, art.2).

Table 1 Comparing the definitions

	Modality of organization	Members	Aim	Target
Law 1/2005 agricultural cooperative	Association	Natural/legal persons	Exploiting the agricultural area/products	Agricultural area/products

society				
Law 566/2004 agricultural cooperative	Association	Natural/legal persons	Promoting members' interests	Members

Source: the authors based on the national legislation

Which law is more explicit in providing a real meaning of agricultural cooperative?

Regarding the modality of organization and the type of members, both laws make references on the same association of natural or legal persons. The Law 566/2004 specifies the fact that the association is accomplished on the *autonomy principle* (autonomy and independency principles mentioned by Cooperative Movement, 1995).

Regarding the aim of creating this type of association of natural/legal persons, the laws do not refer to the same target of their activity – Law 1/2005 aims at exploiting the agricultural area/products, while the Law 566/2004 aims at promoting the members' interest. A critique of the Law 566/2004 is that it does not make clear the meaning of members' interest. One can deduce that it may refer to obtaining profit/benefits from the economic, technical or social activities through the exploitation of agricultural area/products.

The use of syntagma "members' interests/needs" (some cases "mutual interest") is specific to the cooperative meaning. It is identified in the majority of national legislation, such as in Poland, Czech Republic, Romania, Bulgaria, Croatia or Ukraine. All definitions have in common the economic/business activity in accomplishing interests of their members (Matei & Sandu, 2011).

For both definitions there can be identified arguments for the aim of agricultural activity. The real meaning of an agricultural organization is to exploit the agricultural area and the real meaning of a cooperative is to accomplish the members' interests.

For these reasons, the authors consider that a complete and representative definition of agricultural cooperative through legislation should comprise the real meaning of both agricultural organization and cooperative: *an autonomous association of natural/ legal persons created on the free agreement for the aim of promoting the cooperative's members' interests, through the exploitation in common of the agricultural area of shareholders. In this manner, the exploitation of agricultural area and products can represent the way to accomplish the members' interests.*

Thus, the authors underline in this section two important components of the agricultural cooperative: members' interests and exploitation of agricultural area and products.

Firstly, members' interests are described within the Law1/2005 as the economic, social and cultural interests (art. 7(1)) (both laws use the expression "cooperator member").

In accordance with the principles formulated by Cooperative Movement, UK, 1995, the interests shall be achieved by respecting the principles of voluntary and opened association, democratic control, economic participation, autonomy and independency, education, training and information, cooperation among cooperatives, concern for community (Law 1/2005, art.7 (3) and Law 566/2004, art.8).

Secondly, the exploitation of agricultural area and products is described only in the sense of the agricultural cooperatives categories (Law 566/2004, art.6):

- agricultural cooperative for services,
- agricultural cooperatives for acquisitions (materials and equipment for agricultural production) and sells (of agricultural products),
- agricultural cooperatives for processing the agricultural products (typical products, brands),
- handicrafts agricultural cooperatives,
- agricultural cooperatives for the exploitation and management of agricultural, forests, fisheries and livestock areas,
- agricultural cooperatives for financing, mutual aid and agricultural insurance.

The conceptual framework of agricultural cooperatives within the national legislation reveals the fact that there can be some unclear aspects of what an agricultural cooperative is.

The provisions of one law are not enough to explain itself the meaning of agricultural cooperative. Both laws have to work together to provide the clear explanation of the definition and the key-aspects in creating and making functional an agricultural cooperative.

If that was the case of the conceptual framework, there is a need to understand how an agricultural cooperative really works in practice. Thus, the next section will provide an analysis of two agricultural cooperatives in Romania.

MAKING A PROFITABLE LOCAL PRODUCTION: DOES IT WORK?

This section aims at illustrating whether the local production through agricultural cooperatives can be profitable or not.

The case studies are represented by Bio Hrana Prietenia (ENG Bio Food Friendship) and Vlasca 2008. By analyzing the general profile of the cooperatives (Table 2), the financial data (Table 3) and according to the agricultural cooperatives' definition, the authors characterize these organizations as follow:

a) Definition

Bio Hrana Prietenia is an autonomous association of natural persons (represented by mentally disabled people) with the aim of promoting the social interests (social integration and therapy) of its members, through the exploitation in common of the agricultural area. It was established as a limited liability company, but it applies the rules of an agricultural cooperative. Due the fact it reinvests its surpluses in order to achieve a social mission and 2/3 employees are disabled people, it can be considered a social enterprise.

Vlasca 2008 is an autonomous association of legal persons created on the free agreement for the aim of promoting the cooperative's members' economic interests, through the exploitation in common of the agricultural area of shareholders.

Table 2 General description (the authors based on data collection)

Item	Bio Hrana Prietenia	Vlasca 2008

Year of establishment	2011	2008
Legal status	Agricultural cooperative – social enterprise	Agricultural cooperative (societies)
No. employees	3 (2 disabled people)	1
No. members	33	50
Agricultural area	2,5 hectares	30.000 hectares
Products	Fruits and vegetables	Cereals
Approach within the market	Social economy sector	Private sector
Type of activity	Production of bread, sweets and pastries	Facilitation of agricultural raw materials sales, livestock, textiles and semi-products
Mission	Social sustainability, social integration of disabled people	Profit maximization for members

Table 3 Financial data (the authors based on data collection)

Item (currency euro) (exchange rate lei/euro medium value/year)	Bio Hrana Prietenia			Vlasca 2008		
	2011	2012	2013	2008	2012	2013
Turnover	0	3.210,95	2.009,05	0	51.252,69	19.914,00
Net profit	0	0	0	0	28.939,40	262,50
Net loss	321,62	2.712,52	2.038,92	0	0	0
Total debts	377,54	3.337,74	5.210,22	2.715,39	1.349,64	1.958,36
Total expenses	321,62	5.496,40	4.264,53	0	25.918,31	36.449,19
Total incomes	0	2.783,88	2.294,41	0	60.369,83	37.878,25
Stocks	0	36,80	105,90	9,77	0	105,00
Bank accounts	25,72	225,98	38,69	6.884,89	50.024,91	72.344,87

b) A marketing approach

Bio Hrana Prietenia has a small scale production covering an area of 2, 5 hectares. The core products are represented by the material goods type vegetables and fruits, the actual products by bakery products and the augmented products by therapy services.

In the product-life cycle, the products can be identified in the stage of introduction within the market (slow sales growth, no profit). The differential characteristics of the products within the market are the products attributes and branding. The organization pricing – strategy objective is represented by the cost recovery and social equity.

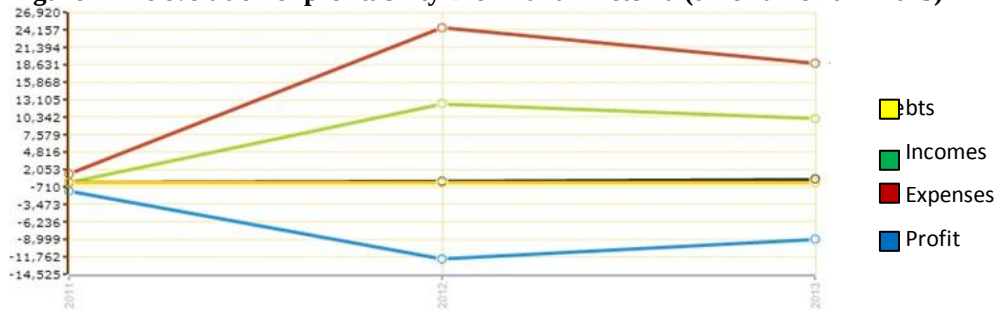
Vlasca 2008 has a large scale production covering an area of 30.000 hectares. The core products are represented by the material goods type cereals (for the moment there is not the case of actual product or augmented product).

In the product-life cycle, the products can be identified in the stage of maturity (close to decline). This is the reason why the cooperatives Board is planning to develop actual and augmented products - bakery products. The differential characteristics of the products within the market are the products and services attributes and branding. The organization pricing – strategy is represented by the surplus and market size maximization.

c) Making a profitable production

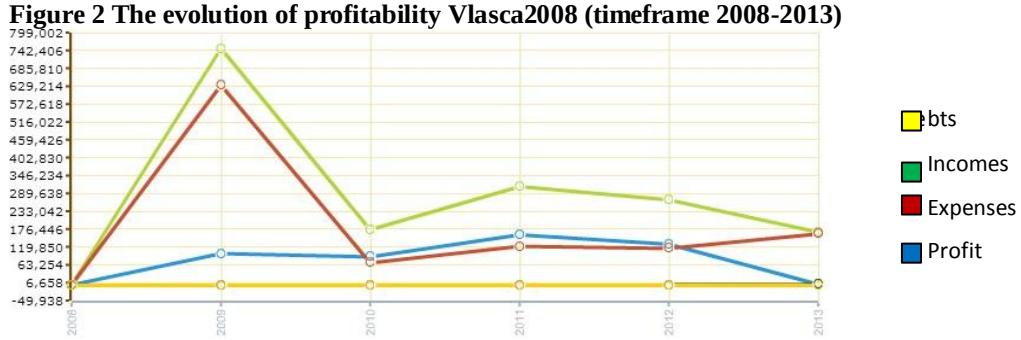
Whether the two cooperatives had a profitable production in their evolution, it is illustrated in Figures 1 and 2.

Figure 1 The evolution of profitability Bio Hrana Prietenia (timeframe 2011-2013)



Source: Firme.info, ***http://www.firme.info/bio-hrana-prietenia-srl-cui28391766/***

Figure 2 The evolution of profitability Vlasca2008 (timeframe 2008-2013)



Source: Firme.info, http://www.firme.info/vlasca-2008-cooperativa-agricola-cui24896626/

Bio Hrana Prietenia is in the phase of costs recovery due the fact it has a small scale production. But it manages to have a balance between incomes and expenses. The profits are continuously increasing, but still not with a large amount, that would allow making a profitable production.

On the contrary, *Vlasca 2008* has achieved its maximum growth within the period 2008-2009 (since its establishment), entered in decline within the period 2009-2010 (the beginnings of the crisis period). The economic recovery started within the period 2010-2011. Currently, the cooperative is in decline stage and they are planning to re-think the strategy of economic growth. Thus, a profitable production within Vlasca 2008 is not stable. Every year it reaches both growth and decline stages.

FINAL REMARKS

The national legislation on agricultural cooperatives described the fact that there are confusing aspects regarding the aim of establishing an agricultural cooperative: exploiting the agricultural area/products vs. promoting members' interests.

The authors attempted to clarify some aspects of defining the agricultural cooperative definition, by comprising the real meaning of both agricultural organization

and cooperative. The proposed definition (as one of the research results), goes in the line of literature important values of an agricultural cooperative. The authors attempted as well to identify pragmatic aspects of the conceptual and legal frameworks within the agricultural sector in Romania.

The two selected case studies illustrate different ways in making a profitable local production (as one of the research results):

- Aim: social profit vs. pecuniary profit
- Market approach: social economy vs. private sector
- Production scale: small scale vs. large scale
- Target group: disabled people vs. members
- Stage of product within the market: augmented vs. core products
- Product- life cycle: introduction vs. decline
- Pricing strategy: cost recovery and social equity vs. surplus and market size maximization

All these differential aspects are visible in the stability vs. instability in making a profitable local production. The authors consider that adopting different marketing strategy can affect the exploitation of local products in the agricultural sector and in making a profitable production.

References

1. Bidet., E., (2000). Économie sociale, nouvelle économie sociale et sociologie économique, *Sociologie du travail* 42, 587-599.
2. Borden, N., (1984). *The Concept of the Marketing Mix*, Journal of Advertising Research, Classics, Vol. II.
3. Carrera, D., Meneguzzo, M., Messina, A., (2006). *Social Enterprise Incubators: The Italian Experience*, The Third Annual UK Social Enterprise Research Conference, London.
4. Defourny, J., Nyssens, M., (2006). *Social Enterprise. At the crossroads of market, public policies an civil society*, London and New York: Routledge Taylor and Francis Group.
5. French, J., Blair-Stevens, C., (2005). *Social Marketing Pocket Guide*, First Edition, UK: National Social Marketing Centre for Excellence.
6. Kotler, Ph., (1969). Broadening Concept of Marketing, *Journal of Marketing*, Vol. 33, pp. 10-15.
7. Kotler, Ph., (1972). A Generic Concept of Marketing, *Journal of Marketing*, Vol. 36, pp. 46-54.
8. Kotler, Ph., (1979). Strategies for Introducing Marketing into Nonprofit Organizations, *Journal of Marketing*, Vol. 43, No. 1.
9. Kotler, Ph., Andreasen, A., (1996). *Strategic Marketing for Non-Profit Organizations*, 5th Edition, New Jersey, USA: Prentice Hall.
10. Kotler, Ph., Lee, N., (2008). *Social Marketing. Influencing Behaviors for Goods*, USA: SAGE Publications.
11. Matei, L., Sandu, C., (2011). *The Social Enterprise: An Empirical Study for Romania*, 10th International Congress of the International Association on Public and Non-Profit Marketing, Porto, Portugal.
12. Matei, L., Sandu, C., (2011). The Social Enterprise: A Literature Review, *Conference Proceedings National and European Values of Public Administration in the Balkans*, Bucureşti: Editura Economică, p. 217-225.
13. Pearce, J., (2009). *Social Enterprise in Anytown*, Claouste Gulbenkian Foundation, UK Branch, London.

14. Price, M., (2009). *Social Enterprise. What it is and why it matters*, Revised 2nd Edition, UK: FFLAN Ltd.
15. Law 1/2005 agricultural cooperative society, republished in the Official Gazette, Part I no. 368 of May 20, 2014.
16. Law 566/2004 agricultural cooperative, published in the Official Gazette no. 1236 of 22.12.2004.
17. List of companies in Romania, http://www.listafirme.ro/vlasca-2008-cooperativa-agricola-24896626/.
18. Firme la vedere, http://www.firmelavedere.com/firma/bio-hrana-prietenia-srl_ilfov_28391766.php.
19. Firme.info, http://www.firme.info/bio-hrana-prietenia-srl-cui28391766/.
20. Firme.info, http://www.firme.info/vlasca-2008-cooperativa-agricola-cui24896626/.

MEASURING THE WHITE-COLLAR CLIENTS' TRUST IN THE PUBLIC INSTITUTIONS – AN INCREASING DEMAND TRIGGERED BY THE RAISING AWARENESS OF THE CORRUPTION PHENOMENON

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Abstract: *The papers aims at adding to the current of assessing the level of corruption, public administration reform and their impact upon the economic development a in-depth study that emphasizes once again the strong link between corruption and public administration as a provider of public service (Rose-Ackerman, 1999; Mauro 1998). Moreover, the issue that the paper is underlying refers to the lack of more developed and accurate instruments and methodologies that measure the corruption level in different fields of activity, and, as a consequence, the need to firstly estimate the intensity of the phenomenon upon the clients of the public administration. In order to avoid general perceptions, the authors decided to limit the research on a sample comprising only respondents that are both clients and providers of a public service (referred to as white-collar clients), hence assuming they have a more accurate understanding of the phenomenon.*
Keywords: *integrity, trust, anticorruption, public sector*

THEORETICAL FRAMEWORK

The issue of corruption indicators is very extensive. This is triggered by the difficulties of measuring a phenomenon with very different origins. Much of these indicators are based on measuring the "perception" using various sociological researches. In the field literature there is a distinction made between subjective and objective indicators. Although they are using the same idea of the sociological questionnaire, the difference lies within the typology of the questions. For example, a subjective indicator will include questions like "Do you think that the government is corrupt?" while an objective indicator will include questions about their own experiences with the corrupt transactions (Urra 2007; Seligson 2002; Calrke and Xu, 2004). Another category of indicators are called aggregated indicators, which started to develop in mid 1990s. They are built by combining multiple primary measurements. They received several names: measurements of "second generation" (Johnston, 2000), "composite indicators" (Arndt and Oman, 2006) or "aggregated indicators" (Kaufamann et al., 1999, 2003). At

international level there are three major indicators of corruption. The first of these indicators was the *International Country Risk Guide* (ICRG), an indicator used by many companies to locate investments and development businesses in certain economic regions. A second very important indicator is the *Corruption Perception Index* (CPI) published by Transparency International, which measures the perception of the public and certain experts on corruption in a society. A third indicator, *Corruption Control*, was developed by Kaufamann, Kraay, and Mastruzzi (2003).

RESEARCH METHOD AND THE EMPIRICAL BASIS OF THE WORK

The methodology we are using in this research is both of a qualitative nature for the theoretical background needed to substantiate the argument of the entire research, and of quantitative nature, namely a sociological questionnaire for assessing the white collar clients' trust in the institutions with a strong involvement in combating corruption and their awareness as both consumers and providers of public service subjected to corruption. The items shall be aiming at factors influencing the corruption phenomenon, and also possible measures to be taken or measures already implemented (successfully or not) in order to raise the public institutions' trust level. The sample is three-folded in terms of the tested institutions' location – Transilvania area, Muntenia area and Moldova area - , and two-folded in terms of the white-collar's administrative level (local or central).

RESEARCH BOUNDARIES

Choosing the best methods for fighting corruption is one theme with a high degree of difficulty. This situation occurs due to the lack of a system of indicators to measure the impact of certain specific measures for combating corruption. On a international level, one of the most popular tools for assessing corruption, and that also offers targeted recommendations for certain sectors is National Integrity System , a tool developed by Jeremy Pope (1997, 2000). The author analyzes the entire social and institutional structure at state level, assessing a number of predefined components, and proposing a series of amendments. But as Brown and Uhr (2004) were writing down, the system provides a qualitative analysis of the ethical infrastructure of a state, without a thorough evaluation of the expected impact of the proposed measures or of already adopted measures.

In fact, the field literature presents numerous questions about the future of research on the corruption phenomenon, related to our research directions. Among the questions that our research should, in the end, answers are: Corruption conditions trust or vice versa? What form of corruption is the most harmful? What was done and what can still be done? How can policies for combating corruption be assessed?

Out of these questions, our current research seeks to find an answer for the first two. Nevertheless, the research project aims to establish very clearly what public administration reform measures have an impact on reducing corruption. In the end, the research project intends to respond to the issue of government reform in correlation with

the economic growth, taking into account that the existing studies do not provide an analysis of causality between these elements. It should be noted that the focus of research will be on the countries of Central and Eastern Europe, namely the economies in transition.

The text included in the section or subsection must begin one line after the section or subsection title. Leave one blank line (10 point) before the section title and one line before the subsection title.

MEASURING CORRUPTION AND TRUST

The increased importance of corruption has generated a strong demand for specific strategies, measures of citizen trust in state institutions. the aim of having clear and simple indicators constitute a problem both for practitioners and for academics and researchers, this is because in this area more comprehensive indicators are required, with various factors of influence, often subjective, as opposed to the traditional direct and 'aseptic' approach of the econometric indicators, common in other areas of activity (Urra, 2007). In the field literature numerous indicators are being used, each expressing some aspects of corruption, of the public administration reform, as they are calculated for certain countries, certain political and administrative regimes and for certain periods of time. The set of indicators that the research project is considering are meant to have a wider application range, while not having the pretense of 'good for everything' to the issue of corruption in public administration.

Achieving this set of indicators is based on two courses of action. The first concerns the field literature, other assessments of corruption and analyses of strategies for the fight against corruption. The second direction is to identify indicators that reinforce the triangle "corruption - government - economic development".

Identifying the causes promoting corruption in the public system is one of the most difficult problems of researching the corruption phenomenon. The field literature identifies four categories of factors directly influencing a system corruption: political, juridical, historical, social and cultural factors and economic factors.

The category of political and juridical factors include the quality of the political system, legal system characteristics, Leite and Weidmann (1999) - in particular the laws and institutions that refer to the fight against corruption - the quality of the democratic system, the electoral system features, the administrative system features, the degree of administrative decentralization in a country, so on and so forth.

A number of studies, such as La Porta (1999), Treisman (2000) and many others highlight the traditions and historical factors' influence upon the level of corruption in a country and upon the characteristics of the mechanisms of substantiating and transmitting it. Also, the social and cultural factors have a special role in highlighting the characteristics of corruption in a country, La Porta (1999), Treisman (2000), Alesina (2003). Equally, religious factors play an important role in the spread of corruption in the social system.

The economic factors such as the level of economic openness, for example, Dreher (2003), Treisman (2000), Wei (2000), the size of the public sector, Tanzi (1998),

Treisman (2000), the public sector wages, van Rijckcghem (1997), etc. directly affect the level of corruption.

Regarding the issue of the influence of corruption on the economic growth the field literature has tried to find an answer to the differences in the influence in different states, but without giving a clear result (Allen and Qian, 2007). As it can be seen, the literature generally focuses on establishing the causes, on the effects' measurement and less on choosing the best measures for reforming the public administration to combat this phenomenon. Hence, the difficulties encountered are precisely arising from the nature of corruption. Corruption is a phenomenon with many facets: sociological, economic, cultural, legal and the possibilities to find a panacea is nonexistent.

Trust is usually associated with the citizen-government relations, and its decline is detrimental to public service delivery (Van de Walle, Van Roosbroek and Bouckaert, 2008). Moreover, the lack of trust fed by corruption is considered critical in that it undermines government efforts to mobilize society to help fight corruption and leads the public to routinely dismiss government promises to fight corruption (Morris and Klesner, 2010). In that same regard, scholars argued that corruption can never strengthen citizens' trust since bribe paying and clientelism open the door to otherwise scarce and inaccessible services and subsidies, and that it would never increase institutional trust (Lavallee E., Razafindrakoto M., Roubaud F., 2008), as the 'efficient grease' theory once claimed. It must be noted that when assessing trust in institutions and corruption we rely upon perceptions and not necessarily the real situation (Wallace, Latcheva, 2006: 82), so, we that in mind, we strive to get answers based upon respondents' estimations of their activities (the surveyed civil servants).

In that regard, some scholars have tried to better understand what drives interorganisational trust in public administration (Oomsels P., Bouckaert G. (2015), others have called it inner-trust and focused on assessing it for different categories of civil servants (Yang and Pang, 2015), or in-group trust measured by official reports like the one provided by the European Bank for Reconstruction and Development (2010). Call it as you will.

THE QUESTIONNAIRE

The questionnaire was build in order to test the *hypothesis* according to which an increase level of trust that would bring down corruption can only be reached by turning to a zoom out approach allowing us to firstly establish the level o trust of the inner circle and its consequent decisions, before expecting a stronger citizens-public administration relation. The argument here is that when considering different official reports showing a growing level of distrust and corruption (COM(2014)38 final), we cannot help but wonder whether, giving all the failing efforts made by Romania and the European Union aiming at bringing down corruption, we have been focusing more on the outer circle (citizens' trust), and less on the inner trust.

Europeans are deeply worried about corruption – Eurobarometer survey results show that three quarters (76%) of Europeans think that corruption is widespread and

more than half (56%) think that the level of corruption in their country has increased over the past three years (COM(2014)38 final: 5-7).

All the past public decisions on fighting corruption led us to believe that we must focus our analysis on establishing the level of trust of the providers in the provided good or service, which is actuality the topicality of this research. Should the public servant trust the public administration, then the one strong instrument that marketing offers us – word of mouth – can be better exploit for fighting corruption. But, should the opposite situation occur, as our findings would reveal, the issue becomes more severe and, moreover, wakens the ability of the public decision maker to continue making decisions, as it produces a decision fatigue and a bad public decisions' ripple (Dinu, 2012). The degree in which a public manager trusts its decisions depends on the level of certainty in which the decision is made. The surer the decider is about the results, the more trust he/she will have to make that decision. Being a two way street, a low level of trust in the decision's results would only worsen the already complex environment of the public decisions, which is one distinguished by high uncertainty, incomplete information and asymmetrical information.

The questionnaire was designed for assessing the white collar clients' trust in the institutions with a strong involvement in combating corruption and their awareness as both consumers and providers of public service subjected to corruption, and it contained eight questions:

- In your opinion, to what extent is corruption a key issue in the Romanian society? (Q1)
- How would you assess the prevalence of corruption in the following areas: education, health, police, justice, public procurement, local public administration, central public administration? (Q2)
- How do you assess the activity of the institutions having the mission to enforce the law? (Q3)
- How would you rate the impact of the following measures for combating corruption (increasing penalties, the confiscation of illicitly acquired assets, revenue growth, increasing the efficiency of the public administration. increasing the efficiency of the judiciary system, legislation clarity)? (Q4)
- How would you value the role of the following institution in combating corruption (The National Anticorruption Directorate, The General Anticorruption Directorate, The National Agency for Fiscal Administration, The National Office for Preventing and Combating Money Laundering, Ministry of Domestic Affairs, Ministry of Justice, and Court of Accounts)? (Q5)
- How would you estimate the importance of the following elements in increasing corruption the Romanian public sector (wage level, work conditions, custom, quality of law, the desire for enrichment, the interference of politics in the public administration's activity)? (Q6)
- How would you consider the fight against corruption of the following institution in the past three years (The National Anticorruption Directorate, The General Anticorruption Directorate, The National Agency for Fiscal Administration, The National Office for Preventing and Combating Money Laundering, Ministry of

Domestic Affairs, Ministry of Justice, Court of Accounts, The Parliament, and The Church)? (Q7)

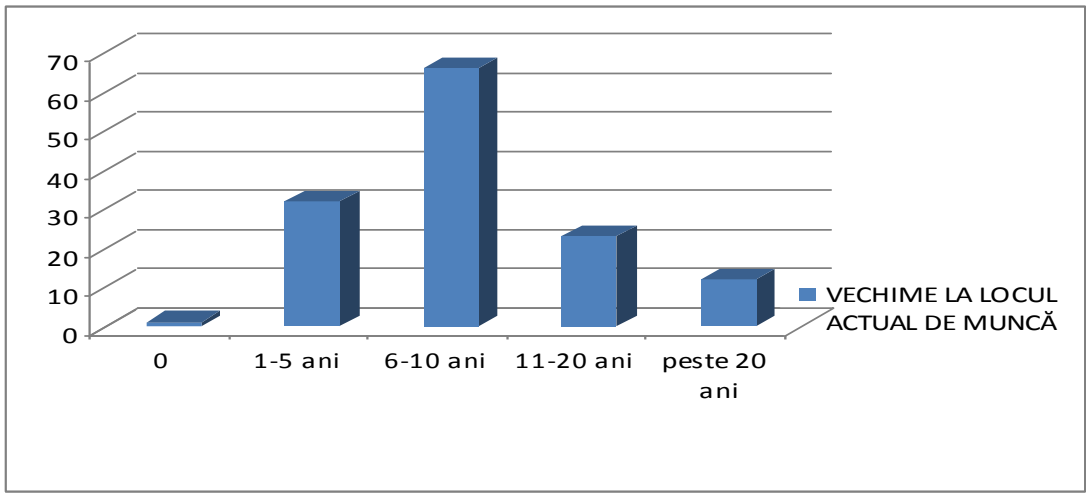
- How would you deem the frequency of the following informal manifestations of the corruption phenomenon (fees for granting contracts, gifts, pressures form the superiors, trading in influence, nepotism, political appointments)? (Q8)

THE SAMPLE'S DUAL ROLE

The provider of the public goods and services must be the first ones interested in delivering both an appropriate and a trustworthy good or service. They are both consumers and providers of the public good or service, which would firstly imply believing in the service as a provider, and thus being concerned with the marketing of public services to their users and the governance of inter-organizational relationships (Osborne, 2009: 5), and secondly being satisfied with the service as a consumers – looking for a service not subjected to corruption.

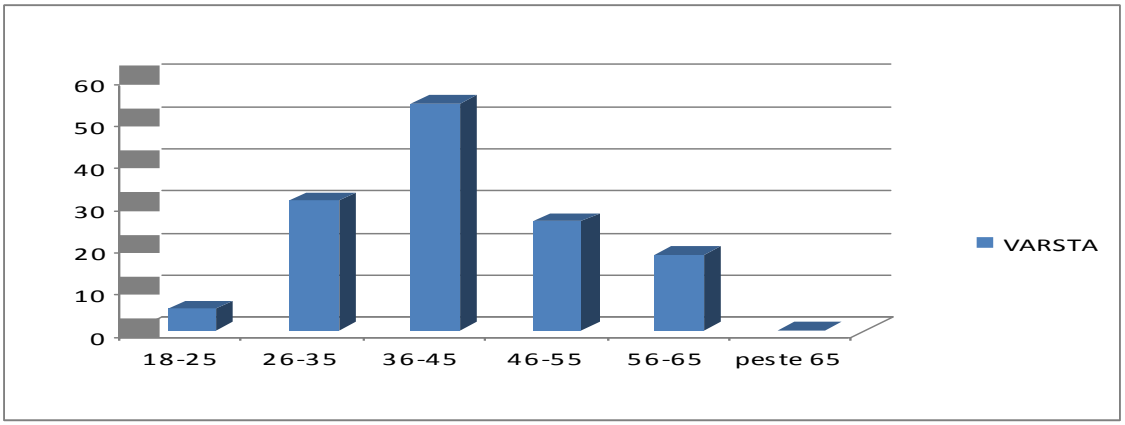
We gathered 134 respondents from eight counties in Romania (Galati, Ilfov, Bucharest, Bacau, Neamt, Timis, Bihor, and Cluj), most of them public servants from the executive branches, but also head positions, contractual personnel, and contractual personnel recruited by exam). More than 60 percent of the respondents have been working for at least 6 years in the public administration (see Graph 1), and were currently working for devoluted services, Government, Ministries, Local and County Councils, Municipality or other public services. More than half of them were women in between 36 and 45 years old (see Graph 2).

Graph 1 Work Seniority at the current job position



Source: own elaboration, data collected through the questionnaire

Graph 2 Age



Source: *own elaboration, data collected through the questionnaire*

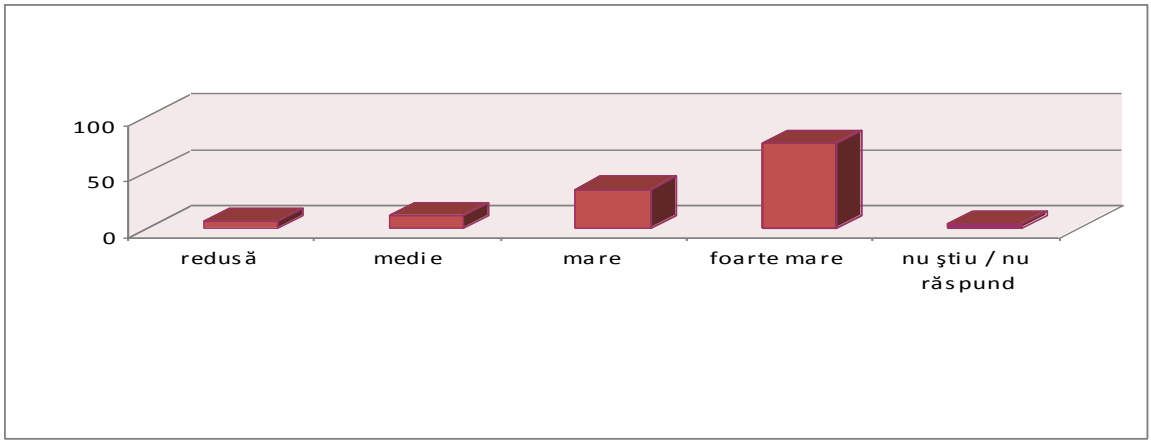
FINDINGS

We aimed at testing three derived hypotheses:

- the white collar clients of the public services are not only aware of the corruption phenomenon, but rate it highly on the severity ladder;
- the awareness of the corruption phenomenon leads to a greater lack of trust in the service they are providing and, further more, to bumpy inner group decision-making;
- measuring the civil servants' perception of the corruption phenomenon, i.e. turning to a zoom out approach, may lead to better measures for combating corruption and, consequently, a better provided public service supported by appraised word of mouth coming from the white collar clients.

When designing this questionnaire, we kept in mind LiTS II Survey (EBRD, 2010) on corruption and trust in the transitions countries that showed us not only that societal and institutional trust is still an issue, but that is starts being associated with more elements than those investigated by the survey, i.e. economic development, economic growth, open markets, and investment. All in all, trust is an issue that must be investigated for all the stakeholders. Therefore, we started our *zoom out* approach from the assumption that a decision-making system can only become more efficient should its core be a true inner circle filled with a high trust level. In other words, a work environment aware of the fact that is fostering corruption only proves that the inner group would definitely have low trust levels in both the provided service and the work colleagues (see Graph 3).

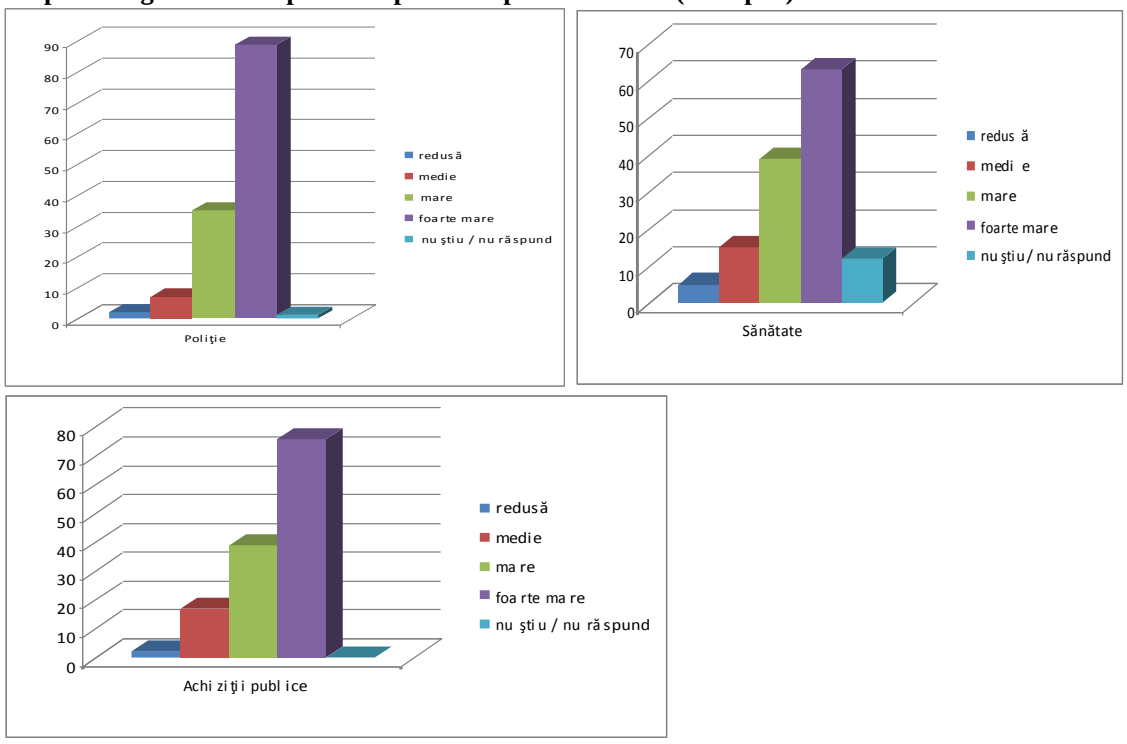
Graph 3 Awareness of the corruption phenomenon



Source: *own elaboration, data collected through the questionnaire*

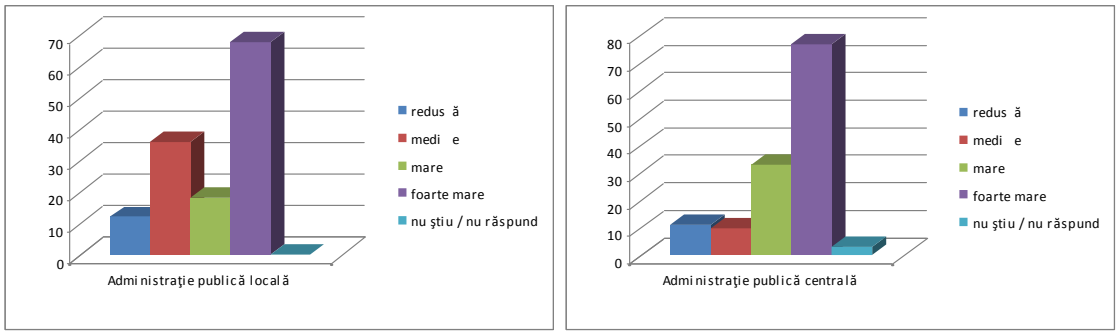
There are certain public services considered either vital for the society (police and healthcare) or defining for a well functioning economy (public procurement). A high degree of corruption in these key public services (very high, as our results shoe, see Graph 4 and Graph 5) only proves the seriousness of the investigated issue and the fact that the problem rises indeed from within the system.

Graph 4. Degree of corruption for provided public services (Group A)



Source: *own elaboration, data collected through the questionnaire*

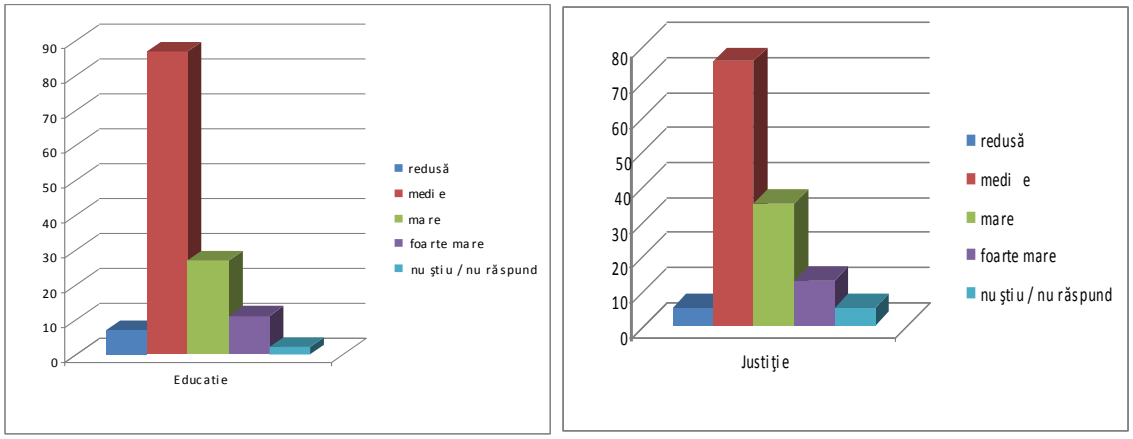
Graph 5. Degree of corruption for local and central public administration



Source: *own elaboration, data collected through the questionnaire*

We also tested the possibility to repair the corruption damage both upstream and downstream, namely with the help of education and justice system. For that measure to be effective, we needed to have a positive feedback (which we did indeed receive it) from the white collars on the perceived degree of corruption for those particular systems (See Graph 6).

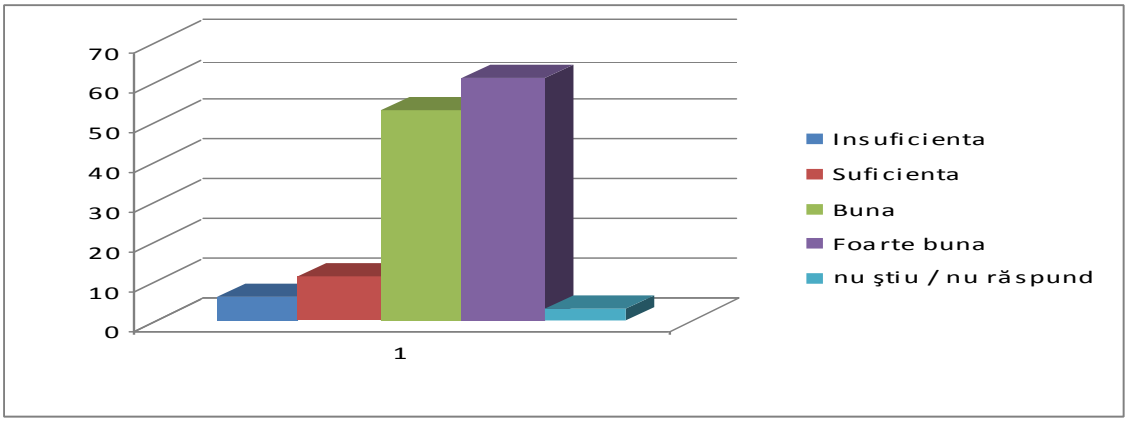
Graph 6. Degree of corruption for provided public services (Group B)



Source: *own elaboration, data collected through the questionnaire*

The third question of our survey aimed at testing the second derived hypothesis, being in fact a blockstart of the testing process but a necessary one considering that no matter the measures we decide to propose at the end of the broader research project, we must be aware of the perception that the inner group have on the currently applied measures (see Graph 7).

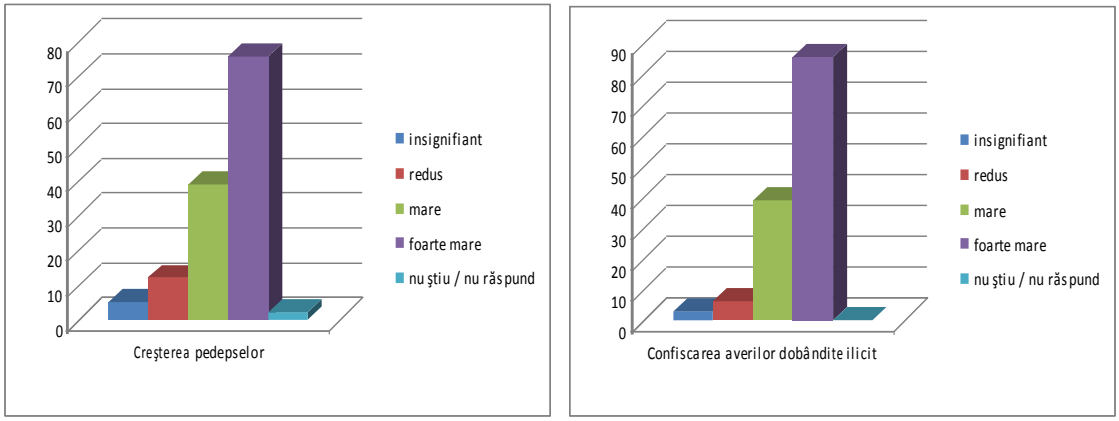
Graph 7. The activity of Law enforcing public institutions



Source: *own elaboration, data collected through the questionnaire*

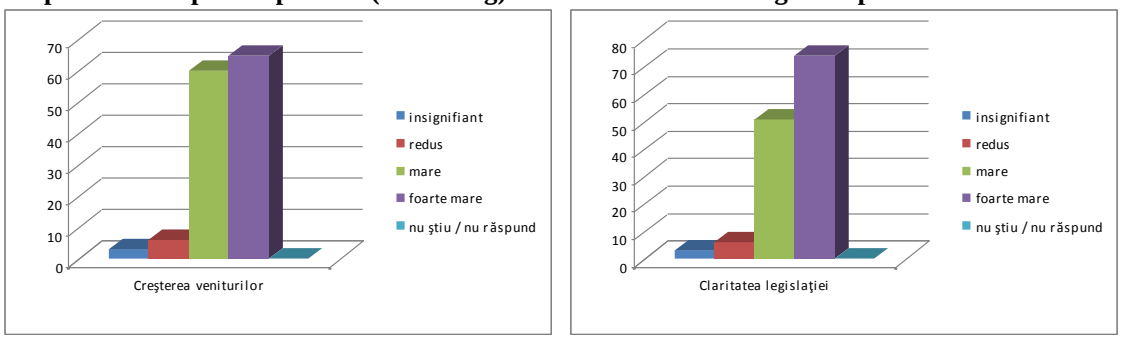
The forth question, which was broke down by six general measures for combating corruption taught us an important aspect that somehow contradicts our belief that relied heavily on the fact that rewarding good behaviors would be more welcomed than punishing bad ones (see Graph 8 and Graph 9).

Graph 8. The Impact of negative (punishing) measures for combating corruption



Source: *own elaboration, data collected through the questionnaire*

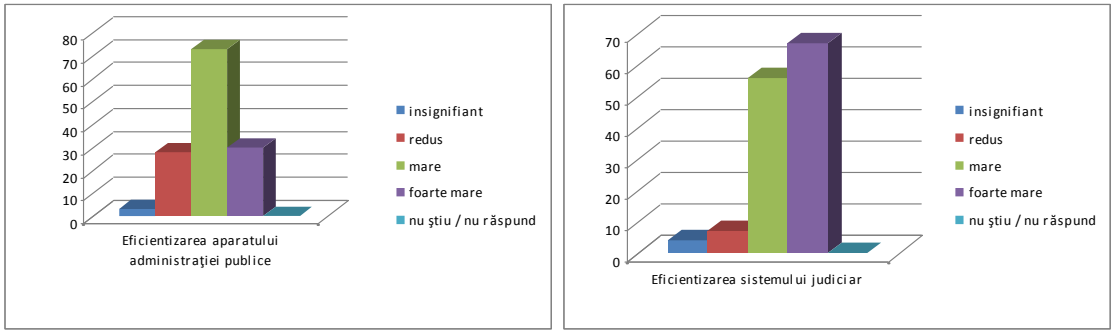
Graph 9. The Impact of positive (rewarding) measures for combating corruption



Source: *own elaboration, data collected through the questionnaire*

In that line, we reached a similar result when testing whether the measure should be applied upstream, namely before or during the decision-making process, inside the public administration's apparatus, or downstream, in the judicial system supervising the activities of the civil servants (see Graph 10).

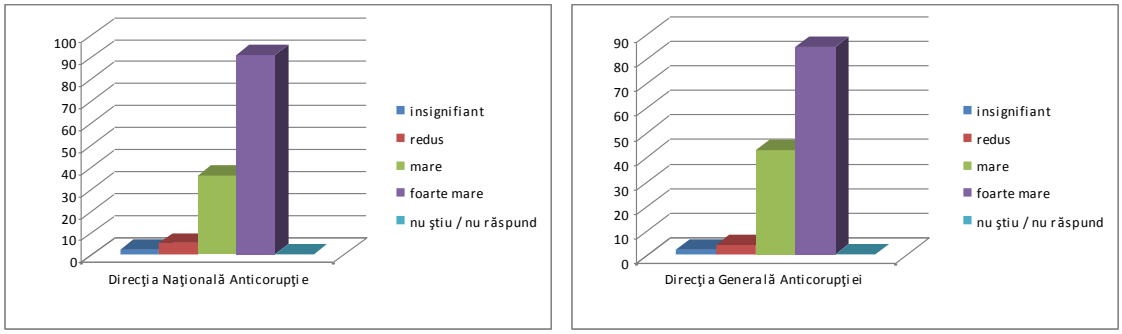
Graph 10. The Impact of reforming measures for combating corruption

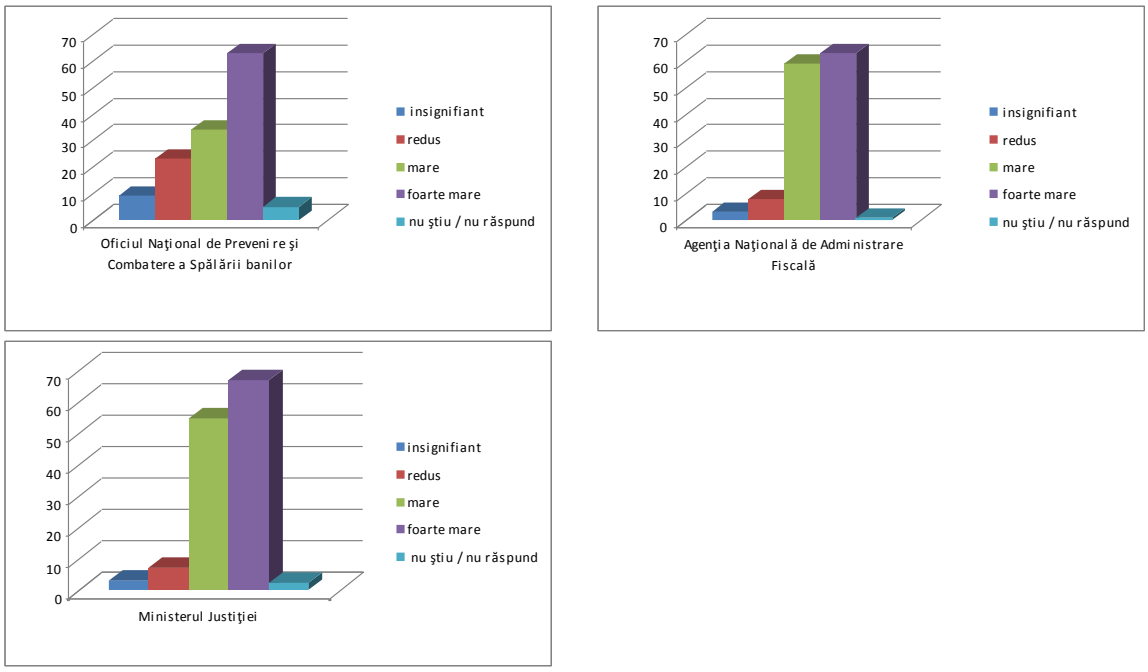


Source: *own elaboration, data collected through the questionnaire*

Consequently, all the institutions with a strong involvement in the review process were rated as highly important (see Graph 11), while those providing a continuous review were given less importance (see Graph 12).

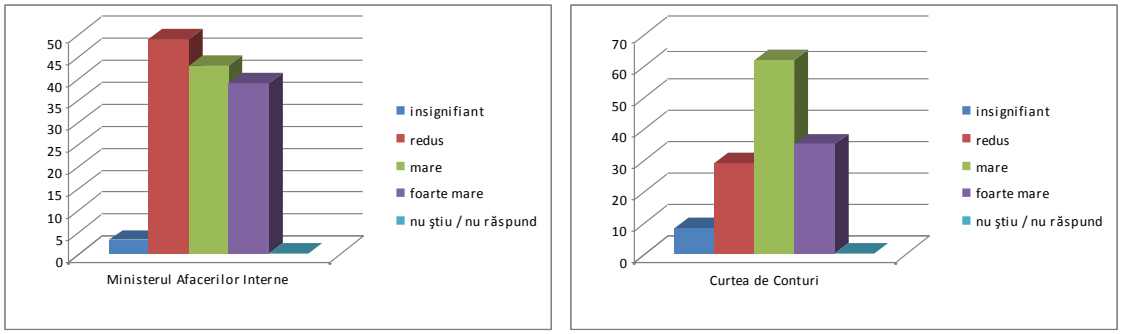
Graph 11. The role of corruption fighting institutions (Group A)





Source: *own elaboration, data collected through the questionnaire*

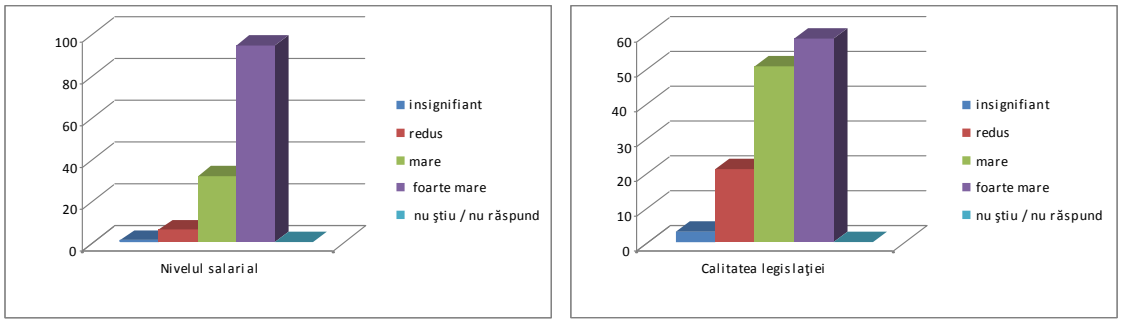
Graph 12. The role of corruption fighting institutions (Group B)



Source: own elaboration, data collected through the questionnaire

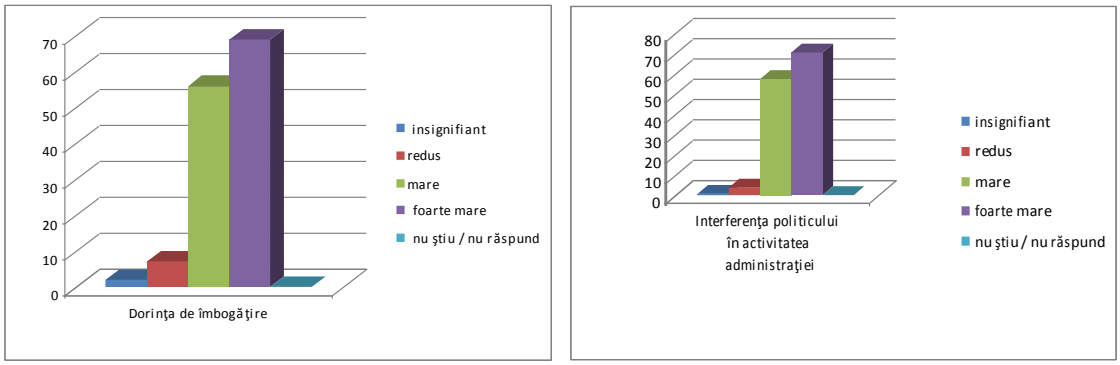
There are certain elements towards which the measures for combating corruption should be directed, or better said the white collar perceive as stringent and effective. The first category refers to positive actions, meaning raising wages and improving legislation quality, but our sample also admitted to the importance of combating the 'get reach fast' behavior and politics interference (see Graph 13 and Graph 14). What they rated as secondary (quite low in importance) in terms of the need to apply measures are the work environment and custom. Actually, there is currently a large debate about making gifts legal, which the civil servants' unions rate as unacceptable as it would mean to allow a society to hold captive an entire public administration (see Graph 15).

Graph 13. The importance of positive elements in increasing inner corruption



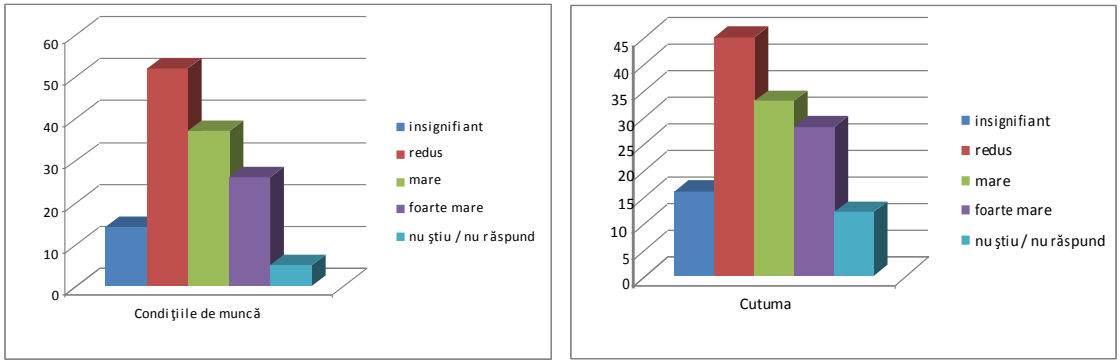
Source: *own elaboration, data collected through the questionnaire*

Graph 14. The importance of negative elements in increasing inner corruption



Source: *own elaboration, data collected through the questionnaire*

Graph 15. The importance of work place related elements in increasing inner corruption

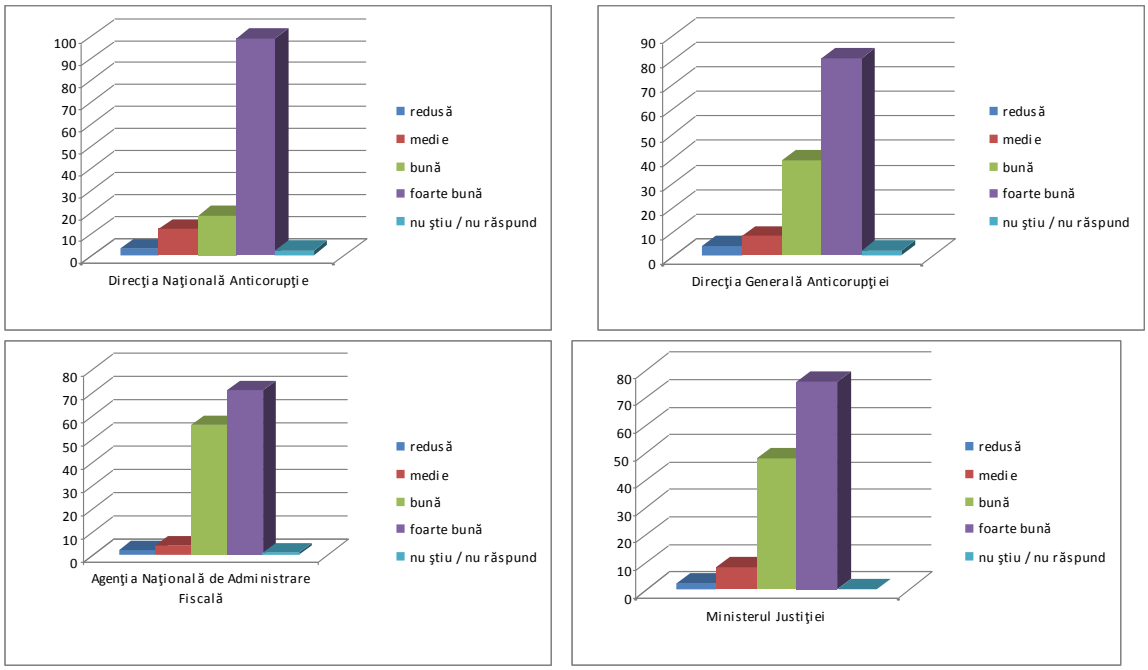


Source: *own elaboration, data collected through the questionnaire*

The authors consider that a research on the issue regarding the activity of the public institutions in the fight against corruption that considered a three years timeframe would help sketch a hierarchy of the institutions that must be given priority when designing targeted measures (see Graph 16). One interesting case is that of the National Office for Preventing and Combating Money Laundering that is perceived as more important and active only during the past year, and not previously.

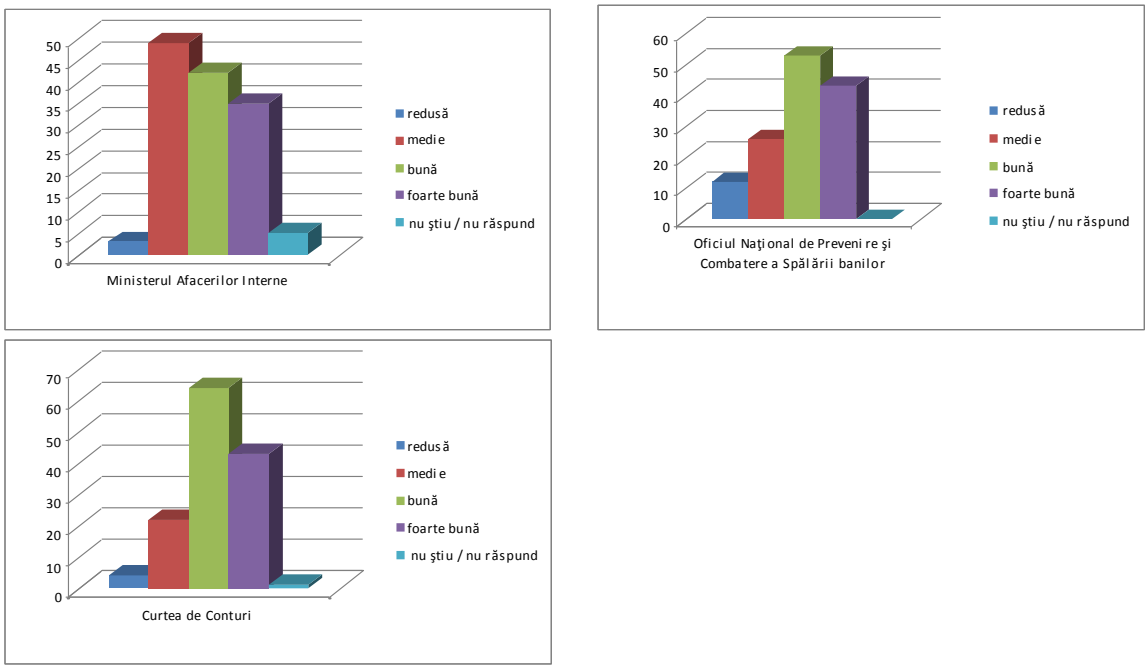
Another aspect to closely consider is the case of the institutions that the citizens perceive as the most trustworthy (the Church) and the less trustworthy (the Parliament) (IRES, 2014). Our sample, namely the white collar clients of the public servants, is giving them both little importance in the fight against corruption (see Graph 18).

Graph 16. The institutions three years fight against corruption (Group I)



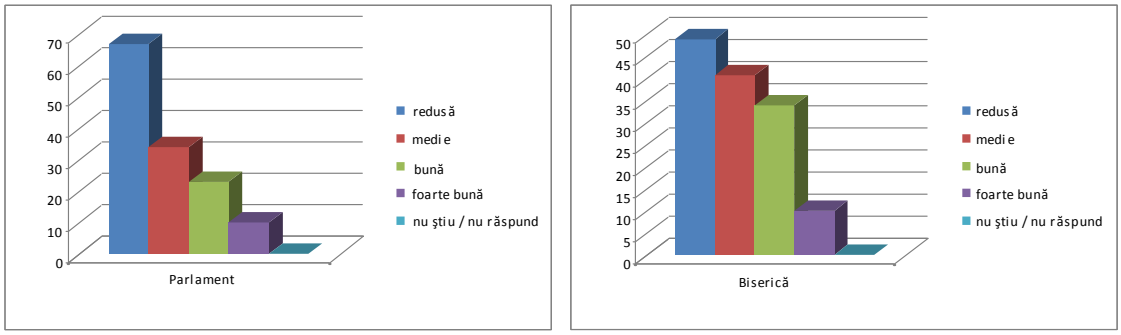
Source: *own elaboration, data collected through the questionnaire*

Graph 17. The institutions three years fight against corruption (Group II)



Source: *own elaboration, data collected through the questionnaire*

Graph 18. The institutions three years fight against corruption (Group 3)

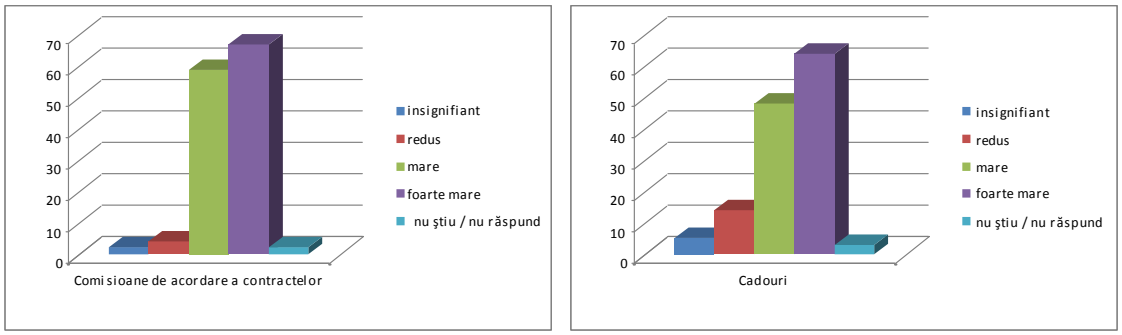


Source: *own elaboration, data collected through the questionnaire*

The informal manifestations of corruptions are an astonishing case in terms of the recorded results for the inner group. No one would be surprise when reaching such a result on a citizens' survey (e.g. EBRD, 2010: 37) with regard to unofficial payment of goods, but it is certainly interesting to be aware of the lax attitude with which the respondents of our sample admitted to having fostered both the low-level administrative corruption and the high-level one, i.e. 'state capture' (Matei and Popa, 2009).

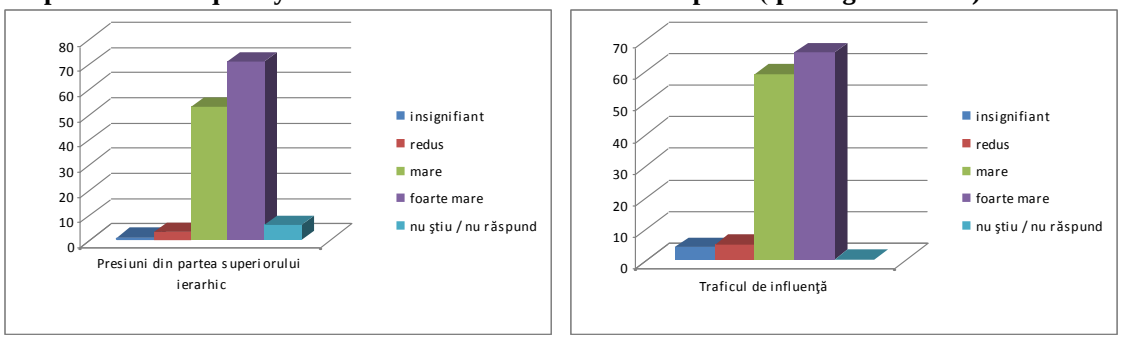
We tested their perception for six different kinds of informal manifestations of corruptions but have received the "very frequent" answer for all for of them, be them referring to rewards for obtaining different services (see Graph 19), actions for changing certain rules (see Graph 20), or even actions for getting public jobs (see Graph 21).

Graph 19. The frequency of informal manifestations of corruption ('rewards')



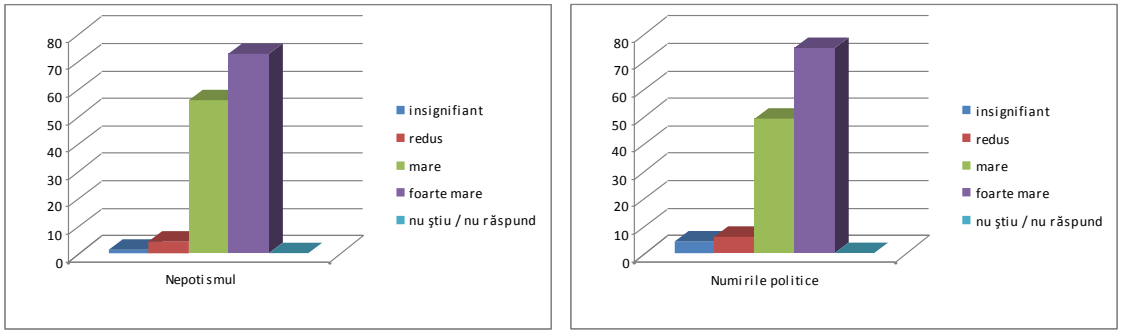
Source: *own elaboration, data collected through the questionnaire*

Graph 20. The frequency of informal manifestations of corruption ('put a good word')



Source: *own elaboration, data collected through the questionnaire*

Graph 21. The frequency of informal manifestations of corruption ('I know someone')



Source: *own elaboration, data collected through the questionnaire*

FUTURE RESEARCH

Our broad research project, as mentioned in the beginning aims at designing a system of indicators assessing the impact of the measures to fight corruption in the economic development process. Therefore, this manuscript only presents our starting point, chosen in accordance with the zoom out approach, the perception on corruption of the public service providers and the in-group trust they show. The applied questionnaire confirmed all our derived hypotheses, mainly our general hypothesis that the inner group is not only aware of the phenomenon, but is also fostering it, which pushes us to take the

next step towards going in depth of the corruption phenomenon. Further research on that topic will probably involve a focus group, in our search for a more down to earth opinion on this highly sensitive issue.

The method we shall be using for further research is the adverse method: clearly analyze the corruption so that the decision makers know what they are dealing with when designing public policies and implementing decisions in order to reduce the phenomenon. First look at the cause, not at the cure. The primary sale of a public service is indeed trust, but a future analysis should also look in-depth of the "competition", namely the corruption.

References

1. Arndt C., Oman C. (2006) "Uses and Abuses of Governance Indicators", OECD.
2. Bjørnskov C. (2003) "Corruption and Social Capital", *Working Paper* 03-13 ISSN 1397-4831, available (online) http://pure.au.dk/portal/files/32303928/0003139.pdf (10 May 2015)
3. Clarke G.R.G. and Xu L.C. (2004) "Privatization, competition, and corruption: how characteristics of bribe takers and payers affect bribes to utilities", *Journal of Public Economics* 88, 2067–2097.
4. Dinu I.T. (2012) The bad public decisions' ripple – setting the education off balance. Marketing simulation – education design decisions, *Theoretical and Applied Economics* Volume XIX (2012), No. 8(573), pp. 37-52, available (online) http://store.ectap.ro/articole/761.pdf (10 May 2015).
5. European Bank for Reconstruction and Development (2010) "*Life in Transition Survey II", Chapter 4 – Corruption and Trust, Transition report*, available (online) http://www.ebrd.com/downloads/research/surveys/LiTS2ee.pdf (2 May 2015).
6. European Commission (2014) "*EU Anti-corrpution Report*", available (online) http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf (7 May 2015).
7. Glaeser E.l., Laibson D.I., Scheinkman J.A., Soutter C.I. (2000) "Measuring Trust", *The Quarterly Journal of Economics*, August, pp. 811-846, available (online) http://scholar.harvard.edu/files/laibson/files/measuring_trust.pdf (11 May 2015)
8. IRES (2014) "*Bilantul politic al anului 2014*", Romanian Institute for Evaluation and Strategies, available (online) http://www.ires.com.ro/articol/285/bilantul-politic-al-anului-2014 (11 April 2015).
9. Johnston M. (2000) "*The New Corruption Rankings: Implications for Analysis and Reform*, available (online) http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.203.296&rep=rep1&type=pdf (2 April 2015).
10. Kaufmann D. A., Kraay A. and Zoido-Lobaton P. (1999) "Governance Matters" *Policy Research Working Paper* 2195. The World Bank, Washington D.C.
11. Kaufmann D., Kraay A., and Mastruzzi M. (2004) "Governance matters III: Governance indicators for 1996, 1998, 2000, and 2002" *The World Bank Economic Review* 18.2: 253-287.
12. Lavallee E., Razafindrakoto M., Roubaud F. (2008) "Corruption and trust in political institutions in sub-Saharan Africa", Document de Travail DIAL, DT/2008-07, available (online) en.dial.ird.fr/content/download/49582/380080/version/1/.../2008-07.pdf (5 April 2015).
13. Matei A.I., Popa F.M. (2009) "*State Capture versus Administrative Corruption; A Comparative Study for the Public Health Service in Romania*". EGPA 2009, THE PUBLIC SERVICE: SERVICE DELIVERY IN THE INFORMATION AGE, Malta. Available (online) at SSRN: http://ssrn.com/abstract=1438573 (8 April 2015).
14. Mauro P. (1998) "Corruption and the Composition of Government Expenditure", in *Journal of Public Economics* 69 (2).

15. Morris S.D., Klesner J.L. (2010) "Corruption and Trust: Theoretical Considerations and Evidence from Mexico", *Comparative Political Studies* 43(10) 1258-1285, Sage, available (online) http://cps.sagepub.com/content/early/2010/04/19/0010414010369072 (2 April 2015).
16. Oomsels P., Bouckaert G. (2015) *"Mechanisms of interorganisational trust in the Flemish administration: Relating interorganisational interaction aspects with trust dimensions*", Public Governance Institute, available (online) https://lirias.kuleuven.be/handle/123456789/503347 (21 April 2015)
17. Osborne S.P. (2009) "Delivering Public Services: Time for a new theory?", *Public Management Review*, 12:1, 1-10, available (online) http://dx.doi.org/ 10.1080/14719030903495232 (12 May 2015)
18. Rose-Ackerman S. (1999) "*Corruption and Government. Causes, Consequences and Reform*" Cambridge: Cambridge University Press.
19. Rose-Ackerman S. (2001) "Trust, Honesty, and Corruption: Reflection on the State-Building Process", John M. Olin Center for Studies in Law, *Economics, and Public Policy Working Papers*. Paper 255. available (online) http://digitalcommons.law.yale.edu/lepp_papers/255 (15 May 2015)
20. Seligson M. (2002) "*On the Measurement of Corruption*", APSA-CP 13 (2): 5-6.
21. Stiglitz J.E. (1999) "*Whither Reform? Ten Years of the Transition*", World Bank Annual Bank Conference on Development Economics Keynote Address, available (online)
22. https://www.gsid.nagoya-u.ac.jp/sotsubo/stiglitz.pdf (29 April 2015)
23. Urra F.J. (2007) *"Assessing Corruption An analytical review of Corruption measurement and its problems: Perception, Error and Utility*", Edmund A. Walsh School of Foreign Service Georgetown University.
24. Van de Walle S., Van Roosbroek S., and Bouckaert G. (2008) "Trust in the public sector: is there any evidence for a long-term decline?" *IIAS*, SAGE Publications (Los Angeles, London, New Delhi and Singapore) Vol. 74(1):47–64 [DOI:10.1177/0020852307085733] available (online) http://ras.sagepub.com/content/74/1/47.full.pdf+html (22 April 2015)
25. Wallace C., Latcheva R. (2006) "*Economic Transformation Outside the Law: Corruption, Trust in Public Institutions and Informal Economy in Transition Countries of Central and Eastern Europe*", Europe-Asia Studies, Vol. 58, No. 1, Jam., 81-102, available (online) http://www.academos.ro/sites/default/files/economic_transformation_outside_the_law.pdf (20 April 2015)
26. Yang N., Pang Y. (2015) "*Building Inner-trust of Beijing Junior Civil Servants in Government: Based on Five-levels Assessment Model of Inner-trust in Government*", Congress of IIAS-IISA, Rio de Janeiro, Brazil, available (online) http://conference.iias-iisa.org/uk/ConferenceCalendarDetail.awp?P1=6&P2=177 (15 May 2015)

INTEGRATED HOMOGENEOUS DEVELOPMENT, RESULT OF AN INTERDISCIPLINARY APPROACH

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Abstract: *The analysis of the processes and dimensions of development was a permanent concern for both theorists and practitioners. Analysis of economic models and theories envisaged their limits to explain the whole complexity of the development process, analysed both at local and regional levels. Thus an interdisciplinary approach was necessary, specific for administrative science; in order to better understand the development process, the mechanisms, the dimensions and patterns that have influenced the development process both from the economical and administrative points of view. This paper aims to develop an overview of the main concepts that may be related to the development process, highlighting their interdependence, who in the authors' opinion leads to the concept of integrated homogeneous development.*
Keywords: *local development, urban development, regional development, integrated homogenous developement*

LOCAL DEVELOPMENT

Local development is the process of development, mainly economic, in a particular region or local administrative unit, which determines an increase of life quality at local level. The aim of local development is "economic prosperity and social welfare by creating a favourable business environment, along with community integration of vulnerable groups, using endogenous resources, and developing the private sector". Local development supposes the existence of a regulatory framework, of a local partnership, of a local development strategy and of resources.

Local development, in the current context of economic, social and administrative restructuring changes, must be viewed as a dependent process of innovation and entrepreneurship, supported by mechanisms, society and flexible institutional structures, with a high degree of local cooperation and interaction (Matei, 2005). Defining the concept of local is not just about local administrative units, commune, town, city or county, but also about inter-communal, interregional and cross border levels (Matei, 1998: 95).

The basic principles of local development are based on administrative, social, economic, workforce and territorial considerations. Thus, specialists (Matei&Anghelescu, 2009:18-22) have identified nine local development principles, as follows: the principle of economic and social competitiveness of the territory, equity principle, public private principle, globalisation, comprehensive strategy, regional collaboration, focus of development, citizen orientation, measuring and evaluation, principles that can be extrapolated to regional development, too.

In French specialized literature, development is considered an economic and cultural finality of decentralisation, diversifying and enriching the activities in a given territory, through mobilising all the existing resources and energies of the area. The result of population efforts, local development means implementation of a project of economic, social and cultural development. It transforms a neighbourhood space in an active mutual aid space (Xavier, 1991:57).

Local development is a progressive concept, focused on social change, on the necessity of defining new rules of play, that need to counteract at local level some negative effects that occur as a result of some actions taken at central level. Some authors (Profiroiu, 1998:69) call this progressive concept "liberal local development", considering it a process whereby governments or community organisations stimulate economic activity and job creation. Its purpose is to increase the employment opportunities in those sectors that improve the community situation, using the existing human, natural and institutional resources. This strategy is rather a way to recover the local economies by creating jobs.

Local development is equally social; its aim is to create a climate of equity in the fight with poverty and by promoting individual identity in a great diversity. It also envisages elimination of discrimination, especially by paying attention to disadvantaged groups. Generally it can be discussed about human development and strengthening the personal competences through education, alignment to ethical values, and social development that takes into account the social and cultural relation, as well as citizens participation in decision making process within public authorities.

Access to information is a prerequisite to local development given that only through the stakeholders' support, it can be successful. At the same time, information allows timely correction of any shortcomings of local development projects under continuous changes of the environment. Lack of management experience and technical abilities of managers is one of the main important constraints of local development.

URBAN DEVELOPMENT

Urban planning is defined in different ways, considering the following: "a complex ensemble of activities of design, endorsement, and approval of several plans or the authorization of future buildings for any type of urban or rural community" (Şăineanu, 1998:1056). However, there were some opinions that consider urban planning is "a set of political, administrative, financial, economic, social or technical measures with the aim of ensuring a harmonious city development" (Hubert, 1993:1).

Urbanization can be understood as a continuous and complex process, in which activities related to concentration of population occur at the same time, as well as various

modernisation and social changes. The urban centre or the city is considered an administrative area or a functional economic area.

Urban development can be seen as a process of growth and amplification accompanied by a series of qualitative changes generated by the development strategies, policies and programs. Urban development is a complex, interactive process, these features being determined by carrying out development projects in the phases of elaboration, planning, implementation and evaluation, phases that involve a series of stakeholders whose decisions determine the development trajectory.

Urban development policy is a set of integrated governmental (national, regional and local) measures (economic, social, cultural, environment, transport and safety) that are addressed to the cities. The purpose of urban development policies formulation is to improve the future development, to eliminate the disfunctionalities, balancing the future development and enhancing development trends. Depending on the city specificity, the sectors covered by development policies include spatial planning, housing, public services, social economic development, and urban revitalization methods.

Urban planning is viewed today in close interdependency with spatial planning, as part of it, and it consists in a set of activities through which objectives related to: improving living conditions by eliminating disfunctionalities, ensuring access to public services and affordable housing for all residents, creating conditions to meet special needs of children, elderly and disabled persons, efficient use of land in accordance with appropriate urban functions, controlled spread of build-up areas, protection and enhancement of the built and natural cultural patrimony, ensuring the quality of the build-up frame, planned and planted in all localities, localities' protection against natural and technological risks are pursued.

Urbanism is currently facing increasingly global structuring of cities problems. Such problems are proving extremely complex, especially when it comes to defining the geographical area of human settlements extension, to remodelling or enlarging the indispensable role of the urban center, to achieving the necessary cities decongestion in order to reach the proper cities performance.

Spatial planning and urbanism (the two notions, urbanism and spatial planning, lead to confusion. Some elements from urbanism are given to the spatial planning term; this issue appears also when we are talking about spatial planning concepts. The confusions appear at the specialists level, whose field of activity is related to both concepts, as well as for the level of ordinary persons that get in touch with those terms) are branches of the same tree. Space is the reference field. Thus, spatial planning and urbanism is a field of study and a spatial subject related to geography, on one hand and architecture, on the other hand. Today, we are witnessing a new approach of the two domains, from the administrative science point of view that emphasizes the role of public authorities in development and using of urbanism and spatial planning tools, as well as the citizens involvement in specific activities.

The urban dimension of regional development is thus required to ensure a balanced and optimal development of regional territory in an attempt to avoid overcrowding and excessive size of some regional areas to the detriment of other areas. Such a situation would cause a series of structural imbalances that contribute to deepening the regional disparities.

METROPOLITAN DEVELOPMENT

The actions related to metropolitan development could generate, besides to the effort for economic growth, a number of negative economic consequences on the environment and social cohesion, with the possibility of developing the so called *growth islands* around metropolis; while others small territorial administrative units can be disconnected from the growth process.

Considering these aspects, a polycentric development can contribute to reducing the environmental pressures, as well as the social tensions leading to the democratic structures stabilization. Theoretical academic and practical concerns related to metropolitan development cover many aspects. The first aspect is the extension of urban area, seen as a result of the action of three powerful forces "population growth, rising incomes and reducing the transportation costs" (Brueckner, 2000:160-171).

Urban sprawl and metropolitan areas constituting raises big concerns regarding the sustainable development of this space. A first requirement is about planning and management of metropolitan areas in the view of developing a strategic management. Metropolitan areas constituting raises, also the need for adopting decisions related to population and the way of managing the new area, new production and resistance techniques being generated. The need for evaluation of the urban space and for clarification of economical value of the specific area is another consequence of metropolitan areas development. In which concern economic activities, metropolitan development contributes to the optimization of the existing resources, supporting and attracting of industries from the sphere of products and services in the area.

The approach of developing metropolitan areas supposes, first of all, elaboration of policies that contributes to a better spatial planning. The need for spatial planning aims two main aspects that are related to the preparation of the conditions for transposing the economic development strategy, as well as in reducing some disparities or development errors that occur just because of the lack of territorial planning. Unplanned evolution of socio economic phenomenon like urban development leads inevitably to the creation of dysfunctionalities. This type of dysfunctionalities has been created due to the lack of strategies for urban development planning.

In the context of balanced development of metropolitan areas, the guiding principle should be urban spatial policy oriented towards growth, supported by greater integration with regional policy, on a more sustained cooperation with the private sector and taking into account the environment protection requirements by the environmental impact studies.

An major role in metropolitan area spatial planning policy is played by the private sector, an important element for social development, and in the same time of spatial development; one of the main tasks of spatial planning being to provide a development perspective, and to ensure security in which concern the management of private investments.

The main problems that should be solved at the level of metropolitan areas are related to the development of basic infrastructure and to ensure the access of population, industrial consumers and tourists to this infrastructure, promotion of strategies for housing

improvement, ensuring modern transport and traffic management strategies, environment protection and promoting sustainable development principles.

Beyond the need to ensure public services and infrastructure, the issues that requires urgent solution refers to the way of using the resources, as well as to the creation of modern transportion systems, to increase the traffic safety, measures that will increase the population accessibility and mobility, as well as the development of economic growth poles.

Within the metropolitan areas, the presence of natural and cultural resources is essential to every human activity, however the main cause of discomfort is how the resources are used and consumed without taking into account the balance of the natural system and the need to ensure the balance between it and the urban system. Most of the times, within the development process of urban activities the resources are excessively consumed, without ensuring their effective management.

In this respect, the local authorities' policy should focus on conservation and balanced use of those resources in order to ensure the proper life conditions for residents.

SUSTAINABLE DEVELOPMENT

The process of economic development inevitably engages changing natural environment, through the fact that is using the environments factors as renewable resources, but also because the nuisances affect sometimes irreversibly the ecological balance. Economic development involves an external cost sustained by the environment, whose dimensions increasingly evident in recent years, if not properly evaluated, question the long term viability of the process itself. From their early stages, the economic development theories tackled the issues of natural resources and their limited feature. Given the fact that environment protection 'objectives and measures targets need to be related to the path of transition to market economy in order to ensure sustainable development, it is obvious that macroeconomic adjustments need to take into account the energy and environmental restrictions.

As a result of macroeconomic dynamics, sustainable economic development requires a set of quantitative, structural and qualitative changes, both in economy and scientific research and manufacturing technologies, within the operating mechanisms and functioning organisational structures of economy. The basic principle of this development is PPP, meaning "the polluter pays principle".

In that context, the concept of sustainable development, this is the form of economic development which aims to meet the present consumers' needs without compromise or prejudicing the needs of the next generation.

The core concept of sustainable development is the interaction between population, economic progress and natural resources potential, highlighting key issues arising from: optimising the resources / needs ratio, goals to be achieved, necessary means, based on time and space mutual compatibilities.

The general objective of sustainable development is to find an optimal interaction and compatibilities of fours systems: *economic, human, environmental* and *technological*, in a dynamic and flexible function.

Therefore we are talking about the capacity to support indefinitely human resources for human society development meaning sustainable use of natural resources (Allaby, 1998) within the carrying capacity. In this context we discuss about development to support the evolution of human socio economic system on a continuous trajectory without affecting the existence of next generation within the carrying capacity. Implementation of this perception of sustainable development led to a pragmatic definition of it which supposes the integration of environment policies into economic and social development at all levels in a holistic manner through economic, political or technological strategies (Barbier, 1987: 101-111).

Sustainable development not only requires a strategy or a program, but also indicators to asses in time its rate and efficiency, or to highlight deviations from the planned overall orientation. Information obtained through "sustainability indicators" must allow identifying restrictions and failures and to base measures for completion and rescaling of the transition action programs at national level and harmonize them to macro regional and global scale (Vădineanu, 1998: 334). A particularly important relationship to be considered is that of urbanism and environment, which is characterized by a complex theoretical and operational relationship. The nature of these relationships is exemplified by the fact that urbanism, referring to the totality of actions of communities spatial planning are interfering on multiple plans and in many subareas with the environment, both the natural one and that influence by human activities.

REGIONAL DEVELOPMENT

Regional development was created out of the efforts of the economists, of persons in charge with planning, regional development policy becoming one of the most important and most complex policies of the European Union, statute resulting from the fact that through its objective (The proposed objective was to understand and to characterize the processes of growth at the regions level) of reducing existent economic and social disparities among different regions from the Member States, the European Union acts in several domains that are significant for development, like economic growth and SME sector, transport, agriculture, urban development, environment protection, specialized training and occupancy, education.

The method of analyzing and interpreting of the regional development process derives from the theories, methods and techniques initial designed for understanding the behavior of national economies. Such a procedure can be considered acceptable, because the economies of the regions resemble in many aspects with national economies. However there is a series of significant differences between regions and nations that cannot be ignored:

- Regional economies are by far much more open than national economies, in which they are located in,
- Interregional commerce does not have fees and other commercial barriers, all the regions from a country using the same currency,
- the workforce and the capital have a higher degree of mobility among regions than between countries,

- barriers regarding legal framework, politics, language exert a higher force in the case of international migration of the production elements than on the interregional one,
- increased degree of existing interdependence among the regions inside the borders of a state, play also an important role in the regional analysis (Nicolae& Constantin, 1998:13).

It should be mentioned that fact that regional economy analyses both interregional and intraregional relations, among local economies. Hence the necessity for the distinction between regional economy, focalized on the region as a clearly defined entity, by taking into account the relations mentioned and the economy of the urban, rural localities who from their name are debating the issue of the localities' social-economic development, through the angle of the elements that compose the locality as a system is its specific functions.

The regional problems, disparities and interregional and intraregional unbalances regarding the economic development levels of the European community countries' (and not only) appeared during human history following an uneven (Iuhas, 2004: 57) geographical development.

Neoclassical economic theories suggest that regional disparities are only temporary and the elimination of these discrepancies could be achieved through adjusting of the prices and salaries, through movements related both to the labor market, and the capital market, the market mechanism being the one making possible the decrease of these differences from the economic activities. The success of the market mechanism in eliminating regional differences depends essentially on the condition of the existence of the prices competition and low transport costs and on the total mobility of the workforce and the capital. If these prerogatives are not fulfilled, then a concentration of the economic activity, of prosperity and of the workforce degree of employment in some regions could appear and a delay in the economic development, unemployment, and decrease in the standard of living could appear in other regions. This is why if the market mechanism is not controlled, a spiral effect could arise, in which the developed regions present the most favorable conditions for the companies as well as a very well developed infrastructure, a concentration of highly qualified workforce, available support for services, leaving to their choice the possibility of increasing or not the economic advantage compared to the poorly developed regions.

Usually, none of the the developed regions will back down in the perspective of the development of another region. Hence, in the poorly developed areas, it is mandatory for the competent authorities to create conditions for the companies that had good results and that have the possibility of reinvesting.

Theoreticians like (Lazonick, 1984), (Glasmeier&Fuellhart, 1991), (Maskell& Malmberg, 1995) tried to apply the existing concepts (Neoclassical conception, keynesian, neomarxist, monetary theories have represented the main economic landmarks that contributed to the understanding and the efficiency of the regional development process), in order to describe the divergence phenomenon of growth methods from one territory to another, the serious consequences regarding interregional disparities at the

European Union level, due to the complexity of the European economic integration process could be only alleviated by applying integrated measures of regional policy.

Three approaches were remembered in the beginning having as main purpose the analysis of the economic growth discrepancies among regions: neoclassical approach (at the end of the XIX century and in the beginning of the XX centrury, economic thought was dominated by the neoclassical school. Even if regional economic problems were not revised by this school, it managed to influence some researchers that approached regional problems, like G.H Borts and J.L Stein), the one concetrated on exports and the theory of uneven development.

The only theory that established a connection between the evolution of a region and its endogenous features is the theory of uneven development (in the beginning of the 1960s' a series of theories of uneven development like center-periphery were highlighted, among the most important representatives of this being John Friedman, Stiard Holland and Gunar Myrdal. The main idea of the development theory, as a chronological differentiation was formulated by the Nobel Prize economy sciences winner, Gunar Myrdal). This considers that the growth process is in essence and permanently unequal, which contradicts totally the neoclassical theory (through its effect of amplification, endogenous growth of incomes creates differences between areas and regions which lead to the appearance of a process of cumulative and circular causality.

A series of studies (Armstrong&Wickerman, 1995) indicates two different tendencies regarding the regional development in the European Union: the alleviation and the increase of the regional disparities, respectively convergence and divergence in regional development, which have succeeded in different time moments.

By all odds, the simplest explanation of regional disparities is the diachronic type, the regions going over a series of phases in the development process, phases that did not start in the same time in all regions.

The implementation of measure of regional policy at local level neccesitates their correlation with the existent tendencies at the:

- European level for establishing the actions and general objectives;
- National level for adapting the general actions to the national context, as well as for monitoring of their implementation and delivering administrative assistance;
- Regional level with a fundamental role in selecting projects, resources allocation for these and their implementation monitoring
- Local level with a role in engaging local actors, projects design and their implementation promotion
- The obligation of cooperation and colaboration at interregional, regional as well as national/ European for implementing integrated and efficient measures for regional development thus appears.

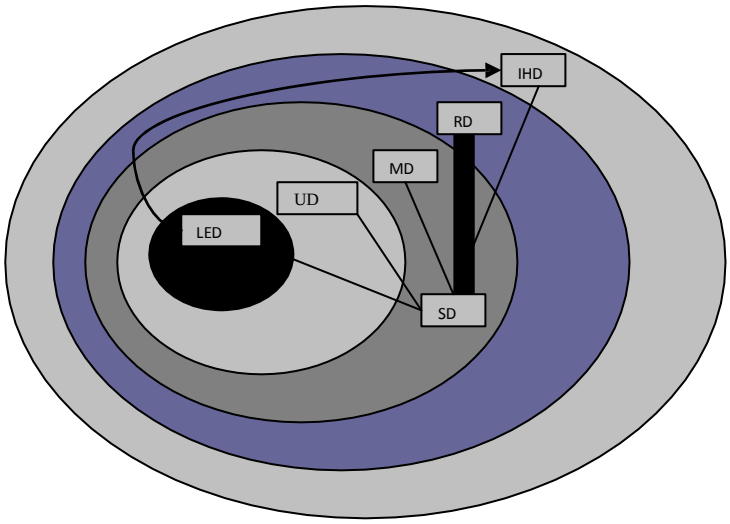
Hence it is recommended that the ensemble of regional development policy instruments to assist the national economic policy of each EU Member State, in order to reduce the existent inequalities among the living standards of the Union's citizens.

CONCLUSION. THE APPEARANCE OF A NEW CONCEPT. INTEGRATED HOMOGENOUS DEVELOPEMENT

Integrated homogenous development (the outline of the integrated homogenous developement will be attained through using in the graphic representation including the concept of regional development. This won't be presented as such during this chapter, considering that a series of main aspects of this process have been developed in previous chapters, and in the future, a special chapter will be dedicated to this process as well as for the features of its applicability in Romania) is reached when the attainment of a balance from the perspective of the other development dimensions previously presented can be observed. Integrated homogenous development implies the intersection of the measures that aim local development with the ones that aim urban development and accompanied by a series of sustainable development representative features.

For a better understanding of what integrated homogenous development aims it is necessary to have a graphic representation of the method through which these concepts become interdependent (figure no.1 Concepts interdependence).

Figure no. 1 – Influences and determinations among models – graphic representation
Key:
LED – Local economic development;
UD – Urban developement;
MD – Metropolitan development;
SD – Sustainable development;
RD – Regional development;
IHD – Integrated homogenous development.
IHD = LED+UD+MD+SD+RD



Source: D. Dincă, C. Dumitrică, Urban development and planning, 2010, p. 113

Graphical representation of the interdependence concepts aims in offering an overview of the method in which the evolution of the development processes through

specific techniques and methods has determined the appearance of new development dimensions like urban, metropolitan dimension, sustainable and regional, all these representing in fact local development dimensions. From the territorial point of view, local development is more ample, aiming besides others the interregional and crossborder level. The other forms – urban, metropolitan or regional – have in view different territories – urban areas, metropolitan areas, regions. An increase of the approach complexity and an increase of the sustainable development integration for these types of local development have been ascertained.

Each of these dimensions has a series of specific features that contribute in achieving an integrated homogenous development focused on an interdependence of the systems, achieving thus a self adjustable development mechanism.

The positioning of local development in the center of the system has as purposes:
To demonstrate the fact that initially, the development process had strong endogenous features and subsequently as a new development level was reached, exogenous factors were more and more present, other features of the development being involved (e.g. DU – Urban development, which has as main objective of activity of spatial planning and urbanism).

To underline the importance of the factors and the local particularities in reaching a homogenous development at the region's level.

Together with the amplifying of the economic processes that subsequently attracted the necessity of a structural development of the urban system, the appearance of the metropolitan areas in the context of urban development can be mentioned. The placement on the same development level with the appearance of the metropolitan areas, moment that corresponds from our point of view to a series of detrimental implications on the environment, sustainable development (D.D.) pinpoints the achievement of a development level whose continuation, without the implementation and respecting procedures that are aiming at the environment protection, can lead to the situation in which this development system is no longer a balanced one. Not respecting the requirements regarding sustainable development is jeopardizing irreparably the possibility of achieving an integrated homogenous development.

Regional development through the process complexity must be positioned in the final part of the representation. Regional development has as main objective the achievement of a convergence between the local development elements, sustainable development and the ones of the urban and metropolitan development. The method through which the regional development process succeeds in creating a balance in using those elements, as well as the adaptation and implementation of the external economic measures at local level, accompanied by the promotion of the development models successfully implemented at local level, will represent that set of necessary actions for reducing the intra and interregional disparities that is influencing in fact the achievement of a homogenous development in the region.

Achieving an integrated homogenous development is directly related to the mechanisms that are the basis of a sustainable local economy development, the importance of the relation of the two concepts being graphically represented. The graphic representation should not lead us to the conclusion that local development is the beginning

and intergrated homogenous development represents the process finality. The analysis of the representation must lead us to the conclusion that local development is superposed over the intergrated homogenous development, constituting its essence, its central element, while the other dimensions are phases that appear in the evolution of local economic development.

Although initially it has been considered that homogenous development can be achieved through the implementation of centralized economic policies, in the 80s', the failure of regional development attempts based on a centralized model of intervention has determined the recommendation of "development of the basis", i.e. strengthening local capacities, by taking into account the local population objectives and its aspirations regarding development. This new perspective yet ancient, if we take into account that the first types of development were identified at local level, grants a distinct importance to certain factors, like the nature and the form of politic institutions, the need of a sustanaible help for the regional, metropolitan public power, the existence of a modern infrastructure connected to a resonsable density of the population.

References:

1. Allaby, M., (1998). *Dictionary of the Environment*. MacMillan Press Ltd, London,
2. Barbier, E.B., (1987). The Concept of Sustainable Economic Development. *Environmental Conservation*, Volume 14, Issue 02, pp.101-110.
3. Brueckner, J.K., (2000). Urban sprawl: Diagnosis and remedies. *Internaţional Regional science Review Volume 23, Issue 2*, 160-171.
4. Dincă, D., Dumitrică, C., (2010). *Dezvoltare şi Planificare Urbană*, Editura Prouniversitaria.
5. Hubert, C., (1993). *Les Principles de L'urbanisme (Connaissance de droit) Edition Dalloz*, Paris.
6. Lazonick, W., (1984). *Business organization and the myth of the market economy*, Editura Cambridge University Press.
7. Matei, L., (1998). *Managementul dezvoltării locale*. Editura Economică: Bucureşti.
8. Matei., L., Anghelescu S., (2009). *Dezvoltarea locală, Concepte şi mecanisme*. Editura Economică, Bucureşti.
9. Maskell, P., Malmberg. A., (1995). *Localised Learning and Industrial Competitiveness*, Brie Working Paper, California, Berkeley.
10. Armstrong, H., Wickerman, R., (1995). *Convergence and Divergence among European Regions*, Regional Sciences Series, no. 5, Londra.
11. Matei, L., (2005). *Dezvoltare economică locală*, Editura Economică, Bucuresti.
12. Profiroiu, M., (1998) *Managementul strategic al colectivităţilor teritoriale*, Editura Economică, Bucureşti.
13. Profiroiu, M., (1998) *Managementul strategic al colectivităţilor teritoriale*. Editura Economică, Bucureşti.
14. Şăineanu, L., (1998). *Dicţionar Universal al Limbii Române*, Editura Litera, Chişinău.
15. Vădineanu, A., (1998). *Dezvoltare Durabilă. Teorie şi Practică, Vol. 1*, Editura Universităţii din Bucureşti.
16. Xavier, F.,(1991). *Descentralizarea*, Editura Humanitas, Bucureşti.

CRITICAL PHASES IN THE PROCESS OF AWARDING PUBLIC PROCUREMENT CONTRACTS. ROMANIA CASE STUDY

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Abstract: *Public procurement represents an important part of the current economy reality. The economical growth of the bidding Romanian companies is closely connected with the public system and cannot be possible without an efficient and correct procurement process. The number of the procurement appeals identifies informations about the satisfaction of the economic operators, while the admitted appeals show the irregularities from the system. This paper presents which are the critical phases of the public procurement procedure, in order to emphasize the weakness, to highlight possible activities that can generate irregularities in the process. According to the admitted complains, the paper shows the irregularities from public procurement system, which can be identified in time by the economic operators. This study is focused on the research of irregularities from public procurement system and the objective of the research is to compose an applicable strategy of identification and avoidance of irregularities from tender procurement procedures. It puts forward suggestions and opinions on the bidding process, content and methods.*
Keywords*: public procurement, critical phases, complains, irregularities, development*

INTRODUCTION

Public procurement concentrates large public sector's purchasing power, and has a significant impact on each country's economic development. The purpose of public procurement procedure is transparency, non-discrimination and accordance to the principles of fair competition in acquisition of goods, services and works necessary for the smooth functioning of the public administration. Besides, public procurement can be one of the most important instruments for sustainable development and other purposes useful to the whole society and the economy of the country (Virginijus Kanapinskas, Zydrunas Plytnikas, Agne Tvaronaviciene, 2014).

The public procurement system represents a significant part of the Romanian economic reality, having the same characteristics, both strong points and weaknesses. Here are the components of the public procurement system: the regulatory authority; contracting authorities; business operators; system supervisors. (Ioana Livia Manea, Ioana Anda Popa, 2010). The quality of the public procurement processes is influenced by the management and intentions of each entity.

Consequently, a *good procurement* system is not about finding the least cost path from inputs to outputs, but rather is a management function that adds value while protecting integrity in the use of public funds (Procurement & Fiduciary Services Department, 2014). The project with the smallest price or cheapest solutions is not allways the best and efficient project.

Because public procurement is one of the key areas where the public sector and the private sector interact financially and this interaction is based on public money, it is a prime candidate for corrupt activity, cronyism and favoritism as well as outright bribery (Reida Kashta, 2014). More expensive solutions can be selected despite cheaper solutions, the cheapest project can have huge additional costs, free competition can be distorted by dedicating specific project requirements and more; all these are the results of corrupt public procurement system. This erroneous system influences the public funds and the development of the business operators, as well.

Public procurement represents an important part of the current economy reality. The economical growth of the bidding Romanian companies is closely connected with the public system and cannot be possible without an efficient and correct procurement process. The public procurement process aims at creating the framework required for conducting the procurement or investment process in the field of public services (Băşanu and Pârjol, 1998). The public procurement process is a sequence of stages and, after going through them, the product, service or work is obtained as a result of the awarding of the public procurement contract. Therefore, detailed description of steps that compose the procurement process is useful and can be an interesting guide for experts (Armeanu, 2011). From the stages of one process, can be identified risks and indicators for each phase, mitigation and disposal solutions.

Public procurement is highly affected by corrupt behavior due to its administrative complexity, financial volumes and close interaction between the public and the private sphere. Administrative and judicial review processes are primarily meant to control the compliance of procurement procedures with legal frameworks and involve bidders in prevention and detection of corruption (Annika Engelbert, Nina-Annette Reit, 2013).

Generally, the most effective and widespread method of detecting the fraud and the misconduct is the complain or information received about it. Opening a channel of communication especially for the risk of fraud is an excellent way to fight fraud (Ionuț Șerban, 2009).

OCED (2007) consider that the public procurement complaint or appeal mechanisms, where competitors can file protests in case of violations of all sorts are very helpful in detecting bribery and corruption. Also, PWC and Ecoris (2013) said that complaints from users or other parties involved are often a good indicator of misconduct. While these procedures are generally very useful, they can also be misused. On the other hand, Mialțu, Bănacu, Popescu and Patraș (2015) said that the contestant behavior is closely related to the distrust in the public procurement system and in the general perception of corruption.

Natalia Monica Balogh, Martin Balogh, Valentin Ciprian Filip (2015) identified the contract award stage as one of the risky stages of financed with European funds projects implementation because of the extremely dense and interpretable legislative framework and the involvement of the large number of stakeholders, lack of expertise manifested in the field and because of complaints that seriously affects the duration of project implementation. However, the opinion of the experts is that corruption is more common where there is no mechanism for reporting them (OECD, 2007).

I believe that a decrease of bidders involvement in the processes of prevention and reporting of fraud and irregularities will lead to a reduction of the information received about them. Less involvement will lead to shortcomings in detection of fraud and irregularities in public procurement system.

Public procurement errors are defined by Ceparu and Irimia (2013) as infringements of the rules (principles) procurement, regardless of the status or consequences for public budget Errors can be committed in public procurement: before initiating a formal procurement procedure (for example during the process of estimating the value of purchase or decision making on the application of a specific procedure), during a procurement procedure (for example, during incorrect assessment of the economic operator's capacities, misapplication of the rules on supplier selection, or mispricing offers), or after the procedure has been completed and the contract awarded (for example a failure to publish a notice of award of contract, unlawful modification of a contract already signed, or the award of additional works or services without being achieved the specific conditions) (Ceparu si Irimia, 2013).

Public procurement legal provisions and procedures do not represent an effective obstacle to bribery; inadequate public procurement legal provision and procedures can even create opportunities for bribery and abuse of power. The nature and technicality of purchased goods, works or services can be another opportunities of irregularities. Finally, bribery and corruption are rarely isolated crimes – they are often associated with other offences or misdeeds. This explains the ongoing effort to identify solutions for reducing the small and big crime in public procurement.

Well Van Weele (2004) defines procurement as all activities that are required in order to get the product/service from the supplier to its final destination. According to Gershon (1999) the process spans the whole life cycle from the initial concept and definition of business needs through to the end of the useful life of a unit or end of a service contract.

Public procurement can be characterised as a process flow starting with procurement planning and proceeding in sequence to product design, advertising, invitation to bid, prequalification, bid evaluation (broken down further into technical and financial evaluation), post-qualification, contract award and contract implementation. Each link in the chain is potentially vulnerable to corruption in some form or another (OECD, 2007).

Below I am going to briefly present which are the main stages of the public procurement procedure in force in order to emphasize the strengths and the weakness of the process, to highlight possible activities that can generate delays and neregularities in the process.

METODOLOGY

To tackle the issues and challenges of public organisations and economic operators are facing in every phases of public procurement process, I conducted a literature review to identify important concepts, patterns and models that previous

research have found important when it comes to the risk and mistakes in every stage of the public procurement process.

In order to achive this article, in the first part, I conducted a brief review of literature and a description about literature reviews.

In the second part of the article I proposed a completely public procurement model and I presented a description of each stage of the process underlining the risks and possible mistakes.

The review process started with searching by keywords relevant articles for my thesis. The searh terms were a combination of "public", "procurement", "phases", "risks". The articles were then chosen based on their relevance. After a quick scan of the article I decided if the article was going to be a part of the review or not. Initially, 54 articles were found at the beginning of the search process. However, 12 of them were found to be relevant after a review of all 54 articles. The period in which the 54 articles that was used in the analysis dates from 1991 to 2015.

In the third part of the article, I presented the irregularities from public procurement system, which can be identified in time by the economic operators.

3. RESULTS

3.1 LITERATURE REVIEW

Procurement includes all the activities required in order to get the product from the supplier to the final destination. All the identified procurement process models can be defined as four phase-models. To easily compare the identified models I was able to groupe the activities of each models in the main common phases like: Needs assessment and definition, Process design, Evaluation and Contract implementation. The activities of each model are similar in some places. The first five models describe the private procurement process and the last six models describe the public procurement process. As we can see in Table 1, in the private procurement process model the phase of Process design does not exist. From the comparison I can define the peculiarities of the public procurement model, which consists in choosing and operating a bidder selection procedure. These procedures should be well chosen, based on the regulations of the general principles of public procurement. Over time, the authors felt the need to detail the process design and Evaluation. It may be due to problems encountered in this phase in and continuously enlarge amount. Is very interesting to observe that not all the authors included the performance evaluation as an mandatory activity in the stage of contract implementation. Moreover, in the view of Freedom House, the contract implementation is not seen as a step of public procurement process. In their opinion, the process of public procurement ends after the signing of the contract.

Table 1.Procurement process models

Phases	Novalc and Simco 119911	Gershon (19991	Archer and Yuan 120001	L,sons.K. and Gillinaham	Van\leele 12005. 2010J	Caldwellet al120071	DECO 120071	Davis 120101	Armeanu 120111	Fazelcas Mihal, 12013i	freedom House 120151
	Private orocurement					Public Procurement					
Needs assessment and definition	Identify or *re-*evaluate Define and evaluate user requirements *Decide* to make or buy -Identify type of purchase Conduct market analysis	What isit that is wanted? How should the procurement ofwhatis wantedbe orocessed? Whatcanthe market provide?	Information gathering(search for suppliers that cansatisfy requirements)	Identification Phase	Determine the specification of goods and services that *need* to be bought			*Needs* idendification DefiningUser requirements / Refine Requirements based on market How should the procurement ofwhatis wantedbe orocessed? What Canthe market Ascertain Budget Available	Elaborating the procurement plan	*Needs* assessment and definition	Planification

Phases	Novalc and Simco 11991	Gefshon 119991	A•chef and Yuan 120001	lysons.K. and Gillinoham	VanWeele 12005. 20101	Caldwellet al120071	DECO 120071	Davis 120101	Atmeanu 120111	Fazelcas Mih.ily 2013	ffeedom House 12015
	Pfivate PfOCUfement					Public Pfocufement					
Process design						5pec1f1cat1on Phase	Identification of *needs* and designof tenders	Tender design	Awarding method The elaboration uflh,.. awarding Juuurrr,..rrldli on Notice of intent Callfor compeuuon	Tinkering withthe threshold and CllOCDtion l Establishing of contract clauses T.=oilnrino eligibility Tailoring assessment criteria Tinkering withthe submission oeriod Pa1t1C1pat1on Advertising	Oevelopmen toftender documentati on Notice of intent Clarifications onthe tender documentati Bid Evaluat1on Committee •nvestltureOpeningof bids
Phases	Novalc and Simco 119911	Gefshon (19991	Atchef and Yuan 120001	lysons.K. and Gillinaham	VanWeele 12005. 2010J	Caldwellet al120071	DECO 120071	Davis 120101	Atmeanu 120111	Fazelcas Mih.ily 12013i	Fteedom House 120151
	Private DfOCUfement					Public Pfocufement					

Evaluation	Identify all possible suppliers Pre-screen all suppliers Evaluate remaining Choose supplier	-	Supplier contact Background review (e.g. references are checked) Negotiation	Ordering Phase	Identify most suitable suppliers Preparing and conducting negotiations	Selection Phase Contracting Phase	Selecting a business The bidding procedure Contract award	Tenders returned – analysis of bids – cost comparison – VFM exercise conducted Contract Awarded	Presentation of the application and tender, The awarding procedure itself The awarding of the public procurement agreement Signing the agreement Completition of the awarding procedure	Tender evaluation and award decision	Offer evaluation Preparation and approval of the Results Notification Waiting period and settlement of appeals Signing the contract and Transmission for the awarding Advertiseme
Phases	**Novak and Simco (1991)**	**Gershon (1999)**	**Archer and Yuan (2000)**	**Lysons, K. and Gillingham**	**Van Weele (2005, 2010)**	**Caldwell et al (2007)**	**OECD (2007)**	**Davis (2010)**	**Armeanu (2011)**	**Fazekas Mihály (2013)**	**Freedom House (2015)**
	Private procurement					**Public Procurement**					
Contract implementation	Deliver product / perform service Post-purchase / make performance evaluation	Making the purchase Making the purchase Ending the relationship	Fulfilment Consumption , maintenance and disposal (evaluation of performance Renewal	Post-ordering Phase	Placing an order with selected supplier Monitor and control the order After-care and evaluation	Ordering Expediting and Supplier Evaluation Follow up and procurement evaluation	Contract execution	Contract Management Expediting and Supplier Evaluation Ending the relationship	Execution of the agreement Completition of the agreement	Contract implementation	-

Source: own representations

Novack and Simco (1991) are the first auhors which sustained that the chains of functions through which materials flow from suppliers to the users represent an object of management. Procurement spans the supply chain as defined and the Management of procurement in a modern organisation encompasses Logistics Management, antifraud management, environmental issues and post-execution controlling as well.

Novack and Simco (1991) identified the main stages of the supply chain, which were the basis of the phasing procurement process (Identify or re-evaluate needs, Define and evaluate user requirements, Decide to make or buy – Identify type of purchase, Conduct market analysis, Identify all possible suppliers, Pre-screen all suppliers, Evaluate remaining supplier base, Choose supplier, Deliver product / perform service, Post-purchase / make performance evaluation).

Public procurement aimes suppling materials, providing services or execution of works, as well, against costs incurred by public funds. Public funds appearance determines the special nature of the public procurement. Unlike private acquisitions, the public procurement must include a correct and efficient step of selecting the bidder / supplier. In public procurement, where the public funds are at stake, it needs a greater focus on conflicts of interest and on the antifraud controls in each phase of project.

Public procurement can be characterised as a process flow starting with procurement planning and proceeding in sequence to product design, advertising, invitation to bid, prequalification, bid evaluation (broken down further into technical and

financial evaluation), post-qualification, contract award and contract implementation. Each link in the chain is potentially vulnerable to corruption in some form or another (OECD, 2007).

Gershon (1999) applied a simple model to the public sector in UK and underlined the importance of defining disting phases in the public project life-cycle, implementation of the gates between these phases, characterised by sets of deliverables (e.g. requirements specification, procurement plan, project management plan, risk management plan), which should be assessed by expertised people and passed as a result of reviews chaired by senior people with no interest in the ouctcome of the review.

One year later, Archer and Yuan (2000) detail a seven-phase procurement process. The phases include (1) information gathering, (2) supplier contact, (3) background review, (4) negotiation (5) fulfilment, (6) consumption, maintenance and disposal, and (7) renewal. Their procurement process model includes the stages detailed by Novack and Simco (1991) and Van Weele (2005), but he adds the Renewal phase, which allowed talking about the recurrent life cycle of the process. According to Archer and Yuan (2000) renewing the contract with the existing supplier is more convenient, because going to another supplier would involve re-tracing the first three steps in the relationship life cycle, at the cost that is worthwhile only if experience with the first supplier has been unsatisfactory. In public procurement system in Romania, we can talk about the renewal of the contract with the same supplier just in the case of the direct acquisitions, with fulfilling the principles of the efficiency using of the public funds. According to EO no. 34/2006, in Romania, the contracting authority direct purchase products, services or works, to the extent that the value of the acquisition, (..) does not exceed the equivalent in RON of 30,000 euros, excluding VAT for every purchase of goods or services or 100,000 euros excluding VAT for every purchase of works. The acquisition is performed based document.

Lysons and Gillingham (2003) have discussed a lot about purchasing procedures, assembled the activities of the acquisition process in three main phases (Identification Phase, Ordering Phase and Post-Ordering Phase), but, but they did not create a clear model of purchasing.

Most of these traditional models do not discuss the whole process. These models deals with a single part of the procurement process, that of the transaction of buying.

Van Weele (2005) identified three levels of reponsability in the purchasing organization (strategical - the highest level and are concerned with more overall issues, tactial - the detail level, and operational - concerned almost entirely with every day details). Van Weele (2005) introduced the Monitor and order control phase. His model encompasses the traditional purchasing steps but also very clearly encompasses the roles of supply management.

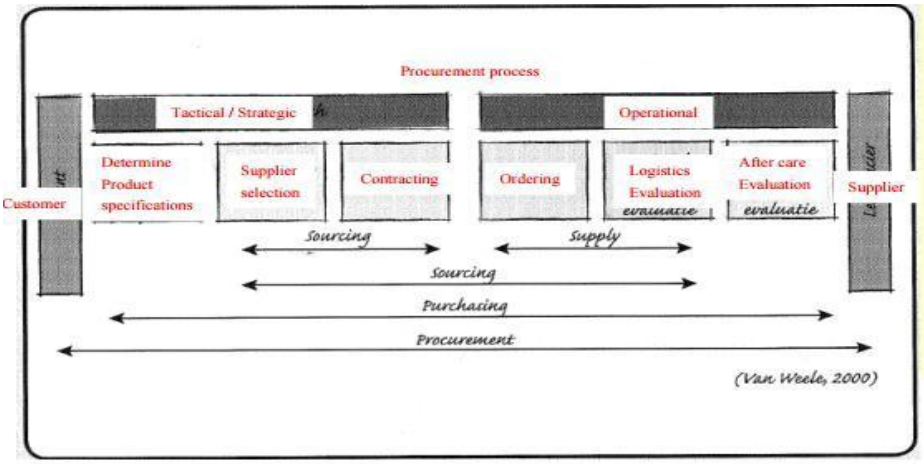

Figure 1. Van Weele's Prcourement Process

Source: Johan Versendasl, http://www.cs.uu.nl/docs/vakken/ee/Week37b%20v1_1.pdf, accessed in 28/11/2015

According to Van Weele (2005), Caldwell, Bakker, and Read (2007) the first step of purchasing is to define the specification of the product, including functional as well as technical specifications. In my opinion, in the public sector, as in the private sector, it is absolutely necessary to identify the need and conduct a market analysis before the specification determination of goods and services that need to be bought. Skipping the phase of the need identification, there it runs the risk of divison the contract into several cheaper contracts to avoid the appliance of the legislative provisions in public procurement and to directly award cheaper contracts. The market analysis if usefull, as well, both in formulating objective requirements, and the subsequent analysis of the received offers.

If all the reminded authors talked about the procurement in private sector, Caldwell, Bakker, and Read (2007) are among those who talked about the purchasing process and the public sector in the same context.

In the same year, The Organisation for Economic Co-Operation and Development (2007) identified the risks of the main stages of the public procurement process. They didn't analyze the market research and project evaluation like as milestones of the process. But they underlined the weakness of the Contract execution phase. According to OECD (2007) this phase is less susceptible to regulation and techniques to hide bribes during the execution of a contract are manifold.

The first contribution of Davis work is the recognition that the appropriate use of technology within a process had a greater impact than applying technology across the whole process. Davis (2010) considered that the process is more complex than those described by other authors and improved the public procurement process model, starting from Gershon's model by adding the Ascertain Budget Available and Tender Design phases. As in the private sector the buget is not unlimited, so the improved model is justified. According to Davis (2010) the iterative nature of the process should be considered.

According to Armeanu (2011) in the public procurement procedure modeling it is important to take into account the legislation. So, in contrast with the previous authors, Armeanu (2011) underlines the importance of the notice of intent and the elaboration of the awarding documentation. In my opinion the elaboration of the awarding documentation it is a very sensitive stage in the public procurement process. With or without intent, the public authorities can make errors that can cost time and money from public funds.

Studying the problems encountered by the contracting authorities and economic operators from Poland, Zielina (2011) identified some mistakes made in some phases of the public procurement process, unidentified as critical phases yet. The study also confirms its critical and risky nature of the estimation and preparation of tender documentation stages. According to Zielina (2011) the buget estimation, tender documentation and clarifications period are weak phases of the public procurement process.

Fazekas, also had a special contribution to the literature in the field of corruption in public procurement. According to Fazekas (2013) the three actors internal to the public procurement process are 1) issuers of tender, 2) public procurement advisors or brokers, and 3) bidder companies. Fazekas is one of the first authors who recognized the importance of the public procurement advisors or brokers in evolution of the process. Through their professional training and their intentions, the public procurement advisors can influence the outcome of a project. There are external actors within the state such as 4) politicians who can also take on senior civil service positions; and 5) review bodies such as courts, state audit institutions, and competition agencies. The external actors outside the state are the 6) media and 7) the civil society. Fazekas Mihály (2013) defined a simple abstract model of procurement activities allowing for grouping of corruption techniques.

Although the developed model is very simple and similar to those developed by previous authors, he identified a summary of corruption techniques, based on examples from Hungary, which can be the basis of a more detailed model.

One of the most completed and detailed public procurement process model is the one developed by the Freedom House Romania (2015). The authors added in the previous model of public procurement process the following stages: the investment of the bid evaluation commission and the drafting and the approval of the procedure report. The model developed by the Freedom House Romania (2015) does not refer, at all, at the Monitoring and Controlling Phases.

Deepening the studies on planning activities for the award of the public procurement contracts is important because the more the stages and the activities within a public procurement process are better identified and rigorously planned, the efficiency and the ongoing manner and monitoring of the entire process are singnificantly improved (Herea Violeta, 2013).

Many academic researchers provided similar procurement process models as shown in Table 1. Among them, the most representative, complete and detailed models for the public sector are Davis and Freedom House models. These models can be well

suited for the private or public sector, but in my opinion, the details level does not cover the entire life cycle of the public contracts.

Starting from this literature we have developed a more detailed life cycle of the project financed from public funds. The national system of public procurement is governed by the same set of rules as the European public procurement system, so the developed model can be used at national and European level.

3.2 THE LIFE CYCLE OF A PROJECT FINANCED FROM PUBLIC FUNDS. THE PROPOSED MODEL

In order to protect the country's economic development is necessarily the success in the fight to prevent and eliminate corruption. In the fight against corruption and insufficient the political will is required. Besides determination and good will, knowledge and specific skills are required to take appropriate measures and implement them successfully to achieve the changes needed in the interest of the national community (Mialțu, Patraș, 2014). According to Mialțu and Patraș, the poor training of stakeholders particularly at government level in the Romanian society is a cause of deficiencies functioning public procurement system.

By developing a model of the public funds projects, the intuitive approach when it comes to the management of projects or programs in Romanian public institutions will be reduced. The emphasis on public sphere is justified by the need to provide a toolbox. This toolbox should help the central and local public authorities to make scientifically sound decisions regarding policies, programs and projects initiated and be able to anticipate the results of certain actions. To improve the awarding contracts management of the public authorities, I propose a more detailed and complete model of the project. The model (see figure 2) is the result of the literature review, based on models proposed by Davis and Freedom House, which I have deemed most relevant.

Next, I will describe each step of the process and I will emphasize the risks of each step.

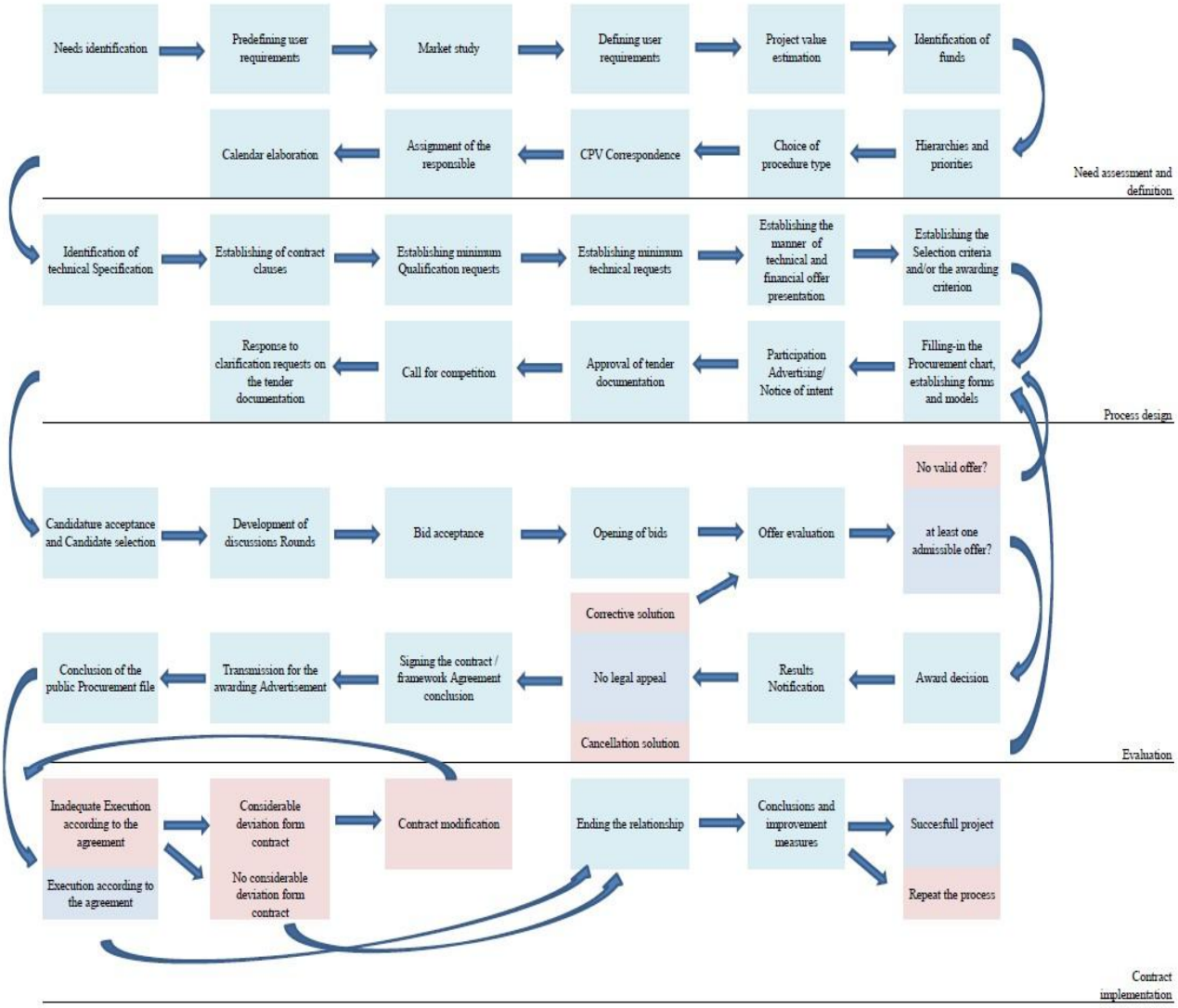

Figure 2. Public procurement process
Source: Own representation

Needs identification. The correct identification of the real need is the key element that influence both the efficiency and effectiveness of public spending. The public authorities can choose to procure goods and services which are in fact not necessary for them, to procure goods and services in a size and quantity excessive compared to their actual needs, economically not justified, or environmentally harmful.

Skipping the identification of need phase, the public authorities can choose to direct sign more cheaper agreements to procure goods and services to fulfill the whole need and to violate the provisions and the principles of public procurement. The needs identification must be done before the budget approval. The quality of identifying need influence the establishing minimum qualification requests and establishing the selection criteria and/or the awarding criterion phases.

Predefining user requirements. To find out what the market offers, the public authorities firs have to find out the general parameters of their needs.

Market study. Technical and economic solutions of the market are useful in correct formulating of the requirements and correct estimation of the contract value. The market analysis can play the role of publicity and information relating to the award of a new public procurement contract. It can also create advantages of prior information to a particular supplier, service provider or contractor.

Defining user requirements. The public authorities can incorrectly formulate requirements to restrict the competition, in benefit of a particular supplier. Such requirements are most easily defined on markets where products and services have a high number of very specific characteristics such as large infrastructure construction or IT infrastructure and services (Fazekas et al., 2015). In Romania, it is impossible to prevent the risk of these irregularities because the specifications are not the subject of the examination made by the competent institutions. Moreover, the competent institutions don't verify all the tender documentation; they verify tender documentations, according to a specific algorithm and don't have specific training for all types of contracts. Those who are most able to notify irregularities concerning restrictive documentation requirements are even the bidders.

Project value estimation. According to Fazekas et al. (2015), the project value estimation can be made without considering all the cost that may be incurred, or it can be over-assessment in order to encourage a certain contracting party. The incorrect need identification can lead to a estimation value that may not correspond to the application of a competitive procedure, like direct award of the contract. The contracts with underestimated values generate additional acts to supplement the value of the contract. It is necessary to prevent all the irregularities from the project value estimation, but the biggest challenge is to identify the contracts, whose value was estimated correctly, but its increased by additional acts, following acts of fraud.

This stage is one of the most sensitive at fraud and irregularities risk. The results of this stage influence the next phases, like the choice of procedure type, establishing the minimum qualification requests and offer evaluation.

Identification of funds. To identify the necessary budget to fulfill a need must take into account both the price of purchase, the cost of maintenance and the cost of using. Also it is very important to identify the need before the funds approval.

Hierarchies and priorities. The projects are prioritized in terms of budgetary allocations and need finances, financial affordability and sustainability, economic and social justification, opportunity. External factors, like consultants and politicians can influence the prioritie of the projects.

Choice of procedure type. The choice award procedure have to take into account the effective ways of meeting the need of the contracting authority. Beside, project value estimation**,** this stage is one of the most sensitive at fraud and irregularities risk. In this stage, the responsable persons can abusive use uncompetitive procedures, like direct award of the contracts, invoking the existence of legal exceptions, can divide the contracts with into small value contracts, or can abusive use extreme emergency situations. According to Fazekas et al. (2015) slicing up contracts, invoking special rules

of exception and underestimating expected contract value are the main ways of moving procedures across public procurement regimes or completely outside the remit of the Public Procurement Law.

CPV Correspondence. CPV (Common Procurement Vocabulary) is a standardized nomenclature describing the categories and types of goods and services may be procured. Superficial identification of the appropriate procurement code. Incorrect determination of CPV code represents a serious misconduct of legislative provisions in public procurement field and can influence the establishing minimum qualification requests and the procedure transparency on the other hand. According to Fazekas et al. (2015) erroneously categorizing a call for tender in the CPV nomenclature can effectively exclude potential bidders from a tender as most companies search by CPV codes rather than going through all the announcements made each day.

Assignment of the responsible. The structure of the project team and the evaluation committee is very important. Project team members must follow the interests of the project and not personal interests. Moreover, the evaluation committee members should be competent in the public procurement field and impartial, they should not be in a conflict of interest in the project. The principle of avoiding unfair competition implies that the bidder is not involved in any way in the preparation of documentation and not exclusively access to information about the case through the evaluation committee members or staff of the contracting authority. According to the Government Emergency Ordinance no.34/2006, in Romania, the person who participated in preparing the tender documentation, has the right to be a bidder, but only if his involvement in the preparation of the request is not likely to distort competition. Assignment of the responsible is the more another critical phase of the public procurement process, the more there is no legal provision to nominate cases make it impossible to distort competition.

Calendar elaboration. Calendar elaboration can be affected by the faulty planning of the procurement process and insufficient time allotment for the appropriate development of each stage.

Identification of technical specification. This stage is closely related with Needs identification, Predefining user requirements, Market study and Defining user requirements. It is indicated for the public authorities to make a market study, but there it is an oportunity for them to meet with the preferred bidder for consultations on technical requirements and to adjust the specification in order to correspond to a single business operator. There it is the risk that contracting authorities formulate unclear, restrictive, contradictory specifications or inconsistent with the laws. According to Mialțu et al. (2015), in Romania the object of the most common appeals are the restrictive or unclear technical specification of the documentation. Thereat, it is very important for public authorities to correctly identify the need and its minimum technical specifications, after examining the market and to be, professionaly well prepared in terms of technical.

Establishing of contract clauses. The public authorities don't have to impose excessive penalties or clauses that are not specifically related to the contracting authority's need and to the object of the contract. It is prohibited any change to the terms of the contract as binding provided within the tender documentation, otherwise it creates prerequisites for abuse of both the principle of transparency and the principle of equal

treatment. It's very important, especially for operators to ask clarification regarding the contractual clauses and any change, in the tendering stage. It is important and useful for contracting authorities to recommend that to the bidders, in the tendering stage.

Establishing minimum qualification requests. Minimum qualification request define which potential bidders can bid and which bids can be considered for competition. Qualification and award criteria must be clearly defined and fully to reflect the objectives of the advantages of the successful tenderer for the contract execution. Elaboration of all documents of the tender documentation components must be correlated to not double, or becoming restrictive.Tayloring the qualification request is a common corruption technique identified by the romanian and international litterature. Another temptation of the public authorities is to customize the minimum qualification request for certain business operators. This customization results in the development of developed and unjustified requirements, but easily identifiable by the rest of the bidders.

Establishing the manner of technical and financial offer presentation. There is a temptation to unjustifiably and restrictively require calculations or graphs produced with certain softwares. Another temptation is to be require many documents and presentations, for the technical offer, regardless of the complexity of the project. In Romania, according to Mialțu et al. (2015) a common object of the accepted appeal is the subjective evaluation of the technical bid, which can be possible because of the complexity of the received technical bids.

Establishing the selection criteria and/or the awarding criterion. In awarding a public procurement contract, the award criteria may be the lowest price or the most advantageous offer. The contracting authority must clearly describe the calculation of scores, in the case of of the contract award situation after applying the most advantageous offer. In determining the most advantageous tender, it is usually considered among the price, the execution time, the warranty period, the cost of using, time of intervention in the case of malfunction etc. These factors account must be justified to not leave room for speculations.

Filling-in the procurement chart, establishing forms and models. The public authorities must fill with consideration the forms, to not leave room for speculations. Errors in the procurement chart or form will have the result of rejecting the documentation. Usually, the most common cause of these irregularities is degrama lack of professionalism and not the misconduct. However, these irregularities cause delays in the contract award.

Participation advertising/Notice of intent. Participation advertising/Notice of intent is the phase in the public procurement process, which should provide a bigger competitiveness, generate a fair price and efficient use of public funds, besides a correct development of the economy. A correct advertise gives the so much needed transparency to the process.

Approval of tender documentation. Approval of the tender documentation should be done after internal controls by the responsible persons for the project and then, following random external controls, by the authorized institutions. The rejection of the award documentation will cause delays in the contract award. If the erronated

documentation pass these controls has a lot of oportunities to be contested by the bidders. In this case, there will be another delay in the process, or even a cancellation solution.

Call for competition. This is the stage when the bidders have acces to the documentation and starting from this moment they have to prepare theis offers. In some countries, there was a problem with the access at the documentation, which were restricted until the implementation of the e-procurement. Even with the implementation of the e-procurement, the malicious contracting authorities can deteriorate the access at the documentation by loading on the platform erroneous or inaccessible files of the documentation. The operators may seek clarification and completion of the documentation, but without a deferral of the deadline for submission of bids, they will not benefit from the same time for offer preparation.

Response to clarification requests on the tender documentation. After the call for competition, the bidders have time to request clarifications or completions on the tender documentation. The public authorities have to respond to all the biders requests, which are made in time. The malicious contracting authorities may give delayed responses, may refuse to answer, respond ambiguous without clarifying unclear situations, or or answers that change the specifications included in the documentation without giving business operators enough time to adapt to the submitted clarifications

Candidature acceptance and candidate selection. This is the phase of public procurement process, when the contracting authority evaluate the compliance of bidders with minimum qualification criteria. According to Mialțu et al. (2015), in Romania, the bidders ofen contest the way of eligibility evaluation. With good or bad intent, the public authorities misinterprets the fulfillment of minimum qualification requirements, such as similar experience, financial, technical and professional capacity. Prefered business operators are considered qualified by accepting authorizations or certifications that do not correspond to real facts. On the other hand, the bidders can submit forged and hard verifiable documents to prove compliance with the requirements.

Development of discussions rounds. Development of discussion rounds is the phase of procurement process in the case of a negotiation. The negotiation procedure it is used in the case of complex project, where it is necessary to find out the best solution after the meeting with the candidates. In this stage it is forbidden to reveal confidential information to the candidates.

Bid acceptance. The decision of acceptance or rejection of the bid must be taken after a correct evaluation. In the cases of misconduct the bid acceptance is established long before the opening meeting. The bidders have to avoid submiting forged and hard verifiable documents. The contracting authorities must ensure that they did everything to obtain the sufficient informations to take a decicion of bid acceptance/rejection.

Opening of bids. The opening bids stage can be treated in several ways.

1) The opening bids stage, in the event that the bids are submitted in hard copy to the contracting authority's headquarters. The bids are opened at a certain time in the presence of the bidders. The bidders have the opportunity to control the accuracy of filling the minutes of opening tenders.

2) The opening bids stage, in the event that the bids are submitted in hard copy to the contracting authority's headquarters. The bids are opened at a certain time in the absence

of bidders. The bidders do not have the opportunity to control the accuracy of filling the minutes of opening tenders.

3) The opening bids stage, in the event that the bids are submitted online. As in the case above, bidders are unable to control the accuracy of filling the minutes of opening tenders. In case of online submission of tenders, tender evaluation in financial terms is made after the technical acceptance of the offer. The technical verification of the offer is made only if the bidder is declared eligible. According to Mialțu (2014) the contract award procedures, with online submission of bids and electronics final phase are exposed to a high risk of delay and abuse of the contracting authority. The contracting authority may incorrect remove the economic operator bid and the bidder may be excluded from the electronic offer improvement final stage. An eventual identification of an error in the elimination of a tenderer before the electronic final stage will cancel the entire procedure and will reveal the best offers of the economic operators.

Offer evaluation. The offer evaluation is the phase when the contracting authority evaluate in objective way the financial offers. The beneficiary must ensure that the prices are supportable, the offer value fit into the available budget and the financial offer is according technical offer and contract provisions.

No valid offer?/At least one admissible offer?. If no offer is valid, the hole process must repeat, until it will be a valid offer.

Award decision. The award decision is made after the evaluation of the offers and the appliance of the awarding criterion.

Result notification. The result notification is made under the law provisions. The bidder/candidates who have been rejected are, or whose offer was unssucessful are informed about the reasons who stood for the decision as follow specific reasons which led to the rejection decision, characteristics and relative advantages of the sucessful tender in relation to tender and the name of the winning bidder.

Corrective solution/ No legal appeal/ Cancellation solution. The dissatisfied bidders may contest the result notification. In this case they have to explain why they disagree the beneficiary result. The contest is a very important instrument in preventing the fraudand irregularities from public procurement process, but, in the same time, it can be unjustifiably, excessively and inappropiately used. The result of an appeal is the approval or the rejection of it. The approval of the appeal will generate the annul the contested document or the hole proedure.

Signing the contract / framework Agreement conclusion. The contract will be signed after the result notification, if no bidder contested the procedure, or after the settlement of the appeals.

Transmission for the awarding advertisement. The transmission for the awarding advertisement is made under the law provisions.

Conclusion of the public procurement file. The public procurement file is the public document made by the contracting authority during the public procurement process until the contract signing. It represents the description of the process of the awaring procedure and must incude all the inscriptions of the process.

Execution of the contract. The phase of execution of the contract is the phase when the contractor provide the beneficiary good. The contractor may provide goods,

whose quality is different from the contract. In this stage, it is very important the control of the contractor results. Also, the authority may accept bribe to overlook the fake douments, the bad quality of the inappropiate provided goods from the contractor. When the authority aceesp bad quality of the provided good, they waste the public funds through theft (bribe) or ineffective spending of funds (the good must be changed, modified soon). Thecontrol must be made on the contractor, and on the authority activity, as well.

Contract modification. The phase of contract modification is not mandatory. This is the step at risk of irregularity because the contract can be changed greatly over other bidders. The irregularities amending the object of the contract are made by increasing the value of the contract, or by modification of technical solutions. The modifications of the contract should not favor the winning bidder. The baseline competition must be constant on the project life and contract implementation.

Ending the relationship. The relationship ends after the work was performed / services were performed / materials were provided and the payments were made, the authority received the provided good. The completion of the relationship is not the end of the project.

Conclusion and improvement measures. This is the stage, when project objectives are reviewed and evaluated. The objectives must be measurable and clearly defined. Their evaluation must be done in the right way by highly trained responsible. The evaluator will propose measures to improve the public procurement process for the future.

Succesfull project. If the project objectives are achieved, it means that the project was successful.

Repeat the process. If the project objectives were not achieved, it will resume the process to repeat or correct the project. Repeating the process is a sign of irregularities made during the project or of the incompetence of the responsible.

3.3 THE BIDDERS IMPACT IN THE PUBLIC PROCUREMENT PROCESS CONTROL AND PREVENTING IRREGULARITIES. ROMANIA CASE STUDY.

Bidders can defend against beneficiaries abuse, can report irregularities and can participate in controlling and reducing fraud in the public procurement process by submitting appeals.

We sought to identify the main and most common reasons for incorrect rejection of bids. After identifying the main reasons for rejecting the bids, it can be identified measures that can be taken by bidders to prevent this situation, including the development of an algorithm for identifying the legality of a procurement procedure.

I conducted a qualitative analysis of 54 decisions on the admission of complaints filed by bidders in 2015 against the outcome of the procedure or documentation. These decisions were randomly selected from the CNSC portal. In order to study the contents of the complaints they were downloaded and studied SEAP. By qualitative analysis on the 54 appeals allowed, we identified the main reasons for contesting the procurement procedures in Romania:

Table 2. Irregularities detected by the bidder

Irregularities detected by the bidders	**The public procurement process phase**
Refusing to divide the acquisition where products / similar works	Need assessement and definition
Restrictive requirements regarding similar experience, qualification criteria, qualification requirements imposed by the contracting authorities - considered to be disproportionate to the nature and object of the contract	Process Design
Limiting the legal right to subcontract part of the work	Process Design
Unclear or unjustified award criteria	Process Design
Restrictive requirements on technical specifications, requirements that refer to a particular manufacturer, limiting competition	Process Design
Lack of a clear answer fully and unambiguously answer from the contracting authority about the requests for clarifications regarding the tender documentation provisions	Process Design
Ambiguities or irregularities in the form of collateralisation participation	Process Design
The imposition of excessive contractual requirements	Process Design
Incorrect minutes of the meeting for opening tenders (failure to take account of the participation guarantee, the conduct of the public opening of tenders)	Evaluation
Misinterpretation of its requirements in the Data Sheet, during the evaluation of tenders	Evaluation
Dismiss the appellant offer following the erroneous evaluation of its similar experience	Evaluation
Dismiss the appellant offer following the erroneous evaluation of supporting third party similar experience	Evaluation
Dismiss the appellant offer following the erroneous evaluation of the power of attorney to sign documents offer	Evaluation
Dismiss the appellant bid following the erroneous evaluation of the qualification documents on its technical and professional capacity	Evaluation
Dismiss the appellant bid following the erroneous evaluation of the qualification documents about its financial capacity (cash flow, turnover, etc.)	Evaluation
Incorrect, subjective and unfounded assessment of the applicant's technical proposal	Evaluation
Incorrect assessment of the applicant's financial proposal (in the final stage of electronic procedures)	Evaluation
Unusually low price for other participants in the tender procedure	Evaluation
Preferential treatment of certain bidder, qualification documents, the technical and / or financial proposal submitted by other bidders or wrong way of scoring / evaluation thereof by the contracting authority	Evaluation
Failure outcome of the procedure, reasons for rejecting the contester offer	Evaluation

Rejecting the offer without to seek clarification on qualification documents, technical proposal, the offer price unusually low price or an incorrect assessment of responses to clarifications	Evaluation
Lack of legal grounds to reject the offers (eg non-compliant package)	Evaluation
Cancellation without legal basis of the tender procedure by the contracting authority	Evaluation
Amend the tender documentation or evaluation factors during the course of the procedure	Evaluation
Lack of transparency and refusal to send information to all potential bidders on errors specifications, tender documentation	Evaluation
Require the submission of clarification in too short time	Evaluation
Receipt of tenders to another address than the one specified in the tender documentation, or later (not in time)	Evaluation

Source: Own results and representations

4. FURTHER RESEARCH

Based on the findings in this thesis, I suggest that furture research within the public procurement targeting risk management dive into finding the early indicators of fraud and irregularities.

5. LIMITATIONS

This work has barely scratched the surface of the possibilities for strategies in public procurement process. The article is limited by the fact that the results are based on articles found by specific keywords. Therefore it is impossible to find out all relevant literature within the area of public sector.

6. CONCLUSIONS

To improve the awarding contracts management of the public authorities, I propose a more detailed and complete model of the public procurement process, the intuitive approach when it comes to the management of projects or programs in Romanian public institutions will be reduced. This model is a toolbox, which should help the central and local public authorities to make scientifically sound decisions regarding policies, programs and projects initiated and be able to anticipate the results of certain actions. A model with a high degree of detail is useful for understanding the process, the development of methodologies to identify indicators of fraud / corruption / irregularities, fraud control methodologies in order to improve the public procurement system.

I described each step of the process for a better understanding, I emphasized the risks of each step and I presented the phases of the public procurement process, which can be easily controlled by bidders against fraud and irregularities. As we can see in Table 2, the bidders have a strong impact in detecting the irregularities from the public

procurement process, especially from the Process Design and Evaluation phases. The bidders have a small influence in detecting irregularities in first phase of the public procurement process and an insignificant influence in detecting irregularities in the last phase of the public procurement process. It is obvious that in most cases, the bidders are active in reclaiming the irregularities when they are directly influenced (when the offer is rejected), in most cases.

These results are of great importance to emphasize the importance of the contribution bidders in identifying and reducing the irregularities from public procurement system and underlying algorithm development to identify the legality of a public procurement procedure. It is very important to encourage bidders to actively contribute to control, identification and reduction of process irregularities. Stakeholder involvement in the control of public procurement is supported by Wang Hongguang, Zhao Dan, Zeng Fusheng (2015) and Tina Soreide (2002), too, which support the transfer of service quality supervision public services to the community and to extend the scope of supervision, so that everyone in society can participate in supervision.

In my opinion, to improve the public procurement system, the legislature would have to seek the real causes of the increased number of the complaints againts public procurement procedures. A desperate decision to increase the absorption of European funds, by limiting the rights of access to justice can have undesirable long-term adverse effects, the downside of transparency, reduce competition, increase the risk of fraud, corruption and irregularities but do not guarantee an increase in the absorption of foreign funds and the economic development.

References

1. Annika Engelbert, Nina-Annette Reit, 2013, Effective corruption control: implementing review mechanisms in public procurement in Kenya, Tanzania and Uganda, Proceedings of the 5th European Conference on African Studies African Dynamics in a Multipolar World, ISBN: 978-989-732-364-5, 27-29 June 2013, Lisbon, pg. 803-826
2. Archer, N.P., Yuan, Y., 2000, Managing business-to-business relationships throughout the e-commerce procurement life cycle, Internet research 10(5), pg. 385-395
3. Balogh Natalia Monica, Balogh Martin, Filip Valentin Ciprian, Implementarea proiectelor cu finanțare europeană – Probleme și cauze ale apariției acestora, Revista Transilvană de Ştiințe Administrative, 1 (36)/2015, pg. 3-16
4. Băşanu, G., Pricop, M., 2001. Managementul aprovizionării şi desfacerii (Supply and Sale Management), Editura Economică Publishing House, Bucharest, pg. 102-109
5. Ceparu, Irimia, Detectarea si corectarea erorilor commune in achizitiile publice, Public Procurement Sigma Public Procurement Brief 29 2013 OECD, Iulie 2013
6. Caldwell, N., Bakker, E., and Read, J., 2007, The Purchasing process in public procurement, in L.Knight, Harland, C., Telgen, J. Thai, K., Callender, G, and McKen, K. Public Procurement International Cases and Commentary, England, Routledge
7. Davis,P., 2010, Development of a Framework for the assessment of the role and impact of technology on the public procurement process – an Irish health sector Study, PhD Thesis, DIT
8. Eduard Armeanu, 2011, Execution of the Public Procurement Procedure, International Journal of Business and Management Vol. 6, No. 11, pg. 181-189

9. Elżbieta Radziszewska-Zielina, 2011, Public Procurement Procedure in Construction in Poland And Problems With its Application, Organization, technology and management in construction. An international journal, 3(1)2011, pg. 269-275
10. Fazekas, Mihály; Tóth, István János; King, Lawrence Peter, 2013, Corruption manual for beginners - "Corruption techniques" in public procurement with examples from Hungary, IEHAS Discussion Papers, No. MT-DP - 2013/39, Retrived from http://hdl.handle.net/10419/108320, (last accesed in 28/11/2015)
11. Freedom House Romania, 2015, Ghid pentru practicieni in domeniul achizitiilor publice, http://ghidachizitii.lfwd.io/#book/ch00-00, (last accesed 28/11/2015)
12. Gershon, P., 1999, Review of Civil Procurement in Central Government. Retrieved from https://www1.toronto.ca/inquiry/inquiry_site/cd/gg/add_pdf/77/Procurement/Electronic_Documents/UK/U.K._Gershon_Report.pdf (last accessed 28/11/2015)
13. Guvern, 2006, Emergency Ordinance no. 34 of 19 April 2006 (* updated *) on the award of public procurement contracts, works concession contracts and public services concession contracts, Official Gazette no. 418 of 15 May 2006, http://www.utcluj.ro/media/documents/2013/OUG_34_din_2006.pdf, accesed in June 2015
14. Herea Violeta, 2013, The responsability of the factors involved in checking the awarded documentation and means of attack within the process of public procurement, Buletinul Institului Politehnic din Iași, Vol. LIX(LXIII), pg. 33-39
15. Lysons, K. and Gillingham, M., 2003, Purchasing and Supply Chain Management, 6th Edition, London: FT Prentice Hall
16. Manea Ioana Livia, Popa Ioana Anda, 2010, Studies and Scientific Researches. Economics Edition, Risk Management in Public Procurement Process, no.15
17. Mialțu Mirela, Bănacu Cristian, Popescu Adina, Patraș Ionuț, 2015, The effect of limiting the right of appeal on the quality of the public procurement management system. Case Study of Romania, The 26th IBIMA Conference on Innovation Management and Sustainable Economic Competitive Advantage, 12 November 2015, Madrid, Spain
18. Mialțu Mirela, Patraș Ionuț, 2014, Romania's economic development through the modernization of the public procurement system, Management Intercultural, Vol. XVI N2 (31)
19. Novack, R.A., Simco, S.W., 1991, The Industrial Procurement Processs: A supply chain perspective, Journal of Business Logistics, 12, (1), pg. 145-167
20. OECD, 2007, Bribery in Public Procurement, Methods, actors and counter-measures, http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/44956834.pdf, accesed in September 2015
21. Procurement & Fiduciary Services Department, 2014, Innovations in Public Procurement – Comprehensive Review of the Bank's Procurement Policy, Retrived from http://www.afdb.org/fileadmin/uploads/afdb/Documents/Procurement/Project-related-Procurement/Summary_of_Literature_on_Innovations_in_Public_Procurement.pdf, (last accesed in 28/11/2015)
22. PWC and Ecoris, 2013, Identifying and Reducing Corruption in Public Procurement in the EU, http://ec.europa.eu/anti_fraud/documents/anti-fraud-policy/research-and-studies/identifying_reducing_corruption_in_public_procurement_en.pdf, accesed in September 2015
23. Reida Kashta, 2014, Corruption and innovation in the Albanian public procurement system, International Scientific Journal, Vol 2, pg. 212-225
24. Șerban Ionuț, 2009, Fraud Risk Management, Proceedings of the 10th International Conference of Finance and economic stability in the context of financial crisis, ISSN 1844-0029, 11-12 December 2009, Bucharest, 554-560
25. Tina Soreide, 2002, Corruption in public procurement. Causes, consequences and cures, Chr. Michelsen Institute Development Studies and Human Rights
26. Van Weele, A., 2005, Purchasing and Supply Chain Management, Analysis, Strategy, Planning and Practice, 5th edition,Cengage Learning EMEA
27. Van Weele, A., 2004 Purchasing and Supply Chain Management, Analysis, Strategy, Planning and Practice, 4th edition, Thomson

28. Virginijus Kanapinskas, Zydrunas Plytnikas, Agne Tvaronaviciene, Sustainable public procurement: Realization of the social aspect in Republic of Lithuania, Business: Theory and Practice, 2014 15(4), pg. 302-315
29. Versendasl Johan, http://www.cs.uu.nl/docs/vakken/ee/Week37b%20v1_1.pdf, accessed in 28/11/2015
30. Wang Hongguang, Zhao Dan, Zeng Fusheng, 2015, Research on the Quality Management Mechanism of Chinese Government Procurement of Public Services, Canadian Social Science, Vol. 11, no.8, pg. 27-31

RESPONSIVENESS GOVERNANCE AND CONVERGENCE OF AGENDAS

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***Abstract**: This research highlights the two concepts: responsiveness government and policy agenda-as a result of convergence between citizens' priorities and governmental and parliamentary activity, and tries to find evidence to prove a relationship of mutual conditioning between the two concepts. The reason for this research is justified by the need for "vision of the future", a concept devoid of academic rigor and, therefore, difficult to define, but which emphasizes, on the one hand, the force of a clear strategic intent and, on the other hand, the irreplaceable role in achieving this vision of public policy to meet the legitimate expectations of citizens. We see responsiveness as part of democratic signal detection system that alerts policymakers to the anxieties and wishes of the public. Responsiveness, in the context of a system can be defined as an outcome that can be achieved when institutions and institutional relationships are designed in such way that they are cognizant and respond appropriately to the universally legitimate expectations of the citizens. So, responsiveness is the key to the proper functioning of any democracy and an important value itself. A good functioning of the democracy must take into account as a primary value not only representation, but also the means of solving the problems. This involves information processing, communication, and the way through which the public's preferences are created and influenced by the governmental strategies and through collective dynamics along with establishing the policy agenda as a result of convergence agendas. A policy agenda represents a common place of convergence between citizens' priorities and governmental and parliamentary activity, is a guarantee that the citizens will receive appropriate and opportune responses of their demands. In other words the convergence agenda involves the existence of responsiveness government.*
***Keywords**: responsiveness government, policy agenda, dynamic capabilities, convergence of agendas.*

THE CONCEPT OF RESPONSIVENESS GOVERNMENT

This research highlights the two concepts: responsiveness government and policy agenda-as a result of convergence between citizens' priorities and governmental and parliamentary activities, and tries to find evidence to prove a relationship of mutual conditioning between these two concepts.

The reason for this research is justified by the need for "vision of the future", a concept devoid of academic rigor and, therefore, difficult to define, but which emphasizes, on the one hand, the force of a clear strategic intent and, on the other hand, the irreplaceable role in achieving this vision of public policy to meet the legitimate expectations of citizens.

In the current context, turbulent and discontinuous, governments are forced to abandon the old paradigm for the adoption of strategic approaches that are able to offer them the opportunity to anticipate and respond to challenges. To win the next challenge, the government must prepare to respond to citizen's needs and expectations. Expectations

are often simply defined as individual's beliefs regarding desired outcomes. Yet the literature suggests that the definition of expectations, and more so the concept of expectations fulfillment is far from easy to define (Thompson and Sunol, 1995, Stanizzszewska, 1999).

Thompson and Sunol (1995) cite four types of expectations:

- Ideal: similar to aspirations, desires or preferred outcomes
- Predicted – realistic, practical or anticipated outcomes that result from personal experiences, reported experiences of others and sources of knowledge such as the media
- Normative – expectations that are based on what should or ought to happen
- Unformed – the situation that occurs when individuals are unable or unwilling for various reasons to articulate their expectations, which may either be because they do not have expectations, have difficulty expressing their expectations or do not wish to reveal their expectations due to fear, anxiety or conforming to social norms.

A real visionary and responsiveness government "must work today for tomorrow". From this perspective, the policymakers must enable themselves to "decrypt future" by interpreting the signals coming from the environment. A key characteristic of democracy is the continuing responsiveness of the government to the preferences of its citizens, as political equals (Robert A. Dahl., 1972, p.1).

We see responsiveness as part of democratic signal detection system that alerts policymakers to the anxieties and wishes of the public.

So, responsiveness is the key to the proper functioning of any democracy and an important value itself.

A good functioning of the democracy must take into account as a primary value not only representation, but also the means of solving the problems. This involves information processing, communication, and the way through which the public's preferences are created and influenced by the governmental strategies and through collective dynamics along with establishing the policy agenda as a result of convergence agendas.

In public services, "responsiveness" is a controversial concept. Democracy would seem to require administrators who are responsive to the popular will, at least through legislatures and elected chief executives if not directly to the people (Eran Vigoda, 2000, p.166).

Yet administrators and scholars alike tend to treat responsiveness both, in the best case as a necessary evil that appears to compromise professional effectiveness, and the worst case as an indication of political expediency if not outright corruption.

Rourke's recent assessment is illustrative: The growing demand for responsiveness in government policy-making puts the survival of a professional outlook characterized by independence of judgment and indifference to political pressures at increasing risks, American bureaucracy corridors (Rourke, 1992, p.545).

From the systemic studies perspective, responsiveness can be defined as an outcome that can be achieved when institutions and institutional relationships are designed in such way that they are cognizant and can respond appropriately to the universally legitimate expectations of individuals.

The fundamental concern is the quality of life improvement in a society, including within that broad concept the quality of citizen-state relations. The achievement of responsiveness in this sense is likely to re-establish the public's trust not only in the particular public policy concerned but also more broadly in the state and system of governance. According to I. Ansoff and E. J. McDonnell's (1990, p.342) perspectives, responsiveness refers to a kind of government behavior; for example, whether the organization anticipates or reacts to challenges from environment.

In these coordinate, the responsiveness approach is not only a technical measurement and implementation issue - it is also a political problem where changes are connected to government activity and, in the end, to society activity. Responsiveness is a generic concept that applies to the relationship between a public service and the citizenry, and to the relationship between the state and civil society.

PUBLIC AGENDA

By "Public agenda" we refer to the set of policy issues that the public relates to (B.D. Jones and F.R.Baumgartner, 2005, p.250). Cobb and Elder suggested that *public agenda* consists of all issues that are commonly perceived by members of the political community as meriting public attention and as involving matters within the legitimate jurisdiction of existing governmental authority (Cobb and Elder, 1972, p.85). And, so the public agenda represents a set of problems to which the public participates. The two authors refer to the systemic/ informal agenda, but in terms of this work, systemic / informal agenda and public agenda may be considered interchangeable.

For our purpose, a public policy problem can be defined as a condition or situation that produces needs or dissatisfactions of the society for which relief or redress (from government) is sought (Anderson, E.J, 2003).

For example, conditions like polluted air, altered food, over populated prisons and cities produce situations that might create potential problems for citizens, taking into consideration that their dissatisfaction and discomfort are raising. The degree of dissatisfaction or discomfort (that also involves governmental intervention) is measured by citizens through a standard or a criterion; if these two rate a situation as being inevitable, or one for which they are directly responsible for, no governmental action will be taken, because that situation does not represent a citizen's will, so it does not find itself on the public agenda.

Objective conditions are seldom so compelling or unambiguous that they determine the policy agenda. Hence, knowing how a problem has been defined is essential to understanding the process of the policy agenda emergence. A policy idea that fails to meet the feasibility criterion is unlikely to be considered as a serious contender on the public agenda.

Because the public opinion has the tendency to become vague and confused when it comes to technical problems or complex solutions, we have to mention that the public agenda does not include the public policy solutions that are granted either by the political elites or by certain public segments. We also emphasize that situations do not become problems unless they are perceived as such, expressed and brought to the attention of the

authorities; this kind of action is frequently used by officials and politicians that find themselves in search of problems to be solved.

More than that, a situation becomes a problem on the public agenda if it identifies itself with an area of state intervention, for which a governmental solution is possible. Regarding this, Aron Wildavsky said that authorities will rather ignore a problem if it is not multiplied by its solution. Hurricanes and earthquakes cannot be considered problems due to the fact they are unpredictable, but the damage that they cause does indeed represent a public policy problem and there have been created many programs that seek to reduce the damaging effects of these natural phenomena (Wildavschy, 1975, pp.134-140).

What are those characteristics that tell a public problem from a private one? Generally, the public problems are thought to be the ones that affect the lives of a substantially large number of people, while their consequences are also felt by people who aren't directly involved in those issues.

Suppose a citizen is dissatisfied by the amount that was taxed under a certain fiscal law. As long as that citizen acts in his own behalf, trying to find derogation from the fiscal institutions in his favor, then, we are talking about a personal problem. But if that citizen, along with other people directly or indirectly affected by the same problem, try to modify the legislation, than the personal problem turns into a public matter.

The fact that a situation or a condition is perceived as a problem doesn't mean that it depends only on its objective dimension but also, to a large degree, on how people relate to that situation. If a person has a certain social standard, it's not a real problem for him to find a job, as he is not threatened by the increasing unemployment rate, he might even consider this as a necessary step in lowering inflation. But for a worker, unemployment is a threat and he will negatively react to it. A person's perception is influenced by its own experiences, values and situations that involve him/her. There isn't a single or valid way of defining the problem, even though many people have opinions and preferences when it comes to a certain situation.

There are frequent cases when various ways of describing a problem converge, to get the public's vote. We decide if a certain situation can or cannot be considered a public problem if we take a look at the terms that was used to define that problem and accept the proposed definition. More than that, the terms that were used to define it and the causes that generate it determine the emergence of certain solutions that are considered to be adequate.

The research conducted in October-November 2009 was, it primarily, aimed at identifying the perceptions and opinions of the Romanian citizens regarding the main directions of government activity in 2010. When asked the question: "In which areas has the government taken the most measures in, according to you own expectations?'' you can see the answers in the chart below.

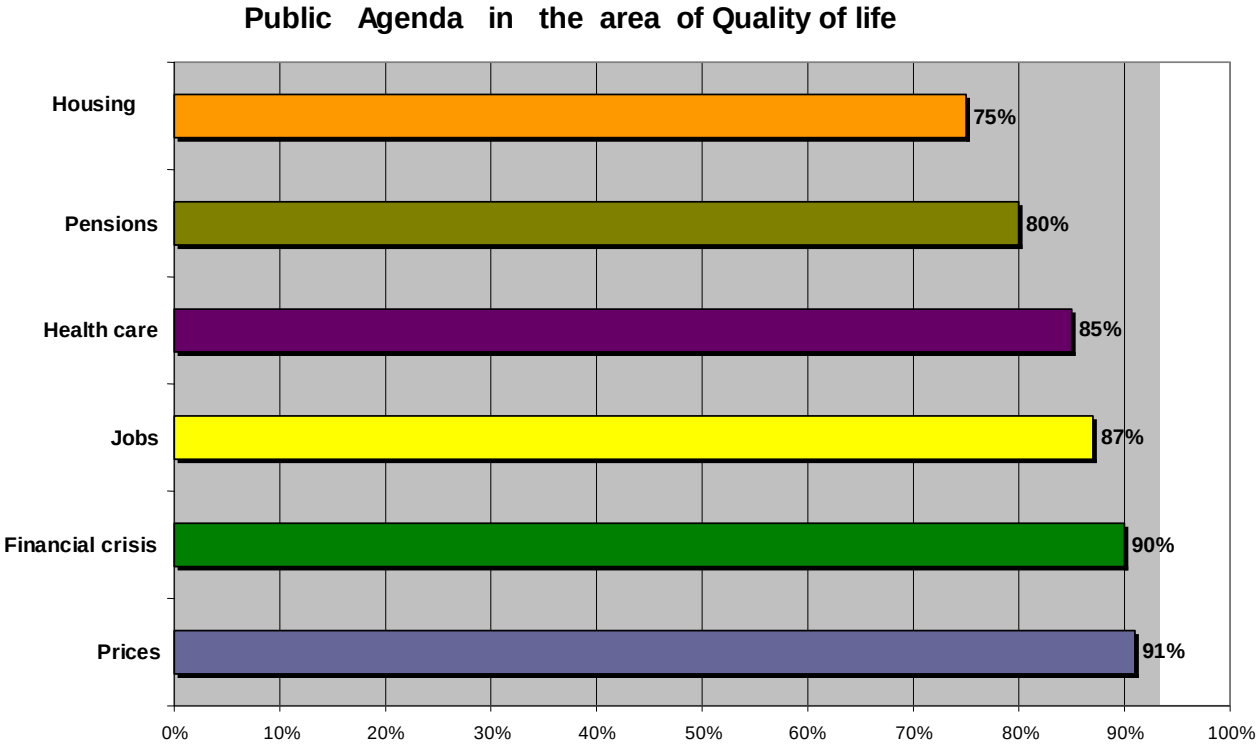
The 16 themes proposed by the questionnaire are grouped into three main groups of the topics:

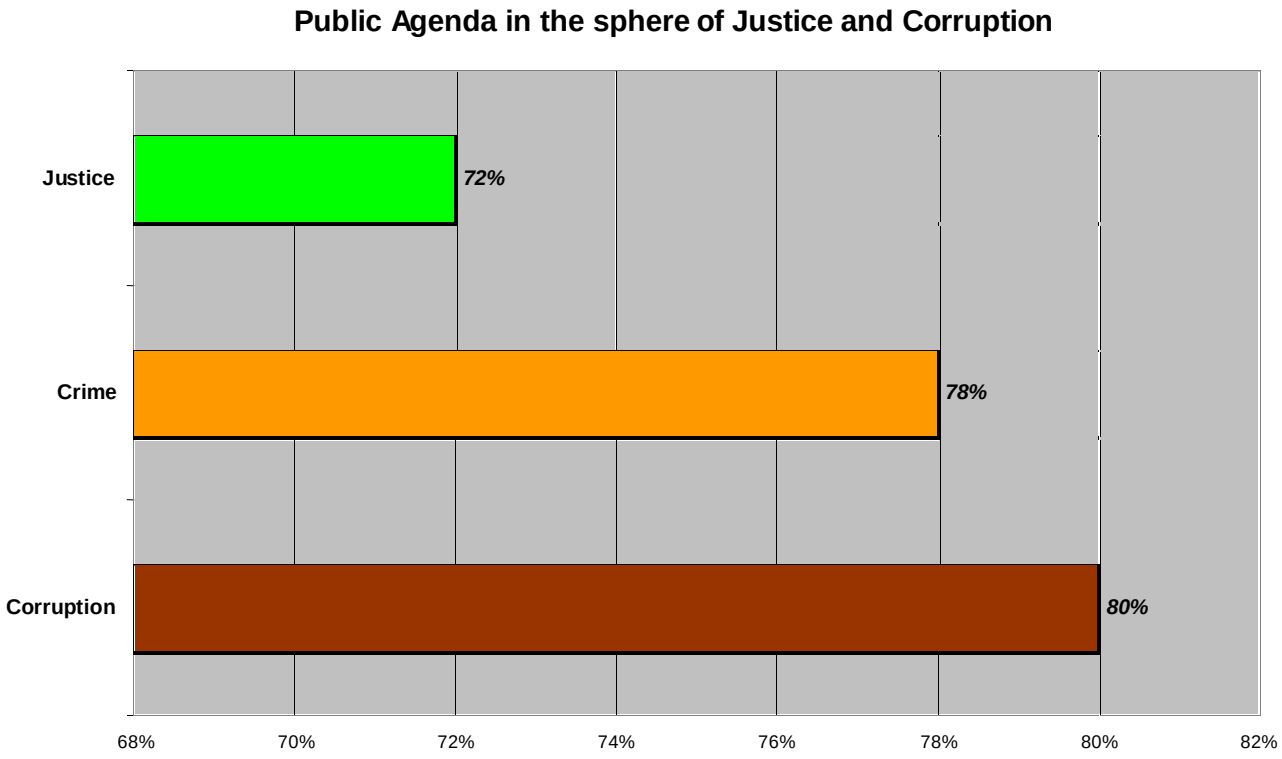
Quality of life - issues relating to employment, housing, prices, pensions, financial crisis, and healthcare;

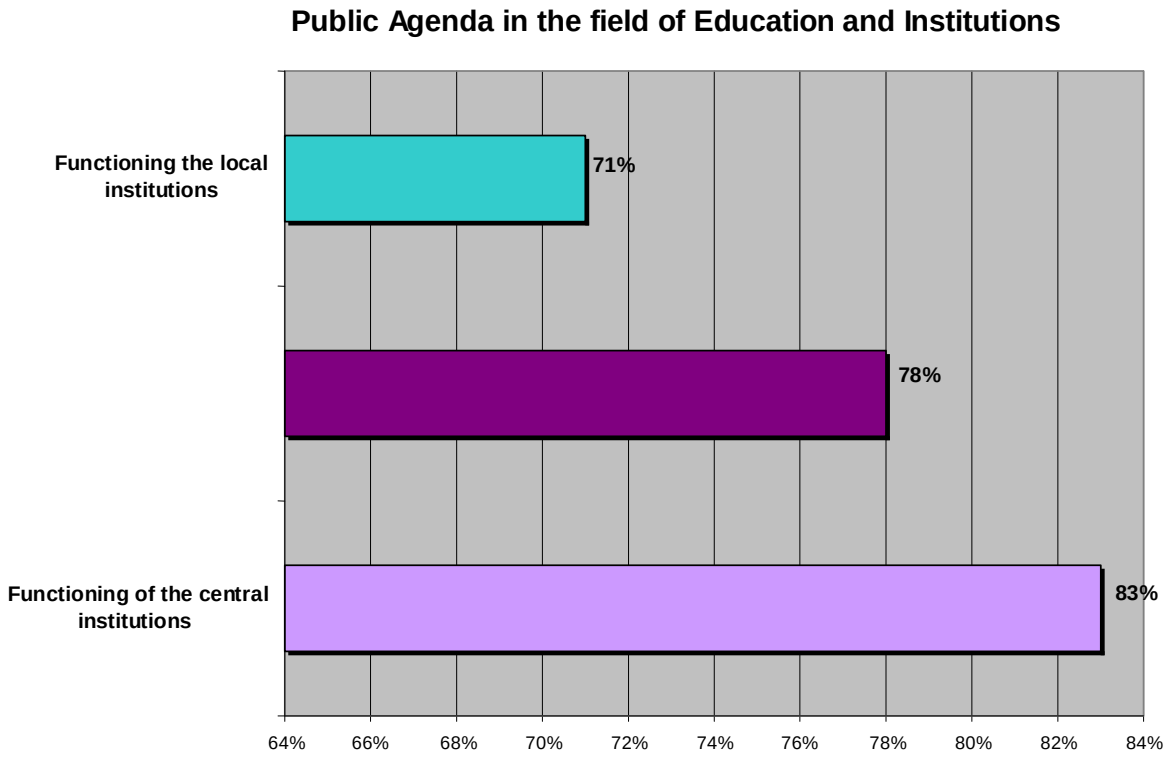
Functioning of the public institutions – functioning of central and local institutions and education;

[redacted] – crime, justice and corruption.

The following charts illustrate the acceptability rate of the Romanian public when it comes to the public agenda.




Public Agenda in the sphere of Justice and Corruption
Justice
72%
Crime
78%
Corruption
80%
68%
70%
72%
74%
76%
78%
80%
82%



Way of interviewing: face to face interviews at the respondents house, or by telephone, using the same questionnaire. The questions remained the same despite the interviewing manner.

Representative volume: 1154 people, + 18 years old.

Representative type: probabilistic group, stratified, multi-staged one. Dual frame of representation: houses with telephones connected to the main market telephone operator (representative in 761 houses) and the adult population of Romania (400 representative houses selected through the random method). Both representations have been projected according to the territorial distribution of the Romanian adult population. The assignment of the representative sample was proportional to the group size.

Stratification criteria: 8 historical regions and the urbanism degree (8 different types of regions).

Units of selection: In the representative case of the face to face interviews, the primary units of selection were the regions. The selection of the houses in this case was made through the random method, and people were selected through the "last birthday" method. In the case of the representation sample for the telephone interview, the primary unit of selection was the house itself, and people were also selected through the "last birthday" method.

Moderation: In order to fix the unequal selection probabilities and adjust the different types of non-answers, the final representative segment was moderated through the RAKING method and the moderation variables were: region, urbanism degree, sex,

age, race, occupation, level of education and having a telephone subscription. The moderation algorithm used as references official statistic data especially from the last demographic survey.

Representativeness: the final moderated segment is representative for the adult population of Romania, with a ±2.9 % error percentage, with a 95% trust level. Besides segmentation errors, the way questions were asked and the practical difficulties when writing down field data or telephone data can also cause other errors that might alter the results of the survey.

The Date of the collected information: October 2009

According to main the results of this research the public agenda is defined by issues related to living standards, corruption and the functioning of institutions,

When analyzing the previous survey and also comparing it to similar surveys in past periods, we can notice a quite slow dynamic of the public agenda when it comes to Romania (there is a powerful domination of the problems that refer to the increasing of incomes and employment rate; on the other hand, the problems that were generated by the important global challenges - such as terrorism, pollution, energy crisis, organized crime - are almost completely left aside).

And this happens in spite of the fact that also in the situation in which various problems continue to stay in the public's attention, the way in which they are defined changes along with the variation of the values and conditions that generated them. More than that, when mentality evolves as a result of the changes and transformations that took place at a societal level, situations that were considered to be normal at a given time can turn into a problem. For example, domestic violence, which has been considered throughout ages a personal problem, is now treated as a felony.

There are many explanations to this; starting with the fact that their only preoccupation is the struggle for day to day living and not taking into consideration the civic responsibility. The same explanations can be used when talking about the lack of interest when mentioning the important global challenges (human rights, energy, terrorism, security, delinquency) among the priorities of the public or governmental agenda.

THE GOVERNMENTAL AGENDA

Shifting problems from the public agenda to the governmental one is the result of a political process that also determines the adequate solutions. Is the fact that people with disabilities should have the right to proper means of transportation an issue regarding the public transport field or an issue that is rather connected to human rights? Special means of transportation for the disabled people is a solution to the transportation issue. The human rights perspective involves equal rights for the transportation of the disabled people and also the existence of proper devices that can allow disabled people to equally use the public means of transportation.

The ideal solution would be for us to consider the connection between the public agenda and the governmental one. But we must say that, if we use the results of the

previous survey as a temporal method of the governmental agenda, the process of establishing a connection between the two types of agendas is altered by the existence of possible threats caused by the irregular types of questions, by the number of respondents etc. (B., D. Jones and F.R.Baumgartner, 2005, p.226)

Causality is an important aspect of a public policy problem. A situation can turn into a problem but what are the causes that generate the situation? Many problems – delinquency, poverty, inflation and pollution – have multiple causes. Inflation is characterized by a generalized growth of prices, measured by the index of commodity prices and it represents a political public problem with multiple roots: an under-production of goods and services, excessive demand of goods and services, a surplus of currency, the result of a psychological inflation (people expecting prices to rise) etc.

In order to solve a problem, we should pay attention to the causes, not only to the manifestations (symptoms) but, in many situations, it's not easy to identify or detect the main causes. Identifying the roots of a problem and negotiating a compromise regarding them is not an easy task for the policy makers because defining the problem turns into a problem itself.

The difficulty of the governmental agenda setting is also determined by the fact that the nature and purpose of many public political problems are hard to express because of their dispersed or ''invisible'' nature. And because determining the size of the problem is often inadequate, those who elaborate public politics don't always correctly evaluate the given situation and it becomes impossible for them to offer adequate solutions or even undertake governmental actions in order to solve the problem. Next to these inaccuracies we can also mention the inadequate understanding of the causes of the phenomena.

Another aspect connected to the governmental agenda refers to its capacity of being easy to control/manipulate, as some of the problems involve a higher level of behavioral changes than others. McKelvey (1976) and Schofield (1976) showed that in absence of a majority–rule, equilibrium implies that virtually any policy outcome is possible. Hence, those who control the agenda can engage in all sorts of manipulations. A monopoly agenda setter can achieve almost any outcome they wish, providing the appropriate order of paired options considered by the voting group operating under majority rules (Schofield, 1976).

Limited resources naturally determine a space limitation as well as the governmental agenda. In the context of scarce resources, many other forces, other than the public opinion, appear and try to get their own space on the agenda, because it necessary defines the priorities within the agenda. It's not enough for a proposal to be included in the agenda but also to occupy a high position on the agenda.

From our point of view, we cannot discus in terms of responsiveness government without taking into account the congruence between public and government agendas.
More than that, responsiveness can lack even if such a correspondence does exist, due to the blocking of public policy actions, either by the political system (its level of complexity can generate various blockings) or by the leaders whose opinions are different from the public's.

We must raise questions of political interdependence among the nations and make some remarks on how these interdependences affect the substance and procedures of

national policy making, including the agenda setting. For example, in the Romanian case, European integration has brought up on the governmental agenda many substantial issues other than those already contained by the public agenda. How must the government react? Which are the government's alternatives? In our opinion, a responsiveness government must act so to produce a favorable society climate, followed by a later stage when the European requests become real issues on the public agenda. In fact, the demand for more transparency in public decision making, the search for new forms of accountability, and the growing reliance on persuasion rather than traditional forms of governmental coercion can be shown to be related, at least in part, to economic growth and political interdependence (World Bank, 1997). In other words, in the absence of that convergence between agendas we can not speak about responsiveness and much less about democratic policies that are able to satisfy the demands of the citizens.

THE PARLIAMENTARY AGENDA

The activity referring to the parliamentary debates is one of the main components of the public politics process.

According to an idealized legislative committee system model developed by Weingast and Marshall (1988, quote by Majone, G, in "The Oxford Handbook of Public Policy", Oxford University Press, pp.230-231) each congressional committee has jurisdiction over a specific subset of policy issues.

Within their jurisdiction, the committees posse the monopoly authority to bring the alternatives to the status quo up for a vote before the legislature; the committee proposal must command a majority of votes against the status quo to become a public policy.

The agenda power held by committee members implies that the success of the legislative initiative is influenced / supported by the members of the relevant committees. Without these members, the bill will not reach the floor for to be vote plenary. Thus committee veto power means that from the set of policies that command a majority against the status quo, only those that make the committee better off are possible. The authority to veto the proposals of others is a powerful tool used by committees to influence policy in their jurisdiction. Institutionalizing control over the congressional agenda – over the design and selection of proposals that arise for a vote – provides durability and enforceability of bargains in a legislative setting (G. Majone, 2008).

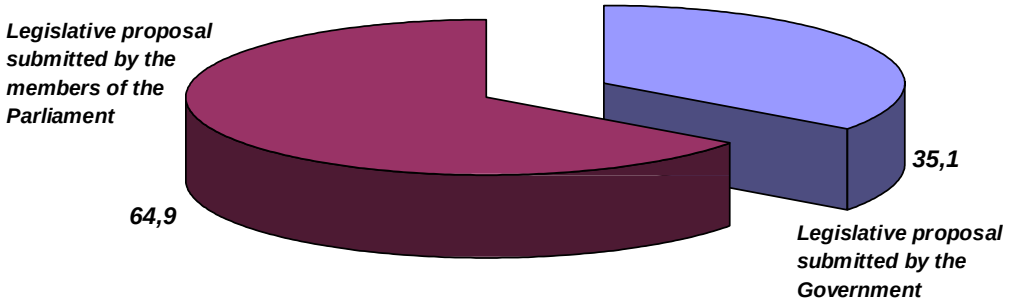
For the Romanian case we can briefly present a research conducted in 2010 concerning the activity of the Romanian Parliament. Romania's Constitution states that Parliament is the supreme representative of the Romanian people and the sole legislative authority of the country. It consists of the Chamber of Deputies and Senate. The current Romanian Parliament consists of 137 senators and 334 deputies who are elected for a term of four years. For this term, the mandate of parliament began on December 15, 2008, with valid elections and sworn, and will end on 14 December 2012. The mandate of such representative, in exercising its deputies and senators are serving the people. First at all, the study captures the quantitative dimension of the Parliament activities. In the first legislative session of 2010 (February 1 to June 30) were submitted 322 regulatory

projects and legislative initiatives at the Chamber of Deputies and another 422 at the Senate.

The relation between the percentage values of the projects submitted by the members of Parliament and the Government are presented below.

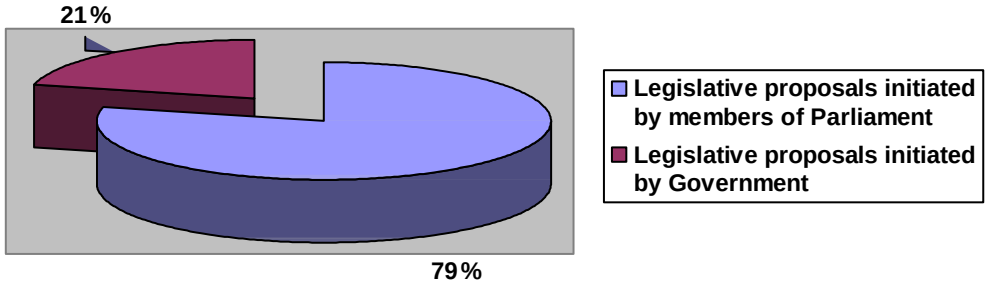
At the chamber of Deputies, 63% of the projects were submitted by MP's and 37% of projects by The Government; At the Senate, 82% of the legislative initiatives were submitted by the PM's and only 18% by the Government. The situation is reversed when we evaluate the relation between adopted and rejected projects. The percentage values are presented below.

Distribution of the legislative proposals submitted

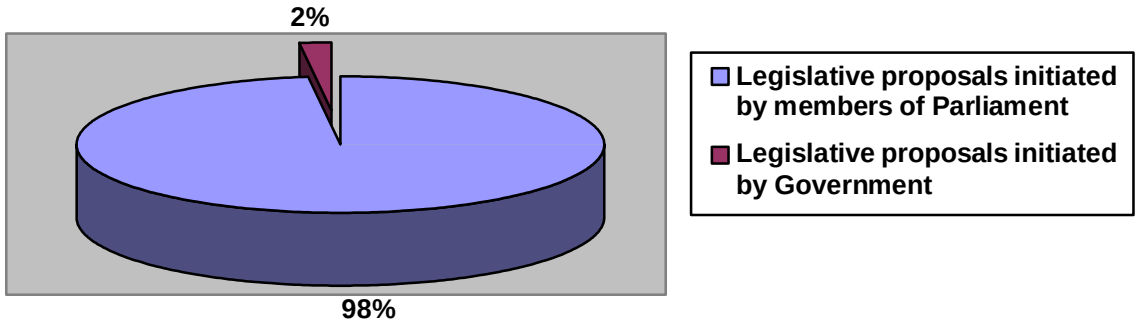


Source: The Public Policy Institute, Monitoring Report, 2011.

Distribution of legislative projects adopted (Goverment vs. Parliament)



Distribution of the rejected legislative projects (Government vs. Parliament)



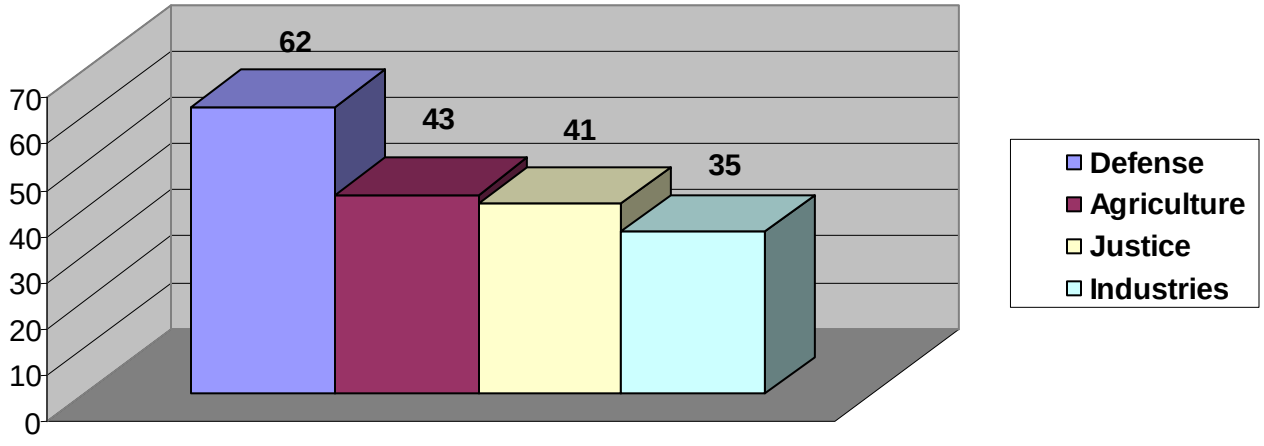
Source: Public Policy Institute, Monitoring Report, 2011

The research conducted by The Public Policy Institute on priorities of legislative process has brought to attention the existence of a net difference between the agendas of both Chambers of Parliament. We report these results bellow.

At the Chambers of Deputies, the Justice represents the main area of initiative (25% of the legislative initiatives have been made in these field), and the last position, with the fewest initiatives submitted, is IT and equal opportunities.

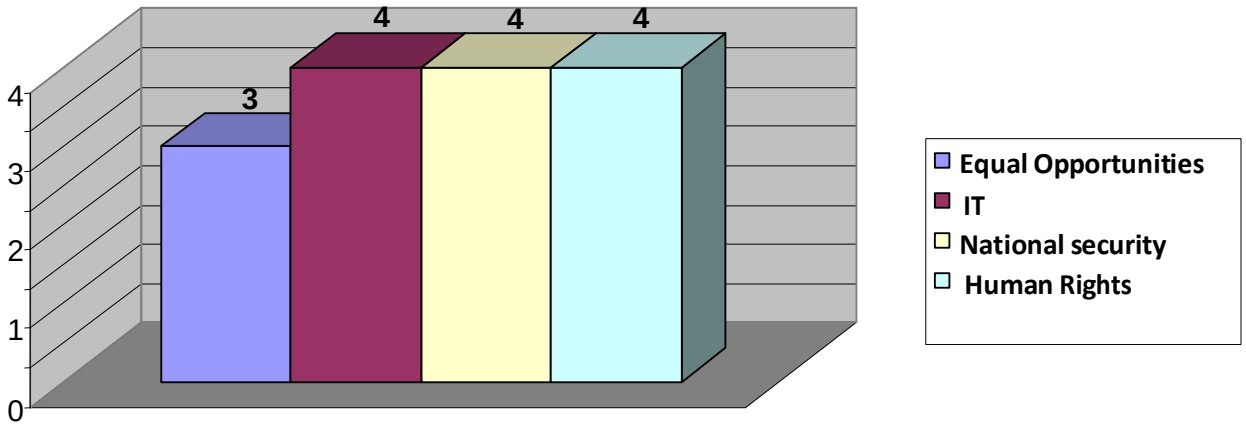
At the Senate, the main regulatory areas of legislative initiatives submitted were agriculture /forestry and the last position is represented by fields such as human rights and equal opportunities.

Priorities of the Senate Agenda



Source: The Public Policy Institute, Monitoring Report, 2011

Last positions in the hierarchy of the priorities on the Senate Agenda



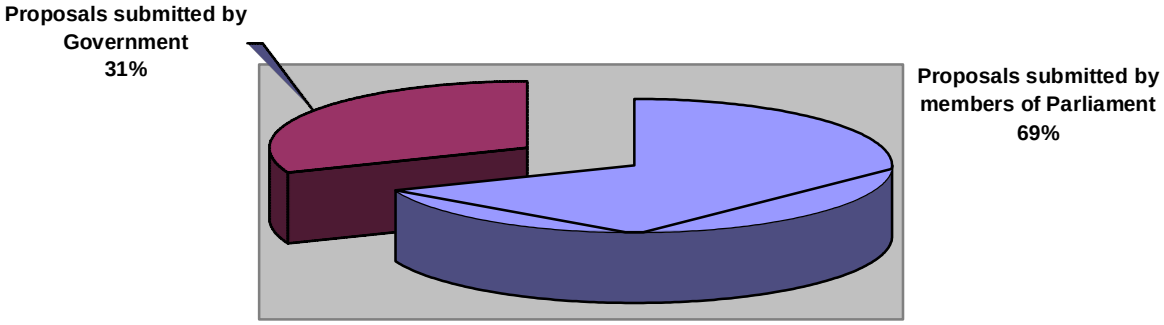
Source: The Public Policy Institute, Monitoring Report, 2011

The study has revealed that there are now over 200 bills that are on the Parliament `s vote queue for over a year.

The celerity of the legislative process is a very important indicator for the efficiency and effectiveness of the Parliamentary work. According to our Constitution, any legislative proposal initiated by the deputies, senators or the Government shall undergo legislation in Parliament within 90 days after registration, or 120 days for codes and laws of astonishing natural complexity. According to regulations in force, the two Chambers of Parliament can decide on the proposals and / or recorded bills.

In the absence of plen debates of a large number of projects, these have been adopted through the tacit adoption procedure. The distribution of these bills, both for the Deputy Chamber and the Senate are:

Distribution of legislative proposal adopted by tacit procedure (Parliament vs. Government)



Source: The Public Policy Institute, Monitoring Report, 2011

The fact that the most of the tacit adopted legislative proposals have been submitted by the Parliament members that can lead us to conclude that, after the deposition of the initiatives, the MP's are less motivated in the supporting their own initiatives. Analyzing, in turn, the dimensions of parliamentary activity, we can draw some general conclusions regarding the defined issues in the monitored session.

The draft legislation submitted by members of Parliament continues the unsuccessful legislative inflation phenomenon - in other words, some lawmakers initiate legislative proposals or co-sign in order to claim it as activity; there was no real and consistent concerns about the purpose of the legislative process regarding this initiatives. MP's belonging to the governing political parties should be consistent in cooperation with fellow parties in the executive to avoid situations when their legislative proposals are in conflict with the agreed political principles.

In terms of priorities, the less important areas for the current Parliament – as they appear depending on the purpose of regulation initiatives submitted - are equal opportunities and human rights.

THE CONVERGENCE AGENDAS AND THE RESPONSIVENESS GOVERNMENT

Congruence between the public and governmental agendas is an unavoidable precondition without which responsiveness cannot occur. Public agenda is measured by the answer to a question about "the most important problems" the nation is facing. The measures from the parliamentary agenda are based on hearings activity. By analyzing the activity of the Permanent Commission of the Chamber of Deputies may be noted that

there is a significant difference between the number of hearings and the degree of access to information on the outcome of the discussion in Commissions. Thus, there is no available information for 31 from a total of 65 hearings of the Human Right Commission. The Public Administration Commission also has not enough available documents (only for 4 of the 25 hearings of this session). Other similar examples are the Economic Policy Committee and the Commission to investigate abuses, corruption and complaints. For the February - June 2010 parliamentary session, there is no available information for 20 hearings of these Commissions.

Unfortunately, at the Senate, information from the hearings of Permanent Commissions is not available. The presence of information, available only for 4 Permanent Commission – Foreign Policy Commission, Public Administration Commission Environment Commission, Commission for Labor, Family and Social Protection and the Commission for Privatization and Administration of the State assets - is rather an exception.

The presented research clearly reveals that parliamentary activity shows, at least for the analyzed period, the nature of dysfunctions that compromise policy agenda, both in terms of its correspondence with the priorities of the other two agendas and in terms of haste in which they are debated in Parliament

According B.D. Jones and F.R.Baumgartner (2005), hearing activity is "the front end" component of the public policy process. Meaning that it responds more easily to changing information flow than accomplish the later policymaking process stages.

As a consequence, it is reasonable to expect a realistic response to the concerns of the citizens in the hearings activity, noting that this response should be offered in the same year If hearings are scheduled a year after an increase in public attention to a topic , our approach, will not count it.(B. D. Jones and F.R.Baumgartner, 2005, p.255)

With this consideration, we appreciate that the concept of responsiveness government is viable only if the policy agenda is a result of the convergence, in real time (approx. 1 year), of the three agendas of others: public, governmental and parliamentary. Adopted standard for assessing the quality convergence of agendas is quite strict; the parliament must take into consideration the priorities of the public agenda in real time, but not later that one year.

Furthermore, between the two concepts is a mutual conditioning. In this sense, the existence of a policy agenda, defined such by the result of convergence between the three agendas, provides a strong support for responsiveness government to work.

In addition, achieving the policy agenda in this way represents a guarantee for democracy; issues raised by different interest groups, must be, first, put on the public agenda and only than put on the governmental and parliamentary agendas.

A special case is represented by the international organizations and public issues that these organizations try to directly promote on the governmental or parliamentary agenda. While solving other problems than the society requires it seems to be a threat to democracy and the political analysts believe that the future capabilities of states to act will depend on their ability to auto-connect to the international context (Beck Ulrich, 2004, p.46).

From our point of view and in terms of previous statements, it is necessary that the states should be concerned on development of the dynamic capabilities. Dynamic capabilities refer to the particular capacity of the government possess to shape, reshape, configure, and reconfigure assets to be able to respond to a frequently changing environment. This definition is an extension in the governmental sphere of corporate dynamic capabilities definition formulated by J.D.Teece in Dynamic Capabilities and Strategic Management, Oxford University Press 2009, p.89.

As with previous considerations results that the concept of responsiveness government is defined by dynamic capabilities that give the government the necessary support to anticipate both the requirements of the international organizations as well as the global challenges. In other words, the prerequisites are for, at least, the reduction of what R. Dahl (2002, p.136) called the dark side of democracy. In the current international context, the governments act in accordance with the charges of supranational structure on which the citizens have no control. In conclusion, the responsiveness approach is a political problem where changes are connected to government and society activity. But this connection is not possible without the convergence between agendas and without compliance with the standard required for assessing the quality of convergence

CONCLUSIONS

This research reveals that the importance attributed to responsiveness government and policy agenda defined as a *commune place* of convergence citizen's priorities and governmental and parliamentary activity is justified, primarily, by their involving in defining a space where public policies work. Throughout this study we tried to configure the dimension of the agenda's convergence and to reveal that congruence agenda is a vehicle that leads to responsiveness. Consequently, the two concepts are inextricably linked and reinforce each other and at the same time they make public policy work.

Secondly, put these two concepts into practice is likely to contribute to increase citizen's trust in the representative national institutions: government and parliament. Responsiveness is a generic concept that applies to the relationship between a public service and the citizenry and to the relationship between the state and civil society.

The fundamental concern is the improvement of the quality of life in society, included within that broad concept of quality of citizen-state relations. The achievement of responsiveness in this sense is likely to re-establish the public's trust not only in the particularly concerned public services but also more broadly in the system and state of governance.

It is already a known fact that in the last decade's citizen's trust in these institutions is in a dramatic decline. This deep lack of trust shown by citizens is an expression of their refusal to accept public policies formulated behind closed doors, a practice where decisions are made without consulting the public.

From the perspective of focusing on Romania case, the study brought to attention the existence of major and dramatic discrepancies between the preferences of citizens and governmental parliamentary agendas. Hence, the premises of building a policy agenda as a result of convergent agendas are being undermined; responsiveness government is also

compromise. Moreover, the public space where public policy works can not be defined. In such circumstance, it was expected that, including, Romanian citizen's trust in government and parliament to register a negative grow.

References

1. Anderson, J.E., 2002, Public Policy making, 5thed. Boston, Houghton Mifflin.
2. Ansoff, I., E. McDonneell, 1990, Implanting Strategic Management Prentice Hall, New York
3. Bates R.H. 1990, Macro political economy in the field of development. Pp.31-54 in Perspectives on Positive Political Economy, ed. J.E.Alt and K.A. Shepsle, Cambridge: Cambridge University Press.
4. Beck U, O multitudine de probleme locale care au o cauza globala, Revista Lettre Internationale, ed in romana, spring-summer, 2004, no.49.
5. Cross, R. W., and Elder, C.D, 1972, Participation in American Politics: The Dynamic of Agenda Building, Boston: Allyn and Bacon
6. Dahl, A.R., 1972, Polyarchy: Participation and Opposition. Yale University Press.
7. Dahl, A.R. 2002, *Democratia si criticii ei* (Democracy and her critics), Institutul European Iasi.
8. Jones B., D. and F.R.Baumgartner, 2005, the Politics of Attention, the University of Chicago Press
9. Majone, G, 2002, *what price safety? The precautionary principle and its policy implication*, Journal of Common Market Studies, Vol.40, pp89-106
10. Majone, G. 2008 *Agenda setting*, Pp.228-260, in *Oxford Handbook of Public Policy*, Oxford University Press.
11. Teece J.D. 2009, Dynamic, Capabilities and Strategic Management, Oxford University Press
12. Vigoda, E. 2000, in Are you being served? The responsiveness of public administration to citizen's demand: an empirical examination in Israel, Pp.165-191,.Public Administration, Vol;78, No.1. Wildavschy, A.,.1975. Budgeting: A Comparative Theory of Budgetary Processes, .Boston. Little, Brown
13. Winter, S.G., 2003 Understanding Dynamic Capabilities, Strategic Management Journal, Octombre Special Issue, 24, 991-6.
14. Weingast, B.R. 1996, Political institution: rational choice perspectives, Pp.166-190, in *A new Handbook of Political sciences*, ed. R.E Goodin and H.D. Klingermann, Oxford: Oxford University Press.
15. Public Policy Institute, *Monitoring Report about parliamentary activities*, Bucharest, 2011.

FINANCE

PROPERTY RIGHTS, EXTERNALITIES AND SUSTAINABLE DEVELOPMENT. A CASE STUDY ON CENTRAL AND EASTERN EUROPEAN MEMBER STATES

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Abstract: *The present paper is aimed to put emphasis on the fact that the role and importance of healthy institutional order in achieving sustainable development is essential. The whole environment theoretical movement follows the same development trend and theoretical and doctrinary evolution. Nevertheless, the market as a real, tangible product of the standard economic judgement system bears imperfections, i.e. income distribution, transaction costs or negative externalities. We therefore aim to bring strong arguments to demonstrate that, irrespective of the ideological level we take into account, we can not refer to market in the absence of private property. Other formal and informal institutions must participate in the whole process in order to enable it to function within optimum parameters.*
The whole CEE countries' analysis illustrates that protecting and respecting property rights is of paramount importance in maintaining a high level of development.
Keywords*: sustainable development, property rights, externalities*

Acknowledgement
This work was supported by the European Social Fund through Sectorial Operational Programme Human Resources Development 2007 – 2013, project number POSDRU/159/1.5/S/142115, project title "Performance and Excellence in Doctoral and Postdoctoral Research in Economic Sciences Domain in Romania".

1. INTRODUCTION

Sustainable development has seen various approaches in time, from „the analysis of the necessary conditions to ensure a long-term optimum consumption which took both technological progress and population growth rate into account"(Pierantoni, 2004, pp.63-91) to the analysis of the compatibility between economic and environmental development so as to ensure that the priority placed on the present generations' needs does not imply the sacrifice of the future ones. "While in the 1970s, in the debate created

by Meadows *et al* (1972), which focused on the limits of the non-renewable natural resources and on the impact of economic growth on the environment, the quality of the environment was seen as divergent from economic growth, starting in the 1980s, the debate was focused on reconciling the two dimensions. Lately, both economic and ecological literature has focused on such issues as: a) *to what extent* and *how* should natural resources be exploited? b) the impact of human activities on the environment (pollution, waste, etc.); c) the sustainable development concept on the long term which is focused on achieving inter-generational equity by integrating economic development, social and environmental welfare"(Ciupagea, 2006:8). The sustainable development theory was based on the explanations related to the optimal growth means in the context of limited resources. The elimination of disparities in terms of access to resources and enabling every nation to develop according to its own values without sacrificing the next generations' welfare may be achieved within a stable and sustainable institutional system which clarifies the limits of individual action in society, a setting in which property rights form the basis of the framework within which people act and interact.

The present paper does not aim to identify those institutions which may influence the development level; on the contrary, we aim to bring arguments in favour of the fact that property-right-based economic systems are, at present, the best option if humanity wishes to leave something behind for the next generations.

2. THE IMPORTANCE OF PRIVATE PROPERTY FOR SUSTAINABLE DEVELOPMENT

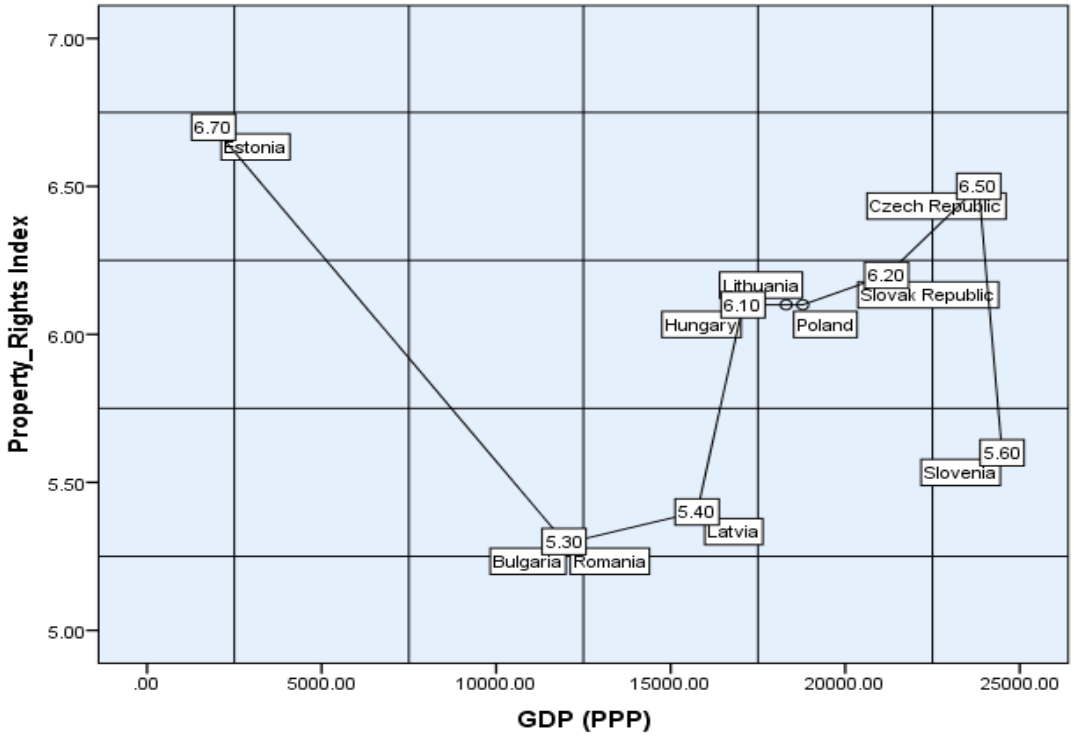
An important question is: why should property rights over things actually exist? A series of arguments have already been mentioned particularly by early writers who stated that property rights maintained work stimulation and durable things. "Property rights are an instrument of society and derive their significance from the fact that they help a man form those expectations which he can reasonably hold in his dealings with others. These expectations find expression in the laws, customs, and mores of a society. An owner of property rights possesses the consent of fellowmen to allow him to act in particular ways. An owner expects the community to prevent others from interfering with his actions, provided that these actions are not prohibited in the specifications of his rights" (Demsetz, 1967). In the absence of a property right assignment, the conservation economic function would not exist. The resources to which every individual has free access are to be overexploited and alienated. This is particularly what the American ecologist, Garret Hardin, names *the tragedy of commons*.

Property rights are seen as made up of possession rights – right to use – and the right to transfer possession rights. Consequently, what we normally perceive as property (land, for example) encapsulates both a series of property rights (the right to build, to cultivate, etc.) and the associated transfer rights. For example, the owner of a lot may not hold complete possession rights, i.e., other people can hold the right to have access to it, to cut trees, or to dig for oil on it (consequently, a conditioned right). This property rights

division may be assessed when various parties consequently obtain different benefits/ losses.

"Private property draws and reflects man's boundaries in terms of freedom of action within society. Property is a praxeological category; it is related to human action, to the deliberately created goods to serve man's needs. The property right is the source of a whole system of rules and principles indispensable for setting out the ethics and legitimacy of human action in society; this right is the only means that can provide the fair verdict regarding social order and the institutional framework suitable for economic prosperity"(Marinescu, 2012:39). Cooperation between individuals is possible only if natural laws are encapsulated and systematized according to the general, universal principles which inexorably govern man's life in a limited-resource universe. This human action absolute conformity to the legitimate framework derives from the obvious necessity to reach a non-conflictual social order in which possession and life interest rules are already established, which enables the resolution of potential conflicts by *the supremacy of law*." A well-defined and implemented property right *"entitles the owner to claim all the advantages that the use of a good could generate on the one hand and burdens him with all the disadvanges resulted from its use, on the other"* (Von Mises apud Doti *et al*, 1991: 85). A system in which property rights are well defined and secure enables individuals to efficiently allocate resources and provides the necessary motivation to efficiently manage the source of means likely to be capitalized at a certain moment.

Figure 1 Property rights values and level of development in ECE member states, 2015



(Source: Author's calculations)

The above figure illustrates the values registered by ECE member states in 2015. The diagram outlines the fact that protecting and respecting property rights has proved of paramount importance in maintaining a high level of development. Figure 1 suggests that the countries in which the Private Property Index values are higher and the presence of the state is less noticeable; have registered a higher rate of development. While in countries such as Czech Republic and Slovenia, the Private Property Index reaches the highest levels; in Romania and Bulgaria it registers the lowest levels among the analyzed countries.

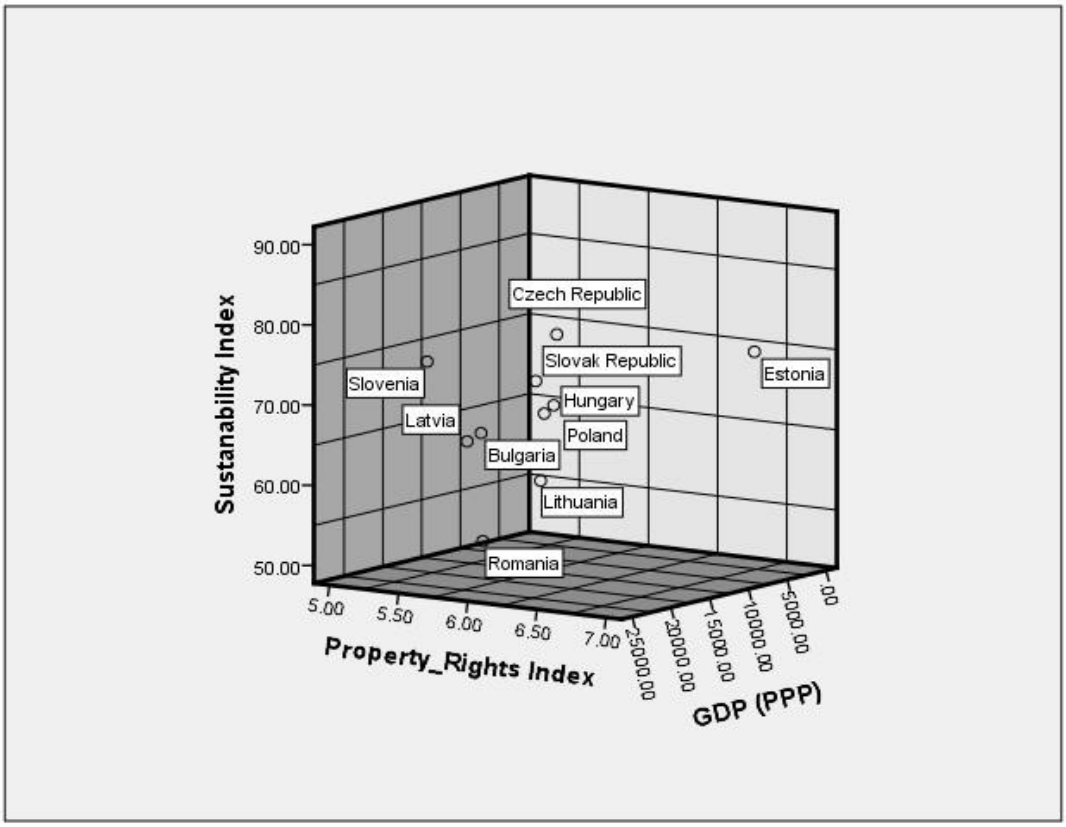
Private property importance is also essential in the area of environmental economy. Some arguments refer to the fact that:

First of all, private property implies the widest range of knowledge necessary to solve the problem of scarce resource. The most efficient allocation of resources and individual plans' coordination is achieved through the market. Under these circumstances, "the owners possess both the information they need to efficiently allocate resources and the necessary motivation to improve resource management"(Soto, 2011:158). Consumers, "who must pay for the natural resources, take advantage from the information in their price and can thus efficiently allocate their income in accordance to the value scale they consider most adequate and which is expressed in every choice" (Soto, 2011:158).

The improvement in knowledge and innovation provides a vital impulse to economic progress. Actually, the major difference between the modern man and the first hunters is the amount of knowledge we possess in relation to the way resources can be turned into desired goods. Our ancestors virtually possessed the resources existing nowadays. However, the superior knowledge we possess today enables us to obtain a considerably greater number of outputs (per capita) from existing resources. No elite or individual group holds complete knowledge. Brilliant ideas most often arise from unexpected sources. By reflecting various combinations of creative talent, ideas and market perceptions, private property and economic freedom allow a great variety of individuals to bring forth new information contributing to production processes (Gwartney, 1985:43).

Secondly, private property does not discourage the preservation of resources for future generations. Since the present market value of the property reflects future incomes, private property encourages preservation. Anytime the value of the future use of the resource is higher than at present that particular resource will be preserved for future use. For example, let us consider that an individual supposes that the price of a barrel of oil (or any other resource) will increase by 10% annually (Gwartney, 1985:43-44). When the expected price increase is higher than the interest rate, resource owners (or potential buyers who believe that the price of that resource will increase faster than the interest rate) will earn more from preserving that resource.

Figure 2. Property Rights, sustainability index and development in ECE member countries



(Source: Author's calculations)

The analysis (see Figure 2) shows that, in general, a higher income level is correlated with a higher rate of environmental sustainability. Countries like Slovenia and Czech Republic, where both the income and the *Environment Performance* Indices register the highest levels, support this idea. The 64.05 and 50.52 scores place countries such as Bulgaria and Romania on the lowest positions in ranking. This is particularly due to the weak, absent or vicious institutions. While in developed countries, the issue of decontamination, life quality improvement and resource optimization resides in transforming, adapting and modernizing, in less developed ones, recovery is essential.

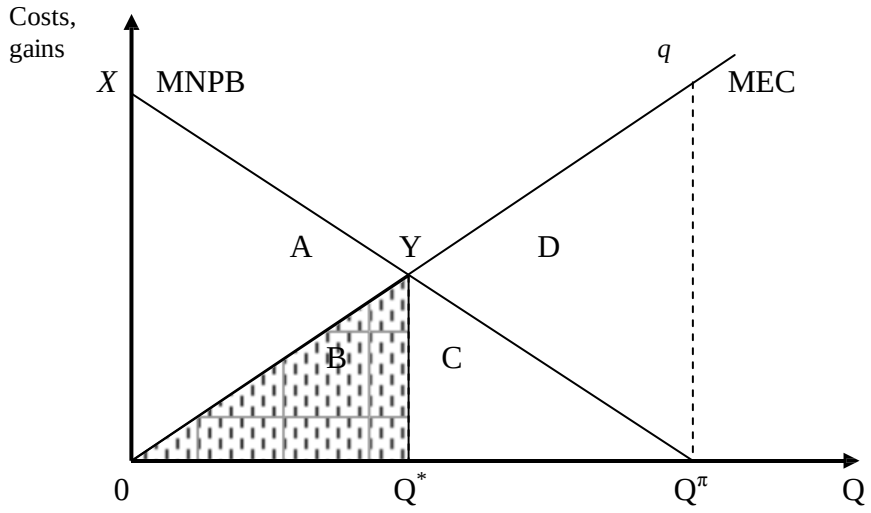
3. THE ISSUE OF EXTERNALITIES IN THE FIELD OF ENVIRONMENTAL ECONOMY

By *externality*, we understand a consequence of an action which affects a person who did not approve it by participating in a voluntary exchange. The role of property rights is *"to guide motivation towards a better internalization of external costs*

(externalities)" (Demsetz, 1967:348). "A prominent feature of the interface is the presence of externalities, which are the unaccounted for consequences for others – including future people – of decisions made by each one of us. Those consequences could be damaging to others, but as they are unaccounted for, people responsible for them aren't obliged to compensate the victims. To be sure, any one person has only a very tiny effect on the global state of affairs, but when the effects that each of us has on others are added, the sum can be substantial. The socio-environmental system is not self-correcting, implying that the "invisible hand" does not work. Eliminating externalities requires collective action, variously at local, regional, national and international scales"(Dasgupta, 2014:2). Any cost or benefit associated to social interdependence thus represents a potential externality. If the rights' transaction costs between two economic agents exceed earnings deriving from their internalizing process, an externality (either positive or negative) occurs. Air or water pollution resulted from a company's productive activity, for example, represents a negative externality; a positive externality example would be the maintenance of a loan by its owners who thus produce additional benefits for the people passing by. In this line of thought, we may conclude that „*if transaction costs following the exchange of rights between two agents exceed the gain derived from their internalization then an externality (positive or negative) appears. Thus property rights develop in order to internalize the externalities when the gains obtained through internalization exceed the costs".* (Chiriac *et al,* 2012, p.445)

In order to exemplify the situation of the internalized damage on the environment as a consequence of the polluting effect, we resort to Pearce's and Turner's works (Pearce *et al,* 1990:63).

Figure 3. The Economic Definition of the Optimum Pollution Level



(Source: Pearce D. *et al,* 1990: 63)

Figure 3 illustrates the relation between the polluter's level of activity and associated costs and benefits, respectively. The activity level of polluter Q is illustrated on the horizontal axis. The costs and benefits, expressed in monetary values, are

illustrated vertically. MNPB and MEC show the net marginal benefits, the external marginal cost, respectively, which represents the value of the additional prejudice occurring as a consequence of the pollution caused by the Q level of production. The latter increases proportionally with the output. The above-mentioned author considers that both MNPB and MEC represent marginal units; consequently, the MNPB - $x0Q^{\pi}$ area represents the total net benefits. In the same line of thought, the area drawn by MEC, represented by the $qQ^{\pi}0$ surface, illustrates the total external cost. Pearce's whole analysis relies on the assumption that both the polluter and polluted must give something up in favour of the other so as to ensure satisfaction on both sides. This means to internalize the environmental damage as a consequence of the polluting effect expressed by external marginal costs leads to the identification of four areas: A, B,C, D. Therefore: area A – represents the optimum level of the social benefit after having internalized a part of the damages on the environment; areas A and B illustrate the optimum level of the benefit provided the solution represented by the optimum level of pollution is accepted; area B – the optimum level of pollution (if pollution is reduced below this level, costs will exceed general advantages); area C – represents the private benefit annulled by internalizing environment damages; areas C+D – the non-optimum pollution level.

If we limit economic activity to Q^{*}, we notice that the X0Y triangle area is the widest „*which means that the maximum level of physical pollution corresponding to the new maximum output level represents the optimum level of pollution*" (Pearce *et al*, 1990:63). The optimum pollution level resulted from the economic activity corresponds to the 0Y Q^{*} surface. This area bears the name of *externality optimum level*.

The whole analytical work of the two authors is genuinely based on the neoclassical tradition. However, a more careful analysis weakens the explanatory force of the whole theory. Some arguments suggest that: the stress falls exclusively on balance, which implies that the information regarding the participants' functions and restrictions *is given*; the analysis context is stationary and consequently, theoretical conclusions can not be accepted as bearing a universal theoretical value; both the dimension and complexity of such phenomena show that although "environment management requires the economic support able to provide an efficient solution for scarce resources allocation and use, the neoclassical corpus faces various limitations regarding their illustration in monetary terms. Thus, the price system reveals the difficulty in measuring the qualitative aspects of welfare and the market mechanism can not actually grasp the preferences for public goods – components of the natural system" (Pearce *et al*, 1990:63); the logic of this analysis assumes that property rights are well defined from the very beginning and therefore, the externality issue is no longer justified in this context. This *apriori* assumption is contradictory because externalities are but the result of the insufficient definition of property rights.

For problems like efficient management of natural resources, pollution reduction and environmental protection to actually have a solution, we resort to the works of authors such as Coase, North, Demsetz, etc. who found that *it*, i.e. the *institution of the market*, is the most efficient „weapon". Thus, for example, the owner of a gold mine in a market economy where all the other natural resources are private property, receives from this institution all the information regarding the alternative use of this ore. By having

access to this information, he will allocate his resource the highest comparable values provided by the market. „*Whether this efficient allocation of resources is historically valid or not remains irrelevant because we should be grateful that such a constant force or tendency towards optimum allocation exists on the market"* (De Soto, 2011:159). We therefore understand that the private management of natural resources through this institution brings about a series of disadvantages in terms of: individual freedom, adaptability to market demands, diversity in terms of participants, balance of results and the highly valuable information provided by the participation in this no-zero-sum game.
The fundamentals of this reasoning prove valid only if property rights are well defined and easy to convey. It is only under such circumstances that the individual is drawn towards preservation by his own selfish interests: the allocation of a higher market value to the resource in his possession.

4. CONCLUSIONS

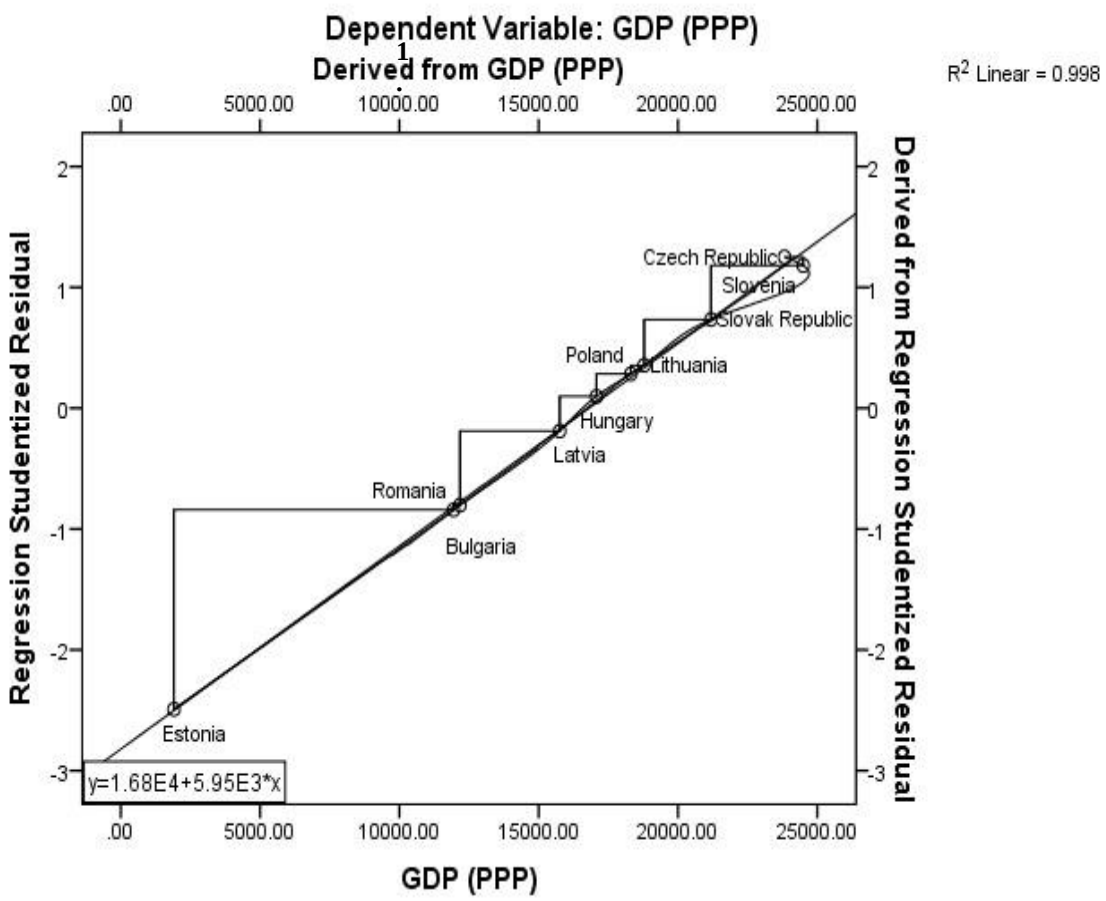
The sustainable development philosophy is based on three main pillars: economic, social and ecologic. The optimal functioning of this system fundamentally relies on the efficiency of the institutional setting, which may be synthesized as follows: a) sustainable development makes sense and may be applied only within a society endowed with powerful institutions capable to support themselves; b) the main role of the state should be to set the rules of the game, the market being the only one capable to internalize transaction costs; c) well-defined and easy to convey property rights support the development process under sustainable circumstances. The most efficient allocation of resources and correlation of individual plans is achieved through the market. In this context, owners possess both the information they need to allocate resources efficiently and the necessary motivation to improve their management.

REFERENCES

[1] Cătălin, Chiriac, Vodă Ana-Iolanda, and Constantinescu Radu. "The Limitations of Standard Economical Theory from the Perspective of Development, Sustainability and Rationality in Resource Allocation." *Ovidius University Annals, Economic Sciences Series* 12.1 (2012): 442-447.
[2] Ciupagea, C., (coord.), (2006). *Direcţii strategice ale dezvoltării durabile în România*, Institutul European din România. Paper viewed on 4th February 2014 at webpage http://strategia.ncsd.ro/docs/comentarii/3_fc.pdf.
[3] Dasgupta, P., (2011). The Ethics of Intergenerational Distribution: Reply and Response to John E. Roemer. *Environmental and Resource Economics*, Vol 39, Issue 5.
[4] De Soto J., (2011). *Eseuri de Economie politică*. Editura Universității Alexandru Ioan Cuza, Iași.
[5] Demsetz H., (1967). Toward a Theory of Property Rights. *American Economic Review*, Vol. 57, No. 2.
[6] Gwartney J., (1985). Private Property, Freedom and the Vest. *The Intercollegiate Review*, essay prepared for the conference: *The Morality of the Free Market*, 1985.
[7] Marinescu, C., (2008). Economia dezvoltării și dezvoltarea economică: de ce contează instituțiile. *Economie teoretică și aplicată*, at http://store.ectap.ro/articole/198.pdf.
[8] Marinescu, Cosmin (Coord.), Bogdan Glăvan, Gabriel Staicu, Marius Cristian Pană, Octavian

Dragomir Jora (2012).*Capitalismul Logica Libertății*, Editura Humanitas, București.
[9] Meadows D.H., Meadows D.L., Randers J., *The Limits to Growth. A Report for the Club of Rome's Project on the Predicament of Mankind*, Universe Books and Potomac Associates, New York, 1972.
[10] Mises L., (1991).Private property and the government and the impracticability of socialism. in James L. Doti si Dwight R. Lee (Eds.), *The Market Economy: A Reader*, Los Angeles: Roxbury Publishing Company, pp. 85-90.
[11] Pearce D., Turner R.K., (1990). *Economics of Natural Resources and Environment*, The John Hopkins University Press, Baltimore
[12] Pierantoni I., (2004). A few remarks on methodological aspects related to sustainable development. *Measuring sustainable development integrated economic, environmental and social frameworks*, OECD, Paris, pp. 63-91.

ANNEX 1.



(Source: Author's calculation)

THE HYPOTHESIS OF EFFICIENT CAPITAL MARKETS: THE CASE OF THE CENTRAL AND EASTERN EUROPEAN STATES

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Abstract: *This paper investigates whether institutional or regulatory changes determine changes in information efficiency within Central and Eastern European states. To test the implications of the institutional and regulatory resort to a series of tests: autocorrelation, binary cycle type, unit root, dispersions and a test report BDS for profitability but also on an auto regression model. All tests are applied to three different samples: complete sample, ante-code of governance and post-codes of governance. Our results indicate that Central and Eastern European capital markets are not informative enough in any analyzed sample. In fact, we are witnessing partial information efficiency for Slovakia for the entire sample and for the ante codes, while for the post code period Hungary, Slovakia, Romania and the Czech Republic are partly informational efficient. In addition to the samples post codes witnessing an improvement in information efficiency in the markets analyzed, but the result is a combination of several factors: changes in legislation, European integration and the recent financial crisis. Our results indicate that for Central and Eastern European Capital Markets, forecasts can be made about the price evolution of an action based on historical data.*

1. INTRODUCTION

The hypothesis of efficient EHM is one of the foundations of modern financial and portfolio management theory. Theoretically, a market is considered to be informational efficient if the price of traded instruments reflects all the information available at one time (Fama, 1970). Within an informative efficient capital market, forecasting of stock price developments is impossible. That is why, in an efficient capital market, the price formation mechanism is able to channel the resources available from financiers to efficient investments that lead to better capital allocation and faster capital market development (Nurumambi, 2012). In the case of emerging countries, information efficiency as well as informal inefficiency pose controversial issues, raising new questions about price capacities to objectively reflect the value of an asset. The characteristics and particularities of emerging countries can be both factors that improve information efficiency and inhibit it. Therefore, in the case of emerging countries, we are talking about a "partial efficiency" (Lim & Brooks, 2011) which is confirmed and challenged by empirical results, depending on the period and the methodology used (Nurumambi, 2012). In the case of Central and Eastern European countries the results are even more contradictory (Dragotă, & Țilică, 2014).

The lack of information efficiency in emerging countries can be attributed to a whole series of factors, but especially to: the different degrees of financial system development (Kim, Shamsuddin, 2008), the degree of liquidity of financial markets (Chorinda et al. 2008), and the disturbing effects of external exogenous shocks that can destabilize information efficiency in other states (Bekaert, Harvey, 1995). Therefore, the introduction of legislative and institutional changes could increase efficiency in emerging countries (Hung, 2009), because lack of an

effective monitoring and control system can inhibit information efficiency (Firmduc et al., 2013).

The purpose of this article is to examine whether regulatory and institutional changes can lead to an increase in information efficiency in emerging countries. In our opinion, the choice of the Central and Eastern European countries is all the more appropriate because these countries act on a whole range of new factors influencing the information efficiency such as the lack of a developed financial system (Pele & Voineagu, 2008) (Dragotă et al., 2009) and the recent financial crisis (Smith, 2012). Therefore, testing information efficiency in the Central and Eastern European countries can highlight the ability of investors to adapt to a new economic climate in which European integration and regulatory changes can be beneficial.

Highlighting the role played by regulatory changes in information efficiency is achieved through an extensive set of autocorrelation tests, binary cycles, unit root, dispersion ratio, and a BDS test for cost-effectiveness but also an autoregressive pattern . All tests are applied to three different samples: complete sample, ante-code of governance and post-codes of governance, in order to highlight the impact of institutional and regulatory changes on information efficiency.

Our results indicate that no analyzed capital market is informational efficient, but we see partial efficiency or partial inefficiency characteristic of all emerging countries (Lim & Brooks, 2011). Additionally, we can see that with institutional modernization in the Central and Eastern European countries we are also witnessing an improvement in information efficiency, but the result is rather a accumulation of several factors. In fact, the increase in information efficiency can be attributed both to regulatory and institutional changes and to the process of European integration as well as to the recent financial crisis. The rest of the article is organized as follows: Section 2 describes the state of knowledge, section 3 data, section 4 of the methodology, section 5 empirical results, and section 6 study findings.

2. THE STATE OF KNOWLEDGE

From a theoretical point of view, reducing information efficiency leads to an increase in the probability of predicting the evolution of a financial asset. In Fama's (1970) vision, a market is informally efficient if all market prices reflect all the amount of information at a time. Consequently, in an information-efficient market, price changes are a direct response to new market information. Because information is in a random manner in the market, asset prices fluctuate randomly as "random walk" as investors react actively to the new information available. The random evolution of financial instruments prices suggests that price developments cannot be predicted on the basis of historical information, and subsequent successive changes are independent of previous developments. Therefore, the random model assumes that asset prices will be in constant balance, while lack of randomization implies an inappropriate level of capital and risk assumed (Nurunnabi, 2012). In this context, the existence of information efficiency is a factor as direct implications on capital allocation and economic development. Generally, the random walk pattern can be written as (1):

$$P_t = \mu + P_{t-1} + \varepsilon_t \quad (1)$$

Where: P_t- price of the action at the moment; μ - the degree of change expected; P_ (t-1) - the price of the action t-1; e_t is the random standard error that has a zero average and a constant variance.

$$\begin{cases} E[\varepsilon_t] = 0, \forall t \\ Var[\varepsilon_t] = \sigma^2, \forall t \\ \varepsilon_t \text{ și } \varepsilon_{t+k} sunt\ variabile\ independente\ , \forall k \neq 0 \end{cases} \quad (2)$$

Fama (1970) classifies the information efficiency of a market according to its ability to react to the new information available in three distinct categories of information efficiency: a weak form of information efficiency, a semi-solid form and a strong form. If the weak form implies the impossibility of forecasting based on historic prices, and the semi-hard form refers both to historical prices and to all public information, in the form of strong information efficiency, asset prices fully reflect both public and private information. Consequently, the technical analysis is inefficient in the weak form while the fundamental analysis in the semi-strong form (Dragotă, et al., 2009).

2.2 Factors influencing information efficiency in emerging countries

In the case of emerging countries, information efficiency or, more precisely, the lack of information efficiency are two topics analyzed by economic literature in the context of globalization, the growth of foreign direct investment flows that make up the major emerging markets emerging markets (Nurunnabi, 2012). In general, the main factors limiting the information efficiency of emerging markets are: the different degrees of financial system development (Kim, Shamsuddin, 2008), the degree of financial market liquidity (Chorinda, et al., 2008) and the disruptive effects of some external exogenous shocks that can destabilize information efficiency in other states (Bekaert, Harvey, 1995).

In parallel with the general factors, which exert influence on information efficiency in emerging states, they are also vectors of influence depending on the specificity of each state. Some authors attribute the lack of information efficiency to the transition from the planned economy to the market economy, requiring a restructuring of the entire financial system that requires a period of modernization (Pele, Voineagu, 2008), the socio-cultural specificity of the investors a country that can encourage speculative behavior without taking into account the true value of financial assets (Dragotă, et al., 2009), the arbitrary limits imposed on foreign capital inflows that may temporarily increase information efficiency in emerging countries (Graham, (Smith, 2012), the accession of the country to an economic union such as the European Union (Borges, 2010) or in a monetary union such as the EURO zone (Urquhart, 2014).

The institutional and governance system is a pillar on which the proper functioning of capital markets and ultimately the efficiency of capital markets are based. Along with the development and upgrading of the institutional and governance system from a capital market, investors' ability to correctly evaluate their shares increases, and the number of inward transactions decreases (Firmduc, et al., 2006). In addition, the existence of a more rigid governance system leads to a more virulent and timely response to domestic transactions with stricter government systems (Firmduc, et al., 2013) while adopting a golden parachute in a company leads to a reduction in the returns obtained by the company as an adverse reaction of the market to the establishment of a protection mechanism against mergers (Bebchuk, et al., 2014). In this context, the adoption of new codes of corporate governance within emerging capital markets can be another factor contributing to increasing the functioning of capital markets (European Commission, 2009), perhaps even increasing information efficiency.

Changing the regulatory system may lead to an increase in information efficiency in a capital market, especially in the case of emerging countries. Some of the most important studies

have shown that: in the case of Turkey, the modification of the capital market regulation system in 1989 has led to an increase in the information efficiency of the Turkish market since 1991 (Antoniou, et al., 1997) the change in the Chinese banks' regulatory system has led to a reduction in information efficiency after their exclusion from the listing between 1 July 1996 and 31 December 1999 and the increase in efficiency after the readmission to the listing from 1 January 2000 to 29 March 2001 (Groenewold et al., 2004), the change in the status of B-rated companies in China on February 19, 2001 led to the informational growth of the entire capital market (Lu, et al., 2007, Fifield, Jetty, 2008, Hung, 2009).

2.3 Empirical Outcomes on Market Efficiency in Central and Eastern Europe

A whole series of controversies in the economic literature, which converge around two conflicting trends, appear around the efficient markets hypothesis. First of all, they are supporters of market efficiency, who believe that there is no systematic way of predicting market developments consistently (Fama, 1970). At the same time, they are the opponents of the hypothesis because it is contrary to economic reality, being refuted by a series of empirical tests (Summers 1986; Fama, French 1988; Lo MacKilay, 1988).

In the case of emerging capital markets, due to the economic, social and historical specifics of each state, the results of the information efficiency tests offer mixed results, depending on the methodology used, the time period and the context in which it is realized, as globalization, foreign investment as well as the process of European integration can be beneficial or disruptive vectors for informational efficiency. A detailed study on information efficiency in emerging countries is presented in Nurunnabi (2012), and for Central and Eastern European Countries (Dragotă, Ţilică, 2014) gives an overview of the main studies, methodologies and results obtained in the studies aimed at this region.

Some of the relevant findings in this direction may be: (Gilmore, McManus, 2003) states that the Czech, Hungarian and Polish capital markets between 1995 and 2000 were not effective in a weak form for weekly series based on unit root tests, dispersions, autocorrelation, ARIMA, GARCH while Grangner tests confirmed random walk. In a study on capital markets in the Czech Republic, Hungary, Poland and Russia, (Hassan, et al., 2006) noted that no country complied with the Random Chance hypothesis between December 1988 and August 2002 on the basis of ARMA, GARCH , dispersion ratio, autocorrelation and rally. In a similar study of all Baltic states between 2002-2009 (Akatan, et al., 2010), none of the analyzed indices complied with the random walk hypothesis, making it possible to make predictions based on ARMA models.

(Heininen, Puttonen, 2008) in a study on the testing of information efficiency based on weekend-type tests, the effect of January for January 1997-February 2008, notes that only Bulgaria and Slovakia respect the random walk hypothesis while the Czech Republic , Croatia, Estonia, Hungary, Latvia, Lithuania, Poland, Russia, Slovenia are not effective in poor form. Similarly (Dragotă, Ţilică, 2014) tests the informational efficiency of the Central and Eastern European markets and observes that in the case of: Bosnia Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Macedonia, Poland, Romania, Russia , Serbia, Slovakia and Slovenia, and notes that each market is effective at least once in a variety of tests: unit roots, rally tests, filter tests and the January effect. The two authors consider that the results show that only the market in Bosnia and Herzegovina is informational and the others are partially effective or partially ineffective (Lim, Brooks, 2011). Regarding the information efficiency in Romania, the results reveal that initially the Romanian capital market was not

efficient in a weak form due to the lack of liquidity and the lack of a risk-free rate to which the investors would relate (Dragotă, et al., 2004) , then the tests revealed an increase in the efficiency of information (Pele, Voineagu, 2008, Dragotă, et al., 2004) and later at least a temporary reduction in the context of the financial crisis (Dragotă, Ţilică, 2014).

The image reflected by the literature provides the necessary framework for our first hypothesis:

H_1: Capital markets in the Central and Eastern European countries are informational efficient in poor form.

Our first hypothesis takes into account his statement (Lim, Brooks, 2011) that he considers that in the case of emerging countries we are talking about a degree of information efficiency depending on time and time and on the whole we can speak of a partially or partially partial market ineffective. That is why we expect the results of our tests to provide clues to information efficiency but also to challenge it for other test categories. Since changes to the institutional and regulatory system can induce an increase in the functional efficiency of a capital market, we will alternatively test whether the adoption of corporate governance codes along with other external factors has allowed information growth in a capital market. In this context, we deduce the second hypothesis of our study:

H_1: Regulatory changes determine the growth of capital markets.

The alternative to our second hypothesis is that despite the adoption of codes of corporate governance, information efficiency does not change significantly post code adoption due to general external factors or due to the specificities of each socio-economic climate in emerging countries.

3. DATA

The data used in this analysis is the daily values of the main stock indices in Bulgaria, the Czech Republic, Poland, Romania, Slovakia and Hungary. The analyzed indices are the most representative for each of the capital markets in the respective countries: SOFIX for Bulgaria, PX for the Czech Republic, TIG for Poland, BET - Romania, SAX-Slovakia and BUX for Hungary. The analysis period for each index is the first day of calculating (trading) the index by 30 October 2015. The source of the data used is represented by the analyzed capital markets sites.

Table 1. Moments of adoption of codes of governance in the analyzed countries

Country	Index	Date of adoption	Code Nr. Last	Last Modified Code Changes
Bulgaria	SOFIX	10.10.2007	2	15.02.2012
Czech Republic	PX	09.09.2002	2	31.12.2004
Poland	WIG	15.06.2002	5	21.11.2012
Romania	BET	22.01.2009	2	11.09.2015
Slovakia	SAX	16.09.2002	2	21.05.2008
Hungary	BUX	26.08.2004	4	12.11.2012

Source: Authorized processing based on ECGI data and the European Commission (2009)

With increasing global competition for funding sources, emerging markets are experiencing the need to improve capital market functionality. Therefore, adopting codes of

governance within regulated markets appears to be a natural reaction to the new economic context and, in the case of the States under consideration, this process implied the adoption of different codes of governance in different stages. In table no. 1 shows the date on which the first corporate governance code was developed in each analyzed country, the number of changes made but also the date when the change was made. It can be observed that each analyzed state chose different moments from the adoption of a code of governance and the process involved at least one change in each state. In terms of time, Poland was the first country to develop the first corporate governance code on 15.06.2002, while in Romania the first code of governance emerged within the capital markets according to generally accepted criteria was 22.01.2009 (European Commission, 2009).

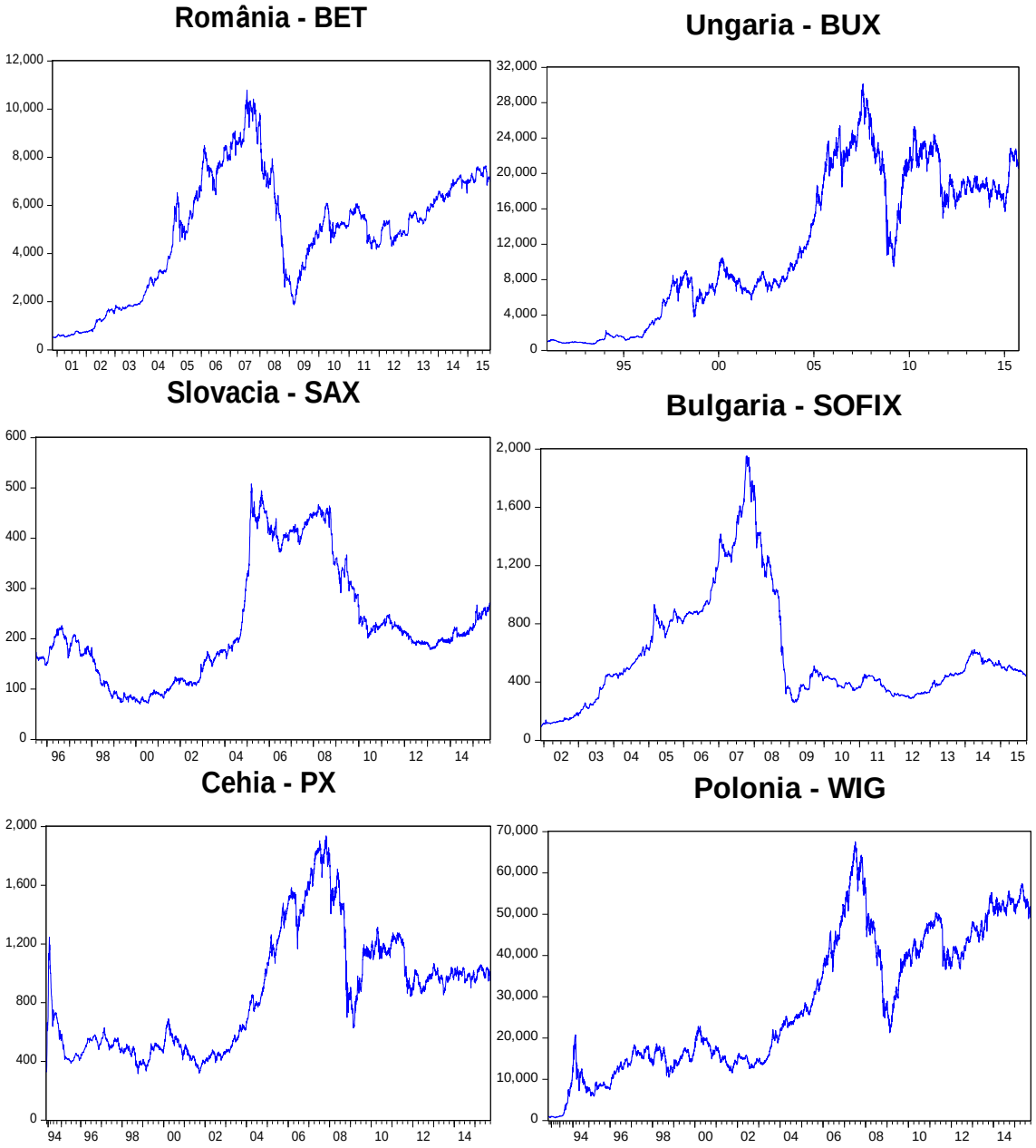
Table 2. Structure of the analyzed sample

Country	Index	Initial date	Number of records	Last day
Panel A: all period				
Bulgaria	SOFIX	26.11.2001	3408	30.09.2015
Czech	PX	07.09.1993	5372	30.09.2015
Poland	WIG	16.04.1991	5669	30.09.2015
Romania	BET	31.10.2000	3706	30.09.2015
Slovakia	SAX	30.07.1995	4956	30.09.2015
Hungary	BUX	02.01.1991	6182	30.09.2015
Panel B: before Governance Code				
Bulgaria	SOFIX	26.11.2001	1377	10.10.2007
Czech	PX	07.09.1993	2092	09.09.2002
Poland	WIG	16.04.1991	2335	15.06.2002
Romania	BET	31.10.2000	2018	22.01.2009
Slovakia	SAX	30.07.1995	1748	16.09.2002
Hungary	BUX	02.01.1991	3365	26.08.2004
Panel C: after Governance Code				
Bulgaria	SOFIX	10.10.2007	2030	30.09.2015
Czech	PX	09.09.2002	3279	30.09.2015
Poland	WIG	15.06.2002	3333	30.09.2015
Romania	BET	22.01.2009	1687	30.09.2015
Slovakia	SAX	16.09.2002	3207	30.09.2015
Hungary	BUX	26.08.2004	2816	30.09.2015

Source: Author calculations

The alternative purpose of our analysis is to observe whether there is an ante and post-adoption of a code of governance in accordance with table no. 2 where the analysis periods used for each of the three different samples are presented in detail: Panel A full sample Panel B Before the Code of Governance and Panel C post Codes of Governance. The evolution of the indices analyzed for the whole period of analysis reveals that the 2000-2008 period represented an upward trend for all analyzed countries, registering the highest values of the indicators at that time. Of all the analyzed capital markets, only Poland, Hungary and Romania tend to the values obtained before the crisis, while in Bulgaria and the Czech Republic the values of the analyzed indices are well below the level previously achieved in the peak period at the end of 2008.

Figure 1. Evolution of Stock Market Indices in the analyzed period



Source: Author's processing

Testing the efficiency of capital markets is based on the daily returns of stock indices that are calculated using the natural logarithm according to the formula:

$$R_t = \ln\left(\frac{P_t}{P_{t-1}}\right) \qquad (2)$$

Where: R_t - the Price Index of the Index;
P_t and P_ (t-1) - index prices at time t and $t-1$.

Table 3 Statistical Description of Variables

Index	BET	BUX	PX	SAX	SOFIX	WIG

Panel A: all period						
N	3706	6182	5372	4956	3408	5669
Medie	0,000696	0,000492	0,000198	0,000085	0,000449	0,000689
Mediană	0,000526	0,000461	0,000315	0,000000	0,000502	0,000577
Maxim	0,145765	0,136157	0,153905	0,118803	0,083878	0,147831
Minim	-0,119018	-0,180331	-0,161855	-0,148101	-0,113600	-0,113472
Abaterea st.	0,016143	0,016496	0,014598	0,012793	0,013445	0,018686
Boltire	-0,176603	-0,506104	0,293763	-0,745045	-0,453438	-0,064271
Asimetrie	12,57549	14,29324	17,57729	16,05637	11,66708	9,822255
Jarque-Bera	14177,72	33115,38	47641,25	35660,31	10783,58	10997,79
Prob.	0,000000	0,000000	0,000000	0,000000	0,000000	0,000000
Panel B: before Governance Code						
N	2018	3365	2092	1748	1377	2335
Medie	0,000767	0,000725	0,000138	-0,000270	0,002007	0,001164
Mediană	0,000588	0,000478	-0,000216	0,000000	0,001183	0,000552
Maxim	0,145765	0,136157	0,153905	0,095738	0,083878	0,147831
Minim	-0,119018	-0,180331	-0,075664	-0,114839	-0,082380	-0,113472
Abaterea st.	0,017618	0,016630	0,015037	0,014242	0,013254	0,024961
Boltire	-0,139473	-0,828724	1,457975	-0,510100	0,258261	-0,030305
Asimetrie	11,94442	17,94236	16,89379	9,818918	10,04216	6,896196
Jarque-Bera	6733,439	31690,07	17567,59	3462,384	2860,650	1477,278
Prob.	0,000000	0,000000	0,000000	0,000000	0,000000	0,000000
Panel C: after Governance Code						
N	1687	2816	3279	3207	2030	3333
Medie	0,000617	0,000213	0,000237	0,000282	-0,000610	0,000356
Mediană	0,000506	0,000425	0,000756	0,000000	-0,000033	0,000619
Maxim	0,086226	0,131769	0,123641	0,118803	0,72924	0,060834
Minim	-0,110125	-0,126489	-0,161855	-0,148101	-0,113600	-0,082888
Abaterea st.	0,014188	0,016335	0,014315	0,011930	0,013478	0,012541
Boltire	-0,262822	-0,101345	-0,566819	-0,926153	-0,915053	-0,429712
Asimetrie	12,35334	9,658161	18,05479	21,95580	12,58499	6,518928
Jarque-Bera	6168,886	5206,338	31141,19	48472,93	8054,133	1822,243
Prob.	0,000000	0,000000	0,000000	0,000000	0,000000	0,000000

Source: Author calculations

The statistical description of the variables used in the analysis is shown in table no. 3. In the case of the entire sample of the average profitability, all six analyzed capital markets are positive and the shape of the curve described by the profitability of the analyzed indices is leptokurtic with left asymmetry. The only index, showing a different structure in terms of the shape of the yield curve, is PX, its curve being a plasticity one. A key aspect indicated by the statistical description of the variables is that none of the analyzed samples is normally distributed according to Jarque-Bera normality tests. The lack of a normally distributed distribution of the returns of the analyzed indices can be considered a sign that markets are

informational inefficient, but not necessarily, so careful treatment of unit root and autocorrelation tests is necessary, which are very sensitive to the lack of a normal distribution.

4. METHODOLOGY

From the methodological point of view for testing, random walk theory can be used a whole series of specific statistical tests as well as a series of tests aimed at identifying the degree of profitability of buying and selling techniques based on the evolution of the markets. In addition to the two main test categories, stochastic test models such as ARMA, GARCH, EGARH as well as other derived tests can be used. Due to the high degree of difficulty in incorporating transaction costs related to the buying and selling techniques, respectively the predictive character of the stochastic tests in the analysis of the information efficiency, we will use a series of specific statistical tests. The main test categories analyzed are: autocorrelation testing, a binary test (rally test), unit root testing, dispersion-based tests and the BDS test.

5. EMPIRICAL RESULTS

5.1 Results of the autocorrelation test

The first method of testing the efficiency of capital markets in the weak form is represented by autocorrelation tests for a number of 20 lags. The results obtained from the test are summarized in Table 4, the values for lag 1-5, 10 and 20 respectively are detailed. Based on the obtained results, we can say that only the Slovak capital market (SAX index) complies with the random run hypothesis over time with the rest of the capital markets not being informally efficient. In case of the sample efficiency analysis for the pre-adoption period of the codes of governance it reveals that only Slovakia presents a random run only in the case of the first lag and the 20th lag, respectively, the rest of the lagoons do not observe the random walk. Similarly, all the other markets analyzed do not respect the hypothesis of efficient financial markets due to self-correlation. Contrary to the results obtained for the other analyzed periods, for the post-code governance period, the informational efficiency of the analyzed markets is changing for Romania (BET), which becomes informational efficient on the basis of autocorrelation tests. However, it can be noticed that in the case of Slovakia (SAX), the information efficiency is no longer confirmed for the post-governance period, the market becoming inefficient in poor form. The analysis of the statistical coefficients of the Q-statistical Ljung-Box test shows contradictory developments between the ante and post code of corporate governance, with a reduction in the degree of self-correlation in Romania, Hungary, the Czech Republic and Poland, while for Slovakia and Bulgaria the degree of autocorrelation for the post code period.

5.2 Results of binary cycle tests

In the case of series that are not normally distributed as for the analyzed returns, the binary (or rally) type tests shown in table no. 6 are considered more appropriate than autocorrelation tests. The results of the rally type tests on the whole sample show that based on a 90% probability, the capital market in Slovakia exemplified by the SAX index is the only one that is informally efficient because the estimates of the Z function indicate the impossibility of forecasting based on historical data through binary cycle tests. In the case of Romania, Hungary, the Czech Republic, Bulgaria and Poland, they are informally inefficient. Repeating the analysis for the ante-codes of governance indicates a 1% assumed risk that no index respects information

efficiency, even if the sign of the Z function for SAX is positive but insignificantly different from zero.

Table 5 Results of autocorrelation test

Lag	BET			BUX			PX			SAX			SOFIX			WIG		
	ACF	Q-Stat	Prob.	ACF	Q-Stat	Prob.	ACF	Q-Stat	Prob.	ACF	Q-Stat	Prob.	ACF	Q-Stat	Prob.	ACF	Q-Stat	Prob.
Panel A: All period																		
1	0,104	40,454	0,000	0,084	43,516	0,000	0,181	175,61	0,000	-0,040	7,9532	0,005	0,131	58,692	0,000	0,246	342,33	0,000
2	-0,022	42,324	0,000	-0,007	43,803	0,000	0,052	190,36	0,000	-0,009	8,3215	0,016	0,119	106,74	0,000	-0,008	342,67	0,000
3	-0,015	43,121	0,000	-0,036	51,863	0,000	0,036	197,25	0,000	-0,003	8,3768	0,039	0,046	114,07	0,000	0,017	344,30	0,000
4	0,008	43,350	0,000	0,040	61,636	0,000	0,060	216,51	0,000	0,008	8,7045	0,069	0,084	138,29	0,000	0,046	356,39	0,000
5	0,012	43,855	0,000	0,009	62,192	0,000	0,021	218,85	0,000	0,005	8,8362	0,116	-0,003	138,32	0,000	0,025	359,89	0,000
10	0,019	56,964	0,000	0,050	100,22	0,000	0,047	232,19	0,000	0,024	24,024	0,008	0,053	168,75	0,000	0,017	376,32	0,000
20	0,019	93,716	0,000	-0,014	121,27	0,000	0,005	336,73	0,000	-0,023	33,957	0,026	-0,010	258,79	0,000	0,006	398,47	0,000
Panel B: before Governance Code																		
1	0,140	39,592	0,000	0,103	35,547	0,000	0,352	259,58	0,000	-0,019	0,6410	0,423	0,111	17,082	0,000	0,303	214,31	0,000
2	-0,027	41,080	0,000	0,040	40,926	0,000	0,227	367,48	0,000	-0,069	8,8947	0,012	0,092	28,749	0,000	-0,002	214,31	0,000
3	-0,001	41,084	0,000	-0,035	45,117	0,000	0,151	415,51	0,000	0,014	9,2389	0,026	-0,016	29,107	0,000	0,015	214,85	0,000
4	-0,006	41,163	0,000	0,018	46,164	0,000	0,099	436,14	0,000	0,038	11,713	0,020	0,035	30,841	0,000	0,061	223,49	0,000
5	0,006	41,225	0,000	-0,009	46,457	0,000	-0,008	436,26	0,000	0,003	11,725	0,039	-0,050	34,289	0,000	0,031	225,69	0,000
10	0,002	46,666	0,000	0,080	81,909	0,000	0,080	451,48	0,000	-0,002	21,363	0,019	-0,000	41,149	0,000	0,017	238,68	0,000
20	0,044	78,130	0,000	-0,008	117,33	0,000	0,046	613,48	0,000	-0,033	26,503	0,150	-0,042	57,683	0,000	0,018	254,32	0,000

Panel C: after Governance Code																		
1	0,036	2,2469	0,134	0,060	10,160	0,001	0,060	11,957	0,000	-0,057	10,468	0,001	0,131	34,813	0,000	0,086	24,714	0,000
2	-0,023	3,1063	0,212	-0,065	22,206	0,000	-0,071	28,344	0,000	0,037	14,903	0,001	0,122	65,307	0,000	-0,026	26,955	0,000
3	-0,049	7,1574	0,067	-0,038	26,212	0,000	-0,046	35,257	0,000	-0,018	15,899	0,001	0,073	76,027	0,000	0,020	28,226	0,000
4	0,031	8,8370	0,065	0,066	38,643	0,000	0,033	38,748	0,000	-0,016	16,684	0,002	0,103	97,516	0,000	0,004	28,267	0,000
5	0,021	9,6005	0,087	0,032	41,570	0,000	0,041	44,281	0,000	0,007	16,823	0,005	0,013	97,874	0,000	0,008	28,460	0,000
10	0,050	32,731	0,000	0,012	66,588	0,000	0,025	48,044	0,000	0,044	29,303	0,001	0,076	129,30	0,000	0,016	31,306	0,001
20	-0,045	48,200	0,000	-0,021	84,601	0,000	-0,022	79,200	0,000	-0,016	38,264	0,008	0,003	223,86	0,000	-0,030	42,421	0,002

Source: Author calculations

The results for post code codes of governance show a clear change in the indices and the analyzed capital markets. Based on the SAX-Slovakia estimates, it indicates a random run for a 95% risk, while WIG - Poland indicates a random move, but the Z function is insignificantly different from zero. In the case of the other analyzed markets it is observed that Romania and Bulgaria do not observe the random move, and for Hungary and the Czech Republic, the coefficient is insignificantly different from zero, rejecting the information efficiency. Overall, we can see that in the case of post code samples of governance we are seeing an improvement of the information efficiency for all the indices analyzed in relation to the ante-codes period. Because none of the analyzed distributions is normally distributed, the results of the rally tests are more enlightening than the autocorrelation tests mentioned above.

Table 6. Test results of "rally"

Coefficient	BET	BUX	PX	SAX	SOFIX	WIG
Panel A: All period						
Test value	3706	6182	5372	4956	3408	5669
Returns < median	1853	3091	2686	2048	1704	2834
Returns > median	1853	3091	2686	2908	1704	2835
Nr. teste Real	1681	2922	2438	2468	1553	2716
Z-Statistic	-5,684	-4,325	-6,795	1,864	-5,208	-3,175
Prob.	0,000***	0,000***	0,000**	0,062*	0,000***	0,002***
Panel B: before Governance Code						
Test value	2018	3365	2092	1748	1377	2335
Returns < median	1009	1682	1046	828	688	1167
Returns > median	1009	1683	1046	920	689	1168
Nr. teste Real	891	1517	826	888	624	1009

Z-Statistic	-5,299	-5,741	-9,666	0,740	-3,532	-6,603
Prob.	0,000***	0,000***	0,000***	0,459	0,000***	0,000***
Panel C: after Governance Code						
Test value	1687	2816	3279	3207	2030	3333
Returns < median	843	1408	1639	1220	1015	1666
Returns > median	844	1408	1640	1987	1015	1667
Nr. teste Real	787	1400	1619	1580	930	1698
Z-Statistic	-2,801	-0,339	-0,751	2,518	-3,818	1,057
Prob.	0,005***	0,734	0,453	0,012**	0,000***	0,291
Note: *, **, *** is statistically significant for 1%, 5% and respectively 10%						

Source: Author calculations

The results of unit root tests

In unit root testing, we used the ADF test, which requires comparison of the results by testing with the results in a critical value table, corresponding to the number of observations. If ADF test values are higher than the appropriate critical values then the random run hypothesis is rejected. The test results ADF pattern of constant trend and a maximum of 20 lags presented in Table 7 indicates that all pointers In the analysis unit root, stationary, so the hypothesis random walk is rejected for all the countries analyzed, regardless of the period analysis: complete sample, ante-codes, post-codes. ADF test reveals a potential improvement not being present mixed results ante codes are indices that increase their efficiency and BUX and SOFIX and indices that reduce their effectiveness as BET, PX, SAX or TIG. However the lack of a normal distribution for samples can induce errors in test results obtained under ADF, so one interpretation must be reserved as ADF test results may reject incorrectly random walk in certain circumstances.

Table 7. Results of unit root tests

TEST ADF	Panel A: All period			Panel B: before Governance Code			Panel C: after Governance Code	
	Critical Values 1% = -3,4328; 5% = 2,8625; 10% = -2,5673			Critical Values 1% = -3,4328; 5% = 2,8625; 10% = -2,5673			Critical Values 1% = -3,4328; 5% = 2,8625; 10% = -2,5673	
	T-statistic	Prob.		T-statistic	Prob.		T-statistic	Prob.
BET	-54,7926	0,0000		-38,8513	0,0000		-39,6681	0,0000
BUX	-72,2145	0,0001		-52,2195	0,0001		-38,9525	0,0000
PX	-61,0344	0,0001		-31,6286	0,0000		-42,2566	0,0000
SAX	-73,2608	0,0001		-32,0131	0,0000		-59,9083	0,0001
SOFIX	-24,3959	0,0000		-22,1746	0,0000		-18,1235	0,0000
WIG	-33,9678	0,0000		-31,5452	0,0000		-52.8985	0,0001

Source: Author calculations

Test results based on dispersion ratio

Estimates of the information efficiency of the indicators analyzed on the basis of dispersion test reports presented in table no. 8 reveals a series of outcomes in the information efficiency of the indices and the analyzed capital markets. If, for previous tests, the evolution of the SAX index indicates a general trend of randomity, results based on the dispersion ratio no longer confirm this regardless of the estimation method used. For the SAX index, the Lo and Mackinley test scores for lag periods of up to 4 days are no longer statistically significant,

whereas in case of longer periods of detention of 8, 16 or more days, the walking hypothesis is respected random. However, on the basis of both Chow-Dening CD2 significance and significance tests based on the Adams (2000) significance JS1 and JR1, respectively, indicates the rejection of the random run hypothesis for the entire sample. Overall, the obtained results no longer confirm the random run hypothesis for Slovakia for the whole analyzed sample. Noteworthy is that for the BET index, results show increased efficiency for holding periods of over 8 days, but these are challenged for all three significance tests. A result that is inconsistent with previous estimates is the JR1 rank signification test for the Czech Republic confirming information efficiency, but this is not corroborated by the other tests.
In the case of the ante-governance analysis, the partial performance of the information is weak in the case of Slovakia based on VR tests and on the basis of the Chow-Dening CD2 test but these results are contradicted by the results obtained on the basis of non-parametric tests on the JS1 signs and the ranks JR1 indicating the possibility of making forecasts based on historical data in the case of SAX.

Table 8. Test results based on dispersion ratios

Lag	Test Dispersie	BET	BUX	PX	SAX	SOFIX	WIG
Panel A: All period							
Lag 2	LoM	1,080***	1,083***	1,180***	0,959***	1,131***	1,245***
		(6,635)	(6.594)	(13,23)	(-2,821)	(7,647)	(18,47)
Lag 4	LoM	1,138**	1,113***	1,404***	0,928***	1,338***	1,368***
		(2,066)	(3,245)	(13,52)	(-2,704)	(10,54)	(14.81)
Lag 8	LoM	1,176*	1,139***	1,494***	0,924*	1,567***	1,503***
		(1,801)	(3.245)	(10,73)	(-1.786)	(11,19)	(12.82)
Lag 16	LoM	1,351***	1,323***	1,669***	1,023	1,898	1,680***
		(2,580)	(5,115)	(9.876)	(0,380)	(11,92)	(11,63)
Critical Values test	LoM	6,635***	6,594***	13,52***	2,821**	11,92***	18,47***
		(70,63)	(80,53)	(227.24)	(19,78)	(159,6)***	(367,2)
	CD2	3,513***	2,876***	4,743***	2,299**	6,226	7,865***
	JS1	5,190***	6,085***	8,580***	8,437***	9,687***	3,413***
		(49.06)	(50,73)	(88,33)	(115,8)	(95,61)	(15,66)
	JR1	6,825***	6,211)***	8,909	4,363**	10,98***	10,55***
		(65,40)	(67,62	(115,32)	(49,39)	(134,2)	(123,4)
Panel B: before Governance Code							
Lag 2	LoM	1,139***	1,102***	1,351***	0,980	1,110***	1,302***
		(6,212)	(5,958)	(16,05)	(-0,805)	(4,100)	(14,60)
Lag 4	LoM	1,178**	1,190***	1,995***	0,906**	1,248***	1,457***
		(2,031)	(5,053)	(20,77)	(-2,095)	(4,929)	(11,82)
Lag 8	LoM	1,237*	1,237***	2,199***	0,920	1,299***	1,625***
		(1,854)	(4,088)	(16,24)	(-1,129)	(3,757)	(10,21)
Lag 16	LoM	1,476***	1,550***	2,519)***	1,004	1,238***	1,841***
		(2,663)	(6,419)	(13,98	(0,041)	(2,011)	(9,242)
Critical Values test	LoM	6,212***	6,419***	20,77***	2,095	4,929***	14,60***
		(56.31)	(93,60)	(471,41)	(11,51)	(27,21)	(228,9)
	CD2	3,535***	3,383***	6,755***	1,732	3,075***	7,270***
	JS1	4,452***	8,115***	11,62***	2,745**	6,768***	6,394***
		(33,55)	(80,86)	(164,10)	(16,40)	(49,25)	(44,38)
	JR1	6,407***	8,444***	11,74***	2,631**	7,201***	11,27***

		(54,12)	(102,58)	(190,88)	(19.15)	(58,14)	(145,8)
Panel C: after Governance Code							
Lag 2	LoM	1,031	1,059***	1,060***	0,942***	1,130***	1,085***
		(1,306)	(3,181)	(3,448)	(-3.234)	(5,892)	(4,960)
Lag 4	LoM	0,995	1,013	0,987	0,942*	1,354***	1,112***
		(-0,087)	(0,334)	(-0,318)	(-1,738)	(8,545)	(3,465)
Lag 8	LoM	1,013	1,010	0,997	0,922	1,641***	1,150**
		(0,169)	(0.172)	(-0,038)	(-1,484)	(9,770)	(2,939)
Lag 16	LoM	1,142	1,032	1,068	1,026	2,120***	1,188***
		(0,238)	(0,731)	(0,791)	(0,346)	(11,46)	(2,469)
Critical Values test	LoM	1,306	3,181***	3,448***	3,234***	11,46***	4,960***
		(9,230)	(19,80)	(35,18)	(25,89)	(140,3)	(26,71)
	CD2	0,804	1,622	1,293	2,445	5,473***	3,897***
	JS1	2,751***	0,584	1,692	8,313***	6,717***	1,740
		(16.79)	(0,869)	(5,054)	(113,1)	(46,63)	(4,471)
	JR1	2,623***	1,651	2,317**	4,676***	7,896***	2,438**
		(10,74)	(6,750)	(14,60)	(37,25)	(68,82)	(9,700)

Source: Author calculations

For the other markets analyzed, the information efficiency hypothesis is rejected on the basis of all the tests performed, so it is possible to make forecasts on the evolution of share prices based on historical data. The analysis of information efficiency post-codes of governance indicates a change in the degree of information efficiency of the analyzed markets. In Slovakia, similarly to the ante-code period, the results of observation of the random walk in the VR tests or the Chow-Dening CD2 test are observed, while the results of the non-parametric tests on the JS1 and JR1 marks invalidate the information efficiency. Similarly for Romania - BET, VR estimates or the Chow-Dening CD2 test confirm the random run hypothesis while the JS1 and JR1 mark tests invalidate random walk. As far as Hungary is concerned, the results attest to informational efficiency in poor form for all tests, less VR tests with a maximum holding period of 2 days. Similarly, the Czech Republic - PX is informally efficient according to all tests less the significance test based on rankings, which may indicate the presence of heteroscedasticity. The information efficiency in Poland is only confirmed by a single JS1 significance test which is a confirmation of the high degree of autocorrelation previously observed for the TIG index.

Mutations in the case of information efficiency following governance codes reveal a possible link between changing the regulatory system and market efficiency, but this should not necessarily be attributed to this issue, being a cumulative effect of a series of factors such as : European integration, joining the euro area (Slovakia only), accelerating globalization and increasing the volume of foreign direct investment, including the disruptive effects of the recent financial crisis.

5.4 Result of BDS tests

The effectiveness of the BDS test in detecting the presence of a random-action effect may provide a new insight into the financial efficiency of a financial instrument as the BDS test proved more effective in detecting self-correlation within a series of returns. The results of the BDS on Profitability test presented in Table 9 show that none of the analyzed capital markets is informative enough for both the whole sample and the ante and post codes of governance. Consequently, in the capital markets analyzed in the three different samples, they were either marked by chaos phenomena or an indication of a possible adaptive information efficiency

hypothesis. In the case of the tests performed on the residues of the AR (n) type autoregressive models in Table 10, it rejects the information efficiency hypothesis for all analyzed capital markets. On the other hand, it can be noticed that in all the markets with less Bulgaria, the post-code rates of governance the degree of autocorrelation is much lower, which again indicates an increase in the degree of compliance of the evolution of the analyzed indices against a random-type model. In spite of the "improvement" of post code information efficiency, highlighted by all our results, we do not consider our result to be a defining one, because at the same time a whole series of other related phenomena have been manifested that could increase information efficiency: European integration, the recent economic crisis and changes in institutional and regulatory bills. The results obtained are in fact the cumulative effect of several factors.

Table 9. Results of the BDS for the return on equity

Dimension	BET	BUX	PX	SAX	SOFIX	WIG
Panel A: All period						
m=2	0,037***	0,025***	0,028***	0,009***	0,043***	0,042***
	(22,59)	(21,91)	(22,67)	(3,619)	(23,66)	(30,92)
m=3	0,070***	0,049***	0,056***	0,022***	0,080***	0,074***
	(26,68)	(26,08)	(28,03)	(5.584)	(27,36)	(34,63)
m=4	0,094***	0,065***	0,075***	0,031***	0,102***	0,097***
	(29,87)	(29,30)	(31,56)	(6,700)	(29,40)	(37,83)
m=5	0,108***	0,075***	0,086***	0,036***	0,114***	0,110***
	(32,79)	(32,33)	(34,79)	(7,366)	(31,49)	(41,18)
Panel B: before Governance Code						
m=2	0,036***	0,031***	0,032***	0,015***	0,039***	0,056***
	(17,31)	(18,37)	(16,13)	(7,447)	(13,42)	(26,76)
m=3	0,064***	0,057***	0,061***	0,030***	0,073***	0,099***
	(19,03)	(21,46)	(19,25)	(9,162)	(15,74)	(29,87)
m=4	0,081***	0,076***	0,083***	0,040***	0,094***	0,126***
	(20,38)	(23,73)	(21,86)	(10,33)	(16,88)	(31,88)
m=5	0,091***	0,086***	0,096***	0,045***	0,105***	0,141***
	(21,79)	(25,84)	(24,24)	(11,09)	(18,11)	(34,24)
Panel C: after Governance Code						
m=2	0,036***	0,019***	0,025***	0,015***	0.045***	0,012***
	(14,22)	(12,25)	(15,73)	(7,447)	(19,45)	(7,889)
m=3	0,073***	0,038***	0,050***	0,030***	0,083***	0,026***
	(17,93)	(14,97)	(19,81)	(9,162)	(22,46)	(10,54)
m=4	0,100***	0,052***	0,066***	0,040***	0,107***	0,038***
	(20,57)	(17,17)	(22,05)	(10,33)	(24,16)	(13,04)
m=5	0,115***	0,061***	0,075***	0,045***	0,119***	0,046***
	(22,67)	(19,24)	(23,92)	(11,09)	(25,76)	(15,19)

Source: Author calculations

Table 10. Results of the BDS test for the Ar(n)

Dimension	BET	BUX	PX	SAX	SOFIX	WIG
Panel A: All period						

m=2	0,036***	0,025***	0,026***	0,009***	0,043***	0,042***
	(21,98)	(21,89)	(21,58)	(3,619)	(23,66)	(30,92)
m=3	0,069***	0,048***	0,053***	0,022***	0,080***	0,074***
	(26,35)	(26,10)	(27,12)	(5.584)	(27,36)	(34,63)
m=4	0,092***	0,064***	0,072***	0,031***	0,102***	0,097***
	(29,40)	(29,34)	(30,87)	(6,700)	(29,40)	(37,83)
m=5	0,106***	0,074***	0,083***	0,036***	0,114***	0,110***
	(32,29)	(32,28)	(34,20)	(7,366)	(31,49)	(41,18)
AR (n)	9	10	10	1	11	7
Panel B: before Governance Code						
m=2	0,035***	0,031***	0,032***	0,015***	0,039***	0,056***
	(16,60)	(18,51)	(16,13)	(7,447)	(13,42)	(26,76)
m=3	0,063***	0,058***	0,061***	0,030***	0,073***	0,099***
	(18,81)	(21,92)	(19,25)	(9,162)	(15,74)	(29,87)
m=4	0,080***	0,077***	0,083***	0,040***	0,094***	0,126***
	(20,23)	(24,25)	(21,86)	(10,33)	(16,88)	(31,88)
m=5	0,090***	0,087***	0,096***	0,045***	0,105***	0,141***
	(21,74)	(26,30)	(24,24)	(11,09)	(18,11)	(34,24)
AR (n)	6	10	9	1	1	4
Panel C: after Governance Code						
m=2	0,035***	0,019***	0,025***	0,015***	0.045***	0,012***
	(13,78)	(12,30)	(15,73)	(7,447)	(19,45)	(7,889)
m=3	0,070***	0,037***	0,050***	0,030***	0,083***	0,026***
	(17,34)	(14,85)	(19,81)	(9,162)	(22,46)	(10,54)
m=4	0,096***	0,051***	0,066***	0,040***	0,107***	0,038***
	(19,88)	(16,94)	(22,05)	(10,33)	(24,16)	(13,04)
m=5	0,110***	0,059***	0,075***	0,045***	0,119***	0,046***
	(21,97)	(18,96)	(23,92)	(11,09)	(25,76)	(15,19)
AR (n)	7	5	5	1	11	3

Source: Author calculations

6. CONCLUSIONS AND DISCUSSIONS

The purpose of this article was to analyze information efficiency for six Central and Eastern European countries: Bulgaria, the Czech Republic, Poland, Romania, Slovakia and Hungary, based on a series of specific tests covering all available data for each of the markets analyzed between the years 1991 and September 30, 2015. The entire sample and the two additional ante and post code codes of governance pointed out the presence of informational inefficiencies in the analyzed countries. Autocorrelation tests such as rally, unit roots, dispersion ratios, and BDS test revealed the obvious autocorrelation of the yields of the analyzed indices.

Our results indicate different degrees of efficiency, depending on the country or period under review, and Table 11 gives an overview of the information efficiency of the analyzed capital markets. Based on the data in Panel A, it can be seen that Slovakia's SAX index reveals the presence of information efficiency in 2 of the eight tests, while the Czech market was informational efficient on the basis of a single test. These results reveal that Romania, Hungary,

Bulgaria and Poland are informally inefficient, considering the entire period of existence of the most significant stock market indices in that country.

For the ante-codes of governance sample, our results indicate that only the evolution of the SAX index followed a random trend based on autocorrelation tests and tests based on sign and rank dispersion ratios. Overall, the efficiency of the Slovak capital market is rejected due to the large number of unsatisfied tests. For the other capital markets, we can see that the ante-code of corporate governance has been characterized by the lack of informational efficiency in poor form. Our results are in line with other studies targeting our countries for the period 1990-2002 as (Gilmore, McManus, 2003) for the Czech Republic, Poland and Hungary or (Dragotă, et al., 2004) for Romania. Testing of information efficiency for the post-code sample of governance reveals a generalized increase in information efficiency for all analyzed capital markets. In the case of the post-code sample of governance, the evolution of the Hungarian capital market is the closest to a random move, even if it is effective only for dispersion-type tests. Significant signs of increasing information efficiency are evident in the capital markets in Romania and the Czech Republic, while for the Slovak capital market we can see a similar degree of information efficiency. Among all the analyzed countries is Bulgaria, which cannot be considered as an informational efficient in any of the tests that concern both the entire analysis period and the ante and post codes of governance.

Table 11. Summary of the obtained results

Test	Romania	Hungary	Czech	Slovakia	Bulgaria	Poland
Panel A: all period						
AC	I	I	I	E	I	I
Raliu	I	I	I	E	I	I
Răd. unitară	I	I	I	I	I	I
VR	I	I	I	I	I	I
CD	I	I	I	I	I	I
JS	I	I	I	I	I	I
JR	I	I	E	I	I	I
BDS	I	I	I	I	I	I
Număr	0	0	1	2	0	0
Rang	3	3	2	1	3	3
Panel B: before Code of Governance						
AC	I	I	I	E	I	I
Raliu	I	I	I	I	I	I
Răd. unitară	I	I	I	I	I	I
VR	I	I	I	E	I	I
CD	I	I	I	E	I	I
JS	I	I	I	I	I	I
JR	I	I	I	I	I	I
BDS	I	I	I	I	I	I
Număr	0	0	0	3	0	0
Rang	2	2	2	1	2	2

Panel C: after Code of Governance						
AC	E	I	I	I	I	I
Raliu	I	I	I	E	I	I
Răd. unitară	I	I	I	I	I	I
VR	E	E	E	E	I	I
CD	E	E	E	E	I	I
JS	I	E	E	I	I	E
JR	I	E	I	I	I	I
BDS	I	I	I	I	I	I
Număr	3	4	3	3	0	1
Rang	2	1	2	2	6	5

Source: Author calculations

Informational inefficiency in the analyzed markets highlights the possibility of forecasting the future price evolution of an action, which implies that financial analysts can anticipate the evolution of stock prices. Therefore, the degree of capital allocation efficiency is lower for Central and Eastern European countries. Even if our tests reveal an improvement in post-governance information efficiency, we can not only attribute the results to the improvement of the regulatory system because the results obtained are rather the cumulative effect of the European integration process, the effects of financial globalization, the increase in foreign direct investment flows in the analyzed countries as well as the destabilizing effects of the recent financial crisis. In conclusion, our results reveal rather an overall improvement in information efficiency in emerging markets than an improvement that can only be attributed to new regulations in the financial system.

References

Aktan, B. & Korsakienė, R. & Smaliukienė, R. (2010)., "Time-varying volatility modelling of Baltic stock markets", Journal of Business Economics and Management, 11(3): 511–532

Antoniou, A. & Ergul, N. & Holmes, P. (1997), "Market efficiency, thin trading and non-linear behaviour: evidence from an emerging market", European Financial Management, 3: 175–190

Belaire-Franch, J. a& Contreras, D. (2004), "Ranks and signs based multiple variance ratio tests", Working Paper, University of Valencia, Valencia

Bebchuk, L. & Cohen, A. & Wang, C. (2014), "Golden Parachutes and the Wealth of Shareholders", Journal of Corporate Finance, 25: 140-154

Bekaert, G. & Harvey, C. (1995), "Time-varying world market integration", Journal of Finance, 50: 403–444

Borges, M., R., (2010), "Efficient market hypothesis in European stock markets", The European Journal of Finance, 16(7): 711-726

Brock, W. A. & Dechert, W. D. & Schieinkman, J. A. (1987) "A test for independence based on the correlation dimension", SSRI Working Paper No. 8702

Brock, W. A. & Scheinkman, J. A. & Dechert, W. D. (1996) "A test for independence based on the correlation dimension", Econometric Reviews, 15: 197–235

Comisia Europeană, "A legal and Economic Assesment of European Takeover Regulation", Marccus Partners and Centre for European Policy Studies, Bruxelles, 2012

Comisia Europeană, "Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States", Comisia Europeană, Bruxelles, 2009

Chorida, T. & Roll, R. & Subrahmanyam, A. (2008), "Liquidity and market efficiency", Journal of Financial Economics, 87: 249–268

Chow, K. & Denning, K. (1993) "A simple multiple variance ratio test", Journal of Econometrics, 58: 385–401

Dickey, D.A. & Fuller, W.A., (1981), "Distribution of the estimators for autoregressive time series with a unit root", Econometrica, 49: 1057-1072
Dragotă, V. & Mitrică, E. (2004), "Emergent capital markets' efficiency: The case of Romania", European Journal of Operations Research, 155: 353-360
Dragotă, V. & Stoian, A.& Pele, D.& Mitrică, E. & Bensafta, M. (2009), "The development of the Romanian Capital Market: Evidences on Information Efficiency", Journal of Economic Forescasting, vol.6 (2): 147-160
Dragotă, V. & Ţilică, E., V., (2014), "Market efficiency of the Post Communist East European stock markets", Central European Journal of Operations Research, vol 22 (2): 307-337
Fama E., (1970), "Efficient Capital Markets: A Review of Theory and Empirical Work", The Journal of Finance, 25 (2): 383-417
Fama E., (1991), "Efficient Capital Markets: II", The Journal of Finance, 46 (5): 1575-1617
Fame E., (1998), "Market efficiency, long-term returns, and behavioral finance", Journal of Financial Economics, 49 (3): 283-306
Fama, E.& French, K. R. (1988) "Permanent and temporary components of stock prices", Journal of Political Economy, 96(2): 246–273
Fifield, S.G.M & Jetty, J. (2008), "Further evidence on the efficiency of the Chinese stock markets: a note", Research in International Business and Finance, vol. 22: 351–361
Fidrmuc J. & Goergen M.& Renneboog L. (2006), "Insider trading, news releases and ownership concentration", Journal of Finance, 61: 2931-2973
Fidrmuc J. & Korczakb A. & Korczakb P. (2013), "Why does shareholder protection matter for abnormal returns after reported insider purchases and sales? ", Journal of Banking and Finance, Volume 37 (6): 1915-1935
Gilmore, C. G & McManus, G. M. (2003), "Random walk and efficiency tests of Central European equity markets", Managerial Finance 29(4): 42–61
Graham, M. & Peltomäki, J. & Sturludóttir, H., "Do capital controls affect stock market efficiency? Lessons from Iceland", International Review of Financial Analysis, 41: 82-88
Groenewold, N. & Wu, Y. & Tang, S.H.K.& Fan, X.M. (2004) "The Chinese Stock Market: Efficiency, Predictability and Profitability". Cheltenham: Edward Elgar.
Hassan, K. M & Haque, M. & Lawrence, S. (2006), "An empirical analysis of emerging stock markets of Europe", Quarterly Journal of Business and Economics, 45(1): 31–52
Heininen P. & Puttonen V, (2008) "Stock market efficiency in the transition economies through the lens of calendar anomalies" lucrare prezentată la: 10th EACES conference paper presentation
Hung, J.C. (2009) "Deregulation and liberalization of the Chinese stock market and the improvement of market efficiency", Quarterly Review of Economics and Finance, 49: 843–857
Kim, J. (2006), "Wild bootstrapping variance ratio tests", Economics Letters, 92: 38–43
Kim, J. H. & Shamsuddin, A. (2008), "Are Asian stockmarkets efficient? Evidence from new multiple variance ratio tests", Journal of Empirical Finance, 15: 518–532
Lim, KP & Brooks R, (2011) "The evolution of Stock Market Efficiency over time: a survey of empirical literature",Journal of Economic Surveys, 25(1): 69–108
Lo, A. W.& MacKinlay, A. C. (1988) " Stock market prices do not follow random walks: evidence from a simple specification test", Review of Financial Studies, 1(1): 41-66
Lu, C.,& Wang, K. & Chen, H. & Chong, J. (2007), "Integrating A- and B-share markets in China: the effects of regulatory policy changes on market efficiency", Review of Pacific Basin Financial Markets and Policies, vol. 10: 309–328
Ojah, K., Karemera, D., (1999), "Random walk and market efficiency tests of Latin American emerging equity markets: a revisit", The Financial Review, 34(2): 57–72
Nurunnabi M., (2012), "Testing weak-form efficiency of emerging economies: a critical review of literature", Journal of Business Economics and Management, 13(1): 167-188
Pele, D.T. & Voineagu, V. (2008), "Testing Market Efficiency via Decomposition of Stock Return. Application to Romanian Capital Market", Romanian Journal for Economic Forecasting, 5(3): 63-79
Smith, G. (2012), "The changing and relative efficiency of European emerging stock markets", European Journal of Finance, 18: 689–708
Summers, L. H. (1986). "Does the stock market rationally reflect fundamental values? ", Journal of Finance, 41(3): 591–601
Urritia J., (1995)., "Test of Random Walk and Market Efficiency for Latin American Emerging Equity Markets", Journal of Financial Research, 18: 299-309

Urquhart, A. (2014), "The Euro and European stock market efficiency", Applied Financial Economics, 24(19): 1235-1248
Wright, J., (2000), "Alternative variance-ratio tests using ranks and signs", Journal of Business and Economic Statistics, 18: 1–9

MATRIX APPROACH FOR ESTIMATING THE EFFECTIVENESS OF ECOLOGICAL BEHAVIOR

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Abstract: The change in the paradigm of the economic system and the transition from individualistic concept to the eco-social concept in company's approaching, perceived as a dynamic element of the planetary metasystem, determined a reconsideration of the ethical values and behavioral norms in the business area. Civilization and the current technology do not allow the elimination of pollution but only the limitation and partial compensation of the inherent compromises. Adopting an ***effective ecological behavior*** *by the company management, faced with a number of legal and economic* ***constraints****, depends largely, on the assumption of* ***environmental ethics*** *rules. Analyzing, based on a matrix model, the hypostases in which any company could be found, from the possible cause of disasters to an ecological maximized behavior (above the level required by rules), there is identified the possible involvement of the society or proximate community in supporting the pro-ecological attitudes and in solving the problems that it faces, in order to preserve a source of welfare (jobs, contributions to supporting the functioning of society and development).*

Keywords: *effective ecological behavior, environmental ethics management, constraints, compromise, compensation.*
JEL Classification: D12, D18, D22, G17, H55

INTRODUCTION

The paradigm of industrialism, interpreting decreasingly the phenomena and relationships through economic determinism and considering the financial profitability as

the main criterion of effectiveness of the company is currently not enough in the approach of human development issues.

The success of modern technology disjoins man from nature and the competitive processes disjoin people. Both, technology and competitiveness are progress and development creators, but both drive high entropy, causing imbalances in the eco-social system. Environmental failure derives from the methodologies applied which force towards division and subdivision into components, which approaches the disjoined parts of a complex system and ignores the priority of the whole over the elements. The eco-social holon anomia induced by the accumulation of disorders in operation, caused by the non-respect of the behavior rules concerning the environment, will generate the disintegration of the whole.

Under the pressure of the accumulation of large imbalances, of the re-assumption of responsibilities at macro and micro level, in terms of ethical standards, in the compliance of the economic system interdependence with the natural and social system, there is a period of deep changes in the perception of the company as a component of all three.

CONTENT

The actual economic theories circumscribe all the interested holders, in the area of the company's responsibilities, including community as an eco-social proximate environment, but also environmental issues extensions upstream (to the project and primary resources) and in downstream (to the end user), following the progress aspirations at the micro-level to the sustainable development at the macro level. These responsibilities are often incongruent or even contradictory (equity holders will maximize it, community wants more engaged workforce, involvement in local programs, solving environmental problems, so.), the company has the obligation to find a compromise at the highest degree of adequacy. The compromise, subsumed to ethical rules, which companies and society should adopt as a way of achieving consensus, requires mutual awareness of all interests and requirements, seeking solutions to maximize their convergence and minimize the coercion to impose of one party. Harmonious, the compromise adopted involves compensations (contraria contraris curatos), their basic function consisting in restoration, maintenance or strengthening/reinforcement of the effectiveness and balance affected by the compromise.

In relationship with the natural environment, the companies do not have additional compromise margins, any damage to it must be fully compensated by payments for remediation or rehabilitation (solutions are, however, partial and post-factum), which requires a totally connected behavior to the environment protection. The danger hanging over mankind, according to the theories of global warming and to the rapid disappearance of thousands of species, should have drastic consequences - stopping pollution, impossible to adopt with the current level of technology development without an economic collapse. We believe that even the charging for pollution is a great **compromise**, and the **compensation** obtained is far away from the real needs for

rebalancing. Under these conditions, the pro-ecological behavior of each entity is strictly necessary to limit the disaster.

"Fear of unpredictability is a given normal" (Bunget and Dumitrescu, 2010). The pro-ecological behavior is directed towards conservation and protection of the environment and of biodiversity, assuming an attitude of promoting the values of the natural environment. Speaking about pro-ecological behavior, there are taken into account three conditions: intention, voluntary initiating of the behavioral act and not require rewards. The existence of a coercive legal framework cancels the presumption of a voluntary behavior, and not pursuing any reward is also invalidated by establishing a rigorous system of rules, approvals, permits and taxes at the companies level. We believe that irrespective of the good intentions and personal attitudes formally declared as pro-ecological, we cannot talk about a generalized pro-ecological behavior, but only about an imposed ecological behavior, often unobserved. Attitude is, in its turn, the resultant of combining the affective, cognitive and co-native items, exercising target influences, motivation or evaluation of behavior. Linked to ethical values, attitudes are on certain vectors at the behavioral level. Attitude and behavior, even though they interrelate directly, cannot be considered totally overlapped or integrated. Attitude is considered by some sociologists as the probability to produce a certain behavior in a given situation, but it is possible for a certain attitude not to have behavioral effectiveness. Moreover, in social terms, it was found that the behavior change necessarily leads to the change of the corresponding attitude, while the change in attitude does not necessarily lead to change behavior (Zamfir and Vlasceanu, 1993). These breakdowns are considered necessary for the evaluation of the probability of the **effective** ecological behavior of the companies, most of them declare themselves in favor of environmental protection.

Attitude and declared behavior are not similar to effective **ecological behavior** on which we believe at least three groups of factors act, at the micro level (Figure 1):

- the legislative constraints of environment protection which determine the compulsory level of the effectiveness of ecological behavior;
- the economic constraints, specific to the evaluated entity, which often discourage ecological behavior;
- the ethical rules developed by the management in the environmental protection. We consider this group of factors that balance in the disjunctive reasoning imposed by the other two groups of factors.

The company will seek the **compromise** between the legislative constraints and the economic **constraints**. In fact, it will seek the **compromise** between the behavioral level required by the rules and their own opportunities of effectiveness.

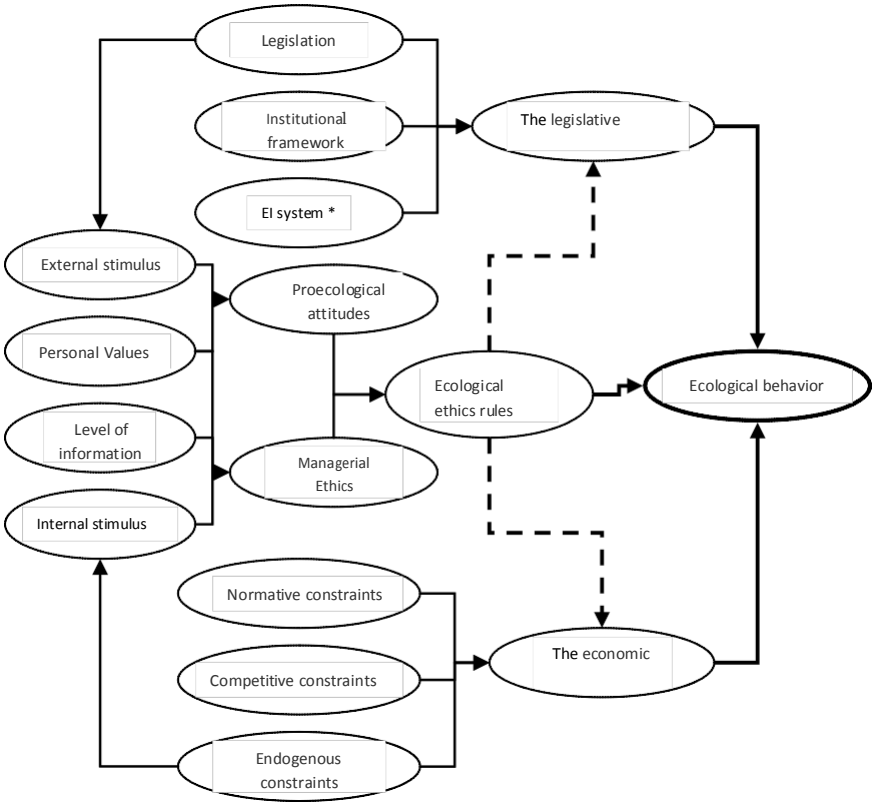

Figure 1. The system of factors which contribute to the effectiveness of ecological

* EI system = economic instruments system

The materialization of the theoretical approach is made on the example of a drugs distribution network company and other associated products with the following characteristics:

- it pollutes with the cartons/cardboard packages, metal, glass, plastic, expired drugs;
- it has a satisfactory percentage of staff with higher education, knowing the importance of the environmental protection and biodiversity;
- it has additional economic **constraints** compared with the distributors in other areas.

The considered legislative constraint factors relate to:

- Legal framework - comprising the European legislation (EC Directives and ECE) and the Romanian one which is based on Ordinance no.195/2005 completed and approved by Law no.265/2006; this legal framework is detailed by government decisions, ordinances, orders for setting rules and instructions, the whole normative system being detailed in 12 groups of issues (Rojanschi, Grigore and Ciomos, 2008). This law provides that any socio-economic activity to be evaluated in terms of environmental impact and then, depending on the characteristics, the environmental requirements are set by opinions, agreements, permits or integrated environment authorizations. We consider that the existence of about 300 acts requires the manager of the environmental issues at central level to develop a guide for information and guidance;

- The institutional framework - is very broad, including the Government of Romania (gives consent/authorization for nuclear activities), the Central Environmental Authority, National Environmental Protection Agency, regional agencies, county agencies, the National Environment Guard, etc. We believe that the involvement of such a large number of structures overlaps and dissipates responsibilities;
- The economic instruments system (IE) - refers to all environmental taxes, fines, payment of pollution licenses or responsibility, performance guarantees and penalties for the violation of the environmental protection rules (from prison to fines to 80,000 lei). We believe that the current EI system is adequate.

These reasons are used in the factors scoring system that contribute to the effectiveness of the environmental behavior.

The economic constraint factors synthesized based on the correlation relationships are grouped into:

- The legal **constraints** - there are companies for which the governmental **constraints** are much higher than for others. Such examples are the enterprises that are required for provisioning the environmental rehabilitation after closure, reflected in their prices. For drugs distributors (case chosen for illustration), he trade mark-up is limited by the central public health (for deposits: between 10% and 14%, depending of price, drugs more expensive than 300 lei with limited mark-up to 35 lei; for pharmacy: between 12% and 24% and 35 lei for drugs with prices higher than 300 lei). The regulated limitation of the trade mark-up is directly reflected in the results of the work, limiting their capacity for adaptability and effectiveness of the ecological behavior;
- The competitive **constraints** - high competitiveness on the drugs market and the existence of a large distribution network of drugs throughout the urban area, with high power price support in the auctions organized by users, make smaller distributors reduce their prices, their market is mainly focused on hospitals (the share of drugs of the total hospital expenditure is less than 10%);
- The endogenous **constraints** - refer to the own retail capacity (spaces, labor, technology, network, financial resources) and its efficiency, the ratio between the time of collection of customers and the period of payment of suppliers (causing permanent liquidity gaps and the need to borrow).

The company chosen as an example presents the following data over five years:

Table 1

Years	Turnover (CA) million lei	Cost of goods (CM) million lei	Sales to hospitals (VS) million lei	Trade mark-up (AC) million lei	Operating expenses (CO) million lei	Operating profit (PE) million lei	Operating profit (RE) %
x_i^j	x_i^a	x_i^d	x_i^b	x_i^c		y_i	
N	62.0	53.5	28.1	8.5	6.5	2.0	3.2
N+1	71.3	60.5	38.4	10.8	8.6	2.2	3.1
N+2	72.0	59.7	39.9	12.2	10.0	2.3	3.2
N+3	71.1	61.8	39.5	9.3	7.7	1.5	2.2
N+4	70.5	61.0	39.5	9.5	7.7	1.7	2.5

Σx_i^j	346.8	296.6	185.3	50.2	40.5	9.7	
$(\Sigma x_i^j)^2$	120,286.9	87,970.3	34,336.0	2,522.7	1,638.4	95.0	
$\Sigma x_i^j /5$	69.4	59.3	37.1	10.0	8.1	1.95	

It was considered as a determining economic factor of the effectiveness of the company ecological behavior the operating profit that allows it to sustain any financial expenses resulting from unfavorable exchange rate differences (the main part of products is imported) and the interest for overdraft (the delays in receiving money from hospitals - more than 180 days - and much lower chargeability of debts to suppliers, usually 30 days, requires loan). In the same time, the operating profit is a result of the action of the variables characterizing each company.

For an objective award of grades for each factor there were calculated the sense and intensities of the correlations between indicators: turnover, sales to hospitals, trade mark-up and cost of goods considered explanatory variables or factors and the operating profit, considered explained variable or result. For this purpose there were calculated the correlation coefficients for each explanatory variable, based on the formula:

$$r^j = \frac{n\left(x_i^j \times y_i\right) - \left(\sum x_i^j \times \sum y_i\right)}{\sqrt{\left[n\sum\left(x_i^j\right)^2 - \left(\sum x_i^j\right)^2\right] \times \left[n\sum y_i^2 - \left(\sum y_i\right)^2\right]}}$$

Where: i = year (from N to N+4); j = a,b,c,d (symbolizing each explanatory variable)

The necessary data for the correlation coefficient calculation are presented in Tables 1 and 2:

Table 2

	$(x_i^a)^2$	$(x_i^b)^2$	$(x_i^c)^2$	$(x_i^d)^2$	y_i^2	$x_i^a y$	$x_i^b y$	$x_i^c y$	$x_i^d y$
N	3,840.1	790.1	71.4	2,864.1	3.9	122.4	55.5	16.7	105.7
N+1	5,089.5	1,473.7	117.4	3,660.8	5.0	159.8	86.0	24.3	135.5
N+2	5,177.0	1,588.3	149.4	3,567.5	5.1	163.1	90.3	27.7	135.4
N+3	5,050.4	1,556.8	85.8	3,819.7	2.3	108.9	60.4	14.2	94.7
N+4	4,969.9	1,559.7	89.4	3,726.3	3.0	122.3	68.5	16.4	105.9
$\Sigma(x_i^j)^2$	24,126.9	6,968.6	513.4	17,638.4	19.4	676.5	360.8	99.3	577.2

The sense and intensities of the connections between the explanatory variables and the operating profit, expressed by the value and sign of rj coefficient, are:

Table 3

The correlation	The correlation coefficients r^j	Meaning
Turnover (Noted: x_i^a) and operating profit	0.69	There is a direct link, above-average intensity, any increase in turnover will lead to increase in the operating profit

The sales to hospitals (Noted: x_i^b) and operating profit	- 0.08	There is a low intensity reversed connection, between two variables, the increase in sales to hospitals shall insignificantly reduce the operating profit
Trade mark-up (Noted:x_i^c) and operating profit	0.70	It is the strongest direct link, any change of the trade mark-up will result in significant changes, in the same sense, in the operating profit
Cost of goods (Noted: x_i^d) and operating profit	- 0.26	Between the two variables there is a feedback below average, but important because it shows that the increase in cost of goods isn't recovered through prices, affecting operational profitability.

It can be concluded that the influence of endogenous factors (the sales capacity expressed by turnover) and the influence of normative **constraints** that restrict the trade mark-up are determinants, being stronger than the competitive **constraints** which requires the company to reduce prices at the auctions for hospitals.

The above analyzed company, with an average trade mark- of 2.8% during five years, is extremely vulnerable for a short-term loan, with an interest rate higher than this level, which may reverse the effect of the financial leverage.

For the companies not subject to the economic normative **constraints** other factors may occur, along with the competitive **constraints**, which may affect the results, including the kind mentioned above (credit, large-scale development etc).

The provisions related to the environmental fund contributions, for the analyzed company, are tolerable (2 lei / kg of packaging for the difference between the amount of packaging placed on the market and the amount recovered/incinerated) and are not likely to jeopardize the major operational profitability. There also are companies for which the strong emphasis punitive charges, caused by the major impact of pollution over the environment (such as heavy metals), may become a discouragement of the ecological behavior.

Factors for assuming ethical rules by the environmental management. It was considered that assuming ethical rules of environmental protection by the management depends on:

- pro-ecological attitudes based on:
  - Co-native or behavioral elements, supported by its own system of generally human, ethical, social etc. values , able to generate pro-ecological actions;
  - cognitive elements, enhanced by information from the authorities and supported by his own;
- managerial ethics, as a set of management standards, principles, legal norms, criteria for ethical conduct. A significant part of the principles and norms concerning the environmental protection are stipulated in environmental regulations, the compliance and the approach of the moral issues depend on the discernment and ethical profile of the manager. The m**anagerial** e**thics** depends on the individual's personal values but also on:
  - external stimuli, such as: increasing competition, monopoly or oligopoly, legal system instability that may induce unethical behavior, etc.;
  - internal stimuli such as the rewards system for the management, the incentives provided to individuals to make the best decisions is a fundamental problem in the economy. The incentives problem is that individuals do not bear the full

consequences of their actions (Stiligtz, Walsh, 2005); the performance requirements imposed to the management, which condition their rewards, as well as the conflicts between the management and the stakeholders may cause deviations from the law to avoid costs.

The money market and the unlimited potential of the monetary rewards shaped and changed the entire basis of the economic activity (Ionescu, 2005) profoundly affecting business ethics.

The causative factors in assuming personal standards, although grouped on the two vectors: attitude and managerial ethics are common for both, their interference generating the moral profile of the manager the ecological behavior of the company depends on. These factors are difficult to quantify and therefore any assignment of weights and notes containing a high degree of subjectivity, which could be diminished by the existence of a sociological survey on a representative sample to provide enough information to establish parameters in the causal relationships between them. In this approach we consider that the existence of personal ethic rules regarding the environmental protection, at company management level, is a significant mediator between the effects of the actions of the two groups of factors, to maximize the probability of effectiveness of the ecological behavior.

Some possible levels may be structured on a scale of assessment of the ecological behavior effectiveness:

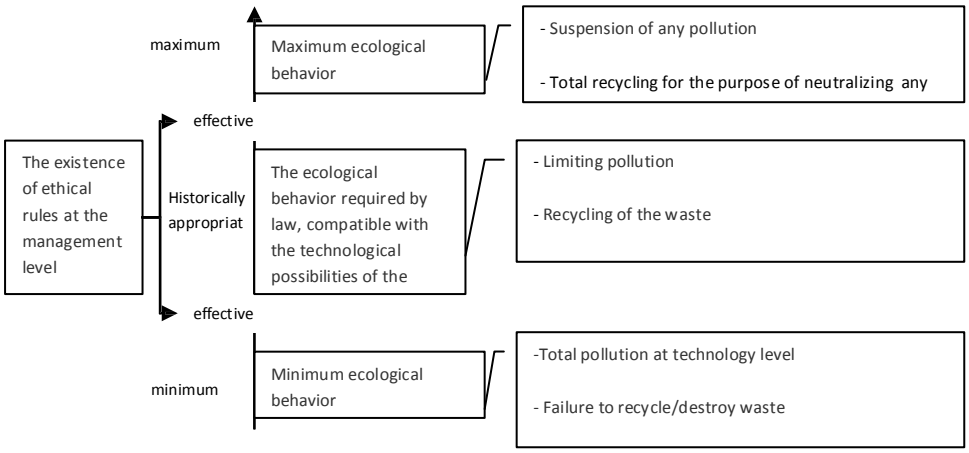

Figure 2. The **effective ecological behavior** scale

It can be seen that assuming some ethical rules by the management may place the ecological behavior of the company at a higher level than required by law and conversely, the absence thereof may cause major deviation from the rules of environmental protection.

For the positioning of the company on the environmental behavior coordinates set by the two types of **constraints** with an opposite effect, mediated by personal norms concerning the environmental protection, we consider a matrix pattern suggestive (Figure 3.). For this purpose, we consider as variables the normative **constraints** and the economic **constraints** determined by the characteristic factors identified on the two

groups. To measure and to combine them into indicators it was used a weighting system taking into account the above-mentioned and a scoring system from 1-5 (Table 4). As specified, the existence of the personal environmental and ethical standards ensures maximum effect and the non-existence thereof minimizes the possibility of achieving the effectiveness of the ecological behavior.

Table 4

	Weights	Notes	Values	Maxi - mum	Mini - mum	Meaning
1. The normative **constraints**	1		2.0	5	1	In this variable there were assigned higher weights to the institutional frame and to the economic instruments system the law enforcement depends on
1.1. The legislative framework	0.3	2	0.6	1.5	0.3	The legislative framework is adapted to current conditions (but far from the ideal suppression of pollution)
1.2. The institutional framework	0.35	2	0.7	1.75	0.35	The existence of many environmental institutions leads to responsibility dissipation and consumes funds that could be used for corrections
1.3. The economic instruments system	0.35	2	0.7	1.75	0.35	It is adapted to conditions, has strong components to avoid/ correct the pollution and sufficient coercion
2. The economic **constraints**	1		1.55	5	1	The weights of factors were assigned according with the intensity of previously calculated links
2.1. The normative **constraints**	0.45	1	0.45	2.25	0.45	Any normative constraint concerning the price means a failure of the free market operation, even if it is caused by insufficient funds to support drug use of the population
2.2. The competitive **constraints**	0.1	2	0.2	0.5	0.1	The competitive **constraints** did not have a big impact in this case
2.3. The endogenous **constraints**	0.45	2	0.9	2.25	0.45	The analyzed endogenous **constraints** revealed the company's incapacity to counteract the trade mark-up constraint through sales volumes

The matrix (Figure 3) that we propose to evaluate the effectiveness of the ecological behavior indicates the conditions in which it is possible to record deviations

from the measured level. In the same time, considering environmental protection a major duty, the future of humanity depends on and the activity of the company strictly necessary in the eco-social environment, using labor and local resources, the contributions to the budgets (central and local) and to the special funds, including the environmental fund, the whole issue has to be assumed by the community and the society. In order to solve these problems it is necessary to be allocated both the resources related to the Environment Fund, as well as other sources, including from EU funds and budgets (central and local).

The matrix of the effective ecological behavior has the following structure:

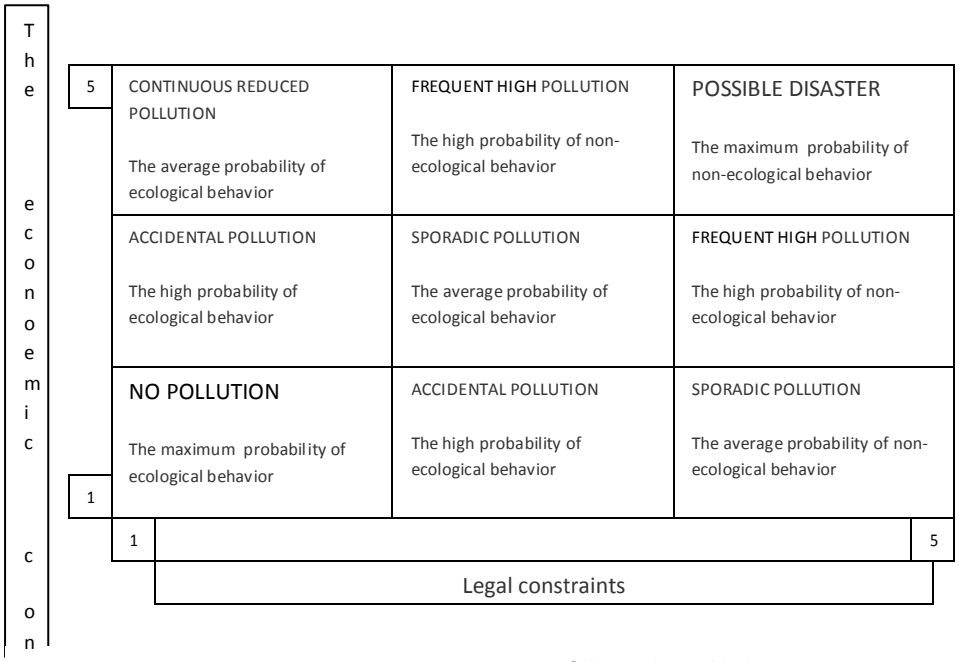

Figure 3. Strategic matrix of the ecological behavior

In this matrix the position of the company determined on the basis of the calculated values for the two variables is indicated by the gray circle, in the dial indicating the sporadic pollution.

Depending on the behavior detected in the matrix, there are identified in Table 5, without being exhausted, certain attitudes and actions of the central and local authorities needed to limit deviations from the level required by law (which, on the scale shown in figure2, are far from the maximum that would guarantee the stop of the imbalances).

Table 5

Effective ecological behavior	Authorities and proximate communities' behavior
NO POLLUTION	Control to maintain behavior.
CONTINUOUS REDUCED POLLUTION	Taking over the recycling/destroy of waste by the community. Suspension of penalties for the delayed payment of obligations justified by lack of liquidity.

	Rescheduling or changing the frequencies and the amounts of taxes for seasonal activity companies etc.
ACCIDENTAL POLLUTION	Strengthening control Additional penalties for negligence or, where appropriate, help in takeover and destruction or recycling of waste.
SPORADIC POLLUTION	Strengthening control Rescheduling of the obligations when proving lack of liquidity or additional penalties in case of negligence.
FREQUENT HIGH POLLUTION	Research financed by the authority to limit and eradicate pollution Grant for the purchase of the necessary equipment to reduce pollution. Taking over recycling / destruction by the authorities or local communities. Periodic evaluation of the status of solving the issues. Severe sanction of the negligence
POSSIBLE DISASTER	Regular strictl control National research programs to reduce pollution and waste use Grant for the purchase of the equipment necessary for permanent measure and pollution reduction. Taking over recycling / destruction by the authorities or local communities. Extremely severe punishment of negligence

3. CONCLUSIONS

The cardinality of the preservation of the environment and biodiversity, orthoscopically focuses the concerns of the whole society, materializing in the legislative area in rules designed to achieve an effectively ecological behavior, historically adapted to the technological level of the society. "Understanding an ecological behavior is a *sine qua non* condition not only for the environment but also for the brand and the business. The growth and the development of destinations as well as of the T&T global area is a duty for the responsible stakeholders - both in terms of the social, cultural, economic and natural environment as well" (State and Stanciulescu, 2012). As a political issue, the environmental protection is neither inoffensive nor irrelevant for the fundamental issues of social justice (Commoner, 1980).

The **effective ecological behavior** on the normalized level requires responsibilities equally incumbent by the companies, the community and the state in pollution reduction and in stopping the imbalances. The incongruent actions of the three grant responsible or imposing rules which cannot be fulfilled at a certain point will sine qua non create situations of deviations from the rules or will lead to the elimination from the economic life of some useful entities for the welfare of the society, resulting in entropies with negative consequences for the assembly. The right policies, focused on the community and national interests, assisting companies in assuming n ecological effective behavior, and the rigorous control of the compliance with the rules is the only way to settle such a complex problem.

The proposed matrix approach may point out to the environmental specialists the possible situations for a company and the appropriate measures.

References:

[1] Bunget, O.C., Dumitrescu A.C., (2010), „*Gestionarea crizei economico-financiare la nivelul IMM-urilor"*, Bucuresti, Vol Congresului Corpului Expertilor Contabili si Contabililor Autorizati din Romania, pp. 73-84.
[2] Zamfir, C., Vlasceanu.L., (1993), „ *Dictionar sociologic",* Bucuresti, Editura Babel, pp.121-123.
[3] Rojanschi, V., Grigore, F., Ciomos, V., (2008), „*Ghidul evaluatorului si auditorului de mediu"*, Bucuresti, Editura Economica.
[4] Stiglitz, J.E., Walsh, C.E., (2005), „*Economie"*, Editura Economica, Bucuresti, pp. 276.
[5] Ionescu, Gh. Gh., (2005), „*Cultura afacerilor. Modelul American"*, Bucuresti, Editura Economica.
[6] State, O., Stanciulescu, G., (2012), „*Posibile interpretari ale comportamentului ecologic in turism",* Bucuresti, Amfiteatru Economic, XIV (31), pp. 95-108.
[7] Commoner, B., (1980), „*Cercul care se inchide"*, Bucuresti, Editura Politica.
[8] Boardman, A., Greenberg, D., Vinning, D., Weimer, D., (2004), „*Analiza cost-beneficiu: concepte si practica"*, Chisinau, Editura Arc.
[9] Petcu, M., (2009), „*Analiza economico-financiara a intreprinderii. Probleme. Abordari. Metode. Aplicatii"*, Bucuresti, Editura Economica.
[10] Macoveanu, M., Ciubota, R., Ioan C., (2008), „*Politici si strategii de mediu"*, Iasi, Editura Ecozone.
[11] Olaru, M. et al., (2010), „*Responsible Commercial Activity of SMEs and Specific Values of Sustainable Development in Terms of the European Excellence Model"*, Amfiteatru Economic, XI (27), pp.10-26
[12] Gradinaru, G., (2010), *„Environmental Quality, Stimulating Factor Consumption in the XXI Century"*, Amfiteatru Economic, XII(28), pp. 444-453

LAW

BOOK REVIEW

Robert Schütze. (2015). An Introduction to European Law. Second Edition, Cambridge University Press, Cambridge, 321 pages, ISBN 978-1-107-11181-3.

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Robert Schütze is professor of European Law at Durham University and a constitutional scholar with a particular expertise in the law of the European Union and comparative federalism. He completed his doctorate at the European University Institute, and has been a trainee at the Legal Service of the European Commission, Germany's Permanent Representation at the EU and in the Chambers of former Advocate General Jacobs at the European Court of Justice. Schütze is the author of many publications. We underline the followings: "European Constitutional Law, "An Introduction to European Law." His monograph "From Dual to Cooperative Federalism: The Changing Structure of European Law" received the Best Book award of the University Association for Contemporary European Studies.

The book reviewed in this paper "An Introduction to European Law" represents the second edition revised and updated of the first version published in 2012 at the same Publishing House – Cambridge University Press.

This book offers a classic introduction to European law. It addresses not only to professors and students, specialists and practitioners in the area of European Union law, but also to persons or researchers form other areas of interests, who want to have am understanding about the European Union system, and the way in which it is functioning. The work has a clear structural framework, which is also described and detailed by the author in the "Introduction" of the book and trough a figure presented in this part it is realized an exhaustive description of the structure of the book. This gives the reader possibility to have an understanding about the logical structure of the book.

The book structured into three parts. These parts correspond to the three themes of which the author considers to be the main steps of evolution of the European law: the creation, the enforcement, and the substance. Each of the three parts of the work is divided in four chapters, each of them explaining a specific area of the European Law.

In the first part it is analyzed the creation of the European Union and implicitly the born of the European law. In the first chapter represents an overview of the four major Union institutions: the European Parliament, the Council, the Commission, and the European Court. In this chapter is presented in a table the evolution of the analyzed institutions according to the regulations of the treaties. The second chapter investigates how these institutions cooperate in the creation of European legislation. It as described

the decision making process and what after the Lisbon Treaty it is called the ordinary legislative procedure. There is also analyzed the role of the informal trialogoues in the decision making system. Chapters three and four look at two constitutional limits to Union legislation. Based on the principle of conferral, the Union must act within the scope of competences conferred upon it by the Member States. The scope of these competences – and their nature are discussed in the third chapter. In the last chapter of the first part it is analyses the second constitutional limit to the exercise of Union regarding the protection of human rights and the limitations of the Charter of Fundamental Rights.

The second part of the book is explaining how the European law is enforced of in the courts. The chapter five discuss about the direct effect of European law in the national legal order of the Member States. It also explained that European law establishes rights and obligations that directly affect individuals. There also made an explanation of the monist and dualist theories derivate from the international law. The 6th chapter is discussed the supremacy of the European law over the national law. European law is directly applicable in the Member States; it must be applied alongside national law by national authorities. And since European law may have direct effect, it might come into conflict with national law in a specific situation. These conflicts that can be created between the two legal order, as well as the solving of this conflict is also researched in this chapter. Chapters seven and eight look at the dual enforcement machinery within the Union legal order. Individuals will typically enforce their European rights in national courts. In order to assist these courts in the interpretation and application of European law, the Union envisages a preliminary reference procedure. The Union legal order has equally required national courts to provide effective remedies for the enforcement of European rights, and has even created a European remedy of state liability.

The third part analyses what the author consider to be "the substantive heart of European law", that is: the law governing the internal market and European competition law. The author argument its affirmation trough the explanation that from the very beginning, the central economic task of the European Union was the creation of a common market. It was provided since 1957 by signing the Treaty of Rome. It provided a common market in goods and it equally required the abolition of obstacles to the free movement of persons, services, and capital. then investigates the legality of regulatory restrictions to. The chapter 9 refers at one of these for freedoms, the free movement of goods. The restrictions regarding these rights are also presented in a subsection of the chapter. The author states that these regulatory restrictions are not, unlike fiscal duties, pecuniary charges. They simply regulate access to the national market. Chapter 10 examines the free movement of persons, which is divided in the book in two main parts free movement of workers and free movement of establishment. In the Chapters 11 and 12 it is analyzed the two pillars of European competition law: Articles 101 and 102 of the Treaty regarding the Functioning of the European Union. The former deals with anti-competitive agreements, the latter prohibits the abuse of a dominant position by an undertaking. European competition law is thereby traditionally seen as a functional complement to the internal market. It would – primarily – protect the internal market from private power.

The book "An Introduction to European Law" offers a concise and relevant documentation material for academia and students, specialists and to all interested by the European Union and who wants to become acquainted with the current reality and perspectives on the EU. Especially for practitioners the book can be very helpful trough the exhaustive list of relevant case law which it contains and which represents an interesting combination between theory and practice.

BETTER REGULATION A RENEWED IMPETUS OF THE EUROPEAN UNION

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Abstract: *The aim of the present analysis is to present in a brief and step-by-step all the particular phases of making better regulation at European Union level. The intention is to emphasize the issues and identify the goals of the renewed commitment of European Commission to simplify and make the decision-making process more efficient. Our special purpose is to draw stakeholders' attention to the European Union and Member States' better regulation system.*
Keywords: *'red tape', regulatory impact assessment, stakeholders' voice, smart regulation.*

1. INTRODUCTION

Regulatory Impact Assessment has been sustained within Britain's Government and since 2006 was replaced by better regulation. In the same time, European Union started to reduce the 'red tape' by introducing the impact assessment compulsory for major policy proposals. Stepping out from the social, environmental, financial impact analysis better regulation ensures that the policies and laws objectives are achieved at minimum costs.

All businesses (small, medium or large) and consumers are struggling with the administrative costs. However, better regulation is not about deregulating even the cost of regulation is spiralling. Better regulation is designed to cut 'red tape', improve the quality of regulation and design better laws required by both national government and international bodies such as the European Union.

Estimating the full economic costs of regulation – which would include both the administrative costs of managing regulations by Government and the (usually much larger) costs to business of complying with the regulations – is not easy. But, undoubtedly the compliance costs are huge and often hidden (Parker, 2006:4).

The aim of the present analysis is to present in a brief and simple way, step-by-step, all the particular phases of making better regulation at European Union level. The intention is to emphasize the issues and identify the goals of the renewed commitment of European Commission to simplify and make the decision-making process more efficient. Moreover, to present a first experience with implementing better regulation at EU level.

Our special purpose is to draw attention of the stakeholders to the European Union and Member States' better regulation system in two papers. At the theoretical level there is no certainty that one single component of the system functional in one country is critical to the success of the whole process in another country. Functional equivalents are

not rare. That is why based on the comparative analysis we will present in the second paper different national systems. We will conclude with a third paper in which we will do an in-depth analysis of the Romanian better regulation system, more precisely of the Regulatory Impact Assessment. For the moment, in Romania RIA is the only working part of the better regulation system.

By using law and literature analysis we will try to draw the attention of all stakeholders (national or European) on their role and impact on the national and EU policy-making process. Our leading hypothesis is that administrative simplification can take different forms and the stakeholders have to have a word to say in all of them. We cannot think a better law system without taking into account the people's interests.

2. WHY BETTER REGULATION IN OUR TIMES?

The EU is the world's third largest population after China and India and has 503 million inhabitants. Every action taken by the EU is founded on rule of law. This means they have to be according to the treaties that have been approved voluntarily and democratically by all EU member countries. The aims set out in the EU treaties are achieved by several types of legal acts. These legislative acts take the form of: Treaties establishing the European Union and governing the way it works; EU regulations, directives and decisions - with a direct or indirect effect on EU member states. Some are binding, some apply to all EU countries and others are not.

The EU is active in a wide range of policy areas. After the Treaty of Lisbon, the number of policy areas was increased and now are more than 40 topics. Among EU policies we can identify those that are specific to national states, such as: agriculture, audio-visual and media, budget, competition, consumers, culture, customs, development and cooperation, economic and monetary affairs, education, training and youth, employment and social affairs, energy, environment, food safety, justice and home affairs, taxation, trade, transport. Nevertheless, there are also those that EU develops in more than 60 years of existence, e.g.: single market, enlargement, humanitarian aid and civil protection, institutional affairs, multilingualism, EU citizenship and space.

EU better regulation covers policy-making, from its initial conception through implementation and enforcement starting with the careful application of the principle of subsidiarity. In developing policies, extensive consultation now guarantees that stakeholders' views are systematically taken into account.

Growing attention on instruments designed to reduce the administrative burdens associated with regulations, nowadays, is viewed critically. Because most of these approaches only take into consideration quite specific aspects of impacts while ignoring many others.

In order to ensure the application of such a wide range of decisions EU has adopted a system which aims to ensure that EU policy- and rule- making focus '*on the things that really do need to be done by the EU and making sure they are done well*'. 'Well' meaning in a straightforward, transparent and evidence-based manner and open to public input and scrutiny (Lein, 2015).

Better regulation system is about the whole policy cycle, from planning, implementation and evaluation to monitoring and revision. It is a more comprehensive concept than "better law-making", which refers only to the process of law-making (meaning the preparation, drafting and enactment of legal acts).

Better regulation, in contrast, is a substantially broader term, which does include the area of law-making, but is not limited to that area. Starting with Baldwin and Cave (1999) it was agreed that better regulation does not refer just to the process of policy formulation, but also to the implementation and application of policies (Konzendorf, et al., 2005:5).

The reduction of unnecessary bureaucratic burdens is considered important objectives of EU even no concrete definitions, targets or measurement procedures are mentioned. Administrative burdens are defined as "the costs imposed on businesses, when complying with information obligations stemming from government regulation. (…) An information obligation is a duty to procure or prepare information and subsequently make it available to either a public authority or a third party. It is an obligation businesses cannot decline without coming into conflict with the law. Each information obligation consists of a number of required pieces of data – or messages – that businesses have to report. (…) Information obligations do not necessarily imply that enterprises have to send information to a public authority and/or a third party. Sometimes enterprises are required to keep information in stock so that it can be sent or presented upon request" (OECD (publisher), The Standard Cost Model. A framework for defining and quantifying administrative burdens for businesses, August 2004, p. 8f).

The administrative costs are defined by EU as the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Information is to be construed in a broad sense, i.e. including costs of labelling, reporting, monitoring and assessment needed to provide the information and registration (Annex 10, SEC(2005)791).

Better regulation system is not one that is specific to EU; public authorities throughout Europe want to reduce 'red tape' and bureaucracy. A subject that has recently seen more attention at the EU level as part of better regulation is the question of reduction of administrative burdens. While the primary responsibility for this subject is considered to be with the Member States, the EU institutions must nevertheless make its contribution in co-operation with the individual States to address the problem (SEC (2005) 175/2).

The evaluation done in more than 10 years of activity showed that the potential for simplification and burden reduction is not exhausted. Further action to ensure that EU regulation is 'fit for purpose' should be taken by simplifying and/or consolidating existing legislation; and, by following up on evaluation recommendations for further regulatory burden reduction.

The results clearly show that Smart Regulation principles have been mainstreamed into policy development in all policy areas and Smart Regulation tools (impact assessment, stakeholder consultation and evaluation) are applied consistently across policy areas. The instruments of smart regulation are an integral part of the policy cycle. Today, almost all proposals by the Commission likely to have significant impacts

are accompanied by an impact assessment and increasing attention is being paid to ex-post policy evaluation. For example, Commission carried out 340 public and a number of social partner consultations between 2010-2012 in order to collect the views of citizens, social partners and other stakeholders in business and civil society and to feed their comments into the process of policy development and review (COM(2013) 685 final).

Better regulation is not about 'more' or 'less' EU legislation; nor is it about deregulating or deprioritising certain policy areas or compromising the EU. Better regulation is about reaching the policy objectives, which EU and Member States have assumed.

Over the last decade, the EU has introduced a comprehensive set of better regulation tools and procedures to ensure it. Even so, the Commission decided to go further.

3. IMPACT ASSESSMENT

Regulatory Impact Analysis (RIA) is a necessary step to assess potential or current legislative changes. RIA is a pillar of the agenda for better governance and sustainable development (Cărăuşan, 2013:189-96).

The OECD described RIA as: 'an information-based analytical approach to assess probable costs, consequences, and side effects of planned policy instruments (laws, regulations etc.) which it can be used to evaluate the real costs and consequences of policy instruments after they have been implemented.' The administrative burdens are systematically estimated in impact assessments.

At the core of RIA is an assessment of the benefits and costs expected to result from a state regulation which should be introduced when it has net benefits. RIA's main contribution to better regulation lies in improving the policy process by promoting proper consultation with affected interests before a regulation is introduced.

A properly instituted system of RIA within policy- and law-making process has the potential to raise the quality of regulation and hence reduce the regulatory costs on business and society in general (Parker, 2006:4-5).

The regulation impact assessment is an instrument permitting to determine the consequences of introducing new regulations. Therefore, RIA is done whenever an adopted decision involves an EU intervention and it is carried out before a draft regulation is written. It is not only an assessment of the proposed normative acts; it indicates that non-legislative measures are the best solution to a particular social and economic problem. RIA may become an important factor in designing a good-quality regulation and in particular, it may help to avoid the adoption of redundant laws and reduce the bureaucratic burden on enterprises (Guidelines for the Regulation Impact Assessment (RIA), Ministry of Economy, Poland, p.7).

An important part of making better laws is having a full picture of their economic, social and environmental impacts, including the international context. In addition to consulting stakeholders, the Commission has set up an integrated system for impact assessment, issued guidelines and applied them to major policy proposals.

Furthermore, an important element for improvement of the Commission's decision-making was the creation in 2006 of an Impact Assessment Board (IAB), which offered advice and support in developing a culture of impact assessment inside the Commission. After its creation, the responsibility for preparing assessments and the relevant proposals remained with the relevant departments and Commissioners. After July 2015, the IAB was replaced with the Regulatory Scrutiny Board (RSB), which has widened functions that include major retrospective evaluation and fitness checks of existing Union policies and legislation. The Board is administratively attached to the Secretariat-General.

4. FITNESS CHECKS – KEEPING THE LEGISLATION ACTUAL

In December 2012, the Commission initiated a Regulatory Fitness and Performance Programme (REFIT), which is the expression of the Commission's ongoing commitment to a simple, clear, stable and predictable regulatory framework for businesses, workers and citizens. REFIT reviews the entire stock of EU legislation, identifies burdens, inconsistencies, gaps or ineffective measures and makes the necessary proposals to follow up the findings of the review (COM(2012)746 final).

Many challenges are on the path to regulatory fitness, which require fresh thinking on horizontal approaches to regulatory fitness. These involve all EU institutions and the Member States and finding solutions will require joint efforts.

Because of the lengthy law-making process and of the stakeholders preference to regulatory stability over frequent legislative revision, there is a stringent necessity to reduce burden without amending the legislation. While administrative burden is systematically estimated in impact assessments, it is important to look at Member States administrative implementation requirements (e.g. reports; authorisations, inspections and fees) in order to reduce EU and Member States burdens. Moreover, is essential to make useful information of regulation (both EU and national) readily accessible for an increasing participation of stakeholders.

Additionally, it is important for Member States to build-up the necessary capacity to monitor implementation. The Commission should assist the transposition process for a better implementation and evaluation process. A more rigorous approach is required to assessing benefits, costs and burdens and seeking stakeholder views.

Rigorousity is a 2020 challenge because there are methodological difficulties regarding the assessment of costs and benefits and the cumulative impact of regulation. It is difficult to calculate costs and benefits of regulation fully and also to consider a variety of regulatory impacts that may reinforce, oppose or contradict each other.

Access to cost and benefit data is an issue: The actual costs/benefits entailed in implementation depend on the choices made by Member States in their transposition of EU legislation. The 2020 EU ICT and administrative challenges are to work with big data. Data collected by Member States and evaluated by EU. A starting point for future evaluation is the assessment of conformity of the transposed national legislation with EU law.

Smart Regulation is a way of working, not a one-off initiative and it has to be anchored into the Commission's work programme and strategic planning cycle (management plans, annual activity reports). The regulatory acquis screened within the REFIT programme revealed that the programming of evaluations is not yet fully harmonised with other important elements of the regulatory cycle.

All these challenges are of the EU as a whole system and not just one more competence of the Commission. The European Parliament and the Council should assess more systematically the impacts of their legislative amendments. For avoiding unintended regulatory burden which is introduced in different phases of the law-making process. In addition, Member States should abstain to add regulatory burden when implementing or applying EU regulation. Member States need to develop their own national simplification programmes to ensure that the advantages of a lighter Community regulatory environment are not cancelled out by new national rules.

5. LISTENING THE STAKEHOLDERS' VOICE

The Commission has an obligation to consult widely before proposing legislation, but, in any event, this is the best way to ensure that all interests have been taken into account. It helps to ensure good quality. By seeking views from a broad spectrum of society, it is possible to test whether policies are workable in practice.

For increasing the confidence of citizens and businesses in EU's ability to deliver, the Juncker Commission's priority is to deliver better rules for better results. Open up policy-making and listen and interact better with those who implement and benefit from EU legislation is a requirement of the future.

Better regulation should not impose policies but prepare them inclusively, based on full transparency and engagement, listening to the views of those affected by legislation so that it is easy to implement. The progress is in opening the policies to external feedback to make them transparent and accountable, whether worked well or need changes.

But, for reaching the policy's objectives better regulation must not turn into a bureaucratic exercise. Even more, it should not forget that citizens, businesses and other stakeholders judge the EU on the impacts of its actions: not just on new initiatives, but, even more importantly, on the rules already in force.

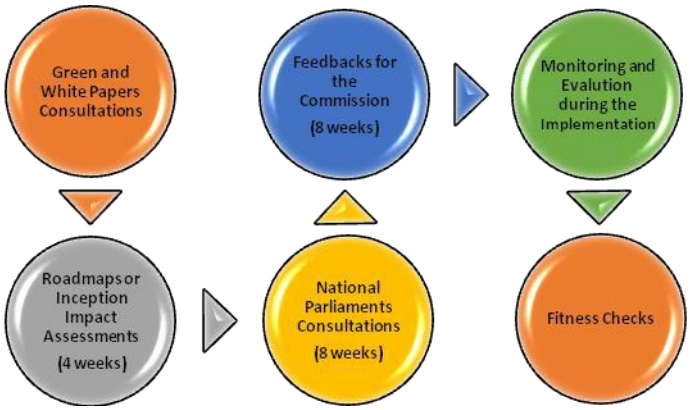
Opening up policy- and law- making can help EU to be more transparent and accountable, but it also ensures that policies and normative acts are based on the best available evidence and makes them more effective. At all levels – local, regional, national and at Union level – those affected by legislation understand best its impact and can provide the needed feedback to improve it.

Stakeholders are able to express their views over the entire lifecycle of a policy. At 'roadmaps' and 'inception impact assessments' stakeholders have the chance to provide feedback and prompt them for relevant information for twelve-weeks. A period of time in which Commission evaluate and carry out 'fitness checks' of existing legislation. In the ordinary legislative procedure after the Commission adopted a proposal, national parliaments have the opportunity to provide reasoned opinions on

subsidiarity. Also, the Commission invites citizens or stakeholders to provide feedback within eight weeks.

Besides, all stakeholders can provide feedback on acts setting out technical or specific elements. The draft texts of delegated acts will be open to the public at large for four weeks in parallel to the consultation of Member States' experts.

Figure 1: Stakeholders' voice in the EU policy - and law-making process



Assessment and evaluation should continue over a policy's lifetime to ensure it stays fit for purpose. This means that based on open public consultations after a policy has been implemented, new ways to lighten the administrative burden without reducing the policy ambition should be taken into account (COM(2015) 215 final).

6. CONCLUSION

In 2015, European Commission renewed its commitment to strengthen its impact assessment system and its simplification programme – and to communicate its better regulation efforts. However, for this goal the Commission cannot succeed alone. It, therefore, needs the European Council, the EU co-legislator and the Member States, to endorse the priorities outlined in European Union better regulation agenda.

This paper has a lesson-drawing approach that provides useful insights on the EU dimension of better regulation by capturing the main elements and the public consultation role in designing the EU rule of law.

The information and ideas presented in this paper points towards one clear lesson, that is, better regulation is a linear process in which a problem exists, information is lacking and public consultations produces information and the decision-maker can eventually decide based on the stakeholders' feedback. Most importantly, better regulation does not substitute the decision-making process, it just rearranges the system of interaction between the society, the European administration (the Commission), and the decision-makers. The conclusion is that, like many other European and national instruments, better regulation commitment should be planned in terms of evolution and institutional learning.

References

1. Baldwin, R. and Cave, M. (1999) *Understanding regulation. Theory, Strategy and Practice*. Oxford University Press.
2. Cărăușan, M.V. (2013) *The role of the Regulatory Impact Assessment in the development of a sustainable public administration*, Romanian Review of European Law (supplementary number).
3. Konzendorf, G., Peter Wordelmann, Susanne Bölck, Sylvia Veit. (2005), *Milestones on the way to Better Regulation at the European Union level*, Study for the 44th meeting of the Directors general responsible for Public Administration of the EU member states, Luxemburg.
4. Lein, B. (2015) *Better Regulation and the new guidelines for EU Impact Assessments – What's in it for human rights and development?* Retrieved from http://www.fp7-frame.eu/better-regulation-and-the-new-guidelines-for-eu-impact-assessments-whats-in-it-for-human-rights-and-development/.
5. Parker, D. (2006) *Regulatory Impact Assessment*, Management Focus, Issue 24, Winter.
6. *** Better Regulation – simply explained, 2006, European Commission.
7. *** SEC(2005)791, *Impact Assessment Guidelines* of the European Commission, Annex 10 EU common methodology for assessing administrative costs imposed by legislation Operational Manual. Retrieved from http://www.europa.eu.int/comm/secretariat_general/impact/docs_en.htm.
8. ***C(2015) 3262 final, Communication to the Commission, *Regulatory Scrutiny Board – Mission, tasks and staff*.
9. ***CEPS/University of Exeter 2012, *Regulatory Quality in the European Commission and the UK: Old questions and new findings*.
10. **COM(2006) 689 final, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *A strategic review of Better Regulation in the European Union*, {COM(2006) 690 final}, {COM(2006) 691 final}, p. 7-8.
11. ***COM(2012)746 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU Regulatory Fitness* {SWD(2012) 422 final}, {SWD(2012) 423 final}.
12. ***COM(2013) 685 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Regulatory Fitness and Performance (REFIT): Results and Next Steps*, p.3.
13. **COM(2015) 215 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Better regulation for better results - An EU agenda.*
14. ***European Court of Auditors Special report N° 3/2010, *Impact Assessments in the EU institutions: do they support decision making?*
15. ***European Parliament 2011, *Comparative study on the purpose, scope and procedures of impact assessments carried out in the Member States of the EU.*
16. **Guidelines for the Regulation Impact Assessment (RIA), Ministry Of Economy, Poland.
17. ***OECD (publisher), The Standard Cost Model. A framework for defining and quantifying administrative burdens for businesses, August 2004, p. 8f.
18. ***OECD 2011, *Sustainability in Impact Assessments — A review of Impact Assessment Systems in selected OECD Countries and the European Commission.*

THE TRANSITION OF LAWS. ENFORCING THE ROMANIAN CONSTITUTION. CASE STUDY - DECISION no.66/26.02.2015 OF THE ROMANIAN CONSTITUTIONAL COURT

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Abstract: *This paper aims at presenting the birth of an important conflict of laws (Government Ordinance no.79/2003 and Government Emergency Ordinance no.66/2011), the subsequent wrongful actions taken by different authorities, the decision taken by the Romanian Constitutional Court on this matter together with its arguments (Decision no.66/26.02.2015) and, finally, a critical approach on the arguments of the Court.*
Keywords: *conflict of laws, Government Ordinance no.79/2003, Government Emergency Ordinance no.66/2011, Romanian Constitutional Court Decision no.66/26.02.2015, Romanian Constitution, law interpretation, retroactivity, transitional provisions*

1. INTRODUCTION

The main goal of this paper is to bring a critical view on the arguments of the Romanian Constitutional Court in its Decision no.66/26.02.2015 with regards to an important conflict of laws (Government Ordinance no.79/2003 and Government Emergency Ordinance no.66/2011).

First, a clear view on the circumstances and facts of the matter must be presented in order to have a firm understanding of the constitutional nature of the problem and accessible means of weighing in the arguments regarding the issue.

Then, the arguments of the Court will be presented together with a short analysis of the effects that were expected of the solution.

While taking a critical view on the decision of the Court and the way arguments were constructed, focus will be brought upon the following essential points/questions:

a. Is there an obligation for the legislative body to insert one or more transitional provisions in its laws? And if there is, to what extent?
b. The ground rule that does not allow for a provision to be interpreted against the Constitution.
c. The unconditional obligation for the executive and judicial institutions of the state to enforce the provisions of law with permanent consideration for the supreme rule of the Constitution.
d. The distinction between two types of provisions, procedural juridical norms and substantial juridical norms.

By considering, on one hand, the arguments of the Court that hold valid in the critical view, and, on the other hand, the arguments that resemble the above mentioned points, it will be concluded that, even though the Decision of the Court can be rightfully criticised under strict constitutional scrutiny, the solution of the Court brings justice to those on the receiving side of the unlawful enforcement of law.

2. HISTORY OF THE RELEVANT FACTS

2.1. Circumstances and laws

As a member of the European Union, Romania benefits from various types of investment and development funds in a wide range of fields. This makes for a difficult area of law, being both a new domain for legislation to be adopted and, in itself, a complex object to regulate.

The aim of this paper is not even slightly to enter in the specific details of this domain, but only to present the broadest idea of how the mechanism of funding works in order to thoroughly understand the legal problem that makes the subject of the paper.

At the national level a structure of institutions, created for this purpose, handles the European funds and, for the purpose of this paper, the acronym NAEF shall be used, short for "*national authorities for European funds*". This is not the official name of the structure of institutions, but, in order to avoid the complexity of hierarchy, and different attributions and powers, it will be referred to, conventionally and generally, as NAEF.

At the other end of the funding mechanism stand the fund beneficiaries, which can be either public or private institutions. They will be referred to, conventionally and generally, as Beneficiaries.

The mechanism that needs to be understood is, in essence, straight forward. NAEF organises a competition of projects that will receive funding, a number of participants are declared winners and a Funding Agreement is then signed between NAEF and the Beneficiary.

The Funding Agreement embodies the obligation for NAEF to finance the winning project and the obligation for the Beneficiary to implement the project precisely as it is written, by obeying a consistent set of laws and regulations and in the space of a pre-set amount of time, usually a couple of years.

NAEF needs to check whether or not the Beneficiary executes its obligations and, in case it does not, NAEF will determine what amount of the initial funding is not to end up at the Beneficiary.

It was essential for this process of scrutiny and fund adjustment to be very well regulated in order to guarantee both good use of the funds and fairness to the Beneficiary. A new area of law was created and this is where the conflict of laws and the constitutional problem that makes the subject of this paper arouse. These are the two Acts of the Romanian Government that are relevant:

1. Government Ordinance (G.O.) no.79/2003 on control and recovery of Community funds, as well as inappropriately used associated co-financing funds, published in the Official Monitor no.622/30.08.2003;

2. Government Emergency Ordinance (G.E.O.) no.66/2011 on preventing, ascertaining and sanctioning irregularities occurred while obtaining and using European funds and/or national funds related thereto published in the Official Monitor no. 461/30.06.2011.

Both of these acts regulate the following important things:

a. The notion of "*irregularity*" that is defined by the Council Regulation (EC) No 1083/2006 of 11 July 2006 *laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999*, art. 2 par. 7,
"*Article 2 Definitions*
For the purposes of this Regulation, the following terms shall have the meanings assigned to them here: (...)
(7) 'irregularity': any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget."
These two Acts of the Romanian Government represent the national legal grounds on which NAEF acknowledges an irregularity or, in other words, that a Beneficiary has unlawfully implemented the project, and that a correction or a recovery of the fund (adjustment) needs to be applied.
b. The extent of the adjustment of the funds that needs to be applied for different types of irregularities.
c. The procedure that NAEF needs to follow in order to discover the irregularities and to apply the adjustment on the funds.

2.2. The conflict of laws

Both of these acts are similar, regulating the same area, but, crucially, bring different definitions to the notion of "*irregularity*" and different percentages of fund adjustment in case of irregularities. In addition to these important differences, the process of control conducted by NAEF is modified.

Art.64 of G.E.O. no.66/2011 states that, at the moment of entry into force of this emergency ordinance, Government Ordinance no.79/2003 *on control and recovery of Community funds, as well as inappropriately used associated co-financing funds* is repealed.

Besides this repeal provision, G.E.O. no.66/2011 brings a transitional provision in the form of art. 66 that states:

"*Pending activities of ascertaining irregularities and budgetary debits assessment at the date of entry into force of the present emergency ordinance will finalise and be achieved under the provisions of Government Ordinance no.79/2003 on control and recovery of Community funds, as well as inappropriately used associated co-financing funds*".

The transitional provision simply states that the procedures started under the old law will finish under the power of that law.

The enforcement of this transitional rule seems pretty straight forward until a closer look on the nature of the juridical norms carried by G.E.O. no.66/2011 is taken.

On one hand, there are "*substantial juridical norms*" like the provisions on "irregularity" and the extent of the adjustment of the funds that needs to be applied for different types of irregularities. These provisions regard the execution of the Funding Agreement between NAEF and the Beneficiary.

On the other hand, there are "*procedural juridical norms*" like the provisions that describe the procedure that NAEF needs to follow in order to discover the irregularities and to apply the adjustment on the funds. These provisions have nothing to do with the execution of the Funding Agreement, but only regard the process of scrutiny that is carried by NAEF in order to ascertain irregularities and assess budgetary debits associated with these irregularities.

These two types of juridical norms behave differently in a transitional situation. The procedural norms, once entered into force, immediately apply to any procedure started after the moment of the entry into force of these norms. For these type of juridical norms, the transitional norms of art.66 G.E.O. no.66/2011 are enforceable without problems.

A problem occurs when trying to apply substantial juridical norms in a transitional situation. For easier understanding of the problem the following hypothetical example that takes place under both G.O. no.79/2003 (*hereinafter, the old law*) and G.E.O. no. 66/2011 (*hereinafter, the new law*) will be analysed:

{*H*ypothetical *Example:*

Funding Agreement no.1/2008 is signed between NAEF and beneficiary BEN to allow for project "Project" to be funded and finalised before 01.01.2013. Whilst implementing the project, BEN commits an irregularity in 2010. In 2012, after the repeal of G.O. no.79/2003 and the entry into force of G.E.O. no.66/2011, NAEF starts a control procedure under the provisions of the new law, identifies the irregularity committed by BEN in 2010, qualifies it as an irregularity under the provisions of the new law, and applies an adjustment of the funds under the provisions of the new law. }

The essential question for the matter is: Did NAEF applied the correct law to qualify the BENs action from 2010 as an irregularity and to apply the adjustment of the funds?

To help answer this essential question, one should consider a fundamental principle stated by the Romanian Constitution in art. 15 par. 2, the principle of non-retroactivity of the law:

"*Article 15*

(2) The law shall only act for the future, except for the more favourable criminal or administrative law."

In accordance with this principle, a law cannot act in relation to facts of the past that give rights or incur obligations under an older law.

For this reason, in the hypothetical example, NAEF correctly applied the new law for the new control procedure, but unlawfully applied the new law in order to qualify BEN's action from 2010 as an irregularity and to determine the extent of the adjustment of the funds. Clearly, BEN's actions from 2010 must be judged by the law in force at that

time, regardless of the fact that at the time of the judgement a new law is regulating the same area of law.

There cannot be another way to apply the constitutional principle of non-retroactivity of the law. Exceptions from this principle are not incident, G.E.O. no.66/2011 undoubtedly being neither criminal nor administrative law, as it will be demonstrated further in the paper.

2.3. Authorities and Courts

Similar courses of actions to the hypothetical example mentioned above took place with real Beneficiaries where NAEF, guided by a misinterpretation of the transitional provision in art. 66 of G.E.O. no.66/2011, made the same mistake, applying the new law to old actions.

Many of those cases were taken to court by the beneficiaries, but, with few exceptions, the argument of non-retroactivity of the law was not successful. It seemed that not only was NAEF unable to properly handle a conflict of laws in a transitional situation, but the courts found it equally hard to correctly make the right interpretations and better the wrong done by NAEF.

Fortunately, there was one court that decided to, on one hand, take the case to the Romanian Constitutional Court (RCC), and, on the other hand, request for two preliminary rulings on this matter from the Court of Justice of the European Union (CJUE).

The Court of Appeal of Bacău (CAB) took one part of the problem to the Court of Justice of the European Union by requesting two preliminary rulings that were registered with CJUE under C-260/14 and C-261/2014. Those requests are not the main subject of the paper, but need mentioning because RCC makes refference to them in its decision.

The part of the problem that CAB took to CJUE is whether or not the provisions of G.E.O. no.66/2011 that regulated directly the Funding Agreements could pass as an exception of the principle of non-retroactivity of the law. One such exception is stated in the second sentence of Article 2(2) of Regulation (EC) No 2988/1995 on the protection of the European Communities financial interests:

"*Article 2 (...)*

2. No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively."

Even though CJUE has not yet (19.01.2016) ruled in C-260/14 and C-261/2014, the official opinion of the European Commission converges with Advocate General's Opinion presented on the 14th of January 2016 in the joined cases C-260/14, C-261/14, suggesting that the measures regulated by G.E.O. no.66/2011 in case of irregularities, the adjustment of funds (as regarded generally in this paper), are not to be considered "*administrative penalties*", but "*administrative measures*" and, for this reason, cannot be subject of retroactive applicability. Further analysis on this argument is to be found in section 4 of this paper.

The Court of Appeal of Bacău addressed the Romanian Constitutional Court holding that G.E.O. no.66/2011 carries a constitutional problem and, even though it did not precisely indicated where that problem stood, RCC ruled in its favour finding that the provisions of art. 66 of G.E.O. no.66/2011 were not constitutional (Decision no.66/26.02.2015 of the Romanian Constitutional Court, case no. 486D/2014, published in the Official Monitor no. 236/07.04.2015).

3. DECISION AND ARGUMENTS OF THE ROMANIAN CONSTITUTIONAL COURT

3.1. The Decision and its effects

Keeping in mind the conflict of laws described in subsection 2.2 and the way that some of authorities and part of the courts acted in relation to this problem, as described in subsection 2.3., it is important to determine what would be the effects of the decision of the Romanian Constitutional Court.

Decision no.66/26.02.2015 of the Romanian Constitutional Court, case no. 486D/2014, published in the Official Monitor no.236/07.04.2015, contains an elaborated structure of considerations that makes the subject of subsection 3.2., and the judgement that simply finds the provisions of art.66 of G.E.O. no.66/2011, being unconstitutional.

The article that was found not constitutional represents the transitional provisions of the new law and was the main legal ground on which NAEF and the ordinary courts rejected the argument of retroactivity brought up by the Beneficiaries.

As described in subsections 2.1. and 2.2., the conflict of laws, the transitional problem, stood in the fact that, regarding actions of the Beneficiaries that took place before the new law entered into force, NAEF and the court considered that is was correct to apply the new law in order to qualify those actions of the past as irregularities and to determine the adjustment of the funds. The Beneficiaries held this was unconstitutional retroactive enforcement of law.

Paragraph 33 of the RCC Decision no.66/26.02.2015 confirms the Beneficiaries had reason,

"*The court finds that, as consequence of admittance of the non-constitutionality exception, qualifying of irregularities and assessing budgetary debits are to be conducted under the law in force at the time of committing the irregularity in accordance with tempus regit actum principle, therefore without being able to combine substantial juridical norms of G.O. no.79/2003 with those of G.E.O. no.66/2011, while the procedure needed to be pursued by the control authorities is the one regulated by the law in force at the time of the performance of the control.* ".

The way in which a decision of the Romanian Constitutional Court produces effects is still a subject of controversy, both in theory and in practice, and considering that this is not the main subject of the paper, the following description is just an opinion.

The rule stated in paragraph 33 of the RCC Decision no.66/26.02.2015 makes it clear that all new control procedures, those that start after the entry into force of Decision

no.66/26.02.2015, need to obey the mechanism described by the constitutional court. Furthermore, the ordinary courts, that are to give judgement in pending cases where NAEF or first courts have not acted accordingly, are to rule in accordance with the decision of the constitutional court. The effects of Decision no.66/26.02.2015 hit the limit where final judgements, with different solutions to that of the constitutional court, have been given.

As a conclusion, the Romanian Constitutional Court, through its Decision no.66/26.02.2015, bettered part of the wrong done by NAEF and the ordinary courts. It needs to be stressed that only part of NAEF and part of the courts misconducted their procedures and judgements. It is not the aim of this paper to bring a statistical analysis of the rights and wrongs of the authorities, but describing the effects of the decision from this additional point of view will meet the purpose of bringing a critical view on the decision and the arguments of the Constitutional Court, disregarding the level of misconduct incidence.

3.2. The arguments of the Romanian Constitutional Court

The constitutional court brought a consistent number of arguments that are rigorously structured and clearly elaborated in order to give the judgement in Decision no.66/26.02.2015. There are four important arguments that need to be presented in order to understand the judgement of the court:

A. The transitional problem between the laws in conflict, G.O. no.79/2003 and G.E.O. no.66/2011, finds its solution in the enforcement of the provisions of art.15 par.2 of the Romanian Constitution, the principle of non-retroactivity of the law that states "*The law shall only act for the future, except for the more favourable criminal or administrative law.*"
B. The juridical nature of the laws in conflict, G.O. no.79/2003 and G.E.O. no.66/2011, does not qualify as an exception to the principle of non-retroactivity of the law.
C. The laws in conflict, G.O. no.79/2003 and G.E.O. no.66/2011, contain both types of juridical norms, procedural juridical norms and substantial juridical norms that behave differently in a transitional situation.
D. Art. 66 of G.E.O. no.66/2011, the transitional provisions of this law, define an incorrect criterion that needs to be used in order to find the applicable substantial juridical norm in a transitional situation, that criterion being the existence or lack of a pending control procedure at the time of entry into force of G.E.O. no.66/2011.

The briefest way to render the court's argumentation is: Acknowledging the distinction "*procedural juridical norms and substantial juridical norms*" (C), the provisions of Art. 66 of G.E.O. no.66/2011 force a solution to the transitional problem (D) that goes against the constitutional principle of non-retroactivity of the law (A) that applies without any exception in this case (B).

4. A CRITICAL APROACH TO THE ARGUMENTS OF THE COURT

After a close look on each argument of the court presented above, subsection 3.2., it will be concluded that points A, B, C hold validity, that point D is incorrect and, in turn, causes the judgement of the court to be incorrect from a rigorous juridical point of view. At the same time, judging from a more pragmatically practical point of view, weighing in the effects of the different solutions that the court could have chosen from, as well as the importance of the need to put things right between the parties, it will be concluded that the court gave the wiser judgement in this case.

4.1. Arguments on the points that hold validity

The first argument that holds true is that the Constitution is the supreme law and its provisions must prevail, therefore the constitutional principle of non-retroactivity of the law reins all transitional situations between laws.

The court makes reference to art.15 par.2 of the Romanian Constitution "*The law shall only act for the future, except for the more favourable criminal or administrative law*", in paragraphs 28, 31 and 32 of the RCC Decision no.66/26.02.2015.

The principle of non-retroactivity of the law has an interesting history that probably spans to earlier times than one might first think, but a few things about this principle deserve mentioning.

It is clear why this principle is very important and why it needs to benefit from a top position in the hierarchy of laws. Without the principle of non-retroactivity of the law there would be no security of rights, no rule of law, arbitrary and abuse would always be the answer to "*how?*" and "*what?*". More arguments to this matter are presented by prof. Dr. Dumitru Mazilu (Mazilu, 2000, p.201).

Therefore, it seems odd that history reveals the principle of non-retroactivity of the law to have been gradually climbing the ladder before its first arrival at the constitutional level in the Constitution of Portugal. The landmark remains the French Civil Code of 1804 where the principle was directly regulated in Art. 2 "*The law rules only for the future; it has no retroactive power*". The Romanian Civil Code of 1864 imported the same principle in its Art. 1. More facts and comments are presented by prof. Dr. Ioan Vida (Vida, 2004, p.93-94).

The need for the principle of non-retroactivity to climb from the level of Civil Codes to the top of law hierarchy stood in the fact that throughout this period the legislative power and the judicial power followed different rules. It was unconceivable that what was not retroactive for the judge could have been retroactive for the legislator. (Vida, 2004, p.95)

Regarding the first argument of the court, it is clear that the transitional provisions of Art. 66 of G.E.O. no.66/2011 needed to be examined against the constitutional principle of non-retroactivity of the law.

The second argument that is very important is found in paragraphs 25 and 28 of the RCC Decision no.66/26.02.2015 where the court demonstrates why neither G.O. no.79/2003 nor G.E.O. no.66/2011 can be considered a penal or an administrative law.

In subsection 2.3. an important distinction between "*administrative penalties*" and "*administrative measures*" was presented together with the instance in which the Court of Appeal of Bacău (CAB) adressed the Court of Justice of the European Union by requesting two preliminary rulings that were registered with CJUE under C-260/14 and C-261/2014 and that aimed at making clear whether or not the exception that is stated in the second sentence of Article 2(2) of Regulation (EC) No 2988/1995 *on the protection of the European Communities financial interests* is applicable. The exception stated that:

"*Article 2 (...)*

2. No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively."

The constitutional court made reference to this distinction between "*administrative penalties*" and "*administrative measures*" in paragraphs 25 of the RCC Decision no.66/26.02.2015 and made it clear that Article 2(2) of Regulation (EC) No 2988/1995 cannot apply.

Although in two documents that back up this distinction, the official opinion of the European Commission and Advocate General's Opinion presented on the 14th of January 2016 in the joined cases C-260/14, C-261/14, the notion "*administrative measure*" is used to describe the legal consequence of an irregularity, a very important mention needs to be made.

The "*administrative*" notion from art. 15 par. 2 of the Romanian Constitution has a different meaning than that of "*administrative measure*", the first one representing the area of "*contravenţional*" which is a milder penal area of law.

Regarding the second argument of the court, it cannot be argued that G.O. no.79/2003 or G.E.O. no.66/2011 qualifies as an exception to the constitutional principle of non-retroactivity of the law.

The third argument of the court, the distinction between procedural juridical norms and substantial juridical norms is demonstrated and used in paragraphs 30-33.

Acknowledgment of this distinction and the different behaviour in transitional situation is presented by prof. Dr. Dumitru Mazilu (Mazilu, 2000, p.202).

The "*substantial juridical norms*" regard the execution of the Funding Agreement between NAEF and the Beneficiary indicating the definition of the "irregularity" and the extent of the adjustment of the funds that needs to be applied for different types of irregularities.

The "*procedural juridical norms*" have nothing to do with the execution of the Funding Agreement, but only regard the process of scrutiny that is carried by NAEF in order to ascertain irregularities and assess budgetary debits associated with these irregularities.

In transitional situation these two types of juridical norms behave differently because they regulate different parts of the relation between NAEF and the Beneficiaries.

The procedural norms, once entered into force, immediately apply to any procedure started after the moment of the entry into force of these norms. The substantial norms, on the other hand, follow their object beyond the moment of their repeal.

Best describing this behaviour is that "*a juridical norm is like a sun than never sets*" (Vida, 2004, p.95), (Carbonniere, *Flexible droit*, p.51).

Once a substantial juridical norm gives birth to a right, the connection between the norm and the right cannot be altered by a later norm. Furthermore, the rights that could have been brought to life in connection with actions that finalise before the entry into force of the new law. This is one way of presenting one of the first theories on this matter, one that brings the idea of previous definitive closed relations. More details on this theory are presented by prof. Matei B. Cantacuzino (Cantacuzino, 1921, p.19-24).

Other theories on this matter have been formulated using other names for the same elements, or by bringing new distinction for different types of situations, but all of them carry the same core principle described above. Prof. Dr. Nicolae Popa takes a close look at those theories (Popa, 2012, p. 142-145).

The main reason why this distinction between procedural juridical norms and substantial juridical norms is so important lays in the fact that the transitional problem between G.O. no.79/2003 and G.E.O. no.66/2011 needs to be divided in order to be solved correctly. Therefore, there are two transitional problems that the legislator tried to solve with only one transitional rule that is provided by art. 66 of G.E.O. no.66/2011.

The constitutional court is correct to acknowledge and use this distinction for finding the right solution to the transitional problem and the conflict of laws, the third argument holding validity.

4.2. Arguments on the point that is incorrect

The argument of the constitutional court that is incorrect, in the view of this critical approach, is that Art. 66 of G.E.O. no.66/2011, the transitional provisions of this law, allows for an unconstitutional interpretation of itself, and defines an incorrect criterion that needs to be used in order to find the applicable substantial juridical norm in a transitional situation, that criterion being the existence or lack of a pending control procedure at the time of entry into force of G.E.O. no.66/2011.

How did the court draw this conclusion? Paragraph 29 of the RCC Decision no.66/26.02.2015 reveals the court analysing the text of Art. 66 of G.E.O. no.66/2011,

"*Pending activities of ascertaining irregularities and budgetary debits assessment at the date of entry into force of the present emergency ordinance will finalise and be achieved under the provisions of Government Ordinance no.79/2003 on control and recovery of Community funds, as well as inappropriately used associated co-financing funds*".

Then, the court uses an interpretative method, the "*per a contrario*" argument, to extract another rule of transition,

"*This text (art.66) allows the interpretation per a contrario that states that G.E.O. no. 66/2011 is to be applied to activities of ascertaining irregularities and budgetary debits assessment that are not pending at the moment of entry into force of this law, even*

though those activities took place under the rule of G.O. no.79/2003", paragraph 29 of the RCC Decision no.66/26.02.2015.

The key questions that confront this particular argument of the court is: Can a transitional provision of any law allow for it to be interpreted against the Constitution? Is there really a provision of article 66 that directly allows such an interpretation?

Another conclusion drawn by the court is found in paragraph 32 of the RCC Decision no.66/26.02.2015,

"*The court finds that the criticised legal text crosses the principle of non-retroactivity, because it allows for the substantial juridical norms of G.E.O. no.66/2011 to be applied to irregularities that took place while G.O. no.79/2011 was in force, the legislator providing an incorrect criterion to determine which substantial juridical norms are applicable …*"

In this instance the key question is: Is really article 66 defining a universal criterion that is forced upon those who apply the law in order to solve all the transitional problems between G.O. no.79/2003 and G.E.O. no.66/2011, or is article 66 only there to solve half of the transitional problems?

The analysis of these arguments of the court and the attempt to answer the questions above will follow the points mentioned in section 1:

A. Is there an obligation for the legislative body to insert one or more transitional provisions in its laws? And if there is, to what extent?
B. The ground rule that does not allow for a provision to be interpreted against the Constitution.
C. The unconditional obligation for the executive and judicial institutions of the state to enforce the provisions of law with permanent consideration for the supreme rule of the Constitution.
D. The distinction between two types of provisions, procedural juridical norms and substantial juridical norms.

A. The answer to the question in point A is to be found after a closer look at the provisions of the Romanian Constitution and the Law no.24/2000 on the rules of legislative technique. Neither of them forces the legislator to insert transitional provisions in the laws.

Even though Law no.24/2000 defines the functions of the transitional norms and states that all law projects must provide solutions to the transitional problems, the obligation only refers to law projects. Unless such a provision meets its correspondent in the Constitution, the Constitutional Court cannot use only the provisions of Law no.24/2000 to declare any law unconstitutional.

The large number of laws that provide no transitional solutions and that were not declared unconstitutional stands proof that there is no such constitutional obligation.

The conclusion is that there is no constitutional and no legal obligation for the legislator to provide transitional solutions for the entire transitional problem neither is there an obligation to provide transitional solutions for part of the transitional problem.

B. The interpretative techniques are an essential asset to any legal system and are as important as the laws themselves, but those who are entitled to use them must never

lose sight of the fundamental principles. Those principles apply regardless of the nature of the interpretations, an official one or a private one.

In the case analysed in this paper the official interpretations of article 66 of G.E.O. no.66/2011 came from NAEF, then the ordinary courts and, finally, from the constitutional court itself.

The constitutional court simply held that Article 66 allows for itself to be interpreted against the constitutional principle of non-retroactivity of the law, and that makes article 66 unconstitutional.

This is deeply incorrect. An official interpretation always comes from an authority and it always needs to result in new rule that has to be in accordance with the Constitution. Never can the law be blamed for the mistakes of the authority that gave an unconstitutional interpretation of that law.

Article 66 of G.E.O. no.66/2011 does not directly state that it allows for an unconstitutional interpretation, does not define a universal criterion that solves all the transitional problems of the laws in conflict; it only provides a transitional solution for only one type of transitional problem.

C. The executive and judicial institutions of the state have the unconditional obligation to enforce the provisions of law with permanent consideration for the supreme rule of the Constitution.

Instead of NAEF and the courts making an unconstitutional interpretation of article 66 of G.E.O. no.66/2011, they should have acknowledged that article 66 is not always applicable and, when it was not, a higher law should have been enforced, the constitutional principle of non-retroactivity of the law should have been directly applied by NAEF and the courts.

The law provides procedural means for both public authorities and courts to avoid applying what they believe to be unconstitutional provisions, but those means were only used when the Court of Appeal of Bacău addressed the Romanian Constitutional Court.

D. Although the distinction between procedural juridical norms and substantial juridical is already fully demonstrated and was used by the court, it needs mentioning here because it is very important in observing that there are two transitional problems and that the solution to one half of the problem cannot be extended to the other.

The conclusion to this demonstration must be that the argument of the constitutional court is incorrect, Art.66 of G.E.O. no.66/2011, the transitional provisions of this law, do not define an incorrect criterion and does not allow for an unconstitutional interpretation.

4.3. Arguments on the decision

The decision of the Romanian Constitutional Court, Decision no.66/26.02.2015, must be incorrect judging in a very strict legal technical manner, as demonstrated above.

The correct decision should be that article 66 of G.E.O. no.66/2011 is in accordance with the Constitution because it only provides a solution for part of the transitional problem and does not force any authority to make an unconstitutional interpretation. The legislator of G.E.O. no.66/2011 had no constitutional obligation to

provide transitional solutions. The authorities that enforced the law and the courts that gave judgement on the matter should have directly enforced the constitutional principle of non-retroactivity of the law.

Even though such a solution may win against the actual solution given by the constitutional court under a firm legal scrutiny, a look at the effects and the equity of the different solutions must be taken.

5. CONCLUSIONS

The solution proposed by this paper would have very limited effects, representing a critical assessment of how the authorities and courts should have acted in that difficult context. However, Decision no.66/26.02.2015 of the Romanian Constitutional Court, despite remaining open to significant criticism, its effects better a large part of the misconducted procedures carried by authorities, thus making it the an equitable solution to the transitional problem between G.O. no.79/2003 and G.E.O. no.66/2011.

References

[1] Cantacuzino B. M. (1923), *Elementele dreptului civil*, Ed. Cartea Românească, Bucureşti.
[2] Carbonnier J., *Flexible droit*, Ed. 6, Librairie Générale de Droit et de Jurisprudence, Paris.
[3] Mazilu D. (2000), *Teoria generală a dreptului*, Ed. a II-a, Ed. ALL Beck, Bucureşti.
[4] Popa N. (2012), *Teoria generală a dreptului*, Ed. a IV-a, Ed. C.H. Beck, Bucureşti.
[5] Vida I. (2000), *Acţiunea normei juridice în timp*, Dreptul nr. 12/2004, Uniunea Juriştilor din România, p.81-102.

THE RIGHT TO WORK FOR HIV PATIENT IN TUNISIAN LEGISLATION

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ABSTRACT: *With this study, we want to support the idea that even in the absence of a proper legal system Tunisian AIDS that would govern all the problems posed by this disease, the interpretation of existing texts can lead to adequate solutions to the problem of AIDS This not to mention the fact that in a particular case, we have a special law (the 1992 Law on communicable diseases). However, the introduction of new AIDS-specific laws have the advantage of finding solutions to balance on the one hand, between the rights of HIV positive and AIDS patients by guaranteeing the protection of human rights, respect for their lives, their liberties and avoid discriminatory action against and stigmatization against them regarding the provision of services and employment, and also the obligation to ensure the same time protection Company against the spread of this epidemic.*

INTRODUCTION

Our aim in this study is to focus on the rights of HIV Tunisian patients. We are, especially, interested in the problems that may incorporate stigmatism, the right to work as one of the fundamental human rights. In Tunisian an even in other compared legislations, there are different dispute resolution routes depending on whether it is a violation of a statute, an individual contract or a collective agreement. In 1981, a previously unknown disease was discovered in the United States: it is a severe immunodeficiency with thirty cases are identified by the "Center for Disease Control" and in young homosexual men. A similar case is also found in France. At the end of that year, the disease had a name: English AIDS (Acquired Immuno-Deficiency Syndrome) in French AIDS (Acquired Immune Deficiency Syndrome). In 1983, the virus responsible is identified by the team of Luc Montagnier at the Pasteur Institute (Paris). In Eastern Europe and Central Asia, we have seen the appearance of plague in the early 1990s. AIDS is now present in the world and produces a global pandemic steadily increasing. We are witnessing a real legislative contagion spread with new laws on this qi disease provokes debate and increasing controversy. Indeed, the model laws can be a useful element in the fight against HIV / AIDS, provided it is securely anchored in the principles of human rights. However, an eminent problem is the stigma and discrimination that have fueled the spread of HIV and greatly exacerbated the

negative impact of the epidemic. Stigma and discrimination associated with HIV continue to occur in all countries and in all regions of the world and are major obstacles to the prevention of new infections, the mitigation of the impact and the provision of care, support and adequate treatment. Or the right to health is a fundamental right of the human person and the right, as an instrument of social regulation or corpus juries, has the vocation to be positioned in the foreground under the determinations of the struggle against this epidemic. In the same vein human rights are an essential component in the fight against this epidemic. "The law is fundamentally a matter of local nature. It grows in a given by and for the community that lives there geographical space. The law, in its normative aspect, therefore, is not subject to export, as can the health and even the culture. Indeed, human rights violations exacerbate the epidemic because they are more vulnerable to possible infection people, first. Moreover, this infection often leads to human rights abuses. People living with AIDS may be subject to various forms of discrimination, including harassment, arbitrary arrest and torture. this study is part of the right initiative to link health and HIV / AIDS and human rights. This study is the link between HIV / AIDS and human rights a reality. In the time that AIDS is an economic threat to the multiple components affecting public and private sectors productive because it leaves behind families destroyed, a work force reduced and therefore the prospects for paralyzed or severely hampered development. Thus, the interest of the subject lays in the development of a rich understanding of health needs among the socially marginalized, such as people who use drugs groups, sex workers, Roma, persons living with HIV / AIDS and those in palliative care. These people did not claim that health care. They wanted the services of defense against violence and discrimination, stronger laws to protect their rights as patients, and a more developed human rights to defend their interests before the police training, care providers health authorities and other stakeholders. This need was not crying in any field other than HIV / AIDS. Besides this component, it is indeed important to protect people and ensure respect for their lives, their social integration and individual liberties, another interest lies in the fact to identify the responsibility of HIV-positive people to ensure at the same time protecting the company against the extension of the epidemic. It, therefore, seems essential to define the problem of AIDS in relation to the law.

PROBLEMATIC AND METHODOLOGY

To deal with such problems should health policy in this field, based on respect of all civil, cultural, political, economic and social. Similarly, it must be based on respect for the right to development in accordance with international standards and principles relating to human standards. Therefore, governments are required to be concerned not only the medical needs of patients infected but also legal, social and ethical issues that are related to the spread of the virus and, in particular, the protection of confidential patient information. This role reflects, in fact, an emerging trend in favor of what might be called the "juridification of the fight against HIV / AIDS." It is in this perspective that we can cite the Declaration of Commitment, adopted in June 2001 at the Special Session of the General Assembly on HIV / AIDS, which

emphasizes the global consensus on the need to fight against stigma and discrimination associated with AIDS. The Declaration states that the fight against stigma and discrimination is a prerequisite to effective prevention and care, and reaffirms that discrimination based on HIV status of a person is a violation of rights man. Under Tunisian law, although research and analysis of legislation on HIV / AIDS have been conducted, supported in particular by the United Nations Program for Development, there is still no legal study for the people affected by HIV / AIDS, including people living with HIV. This study is intended to clarify the responsibility of the company to the sick with AIDS and responsibility thereof to society. Health and biological destruction of this disease is fueled by a wide range of violations of human rights, including sexual violence and coercion against women and girls, the stigmatization of homosexuals, drug addicts and abuse against prostitutes and violations of the rights of adolescents to information about the transmission of the disease. This protection would interest all forms of discrimination in all areas of life, ranging from access to outpatient and inpatient cares that access to the labor market and services. The specific legal provisions, in accordance with international recommendations that promote approaches based on human rights are being observed in our legislation on the disease of HIV / AIDS. Therefore, it is legitimate to wonder about the regulation of the AIDS disease in Tunisian law by posing the following question: To what extent Tunisian law is sufficient to protect and penalize people living with HIV?

Then, we will discuss: The rights to work for the patients with HIV / AIDS in the Tunisian positive law.

DISCUSSION

The right to work in the Tunisian law is illustrated by the article 52 (14 March 1989) was issued to protect people with special needs (PWSNs) and promotion of their rights such as the right to work and the right of all the medical care they need. Regarding their right to work, the 1989 Act establishes two principles:

1. PWSNs refuse work either in the public or private sector, is prohibited as long as the applicant meets the qualifications for the position.
2. Both private and public institutions that employ 100 or more people must spend 1% of their work centers for PWSNs that cardholders check their status, and the Ministry of Social Affairs must be informed of each impact recruitment PWSNs.

These provisions are consistent with the International Labour Convention No. 159 of professional etiquette and professional benefit PWSNs. A national program for the vocational rehabilitation of people with limited physical movement was designed, involving the development of special education centers; rehabilitation companies that are expected to reach more than 180 centers, and the creation of resources for which PWSNs are able to use. HIV infection is not a cause of inability to work (except in exceptional cases) in this context that the employer refuses an employee found medically unfit on the grounds of HIV status or lifestyle is punishable discrimination. And indeed according to art.6 of the Tunisian Constitution: "All citizens have the same rights ... and are equal before the law "This means that every citizen can have access to employment whether or

not a citizen sick from the time he is able to exercise its function. The occupational physician is bound by medical confidentiality in accordance with Article 254 of the CP and article 7 of the Code of Medical Ethics, he did not disclose that the patient is suffering from AIDS or not, it only has jurisdiction to assess the patient's ability to perform his job. In addition, the employee may encounter difficulties seropositive running of his employment contract when it is necessary to be absent periodically. We will focus initially on the right of HIV positive employment in the private sector (paragraph 1) and a second time to his right to employment in the public sector (paragraph 2).

1: The right to work in the private sector

In terms of contracts, in this case the arbitration agreement, the ability of persons of private law differs from that of subjects of public law, each of which must be treated separately. We examine below the questionnaire hired and hired medical visit. For the questionnaire employed, we remark that today, access to employment is first and foremost an interview that a questionnaire is hired. It should include only questions directly related and necessary to the employment sought. It may relate to the applicant's life. Indeed, according to Art 9 of the Tunisian Constitution "... data protection. Indeed employer does not have to learn about the health status of a candidate beyond what is necessary directly with the occupation of the position. Therefore, there is no obligation to answer questions relating to HIV. Omissions and inaccuracies relating to items not decisive for hiring are inconsequential. Under French law, the law of 12 July 1990 on the protection of individuals against discrimination because of their health status or disability punished by imprisonment or a fine and any refusal to hire based on health condition or disability, except in cases of inability to use medically recognized. Regarding crews are concerned, there is no need for testing in general, but the tests can be performed on the basis of clinical indication (see the order of the definition of health conditions Required crews and conditions to be met by medical institutions of the stage crew medical exams, Art 8.1.2.). When the positive results of the sexually transmitted disease (including the HIV / AIDS) tests are confirmed, a rigorous testing process and additional procedures should begin in order to enable individuals to continue working as long as their competence exercise their functions with prescribed standards is not compromised. Treatment should be assessed by a specialist acceptable to the department, and must be adapted to individual and all individuals regarding side effects. The testing regime is acceptable described in Article 2 "Appendix to Articles 3.2 (i), 3.2.5, 8.1. Requirement and EMCR (ATC) 18" (at the end of Appendix 4). Order Tunisia was developed based on the requirements of Class 3 Medical Certification of European air traffic controllers of the European Organisation for the Safety of Air Navigation and in accordance with the Manual of Civil Aviation Medicine, which refers to rigorous testing of three months and six months, which is not include HIV testing, but medical examinations (including neurological tests, cognitive tests, and so on.) after the HIV status of the person was positively. It would be good if the Ordinance explicitly stated that HIV is not a reason for a person not to find a job if he / she is able to accomplish tasks in spite of his / her

medical condition. The mandatory HIV testing based on special orders (the order of the definition of health conditions required for maritime and inland ship crew boat navigation, the Ordinance on measures to be taken in the definition of health conditions general and specific requirements for protective security guards and private security services; Ordinance standards and means of defining mental health, physical ability and health of miners) is performed on people who are employed on maritime and inland waterway vessels, or as security guards or demining experts. Tunisian law, the medical examination is not required to determine the ability of a person to get a job except in certain activities in the public sector. Moreover, it is important to specify in accordance with article 61 of the Labor Code that: "Children under 18 years cannot be employed in all activities after a thorough medical examination to justify their ability to perform the work they will be charged. This review includes appropriate clinical, laboratory and x-ray". This article excluded submitting to a medical examination prior to employment except for certain state jobs for children under the age of 18. It is important to note that the medical examination has several goals: First ascertain whether the employee is not suffering from a contagious disease. In normal work, HIV can be dangerous for other workers, which is why HIV testing is not warranted. Then ensure that the employee is medically fit for the position of the proposed work. It should also be recalled that the mandatory testing in such cases is contrary to the recommendations of UNAIDS and WHO. The employer can not in any way impose the occupational health screening on the individual employee. The occupational physician is bound by medical secrecy and can not reveal the reasons for its decision. The sheet employability given to the employee and the employer only mentions that the ability or inability, total or partial employee. Then when we proceed to discuss the trial period, we remark that the **a**ccordance with Article 6, paragraph 3 of the Labor Code, which was added by Law N°: 96-62 of 15 July 1996: "The workers hired through employment contracts of indefinite duration are subject regarding the period of testing and confirmation to legal or contractual provisions that apply to them. During this period the employee's situation is particularly fragile as the employer can terminate the engagement without having to provide evidence of real and serious grounds for dismissal. During this period, elements "New" coming to the knowledge of the employer (health, privacy) could possibly lead it to refuse final commitment. However, sick leave during this period is not a cause of breakage. It only causes the suspension of the trial period may be extended by the time the sick. However, the employer may notify the employee on sick leave, the decision to stop the trial on the ground that - is not conclusive. Turning now to discuss the Ability to work, we state that HIV-positive employees are able to perform their professional duties. When symptoms occur, the impact on the ability workstation varies with individuals and work requirements of the job. It is the occupational physician to determine whether an employee is still able to continue his job. In cases where the occupational physician finds the inability of an employee to his job, he should not tell the employer if the source of information against the holding of the original position. It may propose measures against individual mutation, transformation stations, justified by the state of health of the worker and if he could not apply, explain why. According to Art 160 of the Labor Code is the business advisory committee is consulted for outplacement. In case the reclassification of

an employee, unfit to his original position or adaptation of his job would prove objectively impossible, the employment contract can be broken. It will be a dismissal. Then the employee will receive compensation. Art 23 of the Labor Code states that: "The wrongful termination of the employment contract by one of the parties has the right to damages." Moreover **,** article 23a (added by the Act of February 21, 1994) states that "in cases of unfair dismissal, the injury giving rise to damages which varies between the salary of one month and two months for the each year of service in the company without these damages do not exceed in any case the salary of three years. " This seems consistent with the trends of international legislation. Recently, APEC adopted extensive guidelines on HIV in the workplace. The Asian Pacific Economic Cooperation (APEC), which was held in Sydney, Australia, 21 leaders gathered supported guidelines to cast a wide net on HIV in the workplace, for springs APEC. 4 The guidelines are based on two publications of the International Labor Organization (ILO): ILO code of practice on HIV / AIDS and the world of work and the manual entitled Implementation of the ILO Code of Practice on HIV / AIDS and the world of work. The guidelines were adopted also deal with issues that are not addressed in the Code of Practice, such as gender, child workers, migrants and mobile populations. The guidelines are addressed to governments of APEC members, employers in the public and private sectors, business associations, workers, trade unions and other labor groups, organizations of people living with HIV and than any other group with responsibilities and activities relevant to HIV and AIDS in the workplace. The guidelines are an example of the approach known as "soft law" approach to development politiques.5 The development of these guidelines was supported by funding from Health Canada during the period when the latter chaired the Working Group APEC health. This working group will work closely with organizations such as the ILO and the Asia Pacific Business Coalition on AIDS, to ensure that the guidelines are disseminated and promoted among APEC member economies. In some conditions, the disease causes suspension of the employment contract. This occurs when it is likened to a "disorder in the business," possible cause of dismissal insofar as it has no impact on the execution of the contract. The disease does not break the contract, but suspends execution. This is what was stated by art 20 of the Labor Code which states: "The disease suspends the contract. It is a ground breaking if it is sufficiently severe or prolonged and if the needs of the business require the employer to replace the sick employee". The employee must inform the employer as soon as possible and a medical certificate must be sent to him (usually within 48 hours). At the French law, when the absence has lasted at least 21 days, a medical recovery is right. It takes place during the resumption of work and at the latest within eight days which follow the recovery. The employee may request to take this tour prior to his return to work in order to facilitate his rehabilitation or adaptation of his job in his new physical state. Art 8 of the Tunisian Labor Code states that: "The absence or abandonment of the position of the work in a way, obvious, unjustified and without prior approval of the employer or his representative constitutes real and serious to justify dismissal'. Therefore, constitute misconduct, lack of timely information and the employer does not have sent him a certificate of work stoppage. Refusal to undergo a medical examination may be cause for dismissal. However it is common that the dismissal is unfair when it is justified by a legitimate reason, this is what was said by the Tunisian

case on several occasions. In, January 26, 1995, the Court of Cassation ruled that Tunisia has been unfairly dismissed in a case where a director of external relations has been dismissed without just cause although he was absent from work since April 22, 1991, due to the working conditions which allowed him to continue over the exercise of its functions under favorable conditions and also the great delay in the payment of wages became quite common. The Tunisian Court of Cassation held that this behavior allows the employee to leave work and consider themselves dismissed. Therefore, it was considered that there was wrongful termination of the employment contract by the employer and that the dismissal was unjustified. But, the unilateral resolution of the of the contract is illegal. The fact to proceed to terminate a contract on the basis that an employee is HIV positive. In labor law, contracts may be terminated if an employee makes a mistake or unacceptable professional misconduct (Article 14). HIV infection is clearly not affected by such a provision, unless the disease leads to imperfections in the performance of work or professional behavior affecting the productivity of the facility (decrease in the volume or quality of production and the frequency of absenteeism at work.) Dismissal cases that occurred almost no one ever because of AIDS, at least explicitly. If the employer wishes to dismiss an employee affected by the disease, will use another excuse. However, dismissal is possible in case of serious misconduct. Article 14-4 of the Labor Code gave a list of serious misconduct justifying dismissal. Moreover, an employer may dismiss an employee on sick two essential conditions: the first is: If the work stoppage continues beyond the period during which the collective agreement prohibits dismissal. Then, the second: the employer must replace the absent employee due to the disruption of service. On the other hand, an employer may dismiss an employee whose absences are frequent and are likely to cause disruption to the smooth running of the company. Thus dismissal without just cause is considered abusive. The health of employees should not cause differentiation procedures - discipline and termination of the contract should be imposed for serious misconduct or unacceptable performance. However, a positive aspect of the Tunisian law is that employee's long-term illnesses that prevent them from working are given considerable additional leave to sick leave standard (Article 14, Labor code). This leave may be as much as 12 months, including two months are fully paid and are 10 months half-pay (Article 42). This can be extended to 5 years including 3 years are fully paid and 2 years on half-pay, as long as the employee has a medical certificate to verify the need for this amount of leave. Four types of diseases are eligible for leave under 5: tuberculosis, cancer, psychological problems and heart disease. Unfortunately, HIV is not included in this installment, and PHAs are simply considered unable to work for health reasons "(Article 68 and following in the general system of basic public employees profession). PLWHA and are provided without pay for leave taken due to long term illness - they only have the right to social security coverage provided by the administration to which they belong (Article 69 of Public Law Professional). Infection with HIV can reduce employee earning potential and social status, it is essential that HIV can be added to the list of diseases that allow the patient to long-term sick leave. In this context, the Labor Tribunal in Bobigny in France condemned a company that had refused to take off work after an employee with AIDS "dismissal without just cause" and "wrongful termination of contract of employment "(2).

The Paris Court of Appeal upheld that decision in April 1991, and has increased the amount of damages related damage (from 50000-70000 F) (3). Court found that the employer, while maintaining salary the employee had not allowed returning to a job equivalent to his position despite a medical certificate. The judges note that the employer "giving precedence his personal opinion on the legally binding decision of the doctor, was based on the subjective and the almost obsessive fear of a disease that justified, in his eyes, a measure isolation or even removal professional". Another similar decision was taken by the Labor Court of Paris in its judgment of 23 July 1990 (4). In this case, it was the dismissal of a commis chef on the grounds of HIV status: the dismissal letter referred explicitly to HIV as the cause of the employer's decision, despite the opinion of the physician labor declared the employee fit for its purpose. The Board therefore held that the dismissal was without just cause. It has not been appealed this decision. In a judgment of the Labor Court March 15, 1989 (1), we use the important principles of labor law. First, the employer cannot use the elements of life outside the employee unrelated to the nature of the job or some operating requirements of the business. Then, in labor relations, there is no reason to treat AIDS differently from other infections. Finally, there is no legitimate reason for dismissal related to that skill, the conduct of the employee or based on the operational requirements of the company or other cases provided by law, such disorder "characterized in business "ie, the disagreement between employees or loss of confidence.

2: The right to work in the public sector

The International Labor Convention No.12 imposes a duty of the state implementation of an active policy to encourage employment in a manner that ensures productivity, freedom of inquiry, and the implementation this policy as a policy objective, Tunisia has ratified this Convention in its review of the labor legislation (30 April 1966). However, articles resulting from the ratification have not addressed the issue of discrimination in the workplace. We examine below the conditions of access to employment in the public sector and also the situation with AIDS in the context of the exercise of its functions. First, Tunisian law, there is no routine screening for candidates for public office. As well as HIV is not a valid cause for refusal to recruit. Indeed, according to Article 1 of Law No. 22-71 of 27 July 1992 relating to communicable diseases, "No one can. Be discriminated against in connection with the prevention or treatment of a communicable disease". In fact there is no regulation at the Tunisian law which implies the exclusion of AIDS public service. The preamble to the Constitution of Tunisia (1 June 1959) stated that "the republican system is the best way to take care of citizens' right to work." Because of international commitments, Article 15 of the Labor Law was revised 5 June 1993, adding the statement that "there should be no discrimination between men and women in the implementation of the provisions of labor law and its laws applied ". art 6 of the Constitution states" All citizens have the same rights and the same duties. They are equal before the law. ". Therefore, there is no difference between a healthy citizen and a citizen sick from the moment it was declared by the occupational physician as fit to perform a public service. However it should be

noted that before being hired, job seekers must provide a medical certificate to prove their physical and mental capacity to do the work (Article 8 of the Law on Public Service, December 12, 1983 and Articles 61 and 153 of the Labor Code). This certificate is an important determinant of whether or not the applicant will be hired. It can be submitted either by a public or a private doctor. The review aims both to test the applicant's ability to do the job they have sought, and also to protect against occupational hazards that could endanger their health (Article 153 and Article 62 of the Code of work, July 15, 1996). The question remains whether or not it is legal to force job seekers to an HIV test. Now nothing in the law prevents the employer to do this, but this is generally not applied. To protect the rights of employees, an article is necessary that explicitly prohibits employers from requesting such reviews. This article has been included in the notifications of the European Council (15 December 1988). Under French law, we can confirm that "The current regulations do not exclude the public, if they are asymptomatic carriers of the AIDS virus It is nevertheless approved physicians to determine whether the health of the applicant is not incompatible with the exercise of the function postulated ". In the same context and contrary to Tunisian law, two circulars of the Ministry of Public Service and the Ministry of Health of 6 July 1984 (2) and 5 March 1990 (3), have clarified employment in the public people with AIDS Virus. We must distinguish between HIV status and the clinical condition of the people. Under French law the AIDS screening is not routine and has no justification, it is not intended by texts that define physical fitness required to have the status of officials. (4) It is important to note that the same is true in Tunisian law in cases where access to public demands before hiring a medical such example: the exercise of a function under the cash National Social Security or in access to employment in the customs. This fact and when the job applicant has a health condition allowing it to perform the function chosen nothing, would justify the refusal to hire because he suffers from AIDS. Or asymptomatic healthy carriers are quite able to perform their professional tasks in conditions, routine work from the moment they offer no risk of contamination for people located around them. Alone cannot justify the denial of admission to the examination, hiring or tenure for those whose immune system is weakened, the situation varies among individuals. During the clinical examination by a doctor approved, the presence of signs suggestive of HIV infection can lead to propose a test. It cannot be carried out without consent. Doctors and medical committees dice when required to give their opinion on the compatibility of the health status of the candidate with the position applied for. In this context it is up to the administration to decide on the legal status of the applicant. Those who develop serious illnesses can work during periods of remission from the treatment. In fact, when the state of health of the person allows, maintenance professional activity can be beneficial for their psychological state and must be sought to the extent compatible with the proper functioning of the service. When employed, these patients were protected by the Law of 5 June 1993, was revised February 21, 1994 to improve provisions for the settlement of individual labor disputes, and July 15, 1996, to bring new forms of labor contracts and improve environments. In the present state of things, the Tunisian case did not address the situation of AIDS exercising a public function. Against by French law, several cases have clarified the rules for employees of the public service. People with already some signs of blown AIDS were recognized as

suitable to perform their jobs and were titularized. The organization of their working conditions is even possible. furthermore, in the context of tenure must distinguish between fixed-term contracts which expire on the date specified in the contract, and permanent contracts whose duration was not specified in the contract and in which tenure operates twelve months from the date or the contract was concluded, and finally the learning contract and for which there is tenure after 2 years. In addition to the afore-mentioned laws, the law of public service (from December 12, 1983) deals with the right to non-discrimination between employees of different religion, political persuasion or gender ... Discrimination between these groups is prohibited on issues of promotion, tenure, transfer of staff and disciplinary boards. In the French jurisprudence, and for tenure in the public service, a teacher trainee Hauts-de-Seine had seen in 1987, his appointment refused because of repeated sick. The county medical committee stated: "ability to use its current position to review in six months. Tenure to be considered later". The student has made an appeal to the higher medical committee who waited more than six months to deliver its verdict. The teacher, who was unanimously supported by the parents of his students and his colleagues, was finally declared fit. For the development of working conditions and sick leave, we observe that the regarding staff and trainees of the Tunisian government, the texts relating to long-term sick leave and long-term planning is nothing special about AIDS But leave scheme in the public is considered quite suitable for the particular situation of officials with AIDS, but it has been deemed necessary to mention this condition in the texts. Indeed Art 20 of the Labor Code states: "the disease suspends the employment contract does not constitute a ground breaking .. ' Art 145 as amended by Act No. 96-69 of 15 July 1996 of the Labor Code states that "the periods during which the contract work was suspended unless the contract has been terminated due to illness including ... are treated as periods of actual work ... ' Similarly, the provisions of the Public Service Law (12th December 1983) also addressed the maternity leave, the priority for PWSNs in certain occupations, and special conditions for child labor. They prohibit the recruitment of children under 16 years as well as the use of children on the night shift, in mines, or in any employment of labor which could hinder their growth or physical or psychological deprive them of their leisure time. Moreover, it is important to note that the long-term leave provisions vary in individual contracts of work function and also the circumstances. Under French law, art 29 of 14 March 1986, gives employees with AIDS accompanied by certain opportunistic infections such as tuberculosis, malignant diseases, the long-term leave. The extended sick leave is for a period of three years in France, with one year maintenance of full pay and two years with half the treatment. It may be renewed. Israel, seropositive surgeon is allowed to resume his duties. In January 2009, the Ministry of Health of Israel has decided that a surgeon with HIV could start practicing invasive surgical procedures provided that it maintains an undetectable viral load, following the procedures of infection control and door two pairs of surgical gloves during any surgery. The Department has also decided that any surgeon's patients do not have to be aware of his HIV status, given the extremely low risk of HIV transmission if the above conditions are met.

CONCLUSION

The promotion and protection of human rights are at the heart of the action against HIV / AIDS. Violate the rights of people living with HIV, or those affected by the epidemic is threatening not only their well-being, but life itself. The rights can play a crucial role in the global response to HIV / AIDS. People in Tunisia and around the world continue to be at risk of contracting HIV because of persistent violations of human rights. The lack of support for programs that protect and promote human rights is a failure of the AIDS response. It was noted in this context that the legislators and activists must redouble efforts to revive and human rights, treatment and prevention for all, including the most marginalized populations.

References:

1. Krid (B) et Masmoudi (T): *L'obligation de soins en droit tunisien*, RJL mai 2002, p. 33.
2. Hamza (N): *Les mutations socio-démographiques de la famille tunisienne*, Tunis, ONFP, 2006, 473.
3. Lafleur Isabelle, Trottier Germain, Lindsay Jocelyn, « *La contribution des personnes vivant avec le VIH-sida au renouvellement de la prévention* », Service social, vol: 50, 2003, 280-294.
4. Mahfoudh (M): *L'obligation d'information du médecin en droit privé tunisien*, RJL décembre 2006, p. 69.
5. Michel Vincineau (M); Klein(P), Mary(Ph) et Petiaux (C): *LE SIDA: un défi aux droits*: actes du colloque organisé à l'université libre de Bruxelles, Bruylant, 1991
6. *La responsabilité délictuelle dans le COC: les sources et les ressources*, in: Livre du centenaire du code des obligations et des contrats 1906-2006, CPU, Tunis 2006, p. 449.
7. Chalmers (J): *The criminalization of HIV Transmission*.. J Med Ethics. 2002 Jun; 28 (3):160-3.
8. Brahmi Zouaoui (N): *L'évolution de la responsabilité du médecin*, RTD 2005, p. 107.
9. Association AIDES: *Droit et SIDA*, L.G.D.S, 1992. Edition France Query, Cahors-juin 1992
10. Casteret.A.M: *L'affaire du sang contaminé*, le monde. Edition Document Paris, 1992.
11. Hermitte.M.A: *Le sang et le Droit*, Seuil, 1996.
12. Foyer(J) et KJiaït(L): *Droit et Sida*, comparaison C.N.R.S. Paris 1994
13. Penneau(J): *La responsabilité médicale*. Edition sirey, 1977
14. Lambert(D.C): *Le coût mondial du S.I.D.A*, C.N.R.S, 1992.
15. *Le VIH / Sida et le monde du travail* - Bureau international du travail Genève.
16. Massenet.M.: *La transmission administrative du S.I.D.A*, Albin-Michel. 1992
17. Mahdjoub.A: *Le S.I.D.A et ses incidences en droit pénal algérien et en droit pénal international*, Chihab, 1992.
18. *Politique de coopération international DE LA France de lutte contre le VIH/Sida*. Ministère des affaires étrangères . 2002.
19. Barnette(T) et Whtesi(A): *Principes Directeurs applicables aux études de L'impact social et économique*.
20. Vansweevelt (T): *Le S.l.D.A et le droit : une étude du droit de la responsabilité et du droit des assurances*, Bruylont, Bruxelles, 1990.
21. Berra(D): *Aspects juridiques des problèmes posés par le S.l.D.A. dans les relations de travail*. Semaine Sociale, lamy, supplément au N°416, 4 Juillet 1988.
22. Danti-luan (M): *Quelques réflexions en droit penal français sur les problems posés par le S.l.D.A*, R.D.P.C, 1988, P.631.
23. Debouy(C): «*La responsabilité de l'administration Française du fait de la contamination par le Virus du Sida*», J.C.P., 1993, I, 3646.