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THE MOTIVATION BEHIND INDIVIDUALS' DECISIONS FOR PURSUING A MASTER PROGRAM IN CORPORATE FINANCE-INSURANCE

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Abstract: It is mandatory for each higher education program to train specialists in various fields. This study aims to develop a local theory in order to choose the Master Program of Corporate Finance - Insurance of the Babes-Bolyai University of Cluj-Napoca, Romania. The participants in this case study are in the exploratory professional identity phase. Choosing the Master Program for these students and assuming it in a responsible manner can lead to their expectations.

While using thematic analysis there were identified four major themes: previous experience, learning, perception and opportunity. All these contributed to the development of a local theory about motivation and there we found a work pattern, knowledge, learning and other topics in their expectations.

Once the student's motivation is determined, the teachers have the opportunity to guide the academic activity according to these professional expectations. After finding out this information, it is easier for the teachers to develop the educational offer. Professional identity also plays an important role in their development.

Keywords: corporate-finance, expectation, insurance, motivation.

JEL Classification: G22

INTRODUCTION

Corporate Finance and Insurance are some of the most complex and dynamic fields. The people who work in these fields must be prepared, determined and motivated. We believe that motivation is the real key to personal and professional development. At any moment, you need to know *how you are* and *why you are there*.

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The paper is organized as follows: Section 2 reviews the literature, Section 3 describes the methodology and the used data, Section 4 offers information regarding the results and Section 5 concludes.

LITERATURE REVIEW

In academic literature, motivation has been defined in multiple ways and there are many theories about this subject. We chose a simple definition: "the process whereby goal-directed activity is instigated and sustained" (Schunk, Pintrich, & Meece, 2008), and we remember the major theories: Maslow's Need Hierarchy (Maslow, 1954), Adam's Equity Theory (Adams 1963), Vroom's Expectancy Theory (Vroom, 1964), Locke's Goal Setting Theory (Locke&Latham, 1990).

In Self-Determination (SDT; Deci & Ryan, 1985) we can identify the most common classification of motivation: intrinsic and extrinsic motivation. Researchers Sekhar, Patwardhan & Singh (2013) provide a summary of the literature in the field, extracting all possible dimensions of motivation: *training, monetary incentives, job transfer, job satisfaction, promotion, working conditions, achievement, appreciation, recognition, job security, social opportunities*, having direct and indirect impact on motivation techniques.

According to Boekaerts, M. (2002, pp 9) "*as teachers, you should have a good idea of the motivational beliefs that your students bring into the classroom*." We think that once the student's motivation is determined, teachers have the opportunity to guide their academic activity according to these professional expectations.

Recently, Incikabi1, Pektas,Ozgelen Kurnaz (2013), in their qualitative research they focused on necessity, motivation and expectation to that could affect the offer academic in the Matematics and Science Education field. They explain that intrinsic and extrinsic motivations generally caused academic expectations.

Research Questions

These questions guides our research:

a) Why you chose this topics?

b) What is the motivation?

c) Previous experience influences the choice of masters program?

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d) What is the relationship between motivation and expectations of students from the Master of Corporate Finance – Insurance?

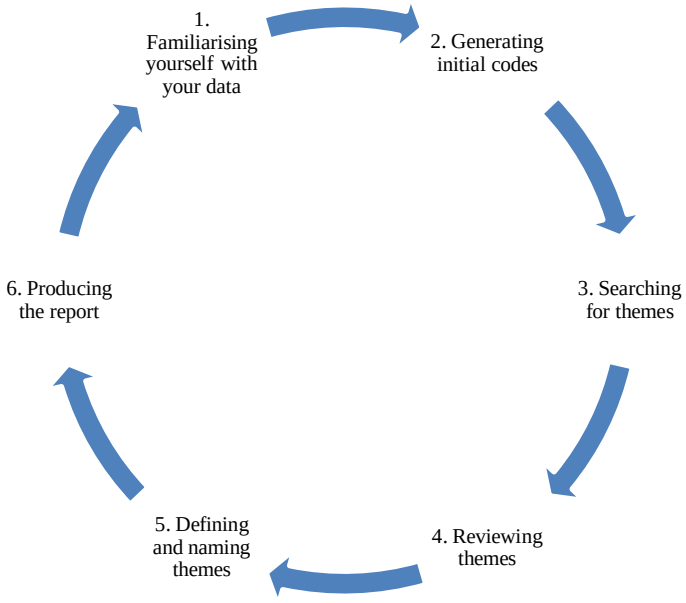
METHODOLOGY

Design research and thematic analysis

The present study uses one of the most common forms of the qualitative methods. According to Henwood & Pidgeon (1992), this method is suitable for a research which can lead to the development of a local theory.

Braun & Clarke (2006, pp. 6) define thematic analysis as: *a method for identifying, analysing, and reporting patterns within data.* Below, can find the all phases of thematic analysis, this should be viewed as *a recursive process* (Clarke & Braun, 2013).

Figure no. 1. **Six phases of tematic analysis -** Braun & Clarke (2006)



Source: our processing based on Braun & Clarke (2006)

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Participants

The participants of this study weren't randomly selected; all students were invited to be part of this research. Twenty students (6 male, 14 female students) from the Master in Corporate Finance Insurance, Faculty of Economics and Business Administration, Babeş-Bolyai University, Cluj Napoca, participated in this case study. Ages ranged from 21 to 30 (M = 22.35, SD=1.9) years.

Procedure

The researcher informed the participants that the goal of the study was to develop a local theory. All information for the case study was collected by using an open-ended questionnaire. The participants were asked:

i. What was your motivation in choosing this master program?

ii. What are your expectations after graduating this master program?

They didn't have a time limit to answer the above questions, and their identities or personal details are confidential.

Tool

According to Buiga, Dragoş, Lazăr, Mare, & Parpucea (2010) the open-ended questions are indispensable in gathering information on sensitive issues such as those related to measuring attitudes, needs and motivations.

The present study aims to develop a local theory about the motivation behind individuals' decisions for pursuing a master program of Corporate Finance-Insurance. We have used a questionnaire with two open-ended questions to find more information about their motivation and expectation.

RESULTS AND DISCUSSIONS

Each of the 6 six steps of the thematic analysis were respected, for example, the table below includes two coding examples. But according Clarke & Braun (2013), this process is not linear and was necessary to read again for getting a deep understanding of the text.

Table no 1 Coding exemples

Coding	**Text fragment**

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Need for change	*"I wanted a change [...] "*
Acquiring new knowledge	*'I wish to acquire more knowledge within this area to aid me in my future career.'*

Source: our processing

The findings from the data were presented under four main patterns:

Figure no. 2. **Students motivation**

Source: our processing

A) Students motivation - A1) Previous experience – our results show that there are three major aspects:

Continuity of studies

The desire for continuity in studying a subject can also be based on familiarity with that subject. An example to that effect is provided by S_{20}:

'The reason behind my choice to specialise in Corporate Finance and Insurance is that I wish to continue studying the subjects which have captivated my interest the most and in which I feel the most capable of reaching the highest proficiency, namely Finance and Insurance.'

The influence of authority – teachers can influence students' choice of a master's programme. Two relevant examples are given below:

S_{15}: '*thanks to the thesis adviser.'*

S_{17}:*'to continue studying insurance, and that is thanks to teacher X, who taught the subject in a way that made it enjoyable.'*

Need of change

S_5: "I wanted a change [...]"

S_{18}: "I wanted to study something new."

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A_2) Learning

Results show that there are five aspects on which the choice of a master's programme is based. During the learning process, expertise is attained both by gaining deeper insight into previously existing knowledge and by acquiring new knowledge. Al these subthemes incorporate the learning process,

In-depth knowledge

S_{14}: *'I wanted to gain more in-depth knowledge'*

Acquiring new knowledge

S_{10}: *'I wish to acquire more knowledge within this area to aid me in my future career.'*

S_{19}: *'through which one can acquire knowledge which will aid me in choosing a job.'*

Two other subthemes have been identified within the same parten: **the desire to exceed oneself** and **thebroadening of one's knowledge.**

A_3) Perception - is defined in this study as a subjective reflection of the motivation that lay at the foundation of one's choice of a master's programme. This comprises:

Choosing a master's programme based on one's perception of the entrance exam

S_3: *'I found the entrance exam easier than the ones for other specialisations'.*

S_6: *'the study material for the entrance exam was easy for me to learn'.*

The quality of the master's programme

S_{13}: *'it provides high quality education.'*

Prospects

S_{11}: *'I thought that the insurance and finance area could make for a promising career'.*

S_{19}: *'The Corporate Finance and Insurance master's gives one good career prospects'.*

A_4) Opportunities

Some of the students focused on the opportunities the master's can offer, which are as follows:

The double specialisation of the master's programme

S_5: *'enhancing my knowledge in two areas, namely Finance and Insurance.'*

S_{16}: *'The career opportunities it provides, both in the corporate area and in insurance.'*

The desire to find employment abroad (financial justification)

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S_7: *'I want to move to Germany [...] and there is a lot of focus on finance and insurance there, which means there are jobs that pay better in these areas.'*

B) Students' expectations

As for the expectations students have once they have graduated from the master's programme, they refer to:

B_1) Learning, which translates as expectations regarding the acquisition of knowledge within finance

S_4: *'I expect to gain new, less theoretical and more practical knowledge'*

S_5: *'to gain specialised knowledge in the area.'*

The batch of collected data also revealed the students' **desire to exceed** their current knowledge level. Some of the participants mentioned their wish to increase the level of knowledge they have already acquired in finance (which includes insurance).

The desire to exceed oneself

S_6: *'I would like to enhance my knowledge in the area'*

The desire to put knowledge into practice

S_6: *'I hope to learn how to put it into practice, too'*

S_{18}: *'I hope to gain enough knowledge, which I will put into practice.'*

Moreover, it is clearly noticeable how S_6 demonstrated full awareness and responsibility with respect to her choice of a master's programme. Acquiring new knowledge and the desire to put that knowledge into practice are realistic expectations when it comes to professional training. These realistic expectations are attainable upon completion of the master's programme, for they are the result of conscious assumptions. Consequently, one may also point out the use of the conjunctive mood (in Romanian) 'să învăţ' (I may learn), 'să deţin' (I may acquire), 'să am' (I may have) etc., which marks an attainable or possible act.

One interesting aspect to note was this new learning dimension, manifested as **curiosity** to gain an in-depth understanding of finance and insurance.

Curiosity

S_1: *'To have a better understanding of everything that has to do with finance and insurance.'*

B_2) Employment

Most expectations targeted the possibility of obtaining a job within the area of expertise. Several such examples are given below:

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S_3: *'finding a better job in this area, a job that I like and that pays well'*

S_{11}: *'I would like to pursue this line of study and get the certifications I need to become an actuary.'*

S_{17}: *'After I graduate I will pursue a career in insurance.'*

Moreover, an **Aspiration towards competence** has also been identified:

S_{13}: *'I hope to become a good specialist.'*

S_{14}: *'To become much better trained, so that I can afford to have high expectations of an attractive, well-paid job.'*

All these expectations about obtaining employment or aspiring to become a good specialist in the area are based both on intrinsic (previous experience) and on extrinsic motivation (the influence of authority, the double specialisation and other opportunities).

As most subjects focused on knowledge acquisition and obtaining a job, this atypical theme attests a new set of expectations of the non-financial kind, founded on the desire to exceed oneself. *'I want, I would like very much for this master's programme to enable me to enhance my expertise, to raise my knowledge level way above the current one.'*

Personal satisfaction

S_{18}: *'I hope that at the end of my master's studies I will be happy to have chosen this specialisation'.*

The two main types of motivation were identified in the batch of collected data.

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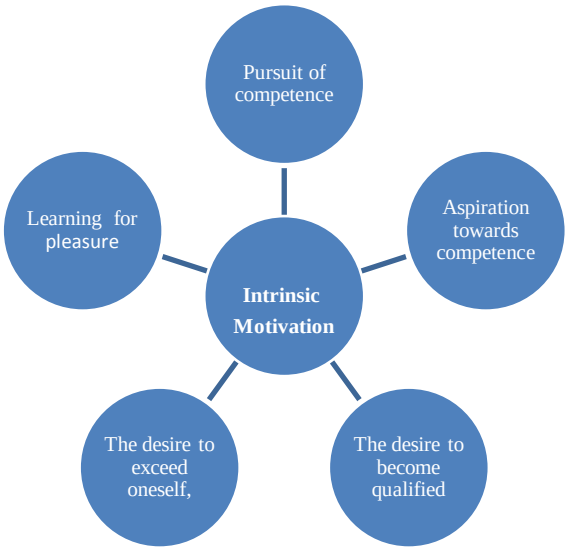
Figure no. 3. Intrinsic Motivation



Source: our processing

Figure no. 4. Extrinsic Motivation

Source: our processing

As illustrated by the figure above, intrinsic motivation includes aspects which are influenced by internal factors and pertain to the individual, while for extrinsic motivation it is external factors that play a major role.

CONCLUSIONS

Using thematic analysis this article investigates the relationship between motivation and expectations of students from the Master of Corporate Finance – Insurance. Our research started from the general to the particular case, also we were collected objective evidence, empirical inductive approach to support the local theory.

Motivation based on *previous experience* is often associated with *the desire to obtain employment within the area*. It is interesting to note that *teachers' personalities – role models* are integrated within *the desire to exceed oneself*. The aspiration to exceed oneself stems from a desire for self-fulfilment as compared to the achievements of a role model.

As far as *learning* is concerned,one cannot identify a rule with a certain applicability, but rather a set of expectations which regard *the learning process: knowledge*, as well as *employment*.

Based on their *perception* of choosing a master's programme, students' expectations are directed towards *the desire to put knowledge into practice* by becoming employed.

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The opportunities provided by this master's programme generate expectations with respect to acquiring the necessary knowledge to be able to face any challenge at the work place.

As for the practical implications, teachers have the possibility to steer their instruction activities towards fulfilling the students' expectations.

Thus, the local theory which best describes the study that we have conducted can be phrased as follows:
When it comes to the motivation behind choosing a master's programme, as defined by previous experience, learning, perception and opportunities, students' expectations upon completion of the master's generally translate as obtaining employment in their area of expertise by means of acquiring the necessary knowledge.

With the aid of the above-mentioned local theory, the students of the *Corporate Finance and Insurance* programme haveexpressed their desire to become integrated into the labour market. Their conscious and responsible choice of a master's programme may lead to the fulfilment of their declared expectations.

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STUDY OVER THE INFLUENCE OF INTERNAL CONTROL IN FINANCIAL REPORTINGS FOR UNLISTED ENTITIES

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Abstract:

In Romania, for organizing an internal control, the unlisted entities can choose one of the various models control, according to what they consider to be adequate for realizing the proposed objectives. Our hypothesis states that the effect of this phenomena is creating a different non-compliance risk for each entity. In the absence of mandatory submission of an audit and therefore on the quality assessment of internal control and financial statements this risk eliminates investor's interest regarding unlisted entities. The objective of this comparative research is to determine the influence of the internal control model over financial information reported by these entities. Through critical analysis, by organization and systematization of the information, we will study and conclude, given the circumstances of the entities investigated, the most suitable model of internal control which ensures the diminution of the non-conformity risk on financial statements.

Introduction

Significant internal control regulations in Romania are adopted for different types of entities among which public entities, banking entities, insurance companies, entities whose stock actions are admitted to trading on a regulated market. In this regard we take note of International Standards on Auditing (ISAs), International Financial Reporting Standards (IFRS), Norm 17/2003 on banking institutions, Government Ordinance no. 119/1999 regarding the internal control management and financial control of public entities, the Government general secretary Order no. 400/2015 approving the internal control management of public entities.

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The entities which are unlisted on the Romanian stock market, do not have standardized framework for internal control, so they have the option to adopt and implement from a various range of procedures.

The International Auditors Standard no. 315 establishes the fact that in the control process for financial reports, not all the elements of internal control can be considered relevant; the relevant ones are the ones which are considered by the financial auditor[1]. The unlisted entities which are not obliged to contract an audit do not benefit of a real feedback on the elements of internal control, managing this process based on previous experiences, not on recognized models of internal control or other professional capacities in this field of work.

Research Methodology

A first approach in our research was the theoretical documentation and critical analysis of information and the second step was the empiric research, on methods and processes of internal control. The empiric research consisted of participative and non-participative observation of the internal control processes in unlisted entities. Interviews were also used as a addition to the non-participative observation. An important factor in the research process was our experience and knowledge level on audit and accounting practices. The internal control processes of 30 unlisted entities based in Mureș County and with different financial statuses and different main activity were analyzed, to conduct this research on the control procedures used by unlisted entities. The sample entities were selected from the category of entities which, according to Romanian laws, are not obliged to implement internal audit and a regulated process of internal control. Further on we will present the results of the research on unlisted entities, grouped in: particularities of internal control on unlisted entities and the signification of internal control in financial reports.

1. Particularities of internal control in unlisted entities

In the regulation process of the internal control, an element is considered to be a decisive factor in dealing with practices and processes of control, which is risk. In our opinion, the financial reporting system is threatened by the control risk, with impact on

[1] International Manual of Standards for Quality Control, Audit, Review, Other Insurance Services and Auxiliary Services, IAASB, Bucharest, pages 263 to 277.

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noncompliance risk. The control risk means the possibility according to which "a significant error in the turnover or account balance may not be discovered and corrected by the internal control system"[2]. The noncompliance risk refers to the possibility that the financial reports may not be in compliance with the applicable regulations[3]. Due to these threats, we used the analysis of some internal control methods which were applied to unlisted entities compared to established models such as COSO, COCO and COBIT. The identification of the similarities and distinctions between the control processes present inside the studied entities and the ones mentioned above was important because during the implementation of internal control, the studied entities did not choose any of those models.

We must take note that the studied entities are small and medium entities in which management can adequately and efficiently supervise the control process, so we started this research knowing that recognized models such as COSO and COBIT can be very well adapted to the internal control process of these entities[4].

We considered even the habit of contracting the financial reporting services with accredited accountants, this action intervening in the internal control process and management supervision process, changing the control environment of financial reports. In our opinion, this action does not increase the possibility of risk. The processes from small and medium entities can be supervised more easily by the management, as stated in the ISA[5] standards, however in this case there is a risk, the elusion of controls, while in case of contacting an financial statements service provider, the contracting entity will be responsible for property managing the risk of noncompliance and control.

According to the conducted study we remarked that from the COSO model, the process of evaluation of internal control in various moment, is not found in the unlisted entities internal control procedures, in our opinion this leads to an inclination towards the COCO model which implies a constant process of adaption. Also the management of the entities tends to adapt an internal control, during the financial reporting process, based on law changes and entity necessities, without evaluating the results. There is a possibility that state authorities, as a result of financial checks on unlisted entities, thought the penalties awarded,

[2] Danescu Tatiana, Procedures and Techniques of financial audit, Publisher: Irecson, Bucharest, 2007, pag. 91.
[3] Dănescu, T., Prozan, M., Dănescu, A. (2014), Non-conformity risks–theoretical and practical connotations, Conference on Emerging Markets Queries in Finance and Business (EMQFB), Tg Mures, 24-27 October 2013, Procedia Economics and Finance, vol 15, pag. 993-1001.
[4] International Manual of Standards for Quality Control, Audit, Review, Other Insurance Services and Auxiliary Services, Bucharest, 2014, pages….. ISA 315
[5] International Manual of Standards for Quality Control, Audit, Review, Other Insurance Services and Auxiliary Services, Bucharest, 2014, pages…..

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to indirectly establish an evaluation note on internal control. The risk identification and evaluation component from the COSO model is absent from the internal control process of the sample entities because their identification was realized late, mostly after making an error.

Another approach in the internal control conducted in the unlisted entities towards the COCO model is realized by accent on the employee engagement unlike the COBIT model that focuses on control processes.

According to our information, we tend to conclude that in the internal control applied, the unlisted entities implement a series of elements from acknowledged models, but mostly elements of the COCO model.

2. Considerations on internal control of financial reports at unlisted entities.

The internal control can offer a reasonable insurance regarding the conformity and credibility of financial reports, realizing this objective through its components.[6] The internal control of financial reports, defined in theory as a component of the internal control system, consists of procedures adopted and implemented by entities with the aim of faithful representation of economic activity, according to an applicable financial reporting framework, for the achievement of established objectives.

In the past some acknowledgements of internal control of financial statements were given under the terminology of financial control, even if financial control unlike internal control of financial reports is limited to the verification process of the financial information.

Financial reports control, can be classified based on the moment when it takes place, as it follows: preventive control, detective control and directive control.[7] Also the verification component from the internal control process of financial reports is divided, based on the moment of taking place, in other three types which are: preventive verification, concomitant verification and verification after the publishing of the financial reports. In case of the entities which made the object of this study, we observed a focus on preventive and concomitant

[6] Dănescu, T., Prozan, M., Dănescu, A. (2012) The role of the risk management and of the activities of internal control in supplying useful information through the accounting and fiscal reports, Conference on Emerging Markets Queries in Finance and Business (EMQFB), Tg Mures, Procedia Economics and Finance, Volume 3, pp.1099-1106.

[7] Schiek P, Vera J, Bourrouilh – Parage O, „Audit interne et référentiels de risques", Editura Dunod, Paris, 2010 pag 227-324

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verification but a reduced number of verification processes after publishing the financial reports.

The documentary control is one of the procedures which is applied in the internal control of the financial reports in all the studied entities. This is closely related to primary documents, accounting records and technical-operation registrations and accounting logs, having the purpose to prevent any human error in the process of financial reporting. In the documentary control process, the verification component appears in the form of a preventive and concomitant verification. We consider that the verification process after the publication of financial reports although it uses the documents which are the object of this control, it has an impact not on this documents or the processes included but on the financial reporting process itself.

Within the verification component, we discovered the use of systematic verification or problem targeted verification. This involves grouping the primary documents according to the registers in which they belong, for example: documents that appear recorded in the cash journals or the documents appearing recorded in the bank journals; and verification by comparison.[8]

Other procedures found in the conducted study, but on a lower scale were:

- Cross verification – which implies an exchange of accounting information between clients and suppliers by issuing account statements at a date later after the financial reports;
- Supervising – implies following and direct control by the management of the personal responsible with the financial reporting;
- Tracking calculations – represents verifying the correlations between the information present in the financial statements;
- The factual finding – is conducted occasionally and it consists of checking the factual existence of the elements presented in financial reports and the fact that these elements are used for the purpose of the entities operations ;
- Inventory – a concomitant control process, rarely found among studied entities, namely only when the regulations oblige in conducting it;

[8] Mircea Boulescu, Mircea Ghiță „Financial control and accounting expertise", Publisher: Mondo ,Craiova 1992, pag 58-61

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- Survey verification – is a concomitant control method, used in the process of financial reporting and it represents a selective checking of the documents, of relevant operations, of calculation ways, record keeping and payment of contributions.[9]

The principle of segregation of duties was used in all studied entities, even if in theory it is considered that this is rarely used in financial reporting control by small entities which do not have a large number of employees, in some entities this hindrance is removed by outsourcing some services.

In the process of analyzing the influence of internal control over the financial reporting system, the second must be structured in controllable components, which in our opinion are: the documenting and collecting component, making particular reference to economic operations and the registration of primary documents, the processing component, the verification component, the synthesis and report publishing component.

Each of these components, according to our research, may be the object of both preventive and subsequent verifications. Within preventive verification, these components are subjected to the survey verification technic to factual finding verification technic, of the activities and the verification for conformity of the legal documents.

From the subsequent verification perspective, it returns to the documenting component every time a discrepancy or error is found within the components.

Concomitant verification refers to the component of processing through the self-control of the responsible person regarding information processing and after that by supervising and comparing the processed data before making the financial reports.

The verification process of the final component of the reporting system, report publishing, cannot be but subsequent to the synthesis and communication component, which is the only stage weher the management is providing input as a supervisor, within unlisted entities.

Within the studied entities, the financial reporting control does not include management supervision but by the person responsible with the elaboration of financial statements, no matter the size of the studied entity. The only component identified which, in some cases, implies management supervision the synthesis component.

3. Conclusions and proposals

[9] Nadia Cerasela Aniței „Laws and regulations for financial and fiscal control institutions”, Publisher: Lumen, Iași 2011, pag 78-81

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According to the results obtained in this study, in our opinion, the model which is most compatible with the used procedures by the unlisted entities is COCO, because there were many similarities between the particularities of internal control applied in the studied entities and the COCO model. Our recommendation is that unlisted entities should realize a combination of COCO and COSO procedures, especially by adopting the process of evaluation for internal control at a certain moment, including the internal control of financial reporting.

The management of unlisted entities tends to concentrate in the supervision process on the of internal control process which should ensure the accomplishment of the entity's economic and financial objectives, neglecting or commissioning most of its control of financial reporting attributes. In our opinion, this phenomena happens most often when a professional accredited accountant is contracted. Our recommendation for the management is to pay more attention to the supervising process focused on the conformity of financial reports and less on the financial image of the entity.

We conclude that the unlisted entities which do not resort to an internal audit or financial audit do not have a clear feedback on internal control efficiency, managing this process based on previous experiences and not on certified internal control methods or professional capacities. Contracting specialized entities to make the financial reports can offer a reasonable level of insurance regarding their conformity, because these entities are obliged to respect a professional ethics and deontology code which imposes the compliance to the professional international standards of financial reporting. Because of these reasons, we tend to believe that the entities which choose to contract independent professionals have a more efficient organization of the internal control on financial reports and also on the internal control components on which the management is focusing their attention.

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EVALUATION OF THE INSURANCE COMPANIES DEGREE OF INFORMATION TRANSPARENCY

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Abstract: One of the major concerns of the Financial Supervisory Authority is to ensure protection for insurance consumers.

In order to achieve such a goal it is very important the "insurance" of a higher level of information transparency from insurance companies.

In this respect our paper has established the objective of building and applying a rating algorithm of Romanian insurers with scores provided for the 14 criteria for assessing the degree of information transparency, actually the minimum information that has to be published annually by insurers according to Order No. 113119/2006 and the corresponding rules based on a uniform, standard reporting model proposed by us under existing regulations.

Keywords:information, insurance, protection, rating, transparency;

JEL Classification: G22

Introduction

Our paper has set the target of building and applying a rating algorithm of insurance companies based on the assessment of the information transparency degree. According to Order No. 113119/2006 for the implementation of the Rules on the minimum information that has to be published annually by insurers, published in the Official Journal of Romania, Part I, No. 630 of 21 July 2006, the insurers should publish annually a report that contains the minimum information asked by the Insurance Supervisory Commission, today the Financial Supervisory Authority, through Annexe to the Order.

Based on the analysis of annual reports published by the insurance companies, we gave scores for each of the 14 information criteria, to finally obtain the rating of the insurers. The purpose of this research was to establish which were the most transparent insurance companies in Romania. The second part of the paper contains the case study and the last part is represented by conclusions.

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Case study: Evaluation of the Romanian insurance companies' degree of information transparency

In this research we have built and applied a rating model to quantify the degree of information transparency for the Romanian insurance companies, analysing their annual reports for 2014. During 2014 there were 37 insurers running their business. From our analysis 6 insurers have been removed, because they did not publish an annual report in accordance with Order No. 113119/2006, but only the Financial Statements, the Directors' Report or the Auditor's Report.

In our analysis we gave a score of 10 for each of the 14 information criteria. Thus, the maximum score that could be obtained by a company is 140. For ease and correctness of establishing the rating, some criteria have been divided into subcategories. The tables below show the set scores for each criterion.

a) The name of insurer and legal form: 10,00 points.

*Table 1***Score for the name of insurer and legal form**

Evaluation criteria	The name of insurer	Legal form	Capital origin / Agreement (type) of administration
Score	5,00	3,00	2,00

(*Source*: Authors' processing)

b) Number of registration in the Registry of insurers-reinsurers, and in the Registry of insurance and/or reinsurance brokers: 10,00 points.

Table 2 **Score for the number of registration in the Registry of insurers-reinsurers**

Evaluation criteria	Number of registration	Date of registration dd/mm/yyyy	Observations: Incomplete date
Score	5,00	5,00	2,50

(Source: Authors' processing)

We mention that by incomplete date we mean that at least one of the elements from the date format dd/mm/yyyy is missing, namely the day, month or year of registration.

c) Registered office address of the insurer: 10,00 points.

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Table 3 **Score for the registered office address of the insurer**

Evaluation criteria	Locality, street, number, postcode	Telephone	Fax	Website	Electronic address	Call - Centre
Score	5,00	1,00	1,00	1,00	1,00	1,00

(Source: Authors' processing)

d) Presentation of the insurers shareholding and management structure together with the short Administrators' Report: 10,00 points.

d1) Shareholding structure: 4,00 points.

Table 4 **Score for shareholding structure**

Evaluation criteria	Share capital subscribed	Paid-up share capital subscribed	Number of issued shares	Nominal value of the share	Shareholders name
Score	0,50	0,50	1,00	1,00	1,00

(Source: Authors' processing)

d2) Management structure: 3,00 points.

Table 5 **Score for management structure**

Evaluation criteria	Board of Directors	Board of Administration	Executive Board	Regional Directors	Branch Directors
Score	0,60	0,60	0,60	0,60	0,60

(Source: Authors' processing)

The score of each criterion of the management structure has been adjusted, according to the information provided by each company, as follows:

1) Presentation of all members, with names, exercise duration and contact details (1,00 x 0,60 = 0,60)
2) Presentation of all members, with names, exercise duration and without contact details (0,75 x 0,60 = 0,45)
3) Presentation of all members with names, without exercise duration and contact details (0,50 x 0,60 = 0,30)
4) Members are not named, but the components of the management structure are mentioned (0,25 x 0,60 = 0,15)

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d3) Short Administrators' Report: 3,00 points.

Table 6 **Score for short Administrators' Report**

Evaluation criteria	General overview and organization (underwriting activity)		Indicators of financial security		
	Year of the market entry and operation	Categories of practiced insurance	M_S	C_L	g_a^{Rz}
Score	0,30	0,30	0,20	0,20	0,20

Evaluation criteria	Taxes	Risk management				Primary indicators		
		R_a	R_m	R_d	R_L	P_a	D_a	A_B
Score	0,60	0,15	0,15	0,15	0,15	0,20	0,20	0,20

(Source: Authors' processing)

M_S – Solvency margin (includes required solvency margin, solvency margin and the degree of solvency)

C_L – Liquidity coefficient

g_a^{Rz} – The degree of coverage of technical reserves with admitted assets

Risk management includes

- Risk related to the insurance activity (R_a)
- Economic environment risk (R_m)
- Interest rate risk (R_d)
- Liquidity risk (R_L).

Primary indicators include:

- Gross written premiums, gross premiums earned and premiums ceded to reinsurance (P_a) (0,20 = 0,10 + 0,05 + 0,05)
- Gross paid claims, claims expenses, net of reinsurance and regresses (D_a) (0,20 = 0,10 + 0,05 + 0,05)
- Balance sheet assets, investments (A_B) (0,20 = 0,10 + 0,10)

e) Presentation of undertaken categories and classes of insurance: 10,00 points.

Table 7 **Presentation of undertaken categories and classes of insurance**

Evaluation criteria	Correct and complete naming of the classes – according to the law, with specification*	Observations: incomplete or incorrect name**
Score	10,00	5,00

(Source: Authors' processing)

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*****classification of the insurance products based on the legal categories, with full and correct name
******further explanations: incomplete name means only the mentioning of the legal categories or classes, without indicating the products underwritten to the respective class

f) General information on insurance products and deductions provided by tax legislation that apply to insurance contracts: 10,00 points.

f1) General information about insurance products: 7,00 points.

Table 8 **Score for general information about insurance products**

Evaluation criteria	Products presentation - listing	Insured presentation	Indication of risks / insured events	Methods of payment of insurance premiums	Insurance beneficiaries/ protection
Score	3,00	1,00	1,00	1,00	1,00

(Source: Authors' processing)

f2) Deductions provided by tax legislation that apply to insurance contracts: 3,00 points.

Table 9 **Score for deductions provided by tax legislation**

Evaluation criteria	1) Category of deductibility – legal system: 1.1) legal entities; 1.2) authorized physical persons. 2) Character: 2.1) as contractor – beneficiary; 2.2) as beneficiary, the employer being the contractor.	Categories of insurance	Amounts versus legal regulations
Score	1,00	1,00	1,00

(Source: Authors' processing)

Tax deductions are those which the insurance companies apply according to Art. 21, para. (3) of the Tax Code. These are deductible from corporate tax, the amount representing the health insurance premium within the equivalent in lei of 250 euros in a fiscal year per employee.

g) Presentation of the network and distribution channels for practiced insurance products: 10,00 points.

Table 10 **Score for presentation of the network and distribution channels**

Evaluation criteria	Distribution channels (listing, presentation)	Working units	Territorial presence (regions, areas, localities)			Numerical dimension (number of units, personnel, percentages)
			regions	areas	localities	
Score	2,00	2,00	0,50	0,50	2,00	3,00

(Source: Authors' processing)

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h) Presentation of the representative offices for damages, of the network support and of the adjusted annual statements in accordance with the Balance Sheet in the case of insurers that practice class no. 10 letter B of Annex 1 of Law No. 32/2000, with subsequent amendments, exclusive carrier's liability and class no. 18 "Insurance assistance to persons in difficulties while traveling or while away from home or from their permanent residence": 10,00 points.

Regarding the adjusted financial statements the insurers must present at least the gross written premiums for classes 10 and/or 18.

Table 11 **Score for the insurers that practice the classes 10 and 18**

Evaluation criteria	Representative offices for damages	Network support	Adjusted annual statements for class 10	Adjusted annual statements for class 18
Score	2,50	2,50	2,50	2,50

(Source: Authors' processing)

Table 12 **Score for the insurers that do not practice the classes 10 and 18**

Evaluation criteria	Representative offices for damages	Network support
Score	5,00	5,00

(Source: Authors' processing)

Table 13 **Score for the insurers that practice the class 10 or 18**

Evaluation criteria	Representative offices for damages	Network support	Adjusted annual statements for class 10 / 18
Score	2,50	2,50	5,00

(Source: Authors' processing)

i) The short form of the external financial Auditors' Report: 10,00 points.

Table 14 **Score for the short form of the external financial Auditors' Report**

Evaluation criteria	Report on summarized financial statements	Management's responsibility for the summarized financial statements	Auditor's responsibility	Auditor's opinion	Emphasising particular, special aspects
Score	2,00	2,00	2,00	2,00	2,00

(Source: Authors' processing)

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j) General information on: assets, obligations, incomes, expenses, insurance portfolio, number of contracts, reinsurance activity, claims payable and paid, the insurer's exposure to risks of natural disasters and the reinsurance program: 10,00 points.

The score for this criterion was given based on the underwriting catastrophe risks of the insurance companies.

Table 15 **Score for insurers that present risks of natural disasters**

Evaluation criteria	Assets	Obligations	Incomes	Expenses	Insurance portfolio
Score	1,50 (0,3 x 5)	1,50 (0,25 x 6)	1,50 (0,21 x 7)	1,50 (0,3 x 5)	0,50
Evaluation criteria	Number of contracts	Reinsurance activity	Claimspayable and paid	Insurer's exposure to risks of natural disasters	Reinsurance program for natural disasters
Score	0,50	1,00 (0,33 x 3)	0,50 (0,25 x 2)	0,50	1,00 (0,33 x 3)

(Source: Authors' processing)

Table 16 **Score for insurers that do not present risks of natural disasters**

Evaluation criteria	Assets	Obligations	Incomes	Expenses
Score	1,75 (0,35 x 5)	1,75 (0,29 x 6)	1,75 (0,25 x 7)	1,75 (0,35 x 5)
Evaluation criteria	Insurance portfolio	Number of contracts	Reinsurance activity	Claimspayable and paid
Score	0,50	0,50	1,50 (0,5 x 3)	0,50 (0,25 x 2)

(Source: Authors' processing)

Criterion "Assets" include:

1) Intangible assets
2) Available funds in current accounts and cash on hand, unencumbered bank deposits
3) Investments, of which:
    3.1.) Investments in tangibles assets and in progress
    3.2.) Securitiesissued by localgovernment
    3.3.) Securitiesissued by centralgovernment
    3.4.) Securities traded on a regulated market
4) Receivables related to gross written premiums
5) Others.

The obligations include

1) Premium reserve

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2) Outstanding claims reserve
3) Incurred but not reported claims reserve
4) Expired risk reserve
5) Equalization reserve
6) Catastrophe reserve.

Criterion "Incomes" includes:

1) Gross written premiums – from direct insurance
   – from receipt of reinsurance
2) Gross earned premiums
3) Gross written premiums cancelled
4) Gross written premiums mediated by brokers
5) Income from commissions for premiums ceded to reinsurance
6) Income net of reinsurance recoveries and regresses
7) Financial income.

Criterion "Expenses" includes:

1) Gross claims expenditure – claims for direct insurance
   – claims for reinsurance reception
2) Net claims expenditure
3) Acquisition costs
   3.1.) Expenses with commissions from insurance activity
   3.2.) Expenditure on advertising and publicity
4) Administrative costs
5) Financial expenses.

For the reinsurance activity the reinsurers with the corresponding rating should be mentioned, together with the forms of reinsurance practiced for the legal categories of insurance or insurance products and the indication of retention and the coverage limits through reinsurance contracts.

k) Investments and return of investments, noting that for the category of life insurance, they will be presented for each class of insurance practiced with accurate and detailed information related to the country where they are located, the issuer, the stock market on which they are traded, the market value etc.:10,00 points.

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Table 17 **Score for investments**

Evaluation criteria	Investments categories	Maturities	Currency	At least two exercises	Fructification rate, yield, average interest rate	Indication if they are free of charges
Score	5,00	1,00	0,50	1,00	2,00	0,50

(Source: Authors' processing)

l) Short form of annual financial statements: 10,00 points.

Insurance companies with a composite activity are those that practice both general insurance (AG) and life insurance (AV).

Table 18 **Score for short form of annual financial statements – insurers with composite activity**

Evaluation criteria	Balance Sheet	Technical Account AG	Technical Account AV	Non-technical Account
Score	2,50	2,50	2,50	2,50

(Source: Authors' processing)

Table 19 **Score for short form of annual financial statements – insurers that practice one category of insurance**

Evaluation criteria	Balance Sheet	Technical Account AG/AV	Non-technical Account
Score	3,33	3,33	3,34

(Source: Authors' processing)

m) The law applicable to the insurance contract: 10,00 points.

Table 20 **Score for the law applicable to the insurance contract**

Evaluation criteria	Law No. 136/1995 on insurance and reinsurance in Romania	Law No. 32/2000 on insurance undertakings and insurance supervision	Law No. 571/2003 regarding the Fiscal Code	Law No. 287/2009 regarding the Civil Code (Chapter XVI: "Insurance contract")	Orders and Rules issued by CSA and ASF and Community Directives
Score	2,00	2,00	2,00	2,00	2,00

(Source: Authors' processing)

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n) Strategies and development perspectives of the insurer's activity: 10,00 points.

Table 21 **Score for strategies and development perspectives of the insurer's activity**

Evaluation criteria	Underwriting component or the technical component		Financial component
	Portfolio of clients – SMEs, corporate	Portfolio of products	
Score	1,00	1,00	2,00
	Indicators for monitoring the activity		

Evaluation criteria	Sales component, distribution network and post-sales component			Settlement of damage cases – indicators		
	Increase in turnover, gross written premiums	Market share – brokers, banks, leasing companies, auto dealers, auto service, healthcare service providers		The average duration of solving damage cases on insurance categories	The number of notifications and complaints	Number of cases of litigation-lawsuits
Score	1,00	1,00		0,67	0,67	0,66
	Degree of inter-mediation	Loss ratio – loss ratio control	Evolution of costs – component of combined ratio	Degree of satisfaction/non-satisfaction of policyholders	Profitabi-lity of products	Efficiency of administra-tive expenses
Score	0,33	0,34	0,33	0,33	0,34	0,33

(Source: Authors' processing)

After applying the rating algorithm the insurance company with the highest score (103,41 out of 140 points), meaning the greatest degree of information transparency, was Groupama Asigurări SA. The table below contains the first five Romanian insurers with the highest degree of information transparency in 2014.

Table 22 **The first five transparent insurers in 2014**

Insurance company	**Rating**
GROUPAMA ASIGURĂRI SA	103,41
BCR ASIGURĂRI DE VIAȚĂ VIENNA INSURANCE GROUP SA	97,67

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ABC ASIGURĂRI - REASIGURĂRI SA	95,22
AXA LIFE INSURANCE SA	94,99
SIGNAL IDUNA ASIGURARE REASIGURARE SA	91,87

(Source: Authors' processing)

On the opposite side is the insurance company Asigurare Reasigurare Asimed SA which obtained a score of 64,60, being the insurer with the lowest degree of transparency. The less transparent insurance companies in Romania in 2014 are listed in the table below.

Table 23 **The last five transparent insurers in 2014**

Insurance company	Rating
EUROLIFE ERB ASIGURĂRI GENERALE SA	71,58
GERMAN ROMANIAN ASSURANCE SA	71,26
GARANTA ASIGURĂRI SA	70,81
ASITO KAPITAL SA	66,05
ASIGURARE REASIGURARE ASIMED SA	64,60

(Source: Authors' processing)

Conclusions and future research

The objective of our paper was to build and apply a rating algorithm for the Romanian insurance companies to assess their degree of information transparency. According to Order No. 113119/2006 for the implementation of the Rules on the minimum information that has to be published annually by insurers, published in the Official Journal of Romania, Part I, No. 630 of 21 July 2006, the insurance companies should publish annually a report that contains the minimum information asked by the Insurance Supervisory Commission, today the Financial Supervisory Authority, through Annexe to the Order.

In our analysis we gave scores for each of the 14 information criteria, to finally obtain the rating of the insurance companies. The analysis included 31 insurers who performed their activity in 2014 and published an annual report according to Order No. 113119/2006.

For each of the 14 criteria we established a score of 10. The insurance company with the highest degree of transparency was in 2014 Groupama Asigurări SA. The insurance company with the lowest degree of transparency was Asigurare Reasigurare Asimed SA.

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As a result of the construction and application of our algorithm, to each company analyzed it can be provided a report with recommendations on issues that have to be improved in order to achieve a maximum degree of information transparency.

In the future we plan to extend this analysis for 2013-2015 for the Romanian insurers and to build the structure of a model report created according to Order No. 113119/2006 that insures a maximum degree of information transparency.

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THE CROSS-BORDER INSOLVENCY OF THE GROUP OF COMPANIES IN THE CONTEXT OF ECONOMIC GLOBALIZATION

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Rezumat:Globalizarea economică este o realitate de necontestat. Circulația liberă a bunurilor, capitalului și a forței de muncă este într-o continuă dinamică transfrontalieră. Organizarea și desfășurarea afacerilor se realizează într-o diversitate de forme de la afacerile individuale și până la structuri de grupuri de societăți. Tratamentul aplicabil grupului de societăți în cazul insolvenței transfrontaliere are anumite particularități. Instanța română și reprezentantul român cooperează într-o măsură cât mai extinsă cu instanța străină și reprezentantul străin. Reprezentantul român și reprezentantul străin pot coopera prin: comunicarea directă de informații și acte procedurale; sprijinirea și punerea în aplicare a unui plan comun de reorganizare a grupului de societăți; încheierea unui acord de insolvență transfrontalieră.

Instanțele românești pot coopera cu instanțele străine și reprezentantul străin prin: coordonarea administrării și supravegherii bunurilor și activităților societăților care fac parte din grupul de societăți; coordonarea desfășurării ședințelor de judecată; coordonarea și punerea în aplicare a planului de reorganizare; comunicarea de informații sau acte procedurale; aprobarea unui acord de insolvență transfrontalieră; desemnarea unui reprezentant comun în procedurile de insolvență.

Cuvinte cheie: globalizare economică; insolvență transfrontalieră; grup de societăți; coordonare insolvență grup de societăți; reprezentant român și reprezentant străin; instanțe românești și instanțe străine.

Abstract:The economic globalization is an undeniable reality. The free movement of goods, capital and labor is in a continuous cross-border dynamic.

The settelment and the developing of the businesses is done in a variety of forms, from individual businesses to structures groups of companies.

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The treatment applicable to the group of companies in the case of cross-border insolvency has certain particularities. The romanian court and the romanian representative cooperates in the widest possible measure with the foreign court and the foreign representative.The romanian representative and the foreign representative may cooperate through: the direct communication of information and procedural documents; the support and the implementation of a joint plan of the reorganization of the company group; the ending of a cross- border insolvency agreement.

The romanian courts may cooperate with the foreign courts and the foreign representatives by: the coordination of the administration and supervision of the assets and of the activities of the companies belonging to the group of companies; the coordination of conducting the hearings; the coordination and the implementation of the reorganization plan; the provision of information or of procedural acts; the approval of a cross-border insolvency agreement; the appointment of a common representative in insolvency proceedings.

Keyvords: economic globalization; cross-border insolvency; group of companies; insolvency the coordination of the group of companies; romanian representative and the foreign representative; romanian courts and foreign courts.

INTERFERENȚE PRIVIND GLOBALIZAREA ECONOMICĂ, INSOLVENȚA TRANSFRONTALIERĂ ȘI GRUPURILE DE SOCIETĂȚI

Globalizarea economică și grupurile de societăți

Globalizarea economică este o realitate de necontestat. Fenomenul globalizării economice are diferite forme[1] de manifestare cum sunt: globalizarea comerțului; globalizarea finanțelor; globalizarea producției; globalizarea forței de muncă.

Libera circulație a bunurilor, capitalului și a forței de muncă sunt într-o continuă dinamică[2] transfrontalieră.

Creșterea interdependențelor dintre economiile naționale ori a fluxurilor generate de acestea spre o economie internațională în cadrul conexiunilor transfrontaliere din domeniile finanțelor, comerțului, producție, serviciilor și forței de muncă impun forme juridice corespunzătoare de organizare și desfășurare a afacerilor.

Organizarea și desfășurarea afacerilor se realizează într-o diversitate de forme, de la afacerile individuale și până la cele structurate în forma grupurilor de societăți.

[1] **J.E. Stiglitz**, *Mecanismele globalizării*, Ed. Polirom, București, 2008, p. 19, **G. De la Dehesa**, *Învingători și învinși în globalizare*, Ed. Historia, București, 2007, p.9
[2] **A. M. Găină**, *Globalizarea și crizele financiare*, Ed. Pro Universitaria, București, 2012, p.10

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Complexitatea și volumul unor afaceri necesită organizarea acestora în forma unui grup de societăți fără ca acesta să devină persoană juridică[3].

Optimizarea afacerilor în condițiile globalizării prin crearea grupurilor de societăți în care diferiți participanți la mediul de afaceri își concentrează acțiunile și cooperează în scopuri comune este o evidentă realitate[4] economică.

Grupul de societăți constituie un veritabil instrument juridic de organizare și desfășurare a afacerilor în economia globalizată.

Importanța grupului de societăți în economie este dată și de faptul că în anumite zone, afacerile desfășurate în forma structurii de grup sunt aducătoare de venituri substanțiale.

Statisticile arată că în Germania 70% din veniturile din economie provin din structurile de grup, iar peste 50% din angajați aparțin grupurilor de societăți[5].

În România grupul de societăți nu are o reglementare juridică de drept comun. El este reglementat doar în legislația în materie de insolvență.

În art. 5, pct. 35 din Legea nr.84/2014 privind procedurile de prevenire a insolvenței și de insolvență se dispune că ”grupul de societăți înseamnă două sau mai multe societăți interconectate prin control și (sau) deținerea participațiilor calificate”. Cele două elemente de diferențiere a grupului de societăți față de alte structuri sunt participația[6] calificată și controlul[7], care pot fi luate împreună sau separat.

Globalizarea economică și insolvența transfrontalieră

Libera circulație a bunurilor, a capitalului și a forței de muncă în economia globalizată necesită existența unor elemente de securizare a operațiunilor juridice desfășurate de operatorii economici. Afacerile derulate în cadrul economiei globalizate au caracter extrafrontalier și produc efecte la nivelul relațiilor internaționale.

Asigurarea stabilității operațiunilor economice în cadrul economiei globale în general, dar și a fiecărui participant la acestea comportă solvabilitate și garanții. Raporturile juridice generate de acțiunile economice ale participanților la operațiunile integrate din economia globală trebuie

[3] **C. Gheorghe**, *Drept comercial*, Ed. CHBeck, București, 2013, p.638
[4] **Ph. Merle**, *Droit commercial*, Societes Comerciales, 15 Dalloz, Paris, 2011, p. 809
[5] **R. Bufan și alții**, *Tratat practic de insolvență*, Ed. Hamangiu, București, 2014, p.836
[6] Participația calificată constă în fracțiunea de capital social compusă între 20% și 50% pe care o persoană o deține într-o altă societate (art. 5, pct. 41 din Legea nr.85/2014)
[7] O persoană este considerată că deține controlul și poate influența sau determina direct ori indirect politica financiară și operațională ori deciziile la nivelul organelor societare atunci când: deține 40% din drepturile de vot și nu există un altul cu un procent superior care deține majoritatea drepturilor de vot în adunarea generală a societății respective; când dispune de puterea de anumi sau revoca majoritatea membrilor organelor de conducere (art. 5, pct. 9 din Legea nr.85/2014)

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protejate în mod specific prin reguli aplicabile comercianților aflați în dificultate[8], deoarece insolvența transfrontalieră este o procedură[9] în care există un element de extraneitate.

Raporturile juridice cu element de extraneitate[10] în cazul insolvenței transfrontaliere necesită un tratament juridic specific.

Globalizarea economică și insolvența transfrontalieră sunt în conexiune și interferă prin sistemul de relații economice extrafrontaliere generate de globalizare, în cadrul cărora, atunci când apare fenomenul de insolvență și acesta dobândește caracter extrafrontalier trebuie tratat în mod specific.

Grupurile de societăți și insolvența transfrontalieră

Grupul de societăți a fost considerat[11] în regimul insolvenței ca un ansamblu de societăți cu personalitate juridică distinctă pentru fiecare, care sunt interconectate juridic și economic prin controlul și (sau) participația calificată deținută de o anumită persoană.

Pe piața globală grupul de societăți poate desfășura activitate economică sub jurisdicția statului în care își au sediile societățile care-l compun dar și sau jurisdicția transfrontalieră, dacă această activitate depășește jurisdicția națională printr-un element de extraneitate al raporturilor respective.

Când raporturile juridice generate de operațiunile economice ale grupului se desfășoară transfrontalier și au un element de extraneitate și grupul ajunge în insolvență, el poate fi subiect al unei proceduri de insolvență transfrontalieră.

PROCEDURI SPECIFICE ȘI PARTICIPAREA ÎN INSOLVENȚA TRANSFRONTALIERĂ A GRUPULUI DE SOCIETĂȚI

Elemente preliminare

Procedurile aplicabile insolvenței transfrontaliere sunt generate de elementul de extraneitate al raporturilor juridice cu statele terțe.

Situațiile[12] cărora le este aplicabilă insolvența transfrontalieră pot consta în: solicitarea de asistență în România de către o instanță străină sau de către un reprezentant străin în legătură cu o procedură străină de insolvență; desfășurarea concomitentă a unei proceduri române de insolvență și a unor proceduri străine referitoare la oricare dintre membrii unui grup de societăți; solicitarea de asistență într-un stat străin în legătură cu o procedură română de insolvență; când creditorii sau alte persoane interesate dintr-un stat străin sunt interesate să solicite deschiderea în România a unei proceduri sau să participe în cadrul unei proceduri deschise.

[8]**M. Dogaru** (Comșa), *Insolvența transfrontalieră*, Rezumat teză de doctorat, www.unibuc.ro, p.2
[9]**R. Bufan și alții**, *op.cit*., București, 2013, p.924
[10]**O. Ungureanu, C. Jugastia, A. Circa**, *Manual de drept internațional privat*, Ed. Hamangiu, București, 2008, p.235; **I.P. Filipescu, A.I.Filipescu**, *Tratat de drept internațional privat*, Ed. Universul Juridic, București, 2005, p. 422
[11]**R. Bufan și alții**, *op. cit*., 2013, p.836
[12] Art. 274 (1) din Legea nr.85/2014

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Pe fondul unor asemenea situații juridice, participanții în procedura insolvenței transfrontaliere pot fi cei comuni oricărei proceduri, adică instanțele judecătorești; judecătorul sindic; administratorul judiciar; lichidatorul judiciar; administratorul special; creditorii, dar și participanți specifici cum sunt reprezentantul român, reprezentantul străin.

Procedurile de insolvență sunt și ele specifice, după caz, adică o procedură română de insolvență ori o procedură străină de insolvență.

Procedura română de insolvență

Procedura română[13]de insolvență este orice procedură de insolvență reglementată de Legea nr.85/2014.

Ea poate fi o procedură generală sau o procedură simplificată și se desfășoară după regulile de drept comun precizate în Legea nr.85/2014.

Procedura străină de insolvență

Procedura străină[14] de insolvență constă într-o procedură colectivă, publică, judiciară sau administrativă care se desfășoară potrivit legislației în materie de insolvență a unui stat străin în care bunurile și activitatea debitorului sunt supuse controlului sau supravegherii unei instanțe străine în scopul reorganizăriii sau lichidării activității acelui debitor. Procedura străină de insolvență poate fi o procedură străină principală sau o procedură străină secundară.

Când procedura străină se desfășoară în statul în care se situează principalele interese ale debitorului, atunci aceasta este o procedură străină principală[15].

Procedura străină secundară[16] este o procedură de insolvență, alta decât cea principală, care se desfășoară în statul în care debitorul își are stabilit un sediu.

Reprezentantul român

Reprezentantul român este practicianul în insolvență care este desemnat ca administrator judiciar sau lichidator judiciar în cadrul unei proceduri române de insolvență. El este abilitat să acționeze într-un stat străin ca reprezentantal procedurii deschise în România în condițiile care sunt stabilite de legea străină aplicabilă.

Reprezentantul român poate să încheie cu reprezentantul străin un acord de insolvență transfrontalieră. Pentru încheierea acordului el trebuie să aibă aprobarea prealabilă a creditorilor în condițiile prevăzute de legea română și de legea străină.

[13] Art. 5, pct. 48 din Legea nr.85/2014
[14] Art. 5, pct. 49 din Legea nr.85/2014
[15] Art. 5, pct. 50 din Legea nr.85/2014
[16] Art. 5, pct. 51 din Legea nr.85/2014

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Acordul[17] de insolvență transfrontalieră poate să cuprindă: alocarea responsabilităților; desemnarea unuia dintre reprezentanți în calitate de reprezentant coordonator; modalitatea de administrare și supraveghere a membrilor grupului de societăți; finanțările acordate ulterior ori care vor fi acordate ulterior deschiderii procedurii; modalitățile de administrare, conservare ori valorificare a bunurilor; fixarea corelată a datelor ședințelor adunării creditorilor; tratamentul creanțelor intragrup.

Reprezentantul străin

Reprezentantul străin[18] este persoana fizică sau juridică, incluzând persoanele desemnate cu titlu provizoriu, autorizate în cadrul unei proceduri străine să administreze reorganizarea sau lichidarea bunurilor și activitatea debitorului ori să acționeze ca reprezentant al unei proceduri străine.

Reprezentantul străin are calitate procesuală privind: introducerea[19] unei cereri de deschidere a procedurii în condițiile în care sunt îndeplinite potrivit legii române condițiile necesare deschiderii unei asemenea proceduri; participarea în cadrul unei proceduri[20] deja deschise împotriva debitorului din momentul recunoașterii procedurii străine pe care o reprezintă; formularea de cereri direct la instanțele românești; formularea de cereri către reprezentantul român.

Prin formularea de acțiuni[21] de către reprezentantul străin în fața instanțelor românești nu poate opera extinderea competenței acestor instanțe asupra acestui reprezentant ori asupra bunurilor și activității externe ale debitorului în alte scopuri decât pentru soluționarea capetelor de cerere formulate.

Reprezentantul străin are calitatea procesuală activă de a formula în fața instanței românești competente o cerere de recunoaștere a procedurii străine cu care a fost desemnat. Cererea de recunoaștere trebuie să fie însoțită de următoarele documente[22]: o copie certificată a hotărârii de deschidere a procedurii străine și de desemnare a reprezentantului străin sau a o adeverință emisăd e instanța străină prin care se certifică existența unei proceduri străine și desemnarea reprezentantului străin sau în lipsa celor menționate orice altă dovadă de deschidere a procedurii străine; o declarație prin care se vor preciza toate procedurile străine cu privire al debitor despre care reprezentantul străin are cunoștință.

Instanța în măsura în care consideră necesar va putea solicita traducerea în limba română a documentelor furnizate în scopul susținerii cererii de recunoaștere.

[17] Art. 310 din Legea nr.85/2014
[18] Art. 5, pct. 56 din Legea nr.85/2014
[19] Art. 289 din Legea nr.85/2014
[20] Art. 283 din Legea nr.85/2014
[21] Art. 284 din Legea nr.85/2014
[22] Art. 287 și art. 288 din Legea nr.85/2014

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După sesizarea instanței cu cererea de recunoaștere, reprezentantul străin va aduce de îndată la cunoștința acesteia următoarele informații[23]: orice modificare importantă care survine în derularea procedurii străine supuse recunoașterii ori recunoscută sau în statutul său de reprezentant al acelei proceduri; deschiderea oricăror proceduri străine referitoare la același debitor de care reprezentantul a luat cunoștință.

FORME ȘI MIJLOACE DE COOPERARE ÎN INSOLVENȚA TRANSFRONTALIERĂ A GRUPULUI DE SOCIETĂȚI

Forme și mijloace de cooperare între reprezentantul român și reprezentantul străin

Reprezentantul român și reprezentantul străin cooperează în insolvența transfrontalieră a grupului de societăți atât prin mijloace comune de cooperare în cadrul insolvenței transfrontaliere a oricăror categorii de debitori, cțt și prin mijloace specifice insolvenței transfrontaliere a grupului de societăți.

Mijloacele comune[24] de cooperare ale oricărei insolvențe transfrontaliere care sunt aplicabile și insolvenței transfrontaliere a grupului de societăți sunt: desemnarea unor persoane sau a unui organ care să acționeze potrivit indicațiilor instanței; coordonarea administrării și supravegherii bunurilor și activității debitorului; comunicarea de informații prin orice mijloace pe care instanța le consideră adecvate; aprobarea ori punerea în aplicare de către instanțe a acordurilor de cooperare a procedurilor; coordonarea procedurilor concomitente referitoare la același debitor.

Reprezentantul român în exercitarea atribuțiilor și sub supravegherea instanței poate în cadrul cooperării cu reprezentantul străin să folosească pe lângă mijloacele comune și următoarele mijloace specifice[25]: să comunice direct informații și acte procedurale aferente procedurilor de insolvență; să analizeze posibilitatea reorganizării grupului de societăți; să sprijine propunerea, negocierea și punerea în aplicare a unui plan comun de reorganizare, dacă acesta este posibil și să acționeze coordonat cu reprezentantul străin; să încheie cu reprezentantul străin un acord de insolvență transfrontalieră.

Reprezentantul străin are și el posibilitatea în cadrul insolvenței grupului de societăți după recunoașterea procedurii străine să folosească pe lângă mijloacele comune de cooeprare șo următoarele mijloace specifice[26]: să fie audiat și să participe la adunările creditorilor; să propună un plan de reorganizare; să solicite orice măsuri procedurale pe care le-ar putea solicita reprezentantul român, în condițiile în care ar fi satisfăcute sufragiile legii române în materie .

[23] Art. 290 din Legea nr.85/2014
[24] Art. 299 din Legea nr.85/2014
[25] Art. 306 din Legea nr.85/2014
[26] Art. 307 din Legea nr.85/2014

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Reprezentantul român și reprezentantul străin pot să încheie în cadrul formelor de cooperare un acord de insolvență transfrontalieră.

Forme și mijloace de cooperare între instanțele românești și instanțele și reprezentanții străini

Cooperarea dintre instanțele românești și instanțele și reprezentanții străini se realizează prin valențele comune cooperării în cadrul oricărei insolvențe transfrontaliere cât și prin valențe specifice insolvenței transfrontaliere a grupului de societăți.

Mijloacele comune de cooperare în cadrul oricărei insolvențe transfrontaliere aplicabile cooperării dintre reprezentantul român și reprezentantul străin sunt aplicabile și cooperării dintre instanțele române și instanțele și reprezentanții străini, neexistând diferențe în acest sens.

Mijloacele specifice[27] de cooperare dintre instanțele române și instanțele și reprezentanții străini constau în: administrarea și supravegherea coordonată a bunurilor și activităților societăților care fac parte din grup; desfășurarea și stabilirea comună a ședințelor de judecată; aprobarea și punerea în aplicare în comun a planului de reorganizare; comunicarea de informații ori acte procedurale privind procedura română de insolvență a unuia dintre membrii grupului de societăți; aprobarea unui acord de insolvență transfrontalieră având ca obiect coordonarea procedurilord e insolvență; desemnarea unui reprezentant comun în procedurile de insolvență.

INDEPENDENȚĂ ȘI IMPARȚIALITATE ȘI SOLUȚIONAREA CERERILOR DE RECUNOAȘTERE ȘI EXECUTARE A HOTĂRÂRILOR STRĂINE

Independență și imparțialitate în procedura de cooperare

Procedura de cooperare între instanțele românești pe de o parte și instanțele și reprezentanții străini pe de altă parte nu trebuie să aducă atingere principiilor[28] de independență și imparțialitate sub care își desfășoară activitatea puterea judecătorească. Nu trebuie ca prin cooeprarea respectivă să fie afectate drepturile și interesele legitime ale participanților la procedura insolvenței.

Soluționarea cererilor de recunoaștere și executarea hotărârilor străine

Cererile formulate până la intrarea în vigoare a Legii nr.85/2014 care privesc recunoașterea și executarea hotărârilor străine prin care se deschid și se închid procedurile de insolvență ori care decurg sau sunt în strânsă legătură cu aceasta se soluționează potrivit regulilor în vigoare de la data formulării acestora.

Din punct de vedere procesual acestea sunt supuse principiului tempus regit actum,a dică reglementărilor procesuale valabile la data formulării lor.

[27] Art. 308 din Legea nr.85/2014
[28] Art. 309 din Legea nr.85/2014

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SOCIO-CULTURAL AND ECONOMIC IMPACT OF FOREIGN STUDENTS OF "VASILE GOLDIS" WESTERN UNIVERSITY OF ARAD. A CASE STUDY

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Abstract:Intercultural dialogue is an area of growing interest in the field of late socio-cultural and socio-economic scientific research, entering since 2007 among the European Union politics (Näss, 2010). This study was done by "Vasile Goldiş" Western University of Arad participating foreign students under the dome of interculturalism, in the idea of building a functional socio-economic and cultural interrelationships. The main themes studied were: the reason for choosing Arad, as the town of study, how they managed to adapt to the local life, to using the Romanian language, to local climate, food and lifestyle,extra-curricular activities and freetime; how they integrated into the local Romanian community and how were their social relations built.

Under socio-economic aspect was investigated the impact that foreign students community can have on local environment. Specifically, there were analyzed: place of accommodation, costs of accommodation and food, utilities fees, costs of transportation, entertainment, telephone; all these being quantified monetary.

Analyzing the gathered information, it highlights both a socio-cultural and socio-economic imprint of foreign students. They bring in the municipality elements of their culture, traditions and customs while supporting the local socio-cultural life and economy.

Keywords: interculturalism, social integration, socio-cultural, community, economic impact

Introducere

Globalizarea este un proces de integrare prin care schimburile dintre ţări în general şi culturi în special se intensifică producând transformări calitative în ceea ce priveşte structura şi funcţionarea, din punct

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de vedere economic, social, cultural, a tuturor țărilor. Văzut inițial ca și integrare economică[1] acest fenomen a depășit în timp această definiție îngustă, fiind identificate transformări semnificative în toate aspectele vieții unei țări, principalul efect fiind cel de uniformizare. Modalitățile, direcțiile și gradul de transfer de la o țară la alta depind de contextele în care aceste transformări au loc și de diferențele de „greutate" pentru fiecare dintre caracteristicile vizate din țările participante.

Migrarea în domeniul educației reprezintă un vector important pentru dialogul intercultural, integrarea socială și chiar dezvoltarea economică, iar în plan științific, constituindu-se într-o necesitate pentru tot mai multe studii (Poglia, Mauri-Brusa și Fumasoli, 2007; Cliche și Wiesand, 2009; Barrett, Byram, Lázár, Mompoint-Gaillard și Philippou, 2013; Holmes, 2014). În prezentul articol sunt analizate elementele cheie ale interactiunii socio-culturale și economice dintre studenții străini ai Universității de Vest „Vasile Goldiș" din Arad (U.V.V.G.) și comunitatea locală, respectiv gradul de integrare în societatea și cultura românească.

În cei peste 25 de ani de existență Universitatea de Vest „Vasile Goldiș" din Arad (U.V.V.G.) și-a lăsat amprenta asupra educației și cercetării științifice atât în plan național cât și internațional. Urmare a prestigiului științific construit în acești ani, universitatea și-a deschis porțile către un număr semnificativ de studenți din străinătate, școlarizând în prezent 1380 studenți provenind din Italia, Franța, Marea Britanie, Germania, Belgia, Ungaria, Serbia, Republica Moldova, Israel, Tunisia, Maroc, Algeria, Pachistan, India, S.U.A., Polonia, Mali, ș.a.

Acești studenți au adus în comunitatea arădeană elemente sociale, culturale și economice, care oferă, prin diversitatea aspectelor lor, în interacțiune cu specificul național, prin deschidere și integrare, șansa îmbogățirii și creșterii reciproce.

Studiul de față urmărește să identifice amprenta socio-culturală și economică lăsată de studenții străini din cadul Universității de Vest „Vasile Goldiș" din Arad asupra municipiului, și modul în care s-s realizat integrare socială a acestora.

Metodologia cercetării

Obiectivele stabilite pentru studiul propriu-zis au fost:

a) Identificarea influenței socio-culturale a studenților străini la nivelul municipiului Arad, și

b) Evaluarea impactului economic al studenților străini în municipiul Arad.

[1] http://ec.europa.eu/economy_finance/international/globalisation/index_ro.htm

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Subiecţii studiului au fost un număr de 170 studenţi străini (12,3% din totalul studenţilor străini şcolarizaţi în cadrul universităţii), dintre care 53,5% sunt de gen masculin şi 46,5% de gen feminin. Dintre respondenţi, 63,5% au fost de naţionalitate italiană, 12,4% franceză, 7,6% israeliană, 5,0% tunisiană, 1,8% marocană, algeriană, germană şi nigeriană, şi 0,6% pakistaneză, suedeză, indiană, americană, siriană, turcă, spaniolă şi bulgară. Media de vârstă a studenţilor a fost de 25,2 ani.

Instrumente de lucru. Subiecţilor le-a fost aplicat un chestionar cu 10 itemi, cu răspuns închis, deschis şi mixt, construit astfel încât să vină în sprijinul atingerii obiectivelor prezentate (vezi Anexa 1). Itemii au fost stabiliţi după o testare, ajustare, validare prealabile, atât de către un grup de trei experţi, cât şi de către un grup de 10 studenţi, pentru a surprinde toate aspectele vizate şi a asigura o înţelegere corectă a formulării conţinutului.

Chestionarele au fost distribuite subiecţilor individual şi în grup, prin intermediul reprezentanţilor studenţilor, la nivelul universităţii.

Itemii chestionarului au vizat, pe lângă culegerea unor date demografice (vârsta, genul şi naţionalitatea subiecţilor) şi abordarea unor teme precum: motivaţia alegerii Universităţii de Vest Vasile Goldis respectiv a Aradului ca destinaţie pentru efectuarea studiilor universitare; gradul de integrare în comunitatea română locală, gradul de integrare în comunitatea studenţească română; uşurinţa cu care s-au obişnuit cu: utilizarea limbii române, mâncarea specifică regiunii, clima locală, traficul urban local, stilul de viaţă local; percepţia privind oportunităţile de petrecere a timpului liber: viaţa studenţească (activităţi extra-curriculare), obiectivele cultural-istorice (muzeu, cinema, teatru, localuri, etc), posibilităţile de a participa la activităţi sportive, posibilităţile de a participa la activităţi de voluntariat, existenţa unor locuri de muncă adaptate studenţilor (part time/cu jumatate de normă). A mai fost studiat modul de organizare/petrecere a timpului liber: activităţi extra-curriculare (întâlniri cu colegii pentru dezbateri, participare la workshop-uri, ateliere de lucru, etc.), frecventarea obiectivelor cultural-istorice locale (muzeu, cinema, teatru, localuri, etc), participarea la activităţi sportive locale (activităţi organizate sau săli de sport), participarea la activităţi de voluntariat destinate comunităţii locale, frecventarea unui loc de muncă local adaptat studenţilor (part time); coordonatele în care se desfăşoară relaţiile sociale; locul cazării (în căminul Universităţii, într-o locuinţă închiriată, într-o locuinţă proprietate personală) - ceea ce oferă indicii privind gradul de integrare în comunitatea românească.

În ideea unei perspective privind viitorul profesional, studenţii au fost întrebaţi şi asupra opţiunii lor după finalizarea studiilor (rămân în Arad, rămân în România, merg în străinătate - în statele UE, se

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întorc în țara natală), fapt care reflectă impactul ulterior al integrării socio-culturale realizat pe parcursul studiilor.

Ulterior, în vederea identificării impactului economic asupra municipiului, studenților le-au fost solicitate informații privind sumele cheltuite în medie pe lună pentru: mâncare (supermarket, restaurant etc), cazare (chirie, rata credit etc.), utilități (încălzire, apă, energie electrică, Internet etc.), transport (taxi, carburant, reparații/ asigurare auto etc.), divertisment (cinema, teatru, opera, club, cafenea, sala sport etc.), altele (telefon, etc.).

Rezultatele studiului

Vom prezenta și discuta rezultatele obținute în funcție de cele două obiective ale studiului: identificarea amprentei socio-culturale și a celei economice.

1. Influența socio-culturală a studenților străini asupra municipiului Arad

O primă temă de studiu a fost *motivația alegerii Aradului ca locație pentru desfășurarea studiilor*. În acest sens, subiecții au fost întrebați „De ce ați ales Aradul ca destinație pentru efectuarea studiilor universitare?" La acest item au avut cinci variante de răspuns închis și una cu răspuns deschis, având posibilitatea alegerii multiple.

Dintre respondenți, 33,1% au ales Aradul pentru că este un oraș mai mic comparativ cu alte centre universitare, 24,8% au ales Aradul pentru că este aproape de granița României, fiind un nod de comunicații și transport cu majoritatea statelor membre ale Uniunii Europene.

În proporție de 12,4% Aradul a fost ales datorită locației universității, existența unor asemănări culturale a contat în procent de 8,3%, iar amabilitatea și deschiderea spre comunicare a localnicilor în proporție de 7,4%. 19% dintre respondenți au avut diverse alte motive pentru care au ales localitatea Arad pentru efectuarea studiilor universitare.

Răspunsurile arată ponderea relativ redusă a asemănărilor culturale în luarea deciziei reflectând deschiderea spre noi experiențe și o disponibilitate ridicată spre comunicare inter-culturală.

Subiecții, au fost rugați de asemenea să motiveze și *alegerea Universității de Vest „Vasile Goldiș" din Arad, dintre alte universități din România*. În acest sens răspunsurile au fost în proporție de 43,5% în favoarea recomandărilor de la prieteni și/sau cunoscuți. Costurile mai mici ale facultății au contat în procent de 25,3% și curricula mai bine adaptată nevoilor personale, în procent de 23,5%. Posibilitatea unei vieți studențești active și faptul că Aradul este aproape de granița României au avut

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influență doar în 18,2% respectiv 12,9% dintre situații. Au fost și un procent de 4,1% dintre studenți, care au menționat că au avut și alte motive, dar nu le-au specificat.

Faptul că ponderea principală in argumentarea deciziei o au recomandările prietenilor și/sau cunoscuților sugerează acomodarea semnificativă la condițiile didactice respectiv socio-culturale pe care foștii studenți, deveniți consilieri informali, au realizat-o, iar dorința unei vieți studențești active definită ca motivație a alegerii de către peste 18% din studenți demonstrează proactivitate și deschidere spre dialog cu alți studenți venind din alte culturi.

A doua temă analizată a fost *modalitatea de adaptare la viața locală*.

Utilizarea limbii române este stăpânită la nivel foarte bun de 28,2% dintre respondenți, la nivel bun de 31,2% și mediu de 24,1%. 8,8% dintre subiecți consideră că utilizează limba română la nivel slab și 7,6% foarte slab sau deloc.

Nu la fel de bună a fost *adaptarea la mâncarea specifică regiunii*. Aproape 40% dintre subiecți au reușit să se obișnuiască la nivel slab și foarte slab cu mâncarea locală. Doar un procent de 15,9% dintre respondenți spun că s-au adaptat foarte bine la modul nostru de alimentație și 13,5% au un nivel bun de adaptare, ponderea cea mai mare avand-o cei cu un nivel adaptare medie 31,2%. Concluzia ar fi că obiceiurile culinare constituie un element care are o puternică stabilitate, schimbarea acestora respectiv integrarea interculturală la acest nivel este mai dificilă. Este motivul pentru care deși există lanțuri de restaurante internaționale de succes care promovează uniformizarea, observăm că în bună măsură bucatăria tradițională se păstrează, mult mai bine decât alte elemente definitorii ale culturii naționale.

Clima locală a creat probleme de adaptare la 15,3% dintre respondenți, în cazul cărora aceasta practic este inexistentă. Pentru un alt procent de 17,6% adaptarea este slabă, dar cei mai mulți consideră că s-au obișnuit la un nivel mediu (31,2%). O adaptare bună și foarte bună au cunoscut-o 21,2% și respectiv 14,7% dintre subiecți.

În ceea ce privește *traficul urban local*, 18,2% dintre respondenți spun că s-au obișnuit foarte bine și respectiv bine. Cei mai mulți dintre ei (31,8%) consideră că s-au adaptat la nivel mediu, 12,9% s-au adaptat puțin și 18,8% foarte puțin.

Următoarea dimensiune investigată a fost *obișnuința cu stilul de viață specific regiunii Aradului*. Marea majoritate a studenților spun că s-au adaptat mediu, bine sau foarte bine stilului de viață local (34,7%, 25,3% și 17,6%). Mai puțini sunt cei cu adaptare slabă sau foarte slabă (12,4% și 10,0%).

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Integrarea în comunitatea română locală este considerată ca fiind slabă de către 15,9% dintre subiecți, medie, bună și foarte bună de către 68,8% dar și inexistentă de către 15,3%. În același timp, integrarea printre studenții români este văzută ca inexistentă în 21,2% dintre situații, și medie, bună și foarte bună în 60,5% din cazuri.

Întrebați asupra persoanelor în compania cărora își desfășoară *relațiile sociale* aceștia au spus că, în procent de 30,6%, compania este asigurată de colegii de facultate din aceeași țară sau cultură cu ei, și în procent de 38,8% de colegi din culturi diferite, inclusiv români. Un procent de 25,6% au spus că își petrec timpul în compania colegilor de facultate din culturi diferite, dar fără români, 9,1% alături de colegii de facultate și localnici și 14,9% stau în compania localnicilor, nu și a colegilor de facultate.
Se remarcă procentul ridicat al studenților care preferă compania conaționalilor (peste 30%) respectiv al celor care au relații sociale cu colegi străini dar fără români (peste 25%) ceea ce reflectă o integrare limitată a acestora în comunitatea locală. Un revers al acestui fapt îl consituie ponderea (aproape 15%) celor care interacționează limitat cu colegii dar au relații sociale cu localnicii.
Sfera de *activități extra-școlare* reprezintă un alt domeniu de interes atunci când se discută despre integrarea studenților străini în comunitatea locală și despre difuzarea trăsăturilor socio-culturale.

Astfel, subiecții au fost întrebați despre activitățile lor din *timpul liber*. Răspunsurile studenților s-au orientat cu precădere spre zona activităților sportive organizate la nivel local cu un procent de 45,5%, iar 24,8% dintre respondenți frecventează obiectivele cultural-istorice locale, cum este muzeul, cinematograful, teatrul, localurile, ș.a. Activitățile extra-curriculare precum întâlniri cu colegii pentru dezbateri, participare la workshop-uri, ateliere de lucru, sunt realizate în 40,5% dintre situații. 12,4% dintre respondenți participă la activități de voluntariat destinate comunității locale, 2,5% frecventează un loc de muncă part-time și 5,8% au alte modalități de petrecere a timpului liber, nespecificate. Se remarcă interesul principal acordat sportului ceea ce îl face principalul factor pentru intensificarea dialogului intercultural, urmat de activitățile extracurriculare pentru care valoarea ridicată a interesului poate reflecta și integrarea socio-culturală limitată în afara școlii.
Oportunitățile de petrecere a timpului liber din cadrul municipiului Arad au fost apreciate de către studenții străini, după cum urmează:
- viața studențească (activități extra-curriculare), este considerată de nivel mediu, bun și foarte bun de către 66.1% dintre studenți, și de nivel slab și foarte slab de către 34,4%;
- obiectivele cultural-istorice (muzeu, cinema, teatru, localuri, etc) sunt considerate de nivel mediu, bun și foarte bun de către 62,4% dintre studenți, și de nivel slab și foarte slab de către 37,6%;

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- posibilitățile de a participa la activități sportive sunt apreciate ca fiind de nivel mediu, bun și foarte bun de către 62,9% dintre subiecți, și de nivel slab și foarte slab de către 37,1%;
- posibilitățile de a participa la activități de voluntariat sunt considerate de grad mediu, bun și foarte bun de către 55,3% dintre subiecți, și de nivel slab și foarte slab de către 44,7%;
- locurile de muncă adaptate studenților (part time/cu jumatate de normă) sunt apreciate ca fiind de nivel mediu, bun și foarte bun de către 42,9% dintre subiecți, și de nivel slab și foarte slab de către 57,1%.

Valorile obținute în ceea ce privește oportunitățile de petrecere a timpului liber au o importanță în sine ca indicator al ofertei municipiului Arad, cu semnale de alarmă în ceea ce privește locurile de muncă adaptate studenților și posibilitățile de a participa la activități de voluntariat, dar totodată se corelează cu criteriile studenților în alegerea Aradului ținând seama că doar 18% au apreciat posibilitatea unei vieți studențești active.

În ceea ce privește *cazarea*, marea majoritate a studenților investigați în cadrul studiului au ales să locuiască în chirie (80,3%) și 14,8% și-au achiziționat o locuință proprie, 71,2% dintre ei apreciind că în Arad ușurința de a găsi cazare este de nivel mediu, bun sau foarte bun. Cu toate că 28,9% dintre studenții străini consideră dificilă găsirea unui spațiu de cazare, doar 2,5% locuiesc în căminul universității și 1,6% se află într-o altă situație, nespecificată. Opțiunile privind cazarea oferă informații intersante privind atât interesul pentru dialogul intercultural repectiv integrarea socio-culturală cât și condițiile în care acestea ar putea avea loc. Prima observație se referă la procentul foarte redus al studenților străini care locuiesc în căminul universității ceea ce reflectă un interes limitat pentru integrarea în mediul local si procentul relativ ridicat al celor care au achiziționat o locuință proprie deși nici jumătate din ei nu intenționează să rămână în Romania după terminarea studiilor. Cei care au optat să locuiască în chirie sunt în general studenți aparținând aceleiași culturi care locuiesc împreună limitând astfel posibilitățile de contact, dialog si integrare socio-culturale.

Întrebați asupra opțiunii lor după finalizarea studiilor, cei mai mulți dintre studenți doresc să profeseze în străinătate, într-o țară membră a Uniunii Europene (63,5%). Imediat pe locul doi sunt cei care spun că se vor întoarce în țara natală (38,2%). Doresc să rămână în România doar un procent de 5,9% și, deși au ales să studieze aici, preconizează că vor rămâne în Arad, 4,1% dintre studenții chestionați.

2. Influența economică a studenților străini asupra municipiului Arad

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Pentru a calcula amprenta economică a studenților a fost analizate diversele tipuri de cheltuieli pe care aceștia le fac (mâncare, cazare, utilități, transport, divertisment, comunicare etc.). Situația acestor cheltuieli este prezentată în medie, în Tabelul 15 și 16.

a. cheltuielile cu mâncarea se situează în jurul valorii medii de 197,1 euro/lună;

b. costurile cazării sunt în jur de 238,3 euro/lună;

c. cheltuielile pe diverse utilități (încălzire, apă, energie electrică, Internet, etc.) sunt în medie de 101,7 euro/lună;

d. cheltuielile cu transportul (taxi, carburant, reparații/ asigurare auto etc.) sunt de 91,0 euro/lună;

e. cu divertismentul (cinema, teatru, opera, club, cafenea, sala sport etc.) se cheltuie în medie 109,0 euro/lună;

f. pentru alte cheltuieli inclusiv comunicarea telefonică studenții cheltuie în medie 30,9 euro/lună.

Făcând o sumă a cheltuielilor medii ale unui student strain în municipiul Arad, obținem o valoare totală de 768,1 euro/lună. Raportat la numărul total de studenți străini ai universității, rezultă o valoare de 1.017.198 euro/lună, respectiv 12.206.376 euro/an, ca fiind bani care intră în economia municipiului, strict prin intermediul acestor studenți, fără a lua în calcul fenomenul de multiplicare.

Concluzii

Analizând informațiile culese, din perspectivă **socio-culturală**, putem extrage o influență exercitată de către studenții străini ai U.V.V.G. asupra municipiului Arad.

În primul rând, Aradul a fost ales ca locație de desfășurare a studilor universitare datorită faptului că este un oraș mai mic comparativ cu alte centre universitare și pentru că orașul este aproape de granița României, fiind un nod de comunicare cu alte state ale Uniunii Europene. A contat și faptul că aici își are sediul universitatea, dar și amabilitatea și deschiderea spre comunicare a localnicilor.

Din perspectiva construirii dialogului intercultural, comunicarea eficientă între studenții străini și localnici, este asigurată de capacitatea lor de utilizare a limbii române, care este de la nivel mediu la foarte bun pentru 83,5% dintre ei. Aceasta se datorează și nevoii de incluziune, integrare și adaptare, care apare inevitabil în situația locuirii într-o țară și cultură diferită (Kockina și Blake, 2013).

Mai puțini sunt cei care s-au obișnuit cu mâncarea specifică regiunii. Doar 60,6% dintre studenți spun că s-au adaptat la stilul nostru de hrană, restul sunt cei care nu au reușit să se obișnuiască și vor aduce la nivelul populației o cultură alimentară diferită, implicând diversificarea produselor. Tot aproximativ

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la fel se situează și adaptarea la clima și traficul urban local. Procentele de adaptare sunt de 67,1% și respectiv de 68,2%.

Un procent mai ridicat de adaptare îl întâlnim la nivelul stilului de viață local, 77,6% dintre studenții străini considerând că s-au obișnuit cu acesta. Integrarea în comunitatea română locală este, de altfel, mai bună decât în comunitatea studențească de români. Procentul este de 68,8%, comparativ cu 60,5%, dar tot peste medie.

Relațiile sociale ale subiecților se desfășoară cel mai adesea în compania colegilor de facultate (38,8%), fiind oarecum firesc datorită faptului că cea mai mare parte a timpului și-o petrec în activitățile școlare. S-a evidențiat, însă, un procent de 14,9% dintre studenții străini, care preferă compania localnicilor, nu și a colegilor de facultate.

Timpul liber pare să fie petrecut, în cea mai mare parte în activități sportive organizate local (45,5%), în activități extra-curriculare organizate de către universitate (40,5%), ori în frecventarea obiectivelor cultural-istorice (24,8%). Sunt foarte puțini cei care au ales să și muncească part-time (2,5%), dar 12.4% dintre respondenți desfășoară activități de voluntariat destinate comunității locale.

În ceea ce privește opțiunea de a rămâne în Arad și de a profesa, după finalizarea studiilor, doar 4,1% și-au exprimat această dorință, marea majoritate alegând fie profesarea într-o țară membră a Uniunii Europene (63,5%), fie întoarcerea în țara natală (38,2%).

Dicolo de influența pe care studenții străini o au punct de vedere socio-cultural există și un impact **economic**, care reiese din cheltuielile acestora cu necesitățile zilnice de trai, și care reprezintă sume de bani care intră în fluxul financiar-monetar al orașului. Adunând sumele la nivelul totalului studenților străini obținem o valoare de 1.017.198 euro/lună, respectiv 12.206.376 euro/an, bani intrați în circuitul financiar al municipiului Arad, din cheltuielile necesare traiului studenților străini înscriși la Universitatea de Vest „Vasile Goldiș".

Prin urmare, se evidențiază atât o amprentă socio-culturală, cât și economică, lăsată de studenții străini. Aceștia aduc la nivelul municipiului elemente din cultura lor, din tradițiile și obiceiurile lor, sprijinind totodată și economia locală, dar și cei care pleacă din municipiu, după finalizarea studiilor, duc cu ei informații despre cultura și obiceiurile noastre, despre tradițiile și valorile noastre, asigurându-ne o carte de vizită la nivel mondial.

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Anexa 1

Chestionar privind integrarea studenților străini

Universitatea de Vest „Vasile Goldiș" din Arad realizează un studiu cu privire la integrarea studenților străini în cadrul Universității de Vest „Vasile Goldiș" din Arad, pentru a îmbunătăți calitatea serviciilor noastre.

În acest scop aplicăm acest chestionar la care vă rugăm să aveți amabilitatea să răspundeți.

Datele furnizate de către dvs. sunt confidenţiale. În cazul în care doriți să primiți rezultatele acestui studiu vă rugăm să scrieți datele dvs. de identificare la finalul acestui chestionar (nume, adresa de e-mail)

1. De ce ați ales Aradul ca destinație pentru efectuarea studiilor universitare?

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a. datorită locației Universității
b. Aradul este un oraș mai mic comparativ cu alte centre universitare
c. Aradul este aproape de granița României (nod de comunicații și de transport cu majoritatea țărilor membre UE)
d. amabilitatea și deschiderea spre comunicare a localnicilor
e. existența unor asemănări între cultura dumneavoastră și cea locală
f. alte motive .....

2. Ce v-a determinat să alegeți UVVG dintre alte universități din România?
costurile facultății (mai mici în comparație cu alte universități)
programul de studii/ curricula mai bine adaptat nevoilor dvs.
posibilitatea de a avea o viața studențească activă
recomandări de la prieteni/ cunoscuți
Aradul este aproape de granița României (nod de comunicații și de transport cu majoritatea țărilor membre UE)
alte motive .....

3. Notați de la 1 la 5 (1 reprezentând o apreciere slabă, iar 5 reprezentând cea mai bună apreciere) ușurința cu care ați reușit să vă obișnuiți cu:
utilizarea limbii române
mâncarea specifică regiunii
clima locală
traficul urban local
stilul de viață local

4. Cum apreciați, pe o scară de la 1 (foarte slab/inexistent) la 5 (foarte bun)?
usurința de a găsi cazare
integrarea în comunitatea română locală
integrarea în comunitatea studențească română

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5. Cum apreciați oportunitățile de petrecere a timpului liber, pe o scară de la 1 (foarte slab/inexistent) la 5 (foarte bun)?

viața studențească (activități extra-curriculare)

obiectivele cultural-istorice (muzeu, cinema, teatru, localuri, etc)

posibilitățile de a participa la activități sportive

posibilitățile de a participa la activități de voluntariat

locuri de muncă adaptate studenților (part time/cu jumatate de normă)

Altele .....

6. Cum vă organizați timpul liber?

a. în activități extra-curriculare (întâlniri cu colegii pentru dezbateri, participare la workshop-uri, ateliere de lucru, etc.)

b. frecventarea obiectivelor cultural-istorice locale (muzeu, cinema, teatru, localuri, etc)

c. participarea la activități sportive locale (activități organizate sau săli de sport)

d. participarea la activități de voluntariat destinate comunității locale

e. frecventarea unui loc de muncă local adaptat studenților (part time)

f. Alte modalități .....

7. Relațiile dumneavoastră sociale se desfășoară:

a. în compania colegilor de facultate din aceeași țară/cultură cu dumneavoastră

b. în compania colegilor de facultate din culturi diferite, inclusiv români

c. în compania colegilor de facultate din culturi diferite, fără români

d. în compania colegilor de facultate și a localnicilor

e. în compania localnicilor, nu și a colegilor de facultate

8. Unde locuiți?

a. în căminul Universității

b. într-o locuință închiriată

c. într-o locuință proprietate personală

d. Altă situație.....

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9. Care este opțiunea dumneavoastră după finalizarea studiilor?

voi rămâne în Arad

voi rămâne în România

voi merge în străinătate, în statele UE

mă voi întoarce în țara natală

10. Vă rugăm să specificați care sunt sumele cheltuite în medie pe lună, cu următoarele:

Categorie	Cost (euro/lună)
Mâncare (supermarket, restaurant etc)	
Cazare (chirie, rata credit etc.)	
Utilități (încălzire, apă, energie electrică, Internet etc.)	
Transport (taxi, carburant, reparații/ asigurare auto etc.)	
Divertisment (cinema, teatru, opera, club, cafenea, sala sport etc.)	
Altele (telefon, ...)	
Total cheltuieli/lună	

Inițiale..... Vârsta..... Gen.....

Naționalitate.....

Facultatea.....

An de studiu.....

Vă mulțumim!

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DISTANCE EDUCATION FROM A HISTORICAL PERSPECTIVE

Petruța Blaga

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Abstract:Distance learning has been considered an efficient way to reach a large number of people who could not benefit from the traditional forms of education. Distance learning by correspondence (letter) has evolved to education through radio and TV and up to the solutions from the early 90th based on computer systems. The continuous introduction of new technologies has strongly affected the way in which the distance learning was developed in the last 50 years.

E-learning as a component of distance education, its historical perspective largely overlaps with the history of distance education.

The e-learning history begins with an understanding of the way in which the training design, training technology and educational technology have evolved in the last century. The research and continuous developments in the e-learning technology, as well as the capacity to develop virtual classrooms and a virtual learning environment are also an important part of the history of e-learning because it has contributed to the development of this form of human resources training. The understanding of the history of the e-learning and the way in which it has evolved, allows the identification of possible future directions and options, to synchronize this form of training with current research and technological innovations.

Keywords:distance learning, e-learning, instructional design, instructional technology, technological innovations

Istoria e-learning începe cu înţelegerea modului în care proiectarea instruirii, tehnologia de instruire şi tehnologia educaţională au evoluat în ultimul secol. Aceasta presupune, de asemenea, o înţelegere istorică a dezvoltării învăţării bazate pe e-learning [18].

Cercetările şi dezvoltările continue în tehnologia e-learning, precum şi capacitatea de a dezvolta săli de curs virtuale şi un mediu virtual de învăţare sunt, de asemenea, o parte importantă a istoriei e-learning deoarece au dus la dezvoltarea acestei forme de instruire a resurselor umane [11]. Înţelegerea istoriei e-learning şi a modului în care acesta a evoluat, permite identificarea unor posibile direcţii şi opţiuni viitoare, pentru a sincroniza această formă de instruire [20] cu cercetările actuale şi inovaţiile tehnologice.

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1. Educaţia la distanţă dintr-o perspectivă istorică

E-learning fiind o componentă a educaţiei la distanţă [1], perspectiva sa istorică se confundă în mare parte cu istoricul educaţiei la distanţă. Anii 1833 în Lund, Suedia şi respectiv, 1840, în Anglia (Sir Isaac Pitman) sunt consideraţi momentele de pornire a educaţiei la distanţă, prin dezvoltarea educaţiei prin corespondenţă. Învăţământul la distanţă a fost considerat o bună modalitate de a ajunge la un număr mare de oameni care fără sistemul de educaţie prin corespondenţă nu ar fi putut beneficia de nici o formă de educaţie [4].

Dintre elementele care au influenţat dezvoltarea educaţiei la distanţă [7] se pot menţiona:

Dezvoltările tehnologiilor de comunicaţii bazate pe radio şi televiziune a făcut posibil ca resursele educaţionale să fie accesibile unui număr mai mare de oameni, cu un cost mai redus.

Educaţia la distanţă face posibilă instruirea resurselor umane, fără ca aceasta să fie prezentă fizic în sala de curs tradiţională [10]. Un exemplu în acest sens este instruirea prin corespondenţă din anii 1980, accesată de către oameni care locuiesc în zonele slab populate din nordul Norvegiei.

Multe ţări şi guverne şi-au dat seama că numai prin educaţia cetăţenilor acestea pot deveni ţări civilizate şi dezvoltate. Învăţarea la distanţă s-a dovedit a fi o soluţie bună pentru a oferi educaţie şi cunoştinţe pentru societate.

Sporirea nevoii de dezvoltare a învăţământului la distanţă şi a e-learning-ului [6] a determinat evoluţia rapidă a tehnologiei şi societăţii în general. Aceste schimbări afectează pe aproape toţi oamenii care trăiesc în ţările dezvoltate. Indiferent de pregătire, toată lumea are nevoie de formare profesională după absolvirea şcolii sau de studii postuniversitare. Necesitatea de a combina în viitor educaţia cu locul de muncă şi familia a fost un factor important în impulsionarea dezvoltării învăţământului deschis, la distanţă şi flexibil. Învăţarea pe tot parcursul vieţii [23] este un cuvânt cheie.

În general, a existat o dezvoltare a învăţării la distanţă de la corespondenţă (scrisoare), la educaţia prin radio şi TV, până la soluţiile, din prima parte a anilor ’90, bazate pe sisteme de calcul. Introducerea continuă a noilor tehnologii a afectat puternic modul în care învăţământul la distanţă s-a dezvoltat în ultimii 50 de ani.

Trăind într-o societate bazată pe cunoaştere şi informaţii poate fi destul de solicitant, atât pentru indivizi şi organizaţii, cât şi pentru societate în general. Trăim în epoca calculatorului şi litera "e" de la electronic a devenit o parte naturală a vocabularului nostru. E-mail-ul, e-dating, e-business, e-commerce şi e-learning reprezintă viitorul şi nu se poate ignora acest lucru.

2. Momente importante în dezvoltarea educaţiei la distanţă

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Se pot evidenţia cronologic câteva din cele mai importante etape din evoluţia educaţiei la distanţă în lume [15],[16],[17], [5]:

1833 Primul curs prin corespondenţă în Lund, Suedia

1840 Înfiinţarea primei şcoli prin corespondenţă din Europa, Sir Isaac Pitman, Colegiul prin Corespondenţă (Correspondence Colleges), Marea Britanie

1883 Fondarea Institutului prin Corespondenţă Chautauqua (Chautauqua Correspondence Institute) în New York, Statele Unite ale Americii

1891 Universitatea din Chicago înfiinţează Şcoala prin Corespondenţă (Correspondence School), Statele Unite ale Americii

1910 Înfiinţarea Şcolii Internaţionale prin Corespondenţă (International Correspondence School) în Pennsylvania, Statele Unite ale Americii

1921 Prima emisiune radio educaţională emisă de Universitatea Latter Day Saints', Statele Unite ale Americii

1938 Fondarea Consiliului Internaţional pentru Educaţie prin Corespondenţă – ICCE (the International Council for Correspondence Education)

1939 Fondarea Centrului Naţional pentru Educaţie la Distanţă (Centre National d'Éducation à Distance), Franţa

1946 Universitatea Africii de Sud (UNISA) introduce pentru prima dată predarea la distanţă a cursurilor în învăţământul superior

1948 Prima Lege cu privire la Şcolile prin Corespondenţă din Norvegia, care iniţiază controlul statului asupra şcolilor prin corespondenţă private

1950 Lansarea primului program educaţional TV în statul Iowa, S.U.A.

1963 Fondarea Consiliului pentru Educaţie prin Corespondenţă – CEC(the Council for Education by Correspondence), predecesor al Asociaţiei Şcolilor Europene prin Corespondenţă – AECS (the Association of European Correspondence Schools)

1964 Crearea Serviciului Public de Radio-Difuziune (Public Broadcasting Service - PBS) şi lansarea de către acesta a educaţiei prin TV, Statele Unite ale Americii

1967 Fondarea Institutului Germande Învăţământ la Distanţă – DIFF(Deutsches Institut für Fernstudien), Germania

1968 Fondarea Asociaţiei Norvegiene de Învăţământ la Distanţă – NADE (the Norwegian Association of Distance Education), Norvegia, re-organizată în 1984, când s-a permis universităţilor şi colegiilor active din domeniul educaţiei la distanţă să devină membre a acestei asociaţii

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1968 Fondarea Consiliului European pentru Studiu Acasă – EHSC (the European Home Study Council), un alt predecesor al Asociaţiei Şcolilor Europene prin Corespondenţă – AECS (the Association of European Correspondence Schools)

1969 Fondarea Universităţii Deschise (the Open University), Marea Britanie

1972 Fondarea Universităţii Naţionale de Educaţie la Distanţă (Universidad Nacional de Educación a Distancia), Spania

1974 Înfiinţarea Universităţii Deschise (FernUniversität), Germania

1974 Înfiinţarea Universităţii Deschise Allama Iqbal (the Allama Iqbal Open University), Pakistan

1974 Fondarea Universităţii Everyman (the Everyman's University), Israel

1975 Fondarea Universităţii Athabasca (the Athabasca University), Canada

1977 Fondarea Universităţii Deakin (the Deakin University), Australia

1977 Înfiinţarea Universităţii de Stat la Distanţă (Universidad Estatal a Distancia), Costa Rica

1977 Fondarea Universităţii Naţionale Abierta (Universidad Nacional Abierta), Venezuela

1978 Fondarea Institutului Naţional pentru Educaţie Multimedia (the National Institute of Multimedia Education), Japonia

1978 Fondarea Universităţii Deschise Multimedia Sukhothai Thammathirat (the Sukhothai Thammathirat Open University), Tailanda

1982 Consiliul Internaţional pentru Educaţie prin Corespondenţă – ICCE (the International Council for Correspondence Education) îşi schimbă denumirea în Consiliul Internaţional pentru Învăţământul la Distanţă – ICDE (the International Council for Distance Education)

1982 Fondarea Reţelei Naţionale de Teleconferinţe pentru Universităţi (National University Teleconferencing Network – NUTN), Statele Unite ale Americii

1982 Fondarea Universităţii Deschise (the Open University), India

1982 Înfiinţarea Universităţii Jysk Aabent (Jysk Aabent Universitet), Danemarca

1982 Înfiinţarea Centrului Naţional de Educaţie la Distanţă (the National Distance Education Centre), Irlanda

1983 Fondarea Universităţii Air (the University of the Air), Japonia

1984 Înfiinţarea Asociaţiei Suedeze pentru Educaţie la Distanţă (the Swedish Association for Distance Education), Suedia

1984 Fondarea Consorţiului pentru Universitatea la Distanţă (Consorzio per l'Università a Distanza), Italia

1984 Înfiinţarea Universităţii Deschise (Open Universiteit), Olanda

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1985 Fondarea Asociaţiei Europene a Şcolilor prin Corespondenţă – AECS (the Association European Correspondence Schools), succesoarea Consiliului European pentru Studiu Acasă – EHSC (the European Home Study Council)

1985 Înfiinţarea Universităţii Naţionale Deschise Indira Gandhi (the Indira Gandhi National Open University), India

1986 Centrul American de Studiu pentru Educaţia la Distanţă, creat la Universitatea de Stat din Pennsylvania, Statele Unite ale Americii

1986 Decizia Consiliului privind Programul Comunităţii Europene COMETT (Community Programme in Education and Training for Technology)

1987 Departamentul pentru Educaţie din Statele Unite ale Americii lansează Programul Star Schools pentru sprijinirea educaţiei la distanţă. Apare Revista Americană pentru Învăţământ la Distanţă (American Journal of Distance Education) la Universitatea de Stat din Pennsylvania, Statele Unite ale Americii

1987 Decizia Consiliului privind Programul Comunităţii Europene ERASMUS (European Region Action Scheme for the Mobility of University Students)

1987 Rezoluţia Parlamentului European privind Universităţile Deschise din Comunitatea Europeană

1987 Fondarea Asociaţiei Europene a Universităţilor cu Predare la Distanţă – AEDTU (the European Association of Distance Teaching Universities)

1987 Fondarea Federaţiei Inter-universitare pentru Învăţământ la Distanţă (Fédération Interuniversitaire d'Enseignement à Distance), Franţa

1987 Înfiinţarea Centrului Deschis de Studii Hoger Onderwijs (Studiecentrum Open Hoger Onderwijs), Belgia

1987 Fondarea Reţelei Europene de Învăţământ Deschis – SATURN (Europe's Open Learning Network)

1988 Înfiinţarea Universităţii Deschise (Universidade Aberta), Portugalia

1988 Decizia Consiliului privind Programul Comunităţii Europene DELTA ("Concerted coordination for the promotion of efficient multimodal interfaces")

1988 Fondarea Programului European de Educaţie Continuă Avansată EuroPACE

1989 Laboratoarele Naţionale Los Alamos (Los Alamos National Labs) organizează prima conferinţă de învăţământ la distanţă, Statele Unite ale Americii

1989 Lansarea satelitului OLYMPUS de către Agenţia Europeană Spaţială

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1989 Înfiinţarea Asociaţiei Europene a Utilizatorilor de Sateliţi în Programele de Educare şi Formare profesională – EUROSTEP (the European Association of Users of Satellites in Training and Education Programmes)

1989 Decizia Consiliului privind Programul Comunităţii Europene LINGUA

1990 Decizia Consiliului privind Programul Comunităţii Europene FORCE

1990 Document de lucru al Comisiei Europene privind "Educarea şi formare profesională la Distanţă" ("Distance Education and Training")

1990 Decizia Consiliului privind Programul Comunităţii Europene TEMPUS (Trans-European Mobility scheme for University Studies)

1991 Înfiinţarea Reţelei Europene de Educaţie la Distanţă – EDEN (the European Distance Education Network), pe baza Declaraţiei de la Budapesta (1990)

1991 Raportul Comisiei asupra Educaţiei Deschise şi la Distanţă (Open and Distance Education) în Comunitatea Europeană

1991 Memorandumul Comisiei asupra Învăţământului Deschis la Distanţă (Open Distance Learning) în Comunitatea Europeană.

1993 Universitatea Internaţională Jones (Jones International University), prima universitate online acreditată, Statele Unite ale Americii

1995-2003 Primulval de dezvoltare al e-learning

2004-2011 Stadiul prezent al dezvoltării e-learning

3. Primul val de dezvoltare al e-learning (1995-2003)

În anul 1995, Brandon Hall, directorul uneia dintre cele mai de succes companii de cercetare în domeniul e-learning BrandonHall Research, a prezentat în cadrul unei manifestări organizate în domeniul învăţământului bazat pe tehnologie, cele mai noi tehnologii şi aplicaţii în domeniu. Acest eveniment a fost considerat cel mai important moment pentru caracterizarea stadiului învăţării asistate de tehnologie.

În anul 1996, Societatea Americană pentru Formare Profesională şi Dezvoltare [13] a organizat o manifestare pe tema formării profesionale bazată pe tehnologiile Internet. În acest an se manifestă un interes larg şi profund pentru aplicarea e-learning-ului ca metodă de formare şi dezvoltare a resurselor umane [12].

Primul articol în domeniul formării profesionale bazată pe tehnologiile Internet a apărut în Revista de formare profesională (Training Magazine) în 1997 [19], în acelaşi an în care Elliott Masie [8] iniţia Conferinţa TechLearn. Această conferinţă pune bazele unei nou domeniu de servicii educaţionale. Au apărut noi firme de e-learning susţinute de fonduri de investiţii, oferind soluţii

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pentru sisteme de management a învăţării, instrumente de autorizare (authoring), portaluri, programe academice de diferite niveluri şi instrumente de evaluare şi testare.

Punctul culminant al evoluţiei e-learning a fost în anul 2000, când John Chambers, preşedinte al Cisco Systems Inc., a declarat că *"e-learning este următoarea revoluţie educaţională"* [12].

În perioada primului val de dezvoltare a e-learning s-au anticipat, poate într-un mod exagerat, efectele impactului şi rezultatele e-learning:

Formarea profesională se va face doar prin e-learning şi nu în sălile de curs.

Este foarte uşor şi ieftin să proiectezi şi să dezvolţi cursuri de e-learning.

Tehnologiile e-learning sunt uşor de folosit şi integrat.

Infrastructura tehnologiei e-learning este uşor de implementat.

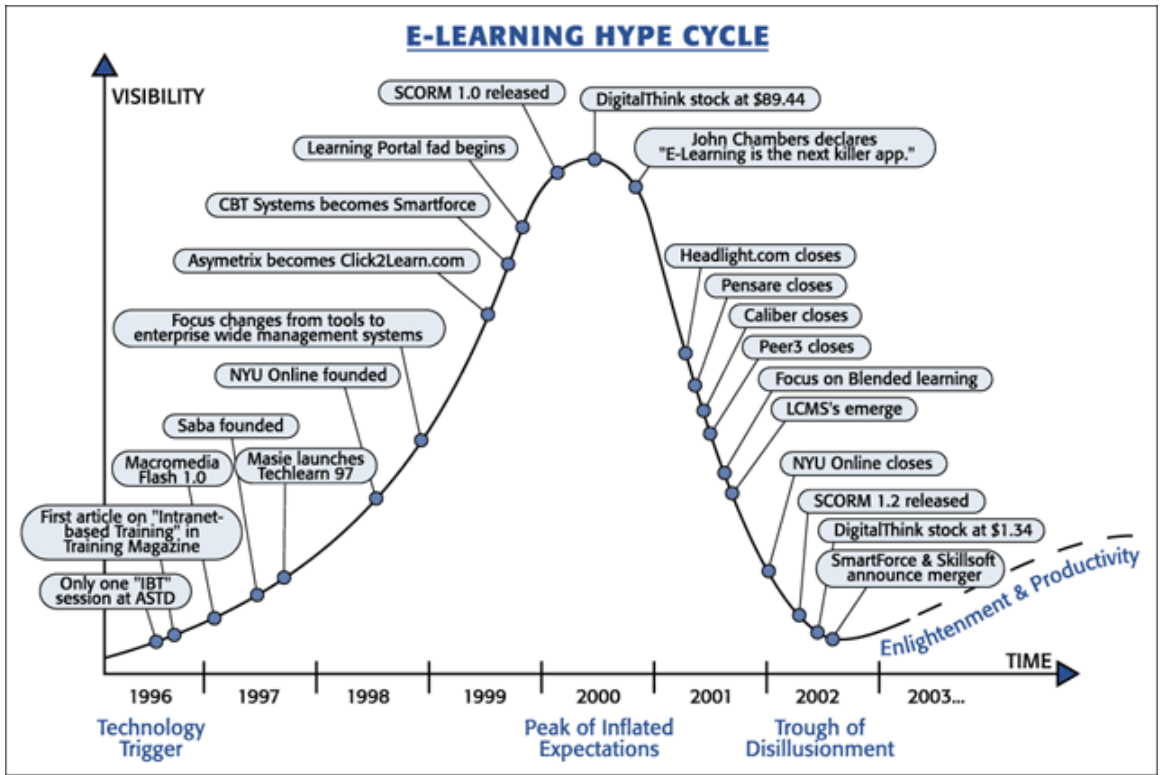
Angajaţii din orice domeniu de activitate vor agrea e-learning.

Prin adoptarea e-learning se pot face economii semnificative.

Piaţa e-learning se va mări cel puţin patru ori pe an.

Multe organizaţii au adoptat rapid e-learning şi au achiziţionat şi/sau dezvoltat prima lor generaţie de tehnologii şi cursuri e-learning. În anul 2003, International Data Corporation – IDC [14] afirma că piaţa e-learning a crescut de la câteva milioane de dolari în 1995, la 3,4 miliarde dolari SUA la nivel mondial în 2000 [12]. În anul 2000, bursa a scăzut puternic, determinând o scădere a preţurilor acţiunilor în 2001, continuându-şi declinul în anul 2002. Economia a încetinit, investiţiile au dispărut şi mulţi furnizori de e-learning au trebuit să-şi închidă firmele din cauza mediului economic nefavorabil. Este momentul în care începe maturizarea e-learning.

Această perioadă de timp ce corespunde primului val de dezvoltare a e-learning a fost evidenţiată în revista Chief Learning Officer prin Figura 2.1, care ilustrează această evoluţie, evidenţiind etapele,



aşteptările supraevaluate şi dezamăgirea progresivă care s-a transformat, în anul 2002, în deziluzie.

Figura 1. Primul val de dezvoltare a e-learning în perioada 1996-2002
(*Sursa:* Hanley, 2008, *Recession and the challenge to e-learning*[3])

Ultimul eveniment din această evoluţie este fuziunea dintre cele mai importante firme furnizoare de e-learning, SmartForce şi SkillSoft în 2002. Această fuziune a creat cel mai mare furnizor global de e-learning şi a fost privită de către revista Chief Learning Officer ca fiind începutul fazei de maturizare a e-learning, care devine un element important în domeniul serviciilor educaţionale [12].
În timpul primului val de dezvoltare a e-learning au fost efectuate cercetări, s-au elaborat studii de caz şi s-au publicat multe rezultate de către o serie de institute prestigioase: Masie Center, American Society for Training and Development (ASTD), Brandon-Hall, precum şi de instituţii de sondare de piaţă: International Data Corporation (IDC), Gartner, Forrester şi Eduventures.

4. Stadiul prezent al dezvoltării e-learning (2004-2011)

În prezent, organizaţiile se confruntă cu o serie probleme şi provocări în domeniul e-learning [12]:
Există un număr redus de organizaţii care derulează procesul de instruire a resurselor umane folosind doar învăţarea bazată pe tehnologiile Internet.
În general, în cadrul acestor organizaţii numărul cursanţilor e-learning, care se înscriu şi care îşi finalizează studiile, variază.
Calitatea unor programe e-learning poate fi slabă, iar unele cursuri putând fi clasificate ca fiind nesatisfăcătoare.
Un curs e-learning de înaltă calitate şi bine conceput necesită o investiţie semnificativă de timp şi bani în evaluarea, analiza, proiectarea, dezvoltarea şi implementarea cursului.
Conţinutul şi structura aceluiaşi curs e-learning poate varia în funcţie de ţară, industrie, companie şi chiar între departamentele unei companii.
Implementarea tehnologiei e-learning poate părea simplă la început, dar de cele mai multe ori s-a dovedit a fi dificilă.
Problemele de conectivitate şi viteză au reprezentat obstacole tehnologice pentru multe organizaţii din cauza lipsei lărgimii mari de bandă.
Multe din implementările tehnologiei e-learning au fost mari consumatoare de timp şi au necesitat schimbări organizaţionale majore, care iniţial au fost subestimate.

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Departamentele de resurse umane nu au fost în măsură să propună planuri solide de investiţii în formarea profesională bazată pe tehnologia e-learning, nereuşind să convingă conducerea executivă în vederea alocării de fonduri pentru finanţarea iniţiativelor e-learning.

E-learning nu înseamnă numai tehnologie, ci învăţare bazată pe tehnologie.

Reducerea costurilor şi creşterea randamentul investiţiei în instruire (ROI) nu sunt garantate pentru toate iniţiativele de e-learning.

Beneficiarii programelor e-learning s-au confundat cu diverse rezultatele şi experienţe ale implementărilor de e-learning, rezultând astfel o neîncredere a acestora în programele de instruire prin e-learning.

Lipsa unor standarde în e-learning provoacă incertitudine, cu atât mai mult cu cât nici un standard existent nu este uşor de pus în aplicare.

Dacă s-ar compara aşteptările e-learning evidenţiate în primul val de dezvoltare cu stadiul actual al e-learning este uşor de observat că e-learning nu s-a ridicat la aşteptările iniţiale [21]. Acest context şi rezultatele actuale generează întrebarea firească: *Aree-learning o problemăde credibilitate?*

Fără îndoială, lipsurile în conţinutul unor cursurie-learning, la care s-au adăugat uneleimplementărinereuşite,au afectat într-o oarecare măsură credibilitateae-learning. Cu toate acestea, e-learning şi-adovedit credibilitatea, fiind consideratonouă oportunitateşio nouăabordareaînvăţăriipentrupersoaneşiorganizaţiila nivel global [12]. Nu existănici oîndoialăcu privire laeficienţaaplicăriie-learning în domeniul formării profesionale a resurselor umane [23]. Multeorganizaţiidin întreagalume au aplicat, aplică şi vorcontinua să aplicetehnologia e-learning într-un mod mult mai responsabil.

Din experienţa primului val de dezvoltare a e-learning s-au învăţat câteva lecţii [12]:

Organizaţiile operează într-un mediu global foarte complex şi ce în ce mai competitiv. În acest context, instruirea resurselor umane prin e-learning a permis acestor organizaţii să se adapteze acestui mediu, ceea ce a determinat un impact pozitiv asupra afacerilor şi asupra profitului.

Multe organizaţii au implementat cu succes iniţiativele e-learning, care au fost bine aliniate cu obiectivele de afaceri specifice ale acestora, aceasta având un important impact asupra afacerilor şi asupra randamentul investiţiilor în instruire resurselor umane. Majoritatea organizaţiilor plănuiesc extinderea programelor de instruire prin e-learning, trecând de la faza de experiment la faza de dezvoltare [9].

Experienţa acumulată în această perioadă s-a materializat într-o proiectare mai eficientă a programelor de instruire prin e-learning, rezultând noi modele de proiectare şi noi metodologii, care au devenit bune practici de implementare a e-learning.

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Provocările generate de aspectul tehnologic al e-learning au fost în mare parte depăşite. Evoluţia tehnologiilor e-learning va influenţa pozitiv cererea de servicii educaţionale în vederea instruirii resurselor umane.

Angajaţii companiilor multinaţionale sunt încurajaţi să asimileze noi cunoştinţe şi competenţe, e-learning căpătând în acest sens şi o dimensiune multiculturală.

La nivel global, accesul la Internet prin wireless şi conexiunile de bandă largă se vor dezvolta în mod semnificativ. Vor exista multe soluţii tehnologice de comunicaţie care vor permite oamenilor să beneficе de cursuri de e-learning care folosesc efecte vizuale, sonore şi video speciale.

E-learning a devenit una dintre principalele forme educaţionale de pregătire a resurselor umane [2]. Cu toate acestea societatea are o inerţie în a depăşi modelultradiţional al sălii de curs şitradiţiadeînvăţare asistată fizic de profesor. Fiinţele umanesuntfiinţesociale, iar acest lucrunus-a schimbatde la înfiinţarea celei mai vechi universităţi înBologna, Italia. Se poate spune căevenimentele educaţionale din sala de curs de tip tradiţional (faţă înfaţă) vorcontinuasă joace unrolimportantîn procesul de învăţare, chiar dacă tehnologiile de comunicaţii [22] tind să devină din ce în ce mai eficiente, în specialîn domeniiprecum: *Team building, Personal coaching, Networking, Culture building.*

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CHALLENGES IN IMPLEMENTATION OF SARBANES-OXLEY ACT

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Abstract:

In 2002 the US Congress passed the Law ,,Public Company Accounting Reform and Investor Protection Act" or Sarbanes-Oxley Act, named after its initiators, Senator Paul Sarbanes and Michael G. Oxley, member of the House of Representatives. The necessity of this regulation was due to huge financial scandals in the US, scandals that led to the collapse of the giants of the American economy. SOX was designed to eliminate vulnerabilities of corporate governance act that caused these scandals and have lowered the credibility of the US stock market and caused massive losses to shareholders. Requirements imposed by law have exposed companies to significant expenditure which generated pros and cons SOX, senior management of the companies arguing that this will lead to a decline in competitiveness of US companies internationally, to smaller profitsfor shareholders etc. . Sarbanes-Oxley Act suffered further changes in order to optimize the effects. The objective of this research is to identify the challenges that companies may face in order to comply with SOX.

Keywords:*Listed Entities, Financial Reporting, Internal Control, Internal Audit, Audit Committee, Corporate Responsibility, Benefits, Costs.*

Introduction

Corporate governance has received several definitions over time including: "the system by which companies are directed and controlled "[1] or "a set of relationships between the company's management, board, shareholders and other stakeholders"[2].

Evenif early '70s spoke of the concept of corporate governance[3], disregard of corporate governance principles (integrity, transparency and accountability) led to a resounding series of financial scandals in the UK, significant being: Guinness (1986), Polly Peck International (1989), Maxwell (1991), BCCI- Bank of Credit and Commerce International (1991). The reasons that led to these scandals were: falsification of accounting records and breaches of accounting law in force at that time, handling corporate actions, false financial statements, theft, fraud. Involved in committing such acts were often members of the entities' leadership with the complicity of audit firms or stockbrokers. These corruption acts caused financial losses for shareholders and beyond, generating a wave of discontent among all stakeholders and especially loss of confidence in the financial data published by companies, the assurances

[1]Cadbury Report, *Report of the Committee on the Financial Aspects of Corporate Governance*, 1992.
[2]Dănescu, Tatiana, Mihaela Prozan and Andreea Cristina Danescu. "Internal control activities: Cause and effect of a good governance of accounting reportings and fiscal declarations." Annales Universitatis Apulensis: Series Oeconomica 13.2 (2011), pag. 339.
[3]Ghiță,Marcel, *Corporate Governance*, Economic Publishing House, Bucharest, 2008., pag.9

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given by the firms that provided external audit or how public companies are run and having in the same time negative effects on the capital market. Thus it became evident to the parties that it was urgently necessary legislation or regulations or codes conducive to increasing the transparency of management, to limit the power of decision of a single person or group of persons found at the pinnacle of decision within the entities by implementing a system of governance that ensures a balance in decision making, to establish clear accountability associated with each leading positions and relationships between companies and their external auditors. The first code of corporate governance emerged in 1992 and was designed by Sir Adrian Cadbury, Cadbury drawing first recommendations regarding corporate governance, the most important being: the Board of Directors must have an Audit Committee; the Board of Directors must have in his composition nonexecutive directors and declaring compliance framework. CadburyCode was followed by a series of codes and reports: Paul Rutteman (1993), Code Richard Greenbury (1995), Report Ronnie Hampel (1995), the Combined Code (1998), Report Nigel Turnbull (1999), Code Charlie Mc Creevy [4].

United States of America have also faced resounding financial scandals: Enron (2001), Allied Irish Bank (2002), WorldCom (2002), Merrill Lynch (2002), Xerox (2002), but a few companies that have contributed to the decrease of public confidence in the accuracy and reliability of financial statements issued and increased doubt regarding the correct representation of interests of shareholders by the management structures of listed entities. The adverse effects of financial scandals and public pressure have led to Sarbanes-Oxley Act.

Objectives of the study and research methodology

The objectives of the study are to identify the requirements of SOX that might translate into real challenges for companies to achieve compliance, the achievement of efficient corporate governance -neglected in some cases up to the moment of the adoption of the law - identification of how to ensure compliance with SOX affect the organization.

This presentation is documented in a theoretical synthesis and analysis on how the provisions of the Sarbanes-Oxley Act translate into challenges for listed companies. In order to achieve this objective were accessed databases, articles, studies and reports of organizations and interviews of prominent personalities in the field.

SOX compliance – a step toward credibility

Since the title of the Law can be seen that the law is focused on two main components: Law tracing details regarding the accounting system, accountability by executives and financial officers regarding financial statements and for the work done by the department of internal control. The Law also contains provisions regarding independent directors, provisions to avoid conflicts of interest or concentration of decision-making around small groups of executives, requires the establishment of audit committees exclusively of nonexecutive directors, setting up committees, appointing committees, remuneration committees, the application of corporate governance principles, outlines the limits regarding

[4]Ghiță,Marcel, *Corporate Governance*, Economic Publishing House, Bucharest, 2008, pag. 49.

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relations between the management and the external auditor and requires many other measures to protect investors.[5]

In taking the necessary steps to uphold the principles of corporate governance – integrity, transparency, and accountability – to ensure compliance with the rules established by the provisions of SOX, companies must find adequate responses to the many challenges that cannot be avoided, including :

- Increased costs;

Since the adoption, SOX has generated controversy, company managers arguing against the adoption of SOX due to higher costs of implementing the law. Although the law benefits are more difficult to quantify, costs can be quantified precisely, the Gordian knot seeming to be theimplementation of the provisions of Section 404- ,,Management assessment of internal control", section which involves forcing companies to reveal any weaknesses activity carried out by the department of internal control and audit thereof by a firm of external audit activity, considered expensive, which led to the exemption application of Section 404 by companies whose market capitalization does not exceed 75 million USD. In 2006, the SEC adopted a provision allowing newly listed companies to postpone the implementation of Section 404 up to 2 years, and in 2012 Congress extended this period for newly listed companies with market capitalization below 700 million USD, giving them five years for compliance with Section 404[6].

Also, the PCAOB has helped the companies in 2007 replacing Auditing Standard No.2/2004 withAudit Standard No. 5, which led to a reduction in costs by up to 25% per year according to a report by the SEC in 2009.

Costs incurred for testing the activity of internal control and financial audit costs have increased with SOX implementation, but remain difficult to quantify the exact weight. SEC estimated for year 2004 a cost of 91,000 USD per issuer regarding internal control but has not released a cost assessment regarding external audit. The only certainty is that these costs are directly proportional to the size and degree of decentralization of the companybut small firms pay more than larger ones as percentage[7].

Indirect costs are harder to quantify and can be generated largely by excessive concern by senior executives in order to avoid committing mistakes punishable by the Sarbanes-Oxley Act.

- Implementing a management of the internal control department under the responsibility of the executive management;

In order to achieve compliance with regard to the provisions of SOX, companies must have an effective internal control department, led directly by company leaders, whose activities fully cover all company' subunits. The most important component of the internal control department is the human resource, this activity requiring staff with high qualifications and competence.

[5]Ghiță,Marcel, *Corporate Governance*, Economic Publishing House, Bucharest, 2008 , pag. 50.
[6]John C. Coates, Suraj Srinivasan, "SOX after Ten Years: a Multidisciplinary Review", pag.8.
[7]John C. Coates, Suraj Srinivasan, "SOX after Ten Years: a Multidisciplinary Review", pag. 25.

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Also an effective management of the internal control activity should include the following[8]:

- being directly driven by company leaders (CFO or CEO);
- covering all processes that affect financial reporting, regardless of location;
- clearly defining the activities and objectives of the internal control department;
- continuously monitor the extent to which the company is assuring compliance;
- implement communication protocols to ensure effective information to senior management about the problems facing internal control activities and ways to remedy them;
- provide the technical means necessary to achieve desiderates;
- identify the hazards that could jeopardize the efficiency of internal control;
- executive must be a model in terms of involvement in achieving efficiency of internal control.

• Implementing a system of risk management;

An effective risk management program cannot ignore the measures that ensure[9]:

- identify and assess the impact of risks on the financial reporting process, to determine the activities or causes they generate;
- advice regarding how risks are disclosed and communicated;
- distribute control activities according to the specific risks of thecompany;
- enables prioritizing risks and provides a proper allocation of resources to comply;
- promotes an understanding of risks regarding financial reporting.

The existence of such a program demonstrates the efforts made by the company's management in order to achieve compliance. At the same time, the existence of such a program can contribute decisively to the identificationof risks and their effective approach.

• Identifying and monitoring inadequate controls associated with complex and unusual recording transactions;

Complex transactions such as mergers, acquisitions, valuation of assets and more can present significant risks to financial reporting. Errors can occur because of insufficient documentation, lack of experienced staff in recording these transactions and may lead to revision of the results reported by the company, which is considered a weakness of internal control activity and can negatively impact the report on the degree of compliance with Section 404 provisions or may cause obtaining an unfavorable opinion from the financial auditor.

Anefficient process reporting of complex or unusual transactions must comply with certain requirements, including[10]:

- a monitoring carried out by specialists and senior management;

[8] Deloitte: ,,Sarbanes-Oxley section 404: 10Threats to Compliance '', accessed at http://www2.deloitte.com/content/dam/Deloitte/us/Documents/audit/us-aers-assur-ten-threats-sep2004.pdf, page 2, retrieved on April 27, 2016.

[9] Deloitte: ,,Sarbanes-Oxley section 404: 10Threats to Compliance '', accesssed athttp://www2.deloitte.com/content/dam/Deloitte/us/Documents/audit/us-aers-assur-ten-threats-sep2004.pdf, page3, retrieved on April 27, 2016.

[10] Deloitte: ,,Sarbanes-Oxley section 404: 10Threats to Compliance '', accesssed athttp://www2.deloitte.com/content/dam/Deloitte/us/Documents/audit/us-aers-assur-ten-threats-sep2004.pdf, page 4, retrieved on April 27, 2016.

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- to follow complete documentedprocesses both in activity and in the accounting control;

- conduct an assessment of the risks inherent to each record;

- involve specialists to reduce the risk of errors.

- Ensuring effective control over the IT component;

IT component has become an important part of the reporting process, companies became dependent on their evolving technology that is becoming increasingly complex and difficult to maintain. For the first time, a law requires companies' detailed evaluation of this component. Remedy the shortcomings discovered requires an amount of allocated resources (financial, time) directly proportional with the implemented IT system complexity or lack of attention paid earlier for this component. Most times, deficiencies were caused by[11]:

- the development, implementation, maintenance and system management;

- data conversion and interface control system;

- security system, protocols and system administration;

- service providers.

- Companies' need to publish effective financial reports;

Regulatory developments and legislative changes in this area has experienced an upward trend in recent years, so for many companies is difficult to keep a pace with changes in the field and to ensure the accuracy of published financial information. The reason may be the lack of a rigorous system for collecting and organizing information sheets or faulty implementation of a control system of this process.

COSO components for effective work of internal control regarding financial reporting are:

- establishing specific actions for monitoring these activities by company's management;

- standardization and efficient communication of data collected;

- sequel procedures regarding the financial reporting process and associated controls;

- identifying the major transactions involving risks and requires staff with a high degree of skill and involvement of management;

- a periodical management training program.

- Implementing a comprehensive, documented and updated accounting policies and procedures;

The presence of a manual of procedures and accounting policies structured, continuously updated facilitates control activities and enable a better assessment of risks. Very large entities operating in the territory of several countries may face difficulties in terms of uniform application of its own practices and accounting procedures manual and because staff may be insufficiently trained or inexperienced regarding certain accounting

[11]*Deloitte: „Sarbanes-Oxley section 404: 10 Threats to Compliance''*, accessed at http://www2.deloitte.com/content/dam/Deloitte/us/Documents/audit/us-aers-assur-ten-threats-sep2004.pdf, page5, retrieved on April 27, 2016.

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operations[12]. And more, complete and timely registration of operations that may affect the reported results can be an impediment to achieve compliance with Sarbanes-Oxley requirements.

- Ensuring adequate evaluation of outsourced processes;

Outsourcing of processes that could significantly affect reported results raises the question of assessment by executive management of efficiency of internal control, including control of outsourced processes. Most often, contracts signed during the outsourcing of services does not clarify who is carrying out the responsibility for internal control activity, this being tacitly ledto those providing the services. If the companycannot obtain information about how the internal control activity is run in these companies, management cannot report objectively about its effectiveness. Also the external auditor may issue a qualified opinion that may adversely affect the company's image.

- Skills development of knowledge by board and audit committee'smembers of the concepts of risk and control;

Section 407,"Disclosure of Audit Committee Financial Expert" requires disclosure of the fact, whether or not, in the Commission of Audit of the issuer exist, at least, one financial expert and if not, this explanation fact. A financial expert is defined as: ,,a person has through education and experience as a public accountant or auditor or a principal financial officer comptroller, or principal accounting officer of an issuer, or from a position involving the performance similar functions is able to:

- understand the applicable accounting principles and financial statements;
- prepare or audit the financial statements;
- apply such accounting principles on accounting for estimates and calculations and reserves;
- understand the work of internal control and audit committee functions"[13].

The external auditor of the company is required to assess the efficiency of audit committee oversight process of preparing financial statements and how it oversees the work of the department of internal control regarding financial reporting.

In order to eliminate the risk of non-compliance with the provisions of Sarbanes-Oxley, members of the audit committee must be familiar with the requirements of this law, to know the responsibilities of each actor involved in the process, to refer the discrepancies between data provided by the department of internal control, the data provided by the department of internal audit and data provided by the external auditor and take measures to eliminate or mitigate these discrepancies

- Auditing the management function;

One of the biggest challenges of internal audit departments is auditing the top-management. Many of the financial scandals of the past were caused by committing fraud at the highest level and even complicity with external auditors (Enron- Artur Andersen). Auditing a company, as a whole, needs to ensure a high degree of independence of internal

[12]*Deloitte: ,,Sarbanes-Oxley section 404: 10 Threats to Compliance''*, accessed at http://www2.deloitte.com/content/dam/Deloitte/us/Documents/audit/us-aers-assur-ten-threats-sep2004.pdf, page 7,retrieved on April 27, 2016.
[13]https://www.sec.gov/about/laws/soa2002.pdf,retrieved on April 27, 2016.

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auditors and major involvement of members of the audit committee in overseeing the work of this department. For adequate acomplishment of internal audit tasks, some companies require the purchase of an IT system, purchase that can be considered expensive by management. A challenge for internal audit department will be to demonstrate to the company's internal environment his ability to add value, in fact achievable by conducting internal audits of high quality and providing useful recommendations to the audit committee but also to the corporate responsibles[14].

- Developingof senior management experience in evaluating the work of internal control covering financial reporting;

Section 302 ,,Corporate responsibility for financial reports", provides that the Executive Director, CFO or other persons performing similar functions, to record at each annual or quarterly reports the following[15]:

- the report was reviewed by the signatory officer;
- signatories, based on their knowledge, ensure that financial carryovers do not contain misleading information or omissions leading to deceive users of accounting information;
- signatories ensure that the information presented in financial reports present a true picture of all operations carried out by the issuer during the period.

All these challenges involves significant increase in responsibilities for those who ensure corporate governance, the executive management, the audit committee regarding reporting and financial control, and penalties in case of non compliance requirements. The effects of lack of manager's experience or lack of recommendations from internal audit department can be mitigated by employing the services of external consultants who usually grow compliance costs of the company.

Conclusion

Financial scandals that rocked the financial world in both the US and UK, have lowered investor confidence in the leading mechanism of corporations, which caused the involvement of both: the senior management and audit firms in committing such frauds. Sarbanes-Oxley was intended to regain the confidence of investors in the capital market. Another goal of this law is to increase accuracy in terms of financial reporting process and transparency in the way that public companies are managed, especially in terms of a basic function of the management process, the control-evaluation.

Confronting the challenges identified above involves significant costs caused by the need for the employment of specialists or professional services in accounting, contracting audit services or consulting for the management and monitoring of companies or permanent insurance programs for training the management. These costs have caused companies to withdraw or postpone capital market listing approach for others. Many companies chose to

[14]Jared S. Soileau, The challenges and Effects of the Sarbanes-Oxley Act on the Internal Audit Profession, Louisiana State University, 2003 may 9, accessed at https://na.theiia.org/about-us/Public%20Documents/Sawyer_Award_2003.pdf, retrieved on April 27, 2016.
[15]*Deloitte: ,,Sarbanes-Oxley section 404: 10 Threats to Compliance''*, accessed at http://www2.deloitte.com/content/dam/Deloitte/us/Documents/audit/us-aers-assur-ten-threats-sep2004.pdf, page 8, retrieved on April 27, 2016.

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withdraw their shares from the stock exchange in New York and opted for the one in London. Thus, if by 2001 the number of new small issuers was around 250 per year in the period 2001-2003, their number decreased to 50.[16]

However, the requirements of this law are largely respected by the companies that have paid increased attention to practices that result in good corporate governance. Some companies have chosen to withdraw from the capital market and we agree with the words of Prof. Suraj Srinivasan: „Sarbanes-Oxley has cut off access to public funding for these companies, but the question is whether it was appropriate presence of these companies in the market capital at first ... but it might not be a bad thing restricting access to public funding for these companies, simply because loss of confidence in the capital market has major consequences for the entire economy."[17]

We find that SOX compliance is beneficial for companies even if it involves considerable costs, companies earning credibility, a significant reduction in risk and an increase of organizational efficiency.

Sarbanes-Oxley has been a model for other states and international organizations. So, in 2006, Japan adopted a similar law and also in 2006 the European Union adopted Directive 8th, with provisions that tend to harmonize with the provisions of Section 404 of SOX.[18]

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[16]John C. Coates, Suraj Srinivasan, ,,SOX after Ten Years: a Multidisciplinary Review”, pag.78

[17]www.papers.ssrn.com/papers.cfm?abstract_id=2343108, retrieved on April 27, 2016.

[18]John C. Coates, Suraj Srinivasan, ,,SOX after Ten Years: a Multidisciplinary Review”, pag.15.

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THE PRINCIPLES OF FISCAL MANAGEMENT - REQUIREMENTS FOR EFFICIENT FISCAL ADMINISTRATION

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Abstract: With a presence today in all areas, so by default in the fiscal area, management can be considered an art, a science and a state of mind. The specificity of the taxation area confers particularities for the management practiced in this field, with implications on substantiation, organization and coordination of all processes necessary for the collection of tax revenues, in order to obtain resources needed to coverage of public needs. The essential coordinates of fiscal management must be found in the guidelines that govern the activity of tax administration, taking into consideration that an efficient organization, an administration rapidly changing, the existence of a modern strategy, the identification of new values in fiscal institutions and the establishment of strategic objectives can lead to increased efficiency and effectiveness in fiscal activity. In this context, through this article we will identify the principles of fiscal management, taking into account aspects concerning procedural and systemic approach, orientation towards taxpayer, coordination and involvement in the field of taxation, continuous improvement.

Keywords: fiscal management, functions and principles, fiscal efficiency, fiscal equity

1. Introduction

The influence of taxation on every individual, every entity and society in general, from economic and social perspective is often found in the scientific literature, so that the studies and researches providing relevant solutions for using taxes as a real economic instrument, for strengthening the partnership between the state and taxpayers.

In this context, an important role belongs of fiscal management, which through its principles, relationships, methods, techniques and procedures can ensure the efficient organization and functioning of the vast field of taxation. Thus, it is noted: the impact of fiscal management on good governance, maximizing welfare and the effective tax revenue collection (Shah, 2005); the role of fiscal management in promoting fiscal discipline (Kumar and Ter-Minassian, 2007) and improving

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fiscal transparency (Parry, 2007); the use of methods and techniques of fiscal management to manage risks (Polackova Brixi, Shatalov and Zlaoui, 2000), for the credibility of the budget deficit (De Mendonça and Auel, 2015) and the strengthening of fiscal responsibility (Silva, Faroni, Baeta and Araujo, 2016); the relationship between fiscal management, tax policy and corruption (Martinez-Vazquez, Boex and Arze del Granado, 2007); macroeconomic aspects of fiscal management in supporting developing countries (Bulir and Lane, 2002); the limits of fiscal management under conditions of austerity (Hlepas, 2015); the role of fiscal management in increasing fiscal performance (Takahashi and Shimada, 2015).

These aspects have led us to approach through this article the principles of fiscal management as the main requirements for an efficient fiscal administration, taking into account, on the one hand, the four pillars of the taxation area, respectively fiscal legislation, fiscal mechanism, fiscal institutions and taxpayers, and on the other hand, the relation of interdependency between the science of taxation and other fields, whereas analysis of the taxation can not be achieved in isolation and tax administration should always be adapted to the progress made in all areas.

2. General coordinates for fiscal management principles

The relationship between taxation, fiscal system and fiscal policy reveals complexity of the field. As an essential component in the life of any nation, the action of taxation suppose establishment of public funds at the disposal of state, the mobilization of fiscal public resources and control how public fiscal revenues are made, so it will have a stimulating factor in economic and social development (Comaniciu, Mihaiu and Bunescu, 2010).

In determining fiscal management principles have been considered: (i) the requirements which must respect any rational tax system, namely the fundamental principles of taxation; (ii) guidelines designed to confer appropriate action of fiscal and budgetary policy; (iii) the link of taxation with other sciences and discipline to identify elements that can contribute to improvement fiscal administration.

In this context, it notes that:

The fundamental principles of taxation were formulated for the first time by Adam Smith, through the four directions (Smith, 1965), with reference to: equity in fiscal obligations; clear and concise nature of the tax legislation; arrangements for payment of taxes; the rationality of tax burdens; efficiency in tax collection. Considering that taxation must contribute to the personal development of each citizen and the development of economy, Maurice Allais has formulated the principles of taxation, referring

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to individuality, non-discrimination, impersonality, neutrality, legitimacy and lack of arbitrariness (Allais, 1989).

The coverage of public finances, respectively the social and economic relations by means of which the public persons constitutes and use funds of financial resources, require the existence of fiscal and budgetary policy at the level of any nation. Thus, in Romania according to the Fiscal Responsibility Law, appropriate action on fiscal and budgetary policy is based on the principle of transparency, the principle of stability, the principle of prudence, the principle of fairness, the principle of efficiency (Law 69, 2010).

Management as science, art and state of mind conferred by its functions, principles, methods and techniques the necessary elements for efficient conduct for any activity, for optimal use of all resources. Thus, the five functions of general management (forecasting, organization, coordination, training and control-assessment) are also found at the level of fiscal management, with content, requirements and ways of achieving specific for fiscal activities. Some of the 14 management principles issued by Henri Fayol (1916), respectively division of work, authority and responsibility, discipline, unity of command, unity of direction, subordination of individual interest to the general interest, remuneration of personnel, the degree of centralization, scalar chain, order, equity, stability of tenure of personnel, initiative and esprit de corps are found even today in the organizations, so implicitly in taxation area.

Success of any organization is given of how are identified, anticipated and satisfied the customer requirements in terms of profitability, responsible for this management process being marketing (Verstage, 2005). Takeover by the fiscal authority of some techniques and marketing methods could provide solutions to increasing confidence in fiscal institutions, to increasing voluntary compliance, to increasing taxpayer satisfaction regarding the services offered.

The basic principles of public management (unit leadership, autonomous leadership, continuous improvement, effective administration, legality) adapted to the taxation area can achieve cohesion between conception, decision and action (Androniceanu, 2004).

3. Requirements of an efficient fiscal administration

Based on the topics specified above, without claiming an exhaustive approach, we believe that effective fiscal management can be performed using the following principles: (i) orientation towards taxpayer; (ii) processual approach and systemic approach; (iii) employee involvement; (iv) unitary leadership and autonomous leadership; (v) continuous performance improvement.

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Orientation towards taxpayer

Often, the success of an organization is given by the extent to which it manages to develop good relationships with its customers, having regard, on the one hand the expressed and real needs, and on the other hand, the objectives pursued. If the organizations depend on their customers, the activity of fiscal administration depends on the taxpayers, on their behavior towards taxes. In this context, without understanding the present and future needs of taxpayers, without satisfies the requirements of taxpayers in full compliance with fiscal policy objectives, without worrying constantly to exceed the expectations of taxpayers, without analyzing the factors that determine the behavior of taxpayers, the work done by fiscal institutions will always be ineffective and underperforming.

Usually, the basis of relationship between tax authorities and taxpayers is the Constitution. Thus, by article 56 of the Romanian Constitution is stipulated obligation of citizens to contribute to public expenditure through taxes and it specifies that the taxation system must ensure a fair distribution of the tax burden (Romanian Constitution, 2003). Based on these provisions, National Agency for Fiscal Administration from Romania synthesized the rights and obligations, both for taxpayers and for fiscal administration, based on three relationships: a citizen taxpayer – an administration that simplifies the life of the taxpayer; a cooperating taxpayer - an administration that respects the taxpayer and his rights; a loyal taxpayer - a equitable administration (RNAFA, 2016).

Analyzing the link between fiscal institutions and taxpayers, based on the relationship between power and trust, Gangl, Hofmann and Kirchler (2015) have identified three types of climate, namely: antagonistic climate (coercive power = forced compliance); service climate (legitimate power + reason-based trust = voluntary cooperation); confidence climate (implicit trust = committed cooperation).

Since compliance with tax law is one of the essential civic duties and voluntary fiscal compliance is as old as taxes, all activities in the field of taxation must put the taxpayer in their center. In this context, micro and macro fiscal decisions are those that can give a real partnership between the State and the taxpayer, based on trust (Gangl, Hofmann and Kirchler, 2015), on optimal tax rate (Swenson, 1988), on interdependence between ethics and tax compliance (Alm and Torgler, 2011), on an efficient use of public financial resources (Barone and Mocetti, 2011).

Processual approach and systemic approach

A desired result in fiscal is obtained in a more efficient manner when all activities and resources involved are managed in the form of interacting processes. From this perspective, a processual

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approach in fiscal management will enable decision-makers from this area to treat each process very seriously, and adoption of the fiscal decisions always be based on their impact on short and long term. The realism, continuity experience, the heterogeneous reality, positive and negative aspects, the presence or absence of an influence factor, induction and deduction, general and particular, truth and lies, decision and power, trust and distrust, discovering and concealing (Nayak, 2008) ... here are a series of elements that must be considered, so that the processual approach in fiscal management contribute to the improvement of fiscal administration.

The public finances fulfill their economic and social mission through the functions performed (distribution function and control function), but their appropriate action will be achieved through taking into account their systemic approach, because between the distribution function and control function there are no relationship of subordination, so each function providing to the other a manifestation field (Comaniciu and Bunescu, 2010).

The systemic approach resides in the fact that the methods and techniques used for determining and collecting taxes are coherently treated, in close connection to the whole system of fiscal management.

We believe that the processual and systemic approach in fiscal management will enable to the fiscal administration to achieve its strategic objectives, respectively firmly combating tax evasion, improving voluntary compliance and increase collection efficiency for fiscal revenue (RNAFA, 2013).

Employee involvement

The essence of any institutions in the fiscal area is human resource, and the full involvement of staff makes his skills to help achieving an efficient fiscal administration.

Integrity, objectivity, legality, confidentiality and competence are fundamental principles on which all persons working in the field of taxation must comply to achieve the objectives of fiscal administration, because engagement is not a simple attitude, engagement is the degree to which the duties and functions are fulfilled (Saks, 2006).

Considering that the involvement and integration occupies an important place among the fundamental values of participative management, and at the present stage participative management is not just a style of management, but a characteristic of worldwide entities (Kamesh and Devi, 2014), we consider that the implementation of participative management methods and techniques in the field of taxation contributes to: improving the process of adopting fiscal micro-decisions; achieving creative thinking for effective fiscal management; increase the level of information in tax institutions and for taxpayers; changing the attitude of fiscal inspectors towards the institution and towards the taxpayers; changing

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the attitude of taxpayers towards fiscal institutions and increasing confidence in them; increasing the level of training for fiscal inspectors; increasing the level of fiscal education among taxpayers; increasing the fiscal institution's performance indicators; increasing compliance voluntary for declaration and payment; increasing job satisfaction for fiscal inspectors; appropriate action of the partnership between the state and the taxpayer (Comaniciu, 2015).

Unitary leadership and autonomous leadership

All decision makers in the field of taxation must have a common and unified vision about the place and role of taxation for economic growth and development, such that the fiscal and budgetary policy decisions to determine full compliance for fundamental principles of taxation and public spending to be achieved with transparency, efficiency and effectiveness.

For satisfying the general and specific public interests should be given an appropriate degree of managerial and financial autonomy to the institutions with attributions in the field of taxation.

Thus, in Romania through Management Charter of National Agency for Fiscal Administration was established the framework in which every manager from the fiscal administration at all levels, register and engage its managerial action. Management by objectives, including establishing clear priorities, accountability and subsequent control of fulfillment of the tasks is management method that allows an efficient tax administration, being respected principles relating to streamlining and stabilizing the organization, proper involvement of managers at all levels, existence of an annual goals plan, adaptation of management tools to changes, continuous improvement of managers (RNAFA, 2005).

Continuous performance improvement

The mission (effective tax collection and tax management) and strategic objectives (the fight against tax evasion, improving voluntary compliance, collection efficiency) of fiscal administration are those that require continuous improvement.

In this context, actions taken by fiscal institutions must be directed to: strengthening the organizational structure; increasing the quality of services provided to taxpayers by expanding communication and improving guidance and assistance activities; combating the risks of voluntary compliance; increased share of revenue collected in GDP and raising productivity for main taxes; increasing voluntary compliance at declaration and payment; reducing tax arrears; reducing tax returns time preparation and increasing the degree of theirs processing on time; reducing the cost of collection; preventing and combating tax evasion (RNAFA, 2013). The success of these actions will be visible to the extent that fiscal institutions will consider the methods, techniques and procedures of

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total quality management and fiscal management system will be addressed in a permanent dynamics, according to the local, national and international dimension of taxation, to the general and specific public interests (Androniceanu, 2004).

4. Conclusion

Ensuring optimum in the fiscal area can not be achieved only to the extent that, rationality is found at each component of the fiscal system, fiscal mechanism and fiscal activity. We consider that, compliance with fundamental principles of taxation, principles of fiscal and budgetary policy and principles of fiscal management by all those involved in fiscal and budgetary field is the foundation for taxation to be a stimulating factor.

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CANCELLATION OF AN ARBITRAL DECISION

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Abstract: Arbitration represents an alternative jurisdiction to the usual justice, displaying a private character. The arbitral procedure ends with the pronunciation of an arbitral decision. The cancellation of such a decision may be achieved only through an action in annulment, which is to be settled by the Appellation Court in the constituency where the arbitration took place.

The grounds of an action in annulment refer to the illegality of the arbitral decision, but not to its merits. This is a particular aspect of the action, as regulated by art. 608 Code of Civil Procedure.

Due to the grounds on which it may be exercised, the action in annulment of an arbitral decision, is a distinct kind of appeal, both from reformation and from retraction.

Key words: arbitral decision, cancellation of an arbitral decision, reasons of action in annulment.

1. Preliminarii.

Conceptul de arbitraj este folosit cel mai adesea în două accepțiuni foarte precise, respectiv pentru a desemna organul însărcinat cu soluționarea unui litigiu pe cale amiabilă şi spre a determina chiar existența unei proceduri speciale de soluționare a litigiilor de drept privat[1].

Codul de procedură civilă[2] reglementează arbitrajul privat voluntar. Normele cuprinse în Codul de procedură civilă reprezintă dreptul comun în materie de arbitraj.

Cartea a IV-a este consacrată arbitrajului. De la început se subliniază în art. 541 C. proc. civ. că, arbitrajul este o jurisdicție alternativă având caracter privat.

Având caracter alternativ la jurisdicția de stat, părțile vor putea decide dacă apelează la instanțele de drept comun sau la arbitraj[3].

[1] I. Leş, *Noul Cod de procedură civilă. Comentariu pe articole. Art. 1-1133,* Editura C. H. Beck, Bucureşti, 2013, p. 799.

[2] Legea nr. 134/2010 a fost republicată în Monitorul Oficial al României, Partea I, nr. 545 din 3 august 2012 şi ulterior a fost republicată în Monitorul Oficial al României, Partea I, nr. 247 din 10 aprilie 2015.

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Datorită faptului că este o jurisdicție cu caracter privat, în administrarea ei, părțile litigante şi tribunalul arbitral competent pot stabili reguli de procedură derogatorii de la dreptul comun, cu condiția ca regulile respective să nu fie contrare ordinii publice şi dispozițiilor imperative ale legii[4].

2. Procedura arbitrală.

Sesizarea tribunalului arbitral se face de reclamant printr-o cerere scrisă de chemare în judecată sau printr-un proces-verbal încheiat în fața tribunalului arbitral şi semnat de părți sau numai de reclamant, precum şi de arbitri.

Şi în procedura arbitrală, ca în procedura de drept comun, pârâtul va face întâmpinare, într-un termen de 30 de zile de la primirea copiei de pe cererea de arbitrare, în care va arăta excepțiile privind cererea reclamantului, răspunsul în fapt şi în drept la această cerere, probele propuse în apărare, precum şi, în mod corespunzător, celelalte mențiuni prevăzute pentru cererea de arbitrare.

Excepțiile şi alte mijloace de apărare, care nu au fost arătate prin întâmpinare, trebuie invocate, sub sancțiunea decăderii, cel mai târziu la primul termen de judecată la care partea a fost legal citată.

La fel ca în dreptul comun, momentul până la care pârâtul poate depune întâmpinare, poate formula cerere reconvențională, propune probe, invoca excepții este primul termen de judecată la care partea a fost legal citată[5].

Dacă pârâtul nu depune întâmpinare şi tribunalul arbitral consideră că nedepunerea ei justifică amânarea soluționării litigiului, pârâtul va putea fi obligat la plata cheltuielilor de arbitrare cauzate prin amânare. Prin urmare, pârâtul va suporta cheltuielile de arbitrare, dacă prin amânare a cauzat un prejudiciu reclamantului.

Pârâtul va trebui să comunice reclamantului, precum şi fiecărui arbitru, copie de pe întâmpinare şi de pe înscrisurile anexate.

Pârâtul poate să formuleze şi cerere reconvențională dacă are pretenții împotriva reclamantului, derivând din acelaşi raport juridic.

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[3] C. Roşu, *Drept procesual civil. Partea specială conform noului Cod de procedură civilă, Ediția 7,* Editura C. H. Beck, București, 2016, p. 253 și urm.

[4] C. Roşu, *Soluționarea litigiilor pe calea arbitrajului-alternativă viabilă la justiția de stat*, în Dreptul nr. 1/2015, p. 99-118.

[5] C. Roşu, *Decăderea-mijloc de evitare a abuzului de drept procesual în reglementarea Codului de procedură civilă*, prezentată la Conferința internațională bienală, Timişoara, 17-18 octombrie 2014, la secțiunea Drept civil şi drept procesual civil, *Abuzul de drept*.

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Cererea reconvențională va fi introdusă în cadrul termenului pentru depunerea întâmpinării sau cel mai târziu până la primul termen de judecată la care pârâtul a fost legal citat şi trebuie să cuprindă aceleaşi mențiuni ca şi cererea principală.

3. Hotărârea arbitrală.

Tribunalul arbitral soluționează litigiul în temeiul contractului principal şi al normelor de drept aplicabile.

Şi în procedura arbitrală se aplică principiul accesului liber la justiție, consacrat de art. 5 C. proc. civ. În temeiul acestui principiu nici arbitrii nu pot refuza să judece pe motiv că legea nu prevede, este neclară sau incompletă. De asemenea, dacă o pricină nu poate fi soluționată nici în baza legii, nici a uzanțelor, iar în lipsa acestora din urmă, nici în baza dispozițiilor legale privitoare la situații asemănătoare, ea va trebui judecată în baza principiilor generale ale dreptului având în vedere toate circumstanțele acesteia şi ținând seama de cerințele echității.

La fel ca în cazul judecătorilor, nici arbitrilor nu le este permis să stabilească dispoziții general obligatorii, prin hotărârile pe care le pronunță, în cauzele ce le sunt supuse judecății.

În cadrul raporturilor dintre profesionişti, utilizarea uzanțelor şi a regulilor profesionale este mult mai întâlnită decât în domeniul civil, astfel încât, ele îşi găsesc aplicarea şi în soluționarea litigiului arbitral. Pe lângă acestea, sunt şi uzanțele care se statornicesc între părți de-a lungul derulării raporturilor dintre ele.

Pe baza acordului expres al părților, tribunalul arbitral poate soluționa litigiul în echitate.

Sub imperiul Codului de procedură civilă, este reglementată soluționarea cererilor, potrivit art. 5 alin. (3) în baza legii, a uzanțelor, a dispozițiilor legale privitoare la situații asemănătoare, a principiilor generale ale dreptului, ținând seama de cerințele echității.

Chiar dacă la art. 575 C. proc. civ., care reglementează dispozițiile generale referitoare la judecata în procedura arbitrală, nu se face referire la art. 5 alin. (3) C. proc. civ., art. 601 alin. (1) C. proc. civ. prevede expres că, tribunalul arbitral soluționează litigiul în temeiul contractului principal şi al normelor de drept aplicabil, potrivit art. 5[6].

După administrarea probelor şi a dezbaterilor asupra fondului, are loc deliberarea în secret a arbitrilor, în modalitatea stabilită de convenția arbitrală sau, în lipsă, de tribunalul arbitral. După finalizarea deliberării, are loc pronunțarea hotărârii.

Dacă datorită complexității dosarului, instanța arbitrală nu pronunță imediat hotărârea, perioada maximă pentru care se poate admite amânarea, este de cel mult 21 de zile, sub condiția încadrării în termenul de cel mult şase luni, de la data constituirii tribunalului.

[6] C. Roşu, *Soluționarea litigiilor pe calea arbitrajului-alternativă viabilă la justiția de stat*, *op. cit.*, p. 99-118.

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Hotărârea se ia cu majoritatea de voturi.

După deliberare, se va întocmi o minută care va cuprinde pe scurt conținutul dispozitivului hotărârii şi în care se va arăta, când este cazul, opinia minoritară.

Hotărârea arbitrală se redactează în scris şi trebuie să cuprindă următoarele mențiuni:

a) componența nominală a tribunalului arbitral, locul şi data pronunțării hotărârii;

b) numele şi prenumele părților, domiciliul sau reşedința lor sau, după caz, denumirea şi sediul, numele şi prenumele reprezentanților părților, precum şi ale celorlalte persoane care au participat la dezbaterea litigiului;

c) menționarea convenției arbitrale în temeiul căreia s-a procedat la arbitraj;

d) obiectul litigiului şi susținerile pe scurt ale părților;

e) motivele de fapt şi de drept ale hotărârii, iar în cazul arbitrajului în echitate, motivele care, sub acest aspect, întemeiază soluția;

f) dispozitivul;

g) semnăturile tuturor arbitrilor, sub rezerva faptului că hotărârea se ia cu majoritate de voturi, şi, dacă este cazul, semnătura asistentului arbitral.

În finalul hotărârii arbitrale, arbitrul care a avut o altă părere va redacta şi va semna opinia separată, cu arătarea considerentelor pe care aceasta se sprijină. Această regulă se aplică în mod corespunzător şi în cazul în care există opinie concurentă.

Hotărârea arbitrală trebuie să rezolve şi cererile referitoare la cheltuielile arbitrale. Regula este că, cheltuielile pentru organizarea şi desfăşurarea arbitrajului, precum şi onorariile arbitrilor, cheltuielile de administrare a probelor, cheltuielile de deplasare a părților, arbitrilor, experților, martorilor, se suportă potrivit înțelegerii dintre părți.

Dacă părțile nu ajung la o înțelegere cu privire la modul de suportare al cheltuielilor, acestea se suportă de partea care a pierdut litigiul, integral dacă cererea de arbitrare este admisă în totalitate sau proporțional cu ceea ce s-a acordat, dacă cererea este admisă în parte.

Hotărârea arbitrală după redactare, va fi comunicată părților în termen de cel mult o lună de la data pronunțării ei.

La cererea oricăreia dintre părți, tribunalul arbitral îi va elibera o dovadă privind comunicarea hotărârii, tot într-un termen de cel mult o lună de la data pronunțării ei.

4. Desființarea hotărârii arbitrale.

Hotărârea arbitrală poate fi atacată numai pe calea acțiunii în anulare, pentru unul din următoarele motive:

a) litigiul nu era susceptibil de soluționare pe calea arbitrajului;

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b) tribunalul arbitral a soluționat litigiul fără să existe o convenție arbitrală sau în temeiul unei convenții nule sau inoperante;

c) tribunalul arbitral nu a fost constituit în conformitate cu convenția arbitrală;

d) partea a lipsit la termenul la care au avut loc dezbaterile şi procedura de citare nu a fost legal îndeplinită;

e) hotărârea a fost pronunțată după expirarea termenului arbitrajului de 6 luni de la data constituirii, deşi cel puțin una dintre părți a declarat că înțelege să invoce caducitatea, iar părțile nu au fost de acord cu continuarea judecății;

f) tribunalul arbitral s-a pronunțat asupra unor lucruri care nu s-au cerut ori a dat mai mult decât s-a cerut;

g) hotărârea arbitrală nu cuprinde dispozitivul şi motivele, nu arată data şi locul pronunțării ori nu este semnată de arbitri;

h) hotărârea arbitrală încalcă ordinea publică, bunele moravuri ori dispoziții imperative ale legii;

i) dacă, după pronunțarea hotărârii arbitrale, Curtea Constituțională s-a pronunțat asupra excepției invocate în acea cauză, declarând neconstituțională legea, ordonanța ori o dispoziție dintr-o lege sau dintr-o ordonanță care a făcut obiectul acelei excepții ori alte dispoziții din actul atacat, care, în mod necesar şi evident, nu pot fi disociate de prevederile menționate în sesizare.

Ultimul motiv, care a fost adăugat prin Legea nr. 76/2012 de punere în aplicare a Codului de procedură civilă[7], era necesar, având în vedere suprimarea efectului suspensiv al excepției de neconstituționalitate.

Motivele care pot determina desființarea hotărârii arbitrale sunt limitativ prevăzute de lege şi nu pot fi extinse prin analogie la alte situații similare. Ele au însă un caracter eterogen, în sensul că unele dintre ele se apropie de temeiurile căilor de atac reglementate în dreptul comun, iar altele sunt caracteristice unei acțiuni în anularea unui act juridic[8].

Motivele acțiunii în anulare au ca obiect nelegalitatea hotărârii arbitrale, nu şi temeinicia acesteia. Practic nu se poate identifica un motiv de acțiune în anulare care să vizeze exclusiv netemeinicia hotărârii arbitrale. Este un aspect particular al acțiunii reglementate de art. 608 C. proc. civ[9].

[7] Legea nr. 76/2012 pentru punerea în aplicare a Legii nr. 134/2010 privind Codul de procedură civilă, a fost publicată în Monitorul Oficial al România, Partea I, nr, 365 din 30 mai 2012.
[8] I. Leş, *op. cit.*, p. 869.
[9] Idem, p. 870.

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Nu mai pot fi invocate ca motive pentru anularea hotărârii arbitrale, neregularităţile care nu au fost ridicate cel mai târziu la primul termen de judecată şi cele care nu au fost invocate la termenul la care s-au produs ori, la primul termen de judecată după producerea neregularităţii sau care pot fi remediate pe calea lămuririi, completării şi îndreptării hotărârii.

Acţiunea în anulare a hotărârii arbitrale se taxează cu 100 lei pentru fiecare motiv invocat. Recursul împotriva hotărârii pronunţate în acţiunea în anulare se timbrează la fel ca în cazul promovării unui recurs împotriva unei hotărâri judecătoreşti.Taxa de timbru este de 100 lei, dacă se invocă unul sau mai multe dintre motivele prevăzute la art. 488 alin. (1) pct. 1-7 C. proc. civ.

În cazul în care se invocă încălcarea sau aplicarea greşită a normelor de drept material, pentru cereri şi acţiuni evaluabile în bani, recursul se taxează cu 50% din taxa datorată la suma contestată, dar nu mai puţin de 100 lei; în aceeaşi ipoteză, pentru cererile neevaluabile în bani, cererea de recurs se taxează cu 100 lei.

Recursul incident şi recursul provocat se timbrează după aceleaşi reguli ca şi recursul principal.

La fel ca la recurs, pentru dovedirea motivelor de anulare nu pot fi aduse ca probe noi decât înscrisuri.

Competenţa materială şi teritorială de a judeca acţiunea în anulare este stabilită de art. 610 C. proc. civ., respectiv, curtea de apel în circumscripţia căreia a avut loc arbitrajul.

Acţiunea în anulare nu este o cale de atac suspensivă de executare, însă curtea de apelva putea suspenda executarea hotărârii arbitrale împotriva căreia a fost introdusă acţiunea în anulare.

Soluţionarea cererii de suspendare a executării se realizează potrivit regulilor de la recurs. Astfel, instanţa sesizată cu judecarea cererii în anulare poate dispune motivat suspendarea hotărârii atacate. Cererea se depune direct la curtea de apel, alăturându-se o copie certificată de pe cererea în anulare şi dovada depunerii cauţiunii. În cazul în care cererea se face înainte de a ajunge dosarul la curtea de apel, se va alătura şi o copie legalizată de pe dispozitivul hotărârii atacate cu acţiune în anulare.

Cererea se judecă în camera de consiliu, cu citarea părţilor, printr-un agent procedural al instanţei sau prin alt salariat ori prin modalităţile alternative de citare.

Termenul de judecată pentru care se face citarea, se stabileşte astfel încât să nu treacă mai mult de 10 zile de la primirea cererii de suspendare.

Completul se pronunţă în cel mult 48 de ore de la judecată, printr-o încheiere motivată care este definitivă.

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Pentru motive temeinice, curtea de apel poate reveni asupra suspendării acordate.

Termenul în care poate fi introdusă acțiunea în anulare la curtea de apel este de o lună de la data comunicării hotărârii arbitrale. Dacă s-a formulat o cerere pentru lămurirea, completarea şi îndreptarea hotărârii, termenul curge de la data comunicării hotărârii sau, după caz, a încheierii prin care a fost soluționată cererea.

Pentru motivul de anulare referitor la pronunțarea deciziei de către Curtea Constituțională, termenul este de 3 luni. Acest termen curge de la publicarea deciziei în Monitorul Oficial al României, Partea I.

Pentru a asigura egalitatea de tratament a părților în procedura arbitrală, părțile nu pot renunța prin convenția arbitrală la dreptul de a introduce acțiunea în anulare împotriva hotărârii arbitrale.

O astfel de renunțare la acest drept se poate face însă, numai după pronunțarea hotărârii arbitrale. După pronunțarea hotărârii, oricare din părți poate să renunțe la exercitarea acțiunii în anulare. Renunțarea trebuie să fie expresă şi neviciată.

Deşi este o cale de atac distinctă, curtea de apel va judeca acțiunea în anulare în completul prevăzut de lege pentru judecarea în primă instanță.

Întâmpinarea este obligatorie. Nedepunerea întâmpinării în termenul prevăzut de lege atrage decăderea pârâtului din dreptul de a mai propune probe şi de a invoca excepții, în afara celor de ordine publică, dacă legea nu prevede altfel.

Soluțiile pe care le poate pronunța curtea de apel, asupra acțiunii în anulare sunt următoarele:

- respingerea acțiunii în anulare şi menținerea hotărârii arbitrale;
- admiterea acțiunii. În acest caz, curtea de apel va anula hotărârea arbitrală şi:

a) în primele două cazuri în care litigiul nu era susceptibil de soluționare pe calea arbitrajului şi tribunalul arbitral a soluționat litigiul fără să existe o convenție arbitrală sau în temeiul unei convenții nule sau inoperante, va trimite cauza spre judecată instanței competente să o soluționeze, potrivit legii;

b) în celelalte cazuri, când tribunalul arbitral nu a fost constituit în conformitate cu convenția arbitrală; partea a lipsit la termenul la care au avut loc dezbaterile şi procedura de citare nu a fost legal îndeplinită; hotărârea a fost pronunțată după expirarea termenului arbitrajului de 6 luni de la data constituirii, deşi cel puțin una dintre părți a declarat că înțelege să invoce caducitatea, iar părțile nu au fost de acord cu continuarea judecății; tribunalul arbitral s-a pronunțat asupra unor lucruri care nu s-au cerut ori a dat mai mult decât s-a cerut; hotărârea arbitrală nu cuprinde dispozitivul şi motivele, nu arată data şi locul pronunțării ori nu este

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semnată de arbitri; hotărârea arbitrală încalcă ordinea publică, bunele moravuri ori dispoziţii imperative ale legii, va trimite cauza spre rejudecare tribunalului arbitral, dacă cel puţin una dintre părţi solicită expres acest lucru. Această soluţie respectă principiul disponibilităţii procesului civil şi intenţia iniţială a cel puţin uneia dintre părţi, de a sustrage litigiul instanţei statale şi soluţionarea cauzei de către tribunalul arbitral.

În caz contrar, dacă litigiul este în stare de judecată, curtea de apel se va pronunța în fond, în limitele convenției arbitrale.

Dacă, însă, pentru a hotărî în fond, este nevoie de noi probe, curtea se va pronunța în fond după administrarea lor. În acest din urmă caz, curtea va pronunța mai întâi hotărârea de anulare şi, după administrarea probelor, hotărârea asupra fondului.

O altă soluție, pe care curtea de apel o poate adopta, este în situația în care părțile au convenit expres ca litigiul să fie soluționat de către tribunalul arbitral în echitate, atunci şi instanța să soluționeze cauza în echitate. Această prevedere este în concordanță cu cea anterioară, prin care curtea de apel se va pronunța în limitele convenției arbitrale.

În acest caz, hotărârea de anulare este o hotărâre intermediară, iar hotărârea finală este cea asupra fondului.

Ca mod de soluționare, acțiunea în anulare fiind asemănătoare cu recursul, probele ce pot fi administrate şi după anularea hotărârii considerăm că pot fi doar înscrisurile.

Hotărârile curții de apel de admitere a acțiunii în anulare sunt supuse recursului.

Aplicând principiul analogiei consacrat de art. 5 alin. (3) C. proc. civ., acelaşi tratament juridic trebuie aplicat şi hotărârilor curții de apel de respingere a acțiunii în anulare, având în vedere natura juridică unică a acțiunii în anulare – aceea de cale de atac[10].

5. Natura juridică a acțiunii în anularea hotărârii arbitrale.

Așa cum a rezultat, acțiunea în anulare este singurul mijloc prin care se poate cere și eventual obține desființarea hotărârii arbitrale. Cu privire la natura juridică a acesteia, opiniile au fost și sunt încă diferite[11].

Astfel, într-o opinie, s-a considerat că acțiunea în anulare ar fi o cale de atac civilă, autonomă și extraordinară, de control judecătoresc și de reformare[12].

Nu putem fi de acord cu această opinie, deoarece, acțiunea în anulare nu este o cale extraordinară de atac, din moment ce ulterior, împotriva hotărârii curții de apel se poate promova recursul. Ori,

[10] G.C. Frenţiu, D.-L. Băldean, *Noul Cod de procedură civilă. Comentat și adnotat,* Editura Hamangiu, București, 2013, p. 938.
[11] I. Deleanu, *Tratat de procedură civilă, vol. II,* Editura Universul Juridic, București, 2013, p. 604.
[12] Gh. Beleiu, *Hotărârea arbitrală și desființarea ei,* Revista de Drept comercial nr. 6/1993, p. 14-20.

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recursul este o cale extraordinară de atac, deschis numai împotriva hotărârilor pronunţate în primă instanţă, ori împotriva hotărârilor pronunțate în apel, care este o cale ordinară de atac.

Într-o altă opinie, cererea în anulare are natura juridică a unui recurs, cu particularitatea că motivele de casare nu sunt identice[13].

Nu putem împărtăși nici această opinie, deoarece motivele pentru care se poate formula acțiune în anulare, sunt diferite de cele pentru care se poate promova recurs. Apoi chiar dacă, sistemul probator este identic, deoarece atât pentru dovedirea motivelor de anulare, cât și pentru cele de recurs, se admite doar administrarea cu înscrisuri, compunerea completului de judecată este diferită. Astfel, în recurs, completul de judecată este format din 3 judecători, în timp ce pentru soluționarea acțiunii în anulare, completul este cel pentru judecata în primă instanță, adică, dintr-un singur judecător. În acest fel, modul de judecată va fi ca la prima instanță și nu ca la recurs.

S-a mai considerat că, acțiunea în anulare are o natură juridică mixtă-jurisdicțională și contractuală. Consecvenți opiniei că, însăși hotărârea arbitrală are o componentă contractuală, autorii considerau că și acțiunea în anularea unei hotărâri arbitrale are o natură juridică mixtă-jurisdicțională și contractuală. S-a considerat, de asemenea, că dubla natură a arbitrajului se regăsește în toate actele și fazele arbitrajului, inclusiv în hotărârea arbitrală[14].

Nici cu această opinie, nu putem fi de acord. Astfel, cum s-a afirmat, o asemenea teză, este dificil de conciliat cu axioma oricărei căi de atac: ea nu se exercită de către părți de comun acord-contractual- ci, numai de o parte sau de amândouă, dar distinct și contradictoriu. Faptul că motivele de anulare sunt strâns legate de convenția arbitrală, nu înseamnă că însăși acțiunea în anulare este o convenție[15].

Dacă la sesizarea instanţei arbitrale, părţile au avut la bază voința lor comună, de a sustrage litigiul, justiției de drept comun și a recurge la soluționarea unor eventuale litigii pe calea arbitrajului, în momentul promovării acțiunii în anulare, una sau amândouă părțile sunt nemulțumite de soluția pronunțată și recurgerea la acțiunea în anulare, nu mai are ca temei voința lor concordanță, ci, dimpotrivă, de data aceasta divergentă.

S-a mai considerat că am fi în prezența unui control judecătoresc, care se exercită pe cale de acțiune, în primă și ultimă instanţă, hotărârea instanței putând fi atacată numai cu recurs, nu și prin exercitarea căilor extraordinare de atac[16].

[13] G. Boroi, D. Rădescu, *Codul de procedură civilă, comentat și adnotat,* Editura All, Bucureşti, 1994, p. 615.
[14] S. Zilberstein, I. Băcanu, *Desființarea hotărârii arbitrale,* Revista Dreptul nr. 10/1996, p. 32..
[15] I. Deleanu, *op. cit.*, p. 605.
[16] V. M. Ciobanu, *Tratat teoretic și practic de executare silită, vol. II,* Editura Naţional, Bucureşti, 1997, p. 615.

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Nu împărtășim nici această opinie, deoarece, acțiunea în anulare nu semnifică soluționarea cauzei în primă și ultimă instanță, ceea ce ar permite un sistem probator complet ca la primă instanță.

Într-o altă opinie, s-a considerat că, acţiunea în anulare este o acțiune propriu-zisă, nu o cale de atac, ci, o modalitate specifică de exercitare a controlului judecătoresc asupra unui act jurisdicțional realizat de o instanţă privată, o acțiune de primă instanță, care va fi soluționată de un complet alcătuit dintr-un singur judecător[17].

Nu suntem de acord nici cu această opinie, deoarece chiar dacă se soluţionează de un singur judecător, nu suntem în prezența unei acțiuni propriu-zise, deoarece sistemul probator nu este ca în primă instanță, unde este admisibilă în principiu, orice probă care este legală, pertinentă și concludentă.

Chiar dacă hotărârea arbitrală este pronunțată de o instanță privată, acțiunea în anulare, declanșează o verificare, pe care instanţa de drept comun, o poate face numai prin raportare la motivele expres reglementate de art. 608 C. proc. civ. În schimb, judecata în primă instanţă este cea mai completă, cauza fiind verificată sub aspectul tuturor motivelor de fapt și de drept, invocate în cauză.

S-a mai considerat de Înalta Curte de Casație și Justiție, într-o decizie de speță că, acțiunea în anulare are caracterul unei acțiuni în fond, iar nu caracterul unei căi de atac împotriva hotărârii arbitrale, dat fiind faptul că hotărârea arbitrală este pronunțată de o justiție privată a cărei procedură nu cunoaște sistemul căilor de atac, specific justiției de stat[18].

Referitor la opinia instanței supreme, considerăm că, în mod întemeiat s-a afirmat că existența unei acțiuni în anulare împotriva modului de soluționare a unei acțiuni în fond, este o contradicție în termeni; acțiunea în anulare se exercită împotriva unui act jurisdicțional; scopul exercitării acțiunii îl constituie desființarea acestui act de jurisdicție; inexistența, de altfel obiectivă, a unor căi de atac trebuie circumscrisă la propriul sistem al arbitrajului, nu extinsă și la raporturile dintre tribunalele arbitrale și instanțele judecătorești[19].

Disputa doctrinară asupra acțiunii în anularea unei hotărâri arbitrale, este determinată, în esență, de natura arbitrajului și îndeosebi de marea diversitate a motivelor ce pot conduce la desființarea hotărârii arbitrale. Tocmai de aceea și în dreptul comparat există controverse cu privire la natura mijlocului procedural destinat a conduce la desființarea unei hotărâri arbitrale. Este de remarcat că unele legislații procesuale, conțin calificări juridice în acest sens. Un exemplu particular este cel al

[17] M. Ionaș Sălăgean, *Arbitrajul comercial,* Editura All Beck, București, 2001, p. 149.
[18] Înalta Curte de Casație și Justiție, secția comercială, dec. nr. 175/2009, în Revista „Săptămâna Juridică" nr. 9/2010, p. 7.
[19] I. Deleanu, *op. cit.*, p. 606.

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legislației franceze, unde se consideră că, sentința arbitrală este o veritabilă hotărâre și trebuie să fie susceptibilă de a fi atacată prin căile de atac obișnuite[20].

Din analiza motivelor pentru care se poate promova acțiunea în anulare, statuate în art. 608 C. proc. civ., rezultă că majoritatea acestora vizează nelegalitatea hotărârii atacate. Natura hotărârii atacate, de act jurisdicțional, precum și efectele acesteia, determină caracterul jurisdicțional al acțiunii în anulare. S-a considerat că, opinia corespunzătoare este cea care apreciază că acțiunea în anulare este un mijloc procedural specific, de natură dual, prin care se exercită controlul judecătoresc asupra unei sentințe arbitrale[21].

În opinia noastră, acțiunea în anularea unei hotărâri arbitrale, datorită motivelor pentru care se poate exercita, este o cale de atac distinctă, care, nu este nici de reformare, nici de retractare. Deși nu se încadrează strict în sistemul căilor de atac care se promovează împotriva hotărârilor judecătorești, nu o putem califica altfel, deoarece urmărește desființarea hotărârii arbitrale. Ori, atât timp cât, hotărârea arbitrală este schimbată prin acțiunea în anulare, iar în caz de admitere, se dispune de regulă rejudecarea, respectiv trimiterea cauzei instanței competente potrivit legii sau tribunalului arbitral, aceste etape se regăsesc și în cadrul soluționării celorlalte căi de atac prevăzute în art. 456 C. proc. civ.

În prezent sunt instituționalitate următoarele căi de atac ale hotărârilor judecătorești: apelul, recursul, contestația în anulare și revizuirea[22].

Motivele pentru desființarea acțiunii în anulare, sunt limitativ prevăzute de lege, așa cum sunt stabilite la celelalte căi extraordinare de atac, de ex. în cazul recursului, la art. 488 C. proc. civ., argument pentru care, considerăm că hotărârea pronunțată în acțiunea în anulare, nu ar mai trebui atacată cu recurs.

Considerăm că acțiunea în anularea unei hotărâri arbitrale, se asemănă cu calea extraordinară de atac a recursului. Pe lângă motivele expres reglementate și în cazul acțiunii în anulare, pentru dovedirea motivelor, nu pot fi administrate alte probe noi, decât înscrisurile, la fel cum este reglementat și în cazul recursului.

De asemenea, acțiunea în anulare, nu este o cale suspensivă de atac, însă, potrivit art. 612 C. proc. civ., curtea de apel va putea suspenda executarea hotărârii arbitrale împotriva căreia a fost introdusă acțiunea în anulare. Pentru soluționarea cererii de suspendare, sunt aplicabile în mod corespunzător, dispozițiile de la recurs.

[20] I. Leș, *op. cit.*, p. 872.
[21] Idem, p. 873.
[22] C. Roșu, *Drept procesual civil, Ediția 7, op. cit.,* p. 1.

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În acelaşi sens, s-a afirmat că, raportându-ne la sistemul căilor de atac prevăzute în dreptul comun, acțiunea în anulare prezintă cele mai multe similitudini cu recursul. Cu toate acestea, s-a considerat că acțiunea în anulare este un mijloc procedural de sine-stătător[23].

6. Concluzii.

Arbitrajul nu este alcătuit dintr-un sistem în sensul celui clasic, format dintr-o judecată pe fond, urmată de una sau mai multe căi de atac. Activitatea arbitrilor, finalizată prin hotărârea arbitrală, nu este ferită de strecurarea unor erori, omisiuni, etc. De aceea, un control al hotărârii arbitrale nu poate fi exclus în totalitate. Această atribuție revine instanțelor judecătorești, care verifică interferența dintre hotărârea arbitrală și cadrul socio-juridic în care aceasta urmează să își producă efectele. În definitiv, hotărârea arbitrală, cu toate că se naște într-un cadru paralel cu cel al justiției statale, trebuie să se înscrie mai devreme sau mai târziu în făgașul acestuia din urmă[24].

Desființare hotărârii arbitrale nu se poate realiza prin mai multe căi de atac, ci, legiuitorul a prevăzut o singură cale de atac, respectiv, acțiunea în anulare, care prin motivele invocate, corespunde specificului arbitrajului, de justiție alternativă la justiția de drept comun.

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THE EFFECTIVENESS OF SOCIAL MEDIA UTILIZATION FOR OPEN GOVERNMENT

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Abstract: In this paper I am particularly interested in exploring citizens' positions and/or understandings of e-government concerning trust, contentment and values, the carrying out of open government technology as an instrument to handle and disseminate government's information, and the capacities of social media to further information, communication, and interplay between governments and citizens. My paper contributes to the literature by providing evidence on technological innovation in the public sphere, the influence that social networking applications and social media have on e-government, and the connection between technology, governmental operations and citizens' perception.
Keywords: social media, e-government, public sphere

1. Introduction

Over the past decade, there has been increasing evidence describing the function of web and social media in e-governments, citizens' perceptions and requirements of e-government strategies, and information policy tools and laws significant to social media. This paper aims to analyze and discuss the anticorruption effect of e-government, the necessities and demands of e-government, government employment of social media, and citizens' perception of possible relevance on e-government employment.

2. The Impact of Social Networking Applications and Social Media on E-government

Recent reasons of social media organize various models of cultural consumption. Social media are likely to be achievable free or at insignificant cost, demanding little technical operational knowledge, and being decentralized, non-hierarchical or peer-governed, and horizontal relying on many-to-many interplay. Technologies and types of social media supply new approaches of augmenting and testing upon the peer production of knowledge. Open University 2.0 relies on a fundamentally decentralized, many-to-many and peer production manner of interactivity, furnishing the foundation for a new social media pattern of the university and processes for coming back to a

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completely socialized perspective of knowledge (Sigauke, 2016; Buber-Ennser, 2015; Rehberg, 2015; Nica, 2015a, b, c) and knowledge-sharing (the open university rests on the standards of social media supplying the ground for a new social media pattern of the university) (Peters, 2015)

Walker Rettberg examines manners in which social media constitute our lives by permeating the information we feed into them via models and by exhibiting simplified models, images and reports back to us: social media assists individuals in considering themselves by taking their unprocessed information and constituting it in organized form. Walker Rettberg analyzes the manners we link our contributions to more significant cultural models that are frequently utilized by commercial media but that are not the exclusive result of them. Social media focus on the contributions that citizens make intentionally or explicitly and our intrinsic contributions. Walker Rettberg investigates the images that are produced of us by social media and that supply us with new manners of associating them to more significant cultural models. Various social network analysis instruments assist us in envisioning clearly articulated social networks online. (Walker Rettberg, 2009)

Social media can be a particularly adequate sales instrument for business-to-business corporations, makes peers more directly and dynamically achievable (Cohen, 2016; Peters and Heraud, 2015; Sharp, 2016; Peters, 2015; Bauder, 2016), can be separated to indicate what user reaction it can best accomplish (the interactive feature of social media is private by character), is more flexible than conventional marketing, entails some type of digital social media or communications facilitated via online technology, and has become overpromoted. There are numerous digital instruments and methods indicating the flourishing growth of online social media request. A lot of social media marketing occurs offline. Nearly all enterprises employ social media for one-way speeches, undertaking a social media movement is time consuming, whereas social media's novelty does not acquire the conventional rules of marketing. The key to an effective social media movement is to bring about circular momentum throughout numerous platforms. Doing the advertising by employing social media is generally counterproductive. (Turner and Shah, 2011)

3. The Employment of New Technologies Implemented for Government Workings

Individuals are interested in having a perception of supervision over their information. Reputation management is a defining aspect of online environment for numerous internet users (individuals can have various experiences with online reputation management). Online advertising has a leading function in the manner that internet users' information is collected, preserved and sold. When compared with older individuals, young users are more dynamic online reputation managers in

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diverse aspects. Internet users formulate different options about announcing their identity to the world. Users of online social networks do not tend to restrict their private information online. There are numerous positive impacts related to a specific degree of visibility online. Search engines and social media sites have a main function in establishing one's reputation online. Search engines modify the manner they supply search results. Social media sites make consecutive changes to privacy settings and schemes. Established search engines are the first step for almost every type of online query. There are numerous undertakings associated with standing supervising what happens on social networking sites. Handling an online identity demands making good judgments about the content you distribute and who you share it with, and checking and processing the material that others post about you. There are no outstanding gender dissimilarities among those who investigate for contact information or social networking profiles. Distributing information about your relationship status is an established aspect of numerous social networking profiles. (Madden and Smith, 2010)

Hartline et al. explore the utilization of social networks in carrying out viral marketing policies, concentrating on the heuristic matter of identifying revenue increasing marketing schemes, monetize social networks through the enforcement of smart selling approaches, scrutinize marketing plans that increase revenue from the selling of digital products, and employ the newly improved local search formula for generally increasing non-monotone submodular roles. Hartline et al. examine symmetric contexts, and indicate that we can establish the optimal marketing policy based on a simple active programming technique. In different contexts impact and exploit schemes approximate the optimal revenue within a moderate stable component. The value diffusions meet the monotone hazard rate requirement. The normal sharing fulfils the monotone hazard rate requirement. Hartline et al. establish a group of Influence-and-Exploit (IE) schemes, demonstrate that they supply better approximation formula, and debate influence patterns, sound selling policies and superior limits on the maximum revenue that a vendor can make, refer to the marketing scheme that optimizes revenue as the optimal marketing scheme, and derive a superior limit on the revenue of the optimal marketing scheme concerning definite player specific revenue roles. (Hartline et al., 2008)

The accessibility of technological infrastructure positively impacts e-government experience and advance. E-government is a transformative, technological revolution, providing individuals with enhanced access to government data and services (El-Montasser et al., 2016; Kaufman and Williams, 2015; Friedman and Jo Lewis, 2015), and being an important instrument for societal improvement and advance. Resources may strengthen a nation's capacity and disposition to

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accelerate its e-government undertakings (Machan, 2016; Duong, 2015; Nica and Potcovaru, 2015) with aspects that back individuals' involvement and engagements. Corruption/openness understandings are considerably related to e-government advance and distribution. More significant supplies of relevant human capital resource influence e-government maturity positively. The notion of "maturity" indicates a level of development from lower to higher phases in a process. Economic resources may be essential to governments and their citizens in their attempts to get indispensable technological products to further augment e-government enterprises. Novel technologies circulate where enabling technological infrastructure exists. Latin America and Sub-Saharan Africa (LA&SSA)'s governments that are thoughtful about gaining propitious e-government experience should evaluate their own schemes and endeavors against peers having advantageous e-government indicators. Richer economies in LA&SSA may improve their human capital, have an enabling technological capital and generate forthrightness in their circumstances. Emerging nations and developing economies in LA&SSA fail to keep up with advanced countries in the organization and utilization of e-government. Economies in LA&SSA with advantageous rule of law tendencies will encounter almost no problems in establishing leading aspects that further citizen involvement and empowerment in governance. Nations in LA&SSA with more technological facilities have more propitious e-government maturity scores. Economies in LA&SSA with more significant degrees of prosperity are likely to have higher technological infrastructure. Economically endowed nations in LA&SSA may obtain the indispensable technical equipment and infrastructure needed to advance and back e-government enterprises. The openness degrees variable is not positively associated with e-government experience in the circumstances of LA&SSA. (Ifinedo, 2012)

The enforcement of public e-procurement augments openness, effectiveness, and responsibility in public procurement procedures. Public e-procurement can have a supporting function in making governments more straightforward and responsible (Bin et al., 2016; Prowle and Harradine, 2015; Hurd, 2016), enhancing interplays between government agencies and enterprises that can assist developing economies to cut down corruption. Confidence is associated with the intent-to-adopt public e-procurement. The possible public e-procurement advantages involve effectiveness, ease of employment, and augmenting confidence between government and bidders. Positive approaches connected with the embracing of e-procurement can assist in hampering fraud in public procurement procedures. Effectiveness in document transfer and automation of procurement procedure may cut down corruption in government procurement. Accessing real time data through e-procurement is an essential component to handle corruption in government procurement. Public e-procurement can have an anti-corruption function in diminishing the risk of

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corruption. The public e-procurement technology operation can assist in cutting down corruption in government activity and services (carrying out of public e-procurement technology may decrease corruption in public procurement) (Neupane et al., 2012)

4. Citizens' Perception of Possible Relevance on E-government Employment

The media setting alters via the continuing interplay of media users and media suppliers. Public attention is the consequence of a structurational operation in which organizations and individuals reciprocally set up the media setting. Public initiatives are social concepts determined by their makers, and the formation of public measures is frequently a political performance. Models of utilization are crucial to comprehending the media's social effect. The aspects of an information technology supply "affordances" that citizens try to use in specific manners. Digital media may lead to social polarization. Interactive digital media may boost the impacts of interpersonal communication. Social media have released tidal waves of user-generated content, are persistently adjusting their tasks, cover a growing portion of public concern, both produce and are produced by models of conduct, are productive in creating and circulating their own subset of public initiatives, whereas social media form more significant models of media consumption. (Webster, 2010)

The function of ICTs is essential and underlying to opening government. Intricate technology may positively influence some citizens' positions. The government's employment of collaborative technologies allows a two-way interplay between government and people via online debates, live conversations, and message threads. Individuals' assessment on the functioning of new actions may fluctuate and alter with their embracing of ICTs. Web 2.0 may modify the manner government supplies services and its link with the public. The essential values of e-government are openness, involvement, and governance (through cooperation). Specific users of prevalent e-government services sense possible advantages of e-government. The effect of e-government fluctuates across portions within the population. Positive approach toward new technologies in e-government is converted to positive approach toward the new tendency of e-government. The persistent utilization of present e-government services generates positive approaches about the new instrument of e-government. E-government value understanding is essential to determining positive approaches toward Open Government. Decomposed causal impacts suggest that prevalent e-government users can have more positive approaches about the new target and instrument of e-government. Open Government goaded by Government 2.0 should be assessed from the perspective of citizens. On the path of e-government improvement, Open Government and Government 2.0 are the current outcomes and new methods of e-government. New enterprises of e-government may augment

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individuals' positive requirements on government functioning by backing the essential values of openness, public involvement, and cooperation. (Nam, 2012)

The Internet has altered governments' schemes of information diffusion. E-government is informational, transactional, and cooperative (Wickremasinghe, 2016; Chapman, 2016; Popescu, 2015a, b; Friedman, 2015), furnishing the link between supervision, partnership, culture, and technology. Confrontation between the cooperation and the supervision is extremely instrumental in the improvement of e-government services. E-participation is the utilization of ICT for determining individuals to join democratic processes relevantly. "E-governance" covers the governance of technologies and their utilization within public and private entities. Social media applications supply extra routes to interact closely with individuals. Well-informed and rational public officials are a significant component in the positive result of e-government enterprises. M-government augments the online government services by handily supplying different applications. Cooperation, government supervision, cultural variety, and information technology (Peters and Besley, 2016; Tulloch, 2016; Willow and Keefer, 2015) make e-government efficient. Cultural variety and information technology can negatively influence the strength of e-government. Policy improvement can hamper the misemployment of privacy data that can be detrimental to both the citizens and/or institutions. Public administration should prompt public officials to involve with individuals by driving them through stimulants, appreciation, and endorsement. (Talip and Narayan, 2012)

The poorest economies mainly sustain the tremendous costs of corruption. E-governance strategies cannot remedy all the structural components that generate corruption in countries and communities, and can make significant contributions to enhancing public services and curbing corruption, being positively associated with boosts in government-citizen links and corruption decrease, assisting in removing corruption and in furthering so under government-citizen connections in developing economies. Corruption has important detrimental consequences, and public sector bureaucracy is the biggest obstacle in the way of enhanced government-citizen links. ICT can be favorably exerted as an instrument in reducing corruption and upgrading the quality of public services for individuals. All kinds of insignificant bureaucratic corruption can be cut down through the openness attained by employing electronic media. (Pathak et al., 2012)

5. Conclusions

Research on the utilization of e-government to reduce corruption, the consequences of improper e-government development, and possible drivers for positions toward the new features of e-government has yielded fairly consistent findings over the past decade. Applying new conceptual

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and methodological approaches, this study advances to the next level research on the effectiveness of public administration, the function of ICT in acting as an accelerator to augment economic development, and technological determinants on e-government development.

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IS CHINA'S ECONOMIC GROWTH SUSTAINABLE?

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Abstract: This paper discusses the major trends in scholarship aboutthe strengthening of China's economic reforms, the role of productivity and foreign capital in China's growth, and the effects of the factor accumulations and technological advancement to real output growth in China. The findings of this study have implications for the link between capital formation and economic growth in China, the impact of FDI on labor productivity in China, and the GHG releases strength of China's energy sector.

Key-words: China; sustainable growth; economic reform

1. Introduction

China's labor supply is at its maximum capacity, capital is indicating decreasing marginal revenues and debt service is accumulating, total factor productivity (TFP) earnings are dropping depending on modifications in administration and the incentive configuration, and schemes to assist growth via state proprietorship and curbed regulatory expenditures are progressively harmful. Chances to modernize manufacturing to fabricate first-rate goods with more significant intangible value are immense. China has huge comparative advantage in covering international request and tremendous domestic propensity for welfare-enhancing imports of products and services. Outward Chinese direct investment is indispensable if China's companies are to preserve worldwide market portion and improve their capacities at home (China will go on to be reliant on internationally acquired natural resources for the predictable future). Advanced-economy regulatory notions will generate dissimilar outcomes if China's categorical imperative is not also altered to improving the rights and wellbeing of persons. The demand for government to stop intervening in trading undertakings that can be managed by markets (Rehberg, 2015; El-Montasser et al., 2016; Kaufman and Williams, 2015; Brown, 2016) and move to regulatory functions that the state has not had until now is fundamental for China (Rosen, 2014).

2. The Role of Productivity and Foreign Capital in China's Growth

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China has designed a steady modification in the renminbi's value by setting up a trading band and mostly establishing fixed rates to indicate market view. Short-run renminbi volatility is not a counter-indication to amendment. China's band broadening and enlarging renminbi internationalization are important moves in the direct of liberalization. The demand for extensive financial system reform contends with attaining gross domestic product (GDP) growth objectives and bailing out particular companies. China's adopting of market-oriented exchange rates and interest rates constitutes a crucial feature of the entire financial system reform. Commercial and investment fluxes connect worldwide production chains to China and the latter to its tremendous foreign markets. China's internal household request must carry the baton of growth from overseas trades and investment in the future. International worries about Chinese trade hurdles consider trade subventions, unethical intellectual property rights (IPR) and autochthonous innovation promotion schemes, unscientific criteria, and overseas trade limitations (Rosen, 2014).

Urbanization in China constitutes a significant feature of economic development that has been both partly responsible for, and has been affected by, steady fast economic growth. The administration of increasing amounts of household, building and industrial waste presents a critical challenge. There are considerable detrimental health consequences in China from vulnerability to atmospheric contamination and environmental accidents. Environmental determinants may apply constraints on the development of Chinese cities. There are powerful complementarities between endeavors to further greener, more environmentally friendly cities and the country's sustained fast economic development. China encounters a critical challenge in dissociating environmental deterioration from economic development. As a reaction to wide environmental challenges, China has considered several significant measures to undertake pollution and back a more environmentally sustainable growth route. As the inhabitants and concentration of economic activity go on to move towards urban zones, environmental views will become more intimately related to how cities grow (OECD, 2013).

China's government has been dynamically backing the move in the direction of a consumption-oriented economy and the establishment of a responsive services sector. China is making preparations to undertake industrial overcapacity, and implement more strict environmental protection criteria (increasing expenditures and a contracting labor market have considerably influenced numerous manufacturing activities). FDI (foreign direct investment) growth will go on in the service sphere, which is increasing in extent and relevance as China rebalances its economy away from a substantial dependence on exports and investment-oriented growth. The enhancement

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in the investment setting will cancel out the repercussions of China's economic decrease, supplying more backing to FDI, and preserving FDI inflows at present levels (KPMG, 2015).

China's recognized competitiveness in mass-producing should considerably experience reform. State-owned and state-related enterprises (SOEs) have a huge function in China's economy. Massive tracks of China's economy are forestalled to private internal companies, not to mention overseas dealings and investors, by SOE paramountcy. China's structural adaptation and rebalancing demand SOE reforms to be significantly carried out (the public sphere has a widespread and deforming effect on the marketplace). The accessibility and extent of a countrywide Chinese negative inventory for types of state interference are the principal sign of China's SOE reform enforcement to evaluate. China's fast economic growth has been facilitated by a series of rules regularizing the allowance and relocation of land. In agricultural China, smallholders preserve the rights to utilize land but not the ownership to it, whereas China's cityscapes are widening as movement and metropolitan municipalities are acquiring marginal zones to furnish space for advancement and seize tax returns. Essential public services are financing a sound, effective labor forceand social steadiness (Rosen, 2014).

3. The Strengthening of China's Economic Reforms

Chinese inhabitants and companies with the means should be instrumental disproportionally in the expenditure of making the grounds of a sound labor force much more reasonable. The public service schemes that have been introduced until now are not almost up to the undertaking of ending China's development disparities and ascending inequality. Exploiting its human resources necessitates that a new importunity be given to positive action (Wickremasinghe, 2016; Howe, 2015; Nica and Potcovaru, 2015; Anderson and Kantarelis, 2016) for its private sphere. Pursuing labor and collective welfare reforms preserves trust that China's growth is on sustainable grounds. Schemes that enhance China's environmental position will damage unconditional concerns reliant on loose environmental implementation. The development of Chinese energy provisions will impact significantly the environmental prospect of the world. China's air contamination troubles can be undertaken without cutting down domestic coal consumption. A decrease in coal utilization in Eastern China arising from macroeconomic rebalancing and contamination supervision endeavors could generate a rise in coal utilization in Western China (Rosen, 2014).

Mean income has attained stages that are frequently related to a sharp rise in ownership rates. Reforming fully-developed cities to cut down the environmental impression can be tremendously expensive, but with additional wide-ranging urbanization to come, China may ensure

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that its conurbations go on to develop in a way that will reduce the harmful environmental impacts of urbanization. Thickly inhabited coastal cities that constitute China's economic powerhouse are unprotected to the effects of climate change. Agglomeration economies emerge as employees and companies bunch up and transact to generate gains associated with participation, matching and acquisition. China's disordered urbanization requires taking advantage of agglomeration economies. As its economy maintains its globalization, the competitiveness of bigger cities will progressively be guided by the recognition of agglomeration economies inherent to urban zones. Land-related income (i.e. land rentals, auction sales, and development rights) are vital to Chinese cities' returns streams and a notable determinant of spatial enlargement. Local governments at all levels understand investment appeal as a pivotal cause of economic growth (Popescu, 2015a, b; Chapman, 2016; Hurd, 2016; Peters and Heraud, 2015), and thus contend with their nearby jurisdictions for business appeal. The present green progress metrics pursuing energy saving and contamination decrease operation have little connection to whether a conurbation is effective at reducing its CO_2 release levels. (OECD, 2013)

Chinese firms' investment goals are shifting from resource-rich developing economies to developed ones that supply access to leading technologies, prominent brands, broad industry experience and global delivery networks. Chinese firms' ODI (outward direct investment) undertakings are aiming access to natural resources and are progressively determined by the demand to improve and alter themselves for sustainable growth. China's quest of 'quality development' and its sound macroeconomic improvement should establish systematic growth in ODI. Chinese strategic investment constitutes most of Chinese foreign investment. SOE reform is a possible economic determinant for China that is reconstituting its industrial growth pattern by altering from concentrating on labor-intensive spheres to a design determined by leading technologies. China's economic schemes have highlighted investment undertakings and export-oriented manufacturing over internal consumption. China's customers have raised expendable income and superior demand for quality services (KPMG, 2015).

China does not require a radical decrease in total investment but a dissimilar investment blend to bring about significant growth from total factor productivity. Without capacity step-downs, China's decrease sheds excess Chinese manufacturing onto global markets once more. Services imports indicate Chinese migrating to spend, this undertaking hindering overseas hot money fluxes. Advanced-economy exports to China generally take place from high-technology or knowledge-intensive spheres (Bin et al., 2016; Buber-Ennser, 2015; Peters, 2015; Sharp, 2016), information and communications technology (ICT) goods and services. China has manifested an inclination to

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employ trade scheme as an instrument of geopolitical diplomacy. Capital assignment reform and government's spending priority reform will redirect income from lenders and companies in the direction of household consumption. Reforms to investment scheme should make it more straightforward for overseas companies to function in China and trade goods there. (Rosen, 2014).

4. The GHG Releases Strength of China's Energy Sector

China's trend to under-enforce contest scheme and procedures on SOEs has short-changed environmental defense. The SOEs should conform to powerful environmental procedures if this country is to balance the action sphere for contest goals andrestore the environment. China cannot attain drastic environmental alteration with only negligible modifications in its macroeconomic fabric. With the institution of emission license trading markets, more open reporting of recently authorized resource charges, and registers of contaminant fluxes from industrial amenities, modifications in emissions and increasing expenditures introduced for environmental effects may occur. The undertaking of squeezing down company-level releases will be conditional on cost internalization. The option to monitoring the particular emissions of companies is to consider entire environmental quality. Numerous of China's business patterns are projected to bypass innovation. China's manufacturers should advance to higher-value components of the value chain to furnish economic growth (Machan, 2016; Friedman and Jo Lewis, 2015; Cohen, 2016; Duong, 2015; Friedman, 2015), but they require the ground-breaking capacities to do so. Incorporating numerous new Chinese laborers into international production arrangements has served consumers and affected manufacturing employees in lower-skill industries (Rosen, 2014).

China's growth will slow down as the economy steadily reduces its large sources of growth and moves to the stage of intensive growth. China's continuous economic growth has been backed by sound capital accumulation, a powerful rise in labor output because of the movement of employees from the agricultural to the industrial sphere, and fast TFP growth as a consequence of the advancing liberalization of the state-oriented economy. China's growth has been mainly determined by capital accumulation because of the significant investment-to-GDP ratio. TFP growth is also a determinant of economic development. China's TFP growth originates from labor output gains because of the move of the employees from the unsatisfactory output agricultural spheres to services and manufacturing. The capacity for TFP rise through labor restructuring is curbed as a result of the steady reduction of inexpensive agricultural labor. Capital accumulation

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may diminish in the next years, restricting China's substantial sources of growth (Dorrucci et al., 2013).

A portion of the Chinese government policy to diminish the significant reliance on imports of oil includes enhancing energy efficiency, varying import sources and raising the financing of internal exploration and manufacturing of crude oil. The notable electric power utilization is a result of the relevance of the energy-intense industries (e.g., petrochemical and iron and steel production) in the Chinese economy. As China is a net energy importer, the significant energy strength indicates a poor efficient energy use, entailing that there is relevant possibility for enhancements in cost-effectiveness. The boost in the utilization of fossil fuels somewhat elucidates the intensifying CO_2 releases. In the group of fossil fuels, coal is the most contaminating and is the chief source of energy. Chinese energy schemes are governed by i) increasing request for oil and dependence on oil imports, ii) expanding the utilization of natural gas as a share of energy consumption by growing internal reserves and transferring from its neighbors through pipelines, and iii) handling the growth in coal output and furthering the expansion of a considerable coal-to-liquids industry (Aller and Ductor, 2014).

Phasing out coal may considerably diminish the health and environmental expenses of air contamination and assists in furthering the tempting, people-oriented cities that will influence China's sustainable economic transfiguration. China's coal utilization is an important source of international GHG (greenhouse gas) releases, raising the risks related to climate change. Properly formulated fiscal reform should enhance China's investment atmosphere, boost the output of capital and labor, and improve China's appeal as an overseas investment destination. China's GHG releases impact considerably the world's quickly decreasing carbon budget. China's low-carbon objectives and undertakings are strengthening, and thus will probably see enhancing pay-offs with regard to dynamic international teamwork (Kunnanatt, 2016; Cheung and Leung, 2016), climate risk decrease, and low carbon technology overseas trade improvement (Green and Stern, 2014).

5.Conclusions

China should set up a starting point of appropriate process and good governance and thus companies will optimize their endeavor to China's growth capacity, accompanying the returns to be received from a sound innovation context. To be relevant, carrying out of improved contest scheme supervision must consist of zones of the market presently monopolized by state companies. The significance of competition implementation to China is determined by a straightforward appropriate process to restrain misuse and a capacity to inhibit bad conduct (Sigauke, 2016; Nica, 2015a, b, c;

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Prowle and Harradine, 2015; Bauder, 2016) that occurs from indicating fairness and introducing reasonable solutions. Leading prices in its financial markets are impacted by political intrusion. Intervention supervises access to capital, with reference to privileged access to bank loaning, rights to release equity and debt on public stock exchanges, and to circulate money in and out of the country. Discontinuing the habit of placing government in a situation to allow transactions between savers and borrowers is key to updating China's financial system. Its unwillingness to let weak companies be unsuccessful maintains misrepresentations of firm accounting, blocks assets that could be redistributed strategically, brings about good money to be switched after bad, and forestalls growth chances to more competitive companies (Rosen, 2014).

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THE RECOGNITION AND ENFORCEMENT OF THE EUROPEAN INVESTIGATION ORDER IN THE EUROPEAN UNION

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Abstract: The continuous improvement of the cooperation activity in criminal matters between Member States represented and it will represent a permanent primary objective of the European Union, the achievement of which depends on the manner of achieving the area of freedom, security and justice. Amid the detection of imperfections in the practical execution of the order of freezing property and evidence, as well as of the European evidence warrant, it has called for the adoption of a new legislative act designed to simplify the cooperation activity between Member States. Within the present study we have examined the provisions contained in the European legal instrument governing the institution of the European investigation order in criminal matters. The novelty consists in the examination procedure for recognition and enforcement of a European investigation order, investigative measures, the limits and grounds for non-recognition or non-execution. There are also a number of critical opinions complemented by proposals for amending and completing the European legislative act, such as the grounds for non-recognition and non-execution that can only be mandatory, not optional as currently provided for in the examined international legal instrument.

Through this work we have aimed at continuing research activity extremely complex of international judicial cooperation in criminal matters, with a focus on European and Romanian legislative regulation. The work can be useful to academics, practitioners, and to the European legislator in the light of operating the mentioned changes; at the same time, the paper can be useful to the Romanian legislator from the perspective of transposing the European legal instrument provisions into national law by 22 May 2017.

Keywords: offense; grounds for non-recognition or non-enforcement, investigating alternative measures; deadlines; transfer of evidence

1. Introduction

Preventing and combating crime of all types more effectively on its territory is a major goal incurred by each state with an acknowledged democratic regime.

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The unprecedented evolution of crime since the second half of last century, and particularly of the organized crime has crossed the borders of a single state, with ramifications and connections increasingly perfected in several countries or even several continents.

In the recent doctrine it was pointed out that currently, but also in perspective, the most serious threat to the existence of humanity is represented by the resurgence of international terrorism, which has reached to an unprecedented scale, affecting frequently the safety of states, destabilizing the national economies, organizations and institutions, reflecting implicitly on the civilian population, panicked, scared and outraged by the cruel and despicable means used by terrorists. The bloody events in the recent years, culminating with the blow to U.S.A. on 11 September 2001 by members of the "Al-Qaida" terrorist network lead by billionaire Osama bin-Laden (being considered responsible also for the bombings of American embassies in Kenya and Tanzania on August 7, 1998) have horrified and acknowledged the danger throughout humanity. In the same context there are also the terrorist attacks in Russia, Spain, England, Italy and Japan, resulting in significant casualties and property damage [1].

On the other hand, the recent revolutions in the Arab world, which led to the fall of dictatorial regimes, such as those in Iraq, Libya, Egypt and more recently large popular movement in Syria, create some favorable conditions for the proliferation of terrorism [2].

Currently, and in perspective, the large number of people seeking asylum in the European Union (particularly in Germany) will implicitly lead to the increase of crime of all kinds, focusing on terrorism.

The latest events lead to the conclusion that the latter phenomenon (immigration) will be perhaps the greatest challenge that the European Union will have to cope [3].

Amid the increases in crime and efforts to reduce it, an activity achieved by the majority of world states, the international judicial cooperation in criminal matters was designed as being a complex activity that has many facets. [4]

The solution identified by most judicial authorities with responsibilities in preventing and combating crime has been to intensify the activities of judicial cooperation in criminal matters among other world's countries.

Although an initial examination of judicial cooperation in criminal matters between the different countries of the world seems to be generally accessible, the examination of the institution in depth leads to the conclusion that it is particularly complex, and consequently, many states continue to show some reluctance in the recognition and execution of its forms.

Although known since ancient times, the institution of international judicial cooperation in criminal matters has experienced an unprecedented development in the recent years, identifying and

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promoting the new forms of cooperation, which were imposed amid the rate increase of cross-border crime and in particular organized crime that has resulted in the increase of terrorist offenses, drug trafficking, trafficking in arms and ammunition, radioactive materials and human trafficking.

The main problem with direct effects in terms of developing some forms of international judicial cooperation in criminal matters has been and it will be the recognition and enforcement of a judgment or other judicial act adopted by the judicial authorities of another State.

Given its importance in the complex activity of judicial cooperation in criminal matters, the European Union raised this form of cooperation at the level of principle.

Thus, according to art. 82, par. (1) of the Treaty on the Functioning of the European Union (TFEU) the Judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions, which after the Tampere European Council of 15-16 October 1999 it was cited as the cornerstone of judicial cooperation in criminal matters within the Union.

On the other hand it is necessary to take into account the major objective that the European Union has set, which is to establish an area of freedom, security and justice.

Based on this reality, from the urgent need to reduce crime in its territory, in the recent years, at European Union level, it appeared and developed new forms of judicial cooperation in criminal matters, and in the case of other forms, it has been expanded the jurisdiction area.

One of the forms of judicial cooperation in criminal matters has experienced a significant development, both in terms of legislative regulation and practical application between Member States, i.e. judicial assistance in criminal matters.

Thus, in the recent years, the European Union, in addition to the classic judicial assistance in criminal matters, has experienced new ways of achievement, namely: execution of orders for freezing property or evidence [5], enforcement of financial penalties [6], mutual recognition to confiscation orders [7], and European evidence warrant [8].

The Judicial practice adopted in the recent years by Member States in the field of judicial cooperation in criminal matters has shown a permanent increase of the new ways of achieving judicial assistance in criminal matters, including the enforcement of financial penalties and the recognition and enforcement of confiscation orders.

2. Some General Considerations on European Investigation Order

Amid the detection of imperfections regarding the way of legal regulation, with direct effects in practice in the recent years, the Council Framework Decision 2003/577/JHA and Council Framework Decision 2008/978/JHA which ensure the execution of orders on freezing property or

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evidence and the European evidence warrant for the purpose of obtaining objects, documents and data for using them in proceedings in criminal matters have not proven their effectiveness, as anticipated.

Thus, although the Framework Decision 2003/577 / JHA has covered the need for immediate mutual recognition of orders to prevent the destruction, transformation, moving, transfer or disposal of evidence, however, that European legal instrument was restricted to the freezing phase, as the freezing order must be accompanied by a separate request for transfer of evidence. This mode of regulation imposed a two-step procedure affecting the efficiency and effectiveness; while this regulation coexists with other traditional instruments of cooperation, these aspects ultimately led to its quite rare use.

On the same lines it enrolls also the Council Framework Decision 2008/978 / JHA by relating to the European evidence warrant, which is based on the principle of mutual recognition for the purpose of obtaining objects, documents and data for their use in criminal proceedings. The most important drawback of this European legal instrument is that it applies only to the existing evidence, something which leads to cover a limited spectrum of judicial cooperation in criminal matters with respect to evidence. Due to the limited scope of application, the competent judicial authorities were free to use either the new regime or the mutual legal assistance procedures which remain applicable to evidence that do not fall within the scope of the European Evidence warrant (MEP).

Therefore, due to these imperfections found in the judicial practice, it was required a new European legal instrument that would lead to the improvement of judicial cooperation in criminal matters between Member States.

The European legislative act by which it was regulated this new institution of international judicial cooperation in criminal matters is Directive 2014/41/EU of the European Parliament and of the Council of April 3, 2014 on the European Investigation Order in criminal matters [9].

Under the depositions of European legal framework instrument, the European investigation order is a *judicial decision issued or validated by a judicial authority of a Member State in order to implement one or more investigative measures specific to a Member State in order to obtain evidence.*

Although this possibility is not included in the definition of the European investigation order, it can be issued for obtaining evidence that is already in possession of the competent authorities of the enforcement Member State.

It is important to note that issuing a European investigation order may be requested by the suspect or accused person, or by the lawyer (in the name of the suspect or accused) in accordance with the

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provisions governing the rights of defense applicable in accordance with the internal law of the State in question.

Under art. 3 of the European legal instrument under examination, the European investigation order include any measure of investigation permitted by law, except the establishment of a joint investigation team and the gathering of evidence within a Joint Investigation Team, established pursuant to art. 13 of the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union [10] and the Framework Decision 2002/465 / JHA [11], unless the purpose is the application of art. 13, par. (8) of the Convention, and that art. 1, par. (8) of the Framework Decision.

In art. 1, par. (8) of Council Framework Decision 2002/465 / JHA of 13 June 2002 on joint investigation teams (to which we have earlier referred) it states that where the joint investigation team needs assistance from a Member State other than the one that founded it or from a third country, the request for assistance may be made by the competent authorities of the State in which it is conducted the intervention of their counterparts in the other State concerned, in accordance with the relevant instruments or arrangements.

3. Recognition and Enforcement of the European Investigation Order

We must emphasize from the outset that the European legal instrument governing the institution of European investigation order in criminal matters, to whose provisions we will refer, is the Directive 2014/41 / EU of the European Parliament and of the Council of 3 April on the European criminal investigation.

In our opinion, considering the provisions of European legal instrument it must start from the general rule established by its provisions, according to which the executing authority (from the executing Member State) recognizes a transmitted European investigation order, without requiring any further formality, ensuring the execution under the same conditions as if the order had been issued by a national authority.

From this general rule, it is an exception the case where the enforcement authority invokes one of the grounds for non-recognition or non-execution or one of the reasons for postponement of execution.

Also, the European investigation order will not be executed and it will be returned to the issuing authority, when the executing authority finds that the order is not issued by a competent authority indicated by the framework legislative act.

Regarding the term of the *issuing authority* which is envisaged by the European legislator, we mention that it means:

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- *A judge, a court, a judge or a public prosecutor competent in the case concerned*; or
- *Any other competent authority, as defined in the issuing State, acting in the case, as investigative authority in criminal proceedings which has the jurisdiction to order the gathering of evidence in accordance with national law.*

So, assuming that a Member State of the European Union receives for execution a European investigation order issued by an authority, other than the one stipulated in the European legal instrument, it will not be executed.

In judicial practice this situation is tantamount to an obligatory reason for non-recognition and non-enforcement of a European investigation order.

Where necessary, the issuing authority may request for one or several authorities of the issuing State to attend to the execution of the European investigation order for supporting the competent authorities of the executing State, insofar as the designated authorities of the issuing State should be able to assist the execution of the measure or measures of investigation indicated in the European investigation order in criminal matters. Given that this assistance is not contrary to the fundamental principles of law of the executing State and it shall not affect the essential interests of national security, the executing authority will comply with the request mentioned above.

On the performance of the European investigation order, the authorities of the issuing State in the territory of the executing State shall respect the law of that State. These authorities do not have competences specific to the authorities in the executing State, unless the execution of such competences in the executing State is in accordance with the law of the executing State to the extent agreed between the issuing and executing authority.

The issuing and executing authorities of the two countries may consult each other, by any means, in cases where it considers that it is necessary.

3.1. Resorting to Alternative Investigative Measures

Under the depositions of the European legislative act, whenever possible, the executing authority will use a measure other than that provided for in the European investigation order, in cases when:

- the investigative measure indicated in the European investigation order does not exist under the law of the executing State; or
- the investigative measure indicated in the European investigation order does not apply in a similar national case.

However, without bringing prejudice to the grounds for non-recognition or non-execution provided for in the examined European legislative act, the above provisions do not apply to the following investigative measures which should always be available under the law of the executing State:

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- obtaining information or evidence already in the possession of the executing authority and information or the evidence could have been obtained in accordance with the law of the executing State, in criminal proceedings or for the purposes of the European investigation order;
- obtaining information contained in databases held by the police or judicial authorities that are directly accessible to the executing authority in criminal proceedings;
- hearing of a witness, of an expert, a victim, a suspect or accused person or a third party in the executing State;
- any non-coercive investigative measure as defined in the law of the executing State;
- identifying individuals subscribed to a phone number or a certain IP address.

Also, the executing authority may use other investigative measure than the one provided in the European investigation order, to the extent where the investigation selected by the executing authority would have the same result as the measure of investigation indicated in the European investigation order, by means less intrusive.

Assuming that the investigative measure indicated in the European investigation order does not exist in the internal law of the administering State or it would not be available in an internal similar case and when there is no other investigative measure which would have the same result as the requested investigative measure, the executing authority shall notify the issuing authority that it was not possible to provide the requested assistance.

However, the issuing authority shall be informed on the possibilities to be taken by the executing authority according to the ones mentioned above, in which case it (the issuing authority) may withdraw or amend the European investigation order.

3.2. Reasons for Non-Recognition or Non-Execution

Although as mentioned previously the established general rule is that of recognizing and executing a European investigation order, however, the provisions of the framework legislative act provided some reasons that may lead to non-recognition and non-execution of the decision, namely:

a) there is an immunity or privilege under the law of the executing State which makes it impossible to execute the European investigation order or there are rules determining or limiting the criminal liability relating to press freedom and freedom of expression in other media means of information, making it impossible the execution of the European investigation order; in the case where the competence to suspend the privilege or immunity lies with an authority of the executing State, the executing authority will submit an application to this effect without delay. If this competence lies with an authority of another State or an international organization, the issuing authority shall forward a request to the authority in question.

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b) in a specific case, the execution of the European investigation order would bring prejudice to the essential interests of the national security, it would jeopardize the source of the information or involve the use of classified information relating to specific intelligence activities;

c) the European investigation order has been issued within proceedings referred specifically to art. 4, letter b) and c) of the examined European legal instrument and the investigation measure would not be authorized under the law of the executing State in a similar national case; we mention that art. 4, letter b) and c) are provided for types of procedures for which the European investigation order can be issued, namely:

in the proceedings initiated by administrative or judicial authorities in respect of acts constituting violations of the law and that are incriminated under the national law of the issuing State and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; and

in proceedings brought by judicial authorities in respect of acts which constitute violations of the law and that are incriminated under the national law of the issuing State and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

d) the execution of the European investigation order would be contrary to the principle of *ne bis in idem*;

e) the European investigation order refers to an offense, which allegedly was committed outside the territory of the issuing State and wholly or partially on the executing State, and the offense in respect of which was issued in the European investigation order does not constitute an offense in the executing State;

f) there are reasonable grounds to believe that the execution of an investigative measure indicated in the European investigation order would be inconsistent with the obligations of the executing State in accordance with art. 6 TEU and the Charter;

g) the act for which it was issued the European investigation order does not constitute an offense under the law of the executing State, unless it relates to an offense in the categories of offenses set out in Annex D of the examined European legislative act, as indicated by the issuing authority in the European investigation order, if that act is punishable in the issuing State by imprisonment or a measure of deprivation of liberty for a maximum period of at least three years; in Annex D there are provided 32 groups of crimes and offenses considered to be more serious among which: terrorism, participation in a criminal organization, trafficking in human beings, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, munitions and explosives, corruption, murder, rape, cybercrime etc.

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h) use of the measure of inquiry indicated in the European investigation order is restricted under the law of the executing State to a list or category of offenses or offenses punishable up to a certain level, which does not include the offense covered by the European investigation order [art. 11, par. (1) of the European legislative act].

Except the situations provided in letter c) and h), before deciding the non-recognition and non-execution of an European investigation order, in whole or in part, the executing authority shall consult the issuing authority, by any means; while the executing authority may request the issuing authority to urgently provide any information deemed to be necessary.

In situations where the European investigation order concerns an offense in connection with taxes or duties, customs and exchange, the executing authority cannot refuse the recognition or enforcement because the law of the executing State does not impose the same kind of tax or duty or it does not contain the same type of regulations concerning taxes, duties, customs or foreign exchange as the law of the issuing State.

3.3. Deadlines

The decision on recognition or execution shall be made, and the investigative measure will be enforced with the same speed and the same degree of priority as in a similar domestic case, within the deadlines set by the European legislative act.

In the case where the issuing authority has indicated in the European investigation order that, due to procedural deadlines, the seriousness of the offense or other particularly urgent circumstances, it requires a shorter period than those laid down in the European legal instrument or if the issuing authority has indicated in the European investigation order that the investigative measure must be implemented on a specific date, the executing authority will take account of this requirement as far as possible [art. 12 par. (1) and (2) of the European legislative act].

Regarding the term specifically set out in the European legislative act in which the executing authority shall make the decision on the recognition or enforcement of the European investigation order, it is at most 30 days of receipt of the European investigation order (as soon as it is possible).

If there are not one or more grounds for postponement or the evidence mentioned in the investigative measure included in the European investigation order is already in the possession of the executing State, the executing authority will apply the investigative measure without delay and without bringing prejudice to par. (5), art. 12 of the European legislative act, within 90 days of the decision referred to above; if the competent enforcement authorities cannot meet in a particular case the mentioned period, it shall inform without delay the competent authority of the issuing State, by any means, giving the reasons for the postponement and consult with the issuing authority on the appropriate timing for the measure of investigation.

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Assuming that the executing authority cannot comply with an appropriate limit set in par. (3) or the date specified in par. (2), art. 12 of the European legislative act, it shall inform without delay the competent authority of the issuing State, by any means, giving the reasons for the delay and the estimated time for the decision; in such a case the period of 30 days may be extended by another 30 days.

3.4. Transfer of Evidence

Following the execution of the European investigation order, the executing authority will transfer to the issuing State without undue delay, the evidence obtained or already in possession of the competent authorities of the executing State; if it is required and possible under the law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing state.

Pending the outcome of an appeal, unless the European investigation order indicated that there are sufficient reasons for immediate transfer, it is essential for carrying out investigations under appropriate conditions or to maintain individual rights, the transfer of samples may be suspended. However the transfer of samples shall be suspended if they cause serious and irreversible damage to the person concerned.

We consider that these provisions of the art. 13, par. (2) of the European legislative act are at least questionable if not contrary to the principles of domestic law of any State.

If the executing State considers it necessary for the samples to be returned as soon as their presence on the territory of the issuing State is no longer required, this will be stated at the time of their transfer.

In the case where the objects, documents or data concerned are already relevant for other proceedings the executing authority may, at the explicit request of the licensing authority and after consultation with its temporarily transfer of evidence, provided that they are returned to the executing State when that is no longer required in the issuing State or at any other moment or at any other time agreed by the competent authorities (art. 13 of the European legislative act).

3.5. Ways of Appeal

Each Member State as the State of execution will consider investigating the possibility that the measures indicated in the order for investigation there are applicable the ways of appeal equivalent to those available in a similar national case.

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In the exercise of an appeal, we mention that substantive reasons for issuing the European investigation order in criminal matters can be challenged only in an action initiated by the issuing State, without bringing prejudice to the guarantees of fundamental rights.

In the case where it would not undermine the need to ensure the confidentiality of an investigation, the issuing authority and the executing authority shall take appropriate measures to ensure that the information is provided on the possibilities under the national law to have recourse to remedies since they become applicable and in timely manner, in order to ensure the possibility of effective exercise [art. 14, par. (1) - (3) of the European legislative act].

The Member States shall ensure that the deadlines for exercising the right of recourse to an appeal which are identical to those laid down in cases similar to the national law and it applies so as to ensure that the parties concerned have the opportunity to exercise effectively the right of resorting to those ways of appeal.

In the enforcement process, the issuing and executing authorities shall inform each other on the appeal against the issuing, recognition or execution of a European investigation order.

Introducing a legal appeal does not suspend the enforcement of the investigative measure, unless this is provided for in similar domestic cases.

The issuing State will consider admitting the appeal against the recognition or enforcement of a European investigation order under its own law. Notwithstanding the internal procedural rules, the Member States shall ensure that, in criminal proceedings in the issuing State it shall respect the right of defense and of procedural fairness in the assessment of evidence obtained through the European investigation order [art. 14 par. (4) - (7) of European legislative act].

3.6. Grounds for Postponement of Recognition or Enforcement

In relation to the particularities of each individual case, the recognition or enforcement of the European investigation order may be postponed in the executing State in the case where:

a) the execution of this order could bring prejudice on an investigation or a prosecution in progress, as long as the executing State deems to be necessary;

b) objects, documents or data are already used in other proceedings until they are no longer needed for that purpose.

After the termination basis that led to the suspension of the order, the executing authority shall take measures for its execution and it shall inform the issuing authority by any means which allows a written record (art. 15 of the European legislative act).

3.7. Obligations Relating to Mutual Information

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After the receipt of the European investigation order, the receiving authority acknowledges this reception without delay and in any case within a week of receiving the order by completing and sending the form provided in Annex B of European legal instrument.

If in the executing State it has been designated a central authority, the obligation to inform belongs to this authority and also to the executing authority.

Also, the executing authority shall immediately inform the issuing authority:

a) if it is possible for the executing authority to make a decision on the recognition or enforcement because the form set out in Annex A of the European legislative act is incomplete or incorrect, in a valid way;

b) in the situation where, during the execution of the European investigation order, the executing authority considers without further inquiries that it may be appropriate to undertake investigative measures that were not initially foreseen, or which could not be specified at the moment of issuing the European investigation, in order to enable the issuing authority to take further action in the case; or

c) if the executing authority establishes that, in that case, it cannot comply with the formalities and procedures expressly indicated by the issuing authority, in accordance with art. 9 of the European legislative act [Art. 16, par. (2) of the European legislative act].

At the same time, the executing authority shall inform without delay the issuing authority by any means which leaves a written record of:

a) any decision on the use of alternative investigative measures and grounds for non-recognition or non-execution;

b) any decision to postpone the execution or recognition of the European investigation order, the reasons for the delay and, if possible, the expected duration of the postponement.

3.8. Criminal and Civil Liability

Officials of the issuing State on the territory of the executing State are regarded as officials of the executing State in respect of offenses committed against them or by them.

Also, the issuing Member State is liable for any damage caused by its officials during their operations, in accordance with the law of the Member State in whose territory they operate.

3.9. Privacy and Protection of Personal Data. The Costs

In each Member State there shall be taken measures to ensure confidentiality of the investigation into the execution of a European investigation order.

At the same time, the issuing authority shall keep confidential any evidence or information provided by the executing authority, except where such disclosure is necessary for the investigations or proceedings described in the European investigation order.

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In the case of implementing the provisions of the enactment of the European Member States it shall ensure that personal data is protected and it can only be processed in accordance with Council Framework Decision 2008/977 / JHA [12] and the principles of the Convention Council Europe of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data and its additional protocol [13].

4. Conclusions and Critical Opinions

Since its adoption, the European Protection Order in criminal matters was intended to be a genuine instrument available to Member States to contribute to the improvement of the complex activity of judicial cooperation in criminal matters in the European Union.

As mentioned in this study, the adoption of the European legal instrument that regulates, among other institutions, also the recognition and enforcement of a European protection order in criminal matters was imposed amid the imperfections found in the judicial practice in relation to the execution of freezing orders of assets or evidence, and certain provisions governing the institution of the European evidence.

Against this background concerning some difficulties faced by the judicial bodies in the execution of the two European legal instruments, there was a need for a new law designed to simplify the cooperation activity in the domain of taking evidence required in criminal proceedings in a Member State.

Besides the simplification of procedures, the new law directly contributes to more efficient and concrete activities of obtaining evidence in another Member State, which will lead to the improvement of specific activities for preventing and combating crime of all kinds.

Under art. 36, par. (1) of the European framework legislative act (Directive 2014/41 / EU of the European Parliament and of the Council of April 3, 2014 on the European Investigation Order in criminal matters), the Member States shall take the necessary measures to transpose into their national law this European legal instrument until 22 May 2017.

In this context, without legal practice relevant at the level of Member States, it has imposed the examination of the provisions that regulated the procedure of recognition and execution of a European investigation order in criminal matters, examination which revealed some dysfunctions on the way of ruling, which led to some critical opinions.

Thus, in art. 11, par. (1) of the European framework regulatory act there are provided grounds for non-recognition or non-execution of a European Investigation Order in criminal matters.

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As the European legislator uses the phrase *the recognition or execution of a European investigation order may be refused in the executing state*, the conclusion that emerges is that these reasons are only optional and not compulsory for the Member State of enforcement.

The examination of the eight grounds mentioned in the text of art. 11, par. (1) from the European legal instrument, leads to the conclusion that they are in their essence *obligatory groundsfor non-recognition or non-execution of such an order, and not optional grounds.*

This imperfection of the law can be remedied by excluding the phrase it *may be refused* and replacing it with the phrase *it will bedeclined* in the text par. (1), art. 11.

Another provision in the wording of the examined legislative act that seems to be at least arguable is the one by which it states that *the introduction of an appeal court does not suspend the execution of the measure of investigation, unless this is provided for in cases similar to the national law.*

We believe that the provision contained in art. 14, par. (6) of the European legislative act should be removed in all circumstances as the introduction of an appeal against a measure of inquiry involves settlement in accordance with the law of the executing State.

We formulate another critical opinion in relation to art. 13, par. (2) of the European legislative act, according to which the transfer of evidence cannot be suspended pending the solution to be ruled in an appeal, when in *the European investigation order there are indicated insufficient grounds for an immediate transfer, it is essential for carrying out investigations under appropriate conditions or to maintain individual rights.*

We believe that these provisions should be removed from the text as it violates the rights and freedoms of the investigated person, every time, regardless of the situation, being necessary to suspend the transfer of evidence until the resolution of the appeal, if the national law provides this way of appeal.

As a general conclusion, we consider that the adoption of this European legal instrument by which it is regulated the institution of European investigation order will contribute to improving the complex activity of international judicial cooperation in criminal matters and thus to increasing the efficiency of solving some criminal cases with implications in other Member States.

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ASPECTS REGARDING THE ENTERPRISE'S ECONOMIC ACTIVITY AND THE QUALITY OF STATE INTERVENTIONISM

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Abstract:State interventionism is a decisive factor in the development of financial-economic activity of the enterprise, its impact causing its "health" image, credibility, its market position. The performances of the economic agent are directly or indirectly dependent on elements that characterize the external environment in which the enterprise operates, and the state intervention is one of those elements. The purpose of this paper is to present the effect of state interventionism on enterprise, and in this regard we propose a coefficient α, which indicates the share, profitability levels modification due to this intervention.In this regard we will use a descriptive methodology, which consists of gathering data and information from the national and international literature and in practice.

Key words: State, interventionism, enterprise, economic activity, performance

Introduction

State intervention in the economy, regardless of its "pragmatic" or "regulatory" form, seems to be clear: the state should intervene into economy. But the question is: how large should this intervention be and when it should intervene? State interventionism always affects business activity, because it has implications, both directly and indirectly, manifested by: the organization and state governance, economic policy which it promotes, especially by the degree of state involvement in the economy (as subsidies, protectionist measures, antitrust policies etc.), affiliation to groups and economic and political communities, in general by the integration conception in global economic and political life that is promoted. All these elements can stimulate or hold back the activity which is carried by domestic and international enterprises.

1. Literature Review

There were two reasons why the State did not intervene in the activity of economic agents. First, the economic activity was under the influence of manual labor, the industry being predominantly manufacturing and trading of goods limited in amount and, secondly, state intervention in economic activity required financial resources, this not being able to limit only to planning, economic

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provisions for entrepreneurs etc. Economic life was conducted under the "laisser faire, laisser passer" principle, public spending being necessary to be minimized.

The concept of "cheap government" finds support in the argument that social and economic progress required the use of national income for industry and trade development, instead of being wasted on unproductive activities. The role of public finances is to provide resources for the functioning of public institutions.

In the period after the First World War the non- interventionist state place was taken by the interventionist one. Public finances become an intervention mean in socio-economic activity, for the exercise of a positive influence for organizing the entire activity. Maurice Duverger, referring to the modern state of our century, writes that it "is not limited to traditional and military tasks. It interferes in social life to stimulate production during the crisis in order to prevent price increases and to maintain the purchasing power of the currency during inflation to ensure the best possible use of the country's wealth and the distribution of national income ".

Pierre Lalumiere emphasizes the increasing the interventionist role of the state within the economy after the global crisis of 1929-1933. To fulfill this role they were used, on a larger scale, expenditures, taxes and other financial instruments. Public finances are defined as the science that studies the state activity, as the user of certain special techniques, so-called "financial": expenses, taxes, loans, monetary processes etc.

According to other opinion, in the 20th century and especially after the great crisis of the years 1929-1933, the gendarme state place was taken by the providence state. State intervention is ultimately determined by maintaining economic balance, by profitability of enterprises or economic sectors considered to be strategic, solving the internal contradictions of society: inflation, unemployment, etc., and leads to public companies and trading firms with joint capital to grant subsidies to private enterprises etc

2. State interventionism- theoretical considerations

The state is a basic component of the economy functioning mechanism. It does not substitute the market but completes, rectifies market dysfunctions and ensures its good and accurate functioning through legal and economic instruments (rules, regulations, laws).

State intervention in the economy derives from the failures and weaknesses of functioning mechanisms of the market, from their inability to satisfy the requirements of balanced and efficiently operation of national economic complex.

Market mechanism refers to an abstract framework of a dynamic system in which prices are a determining factor of agents decisions, that influence the prices. Market, as automatic mechanism for adjusting the functioning economy, essentially depends on the price system - this is a system of

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signals received by economic agents; competition represents a model of behavior of economic agents.

The state is, by its area, limits and effects:

a) an autonomous center for decisions to achieve the objectives of general interest; the market is not sufficient in supplying the society with goods and services that are as merchandise - education, healthcare, public services;

b) independent economic agent and partner of private capital as shares (directly and indirectly) as producer-consumer and buyer-seller;

c) component of the economy functioning mechanism of the economy because it can intervene either for the supply side or the demand side, completing and ensuring in the same time market operations. State influences quantitatively and structurally the supply and demand by developing economic branches; also stimulates investment, distribution of production factors.

As a factor of correction and supporting the operation of the market:

- it secures "economic rules of the game" (collective work agreements procedure, establishes the legal duration of work);
- intervenes on the level of economic activity through taxes and public spending;
- controls monetary emissions;
- finances investments;
- covers some demands of international competition.

It is a factor with impact on national economic circuit, principally by assuming the role of legislative support for the economy:

- creates and develops infrastructure;
- supplies with raw materials, fuel the disadvantaged areas;
- creates and transforms information into determinant of the economy;
- changes mechanisms of formation and income distribution (given that unions and other associations introduce rigidities that can disturb the connections between income and contribution to production).

e) is a major agent for technical and technological reorganization of the activities (in terms of maturation and internationalization of leading industries that cause technical, financial or commercial problems) that private companies can not solve; contributes to the promotion of basic and applied research, to vocational training and technologicalmodernization (in some cases belonging to state property units);

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f) factor of overcoming the depressive economic phenomena as inflation, unemployment, economic budgetary deficit, monetary dysfunctions, slowing economic growth, decline in purchasing power and living standards, amplification externalities and worsening environmental problems.

The modalities of state intervention in the economy are adapted to economic domestic/ international circumstances and essentially represent:

- establishing state organisms (agencies, offices, committees) aimed at promoting / facilitating the implementation of programs for private companies;
- financial participation in some mixed activities;
- intervention in banking sector through banks under direct state control in combination with private investors.

3. State intervention at business environment level

The state must ensure a normal competitive environment, which requires the following items:

• autonomy of enterprises;
• freedom to establish any type of company;
• promoting the most profitable products in terms of the interests of each enterprise;
• equal economic and financial regulations to all economic agents, regardless of ownership, size (neutral state), etc .;
• free price formation;
• stability in the external market by budgetary rules;
• measures to promote the participation on the foreign market;
• clear regulations for sanctioning by the court, the unprofitable enterprises etc.

State intervention in the development of small and medium enterprises can have both pros and counter arguments.

Table 1 Effects of state interventionism

The intervention effect	**PROS**	**CONS**
From the economic efficiency perspective	Uses resources more efficiently and develops faster than large firms	SMEs are not by definition more effective or dynamic. It could not be demonstrated a direct relationship between firm size and efficiency. It turned out that innovation

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		is the preserve of large companies.
In terms of job generation	Creates jobs in a faster rhythm than other types of enterprises with a lower specific investment.	Destroys jobs in a proportion nearly equal to the number of those created; therefore should be assessed net gain of jobs.
In terms of the concept of market economy	Banks show no particular preference for SMEs, even in conditions of higher interest rates, therefore the state must intervene by subsidized loans for SMEs.	It is considered that SME presents a high risk because 9 out of 10 US firms fail in the first 5 years of existence. The failure of state intervention may have more serious effects than the failures of market mechanisms.

Source: Chapaud, H., 1993, Diagnostique de l'entreprise en situation de crise, Economica Publishing House

The main forms of state intervention at the micro level are:

● neutral - the intervention affects all businesses (for example, equal incentives to all economic agents, regardless of activity sector, form of ownership and firms size).

● discretionary - state intervenes with specific regulations in certain areas of activity, in certain moments.

● regulator agent- changing the legal framework determines the mechanism modification.

● as an economic agent – the state can be producer, consumer, partner in exchange operations, it participates in auctions, produces goods for society that can not be achieved by another economic agent.

It must be noted that it does not behave as any other agent, it establishes, on the one hand, the rules of the game, and participates as a player in its own rules. The state bodies are financed by taxes, not by voluntary exchange, as in the case of private businesses. Therefore, no matter how intense is the state- economic agents competition, the state can not ever be defeated, bankrupted.

4. The quality of state interventionism

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State interventionism in the market economy is measured by performance indicators, namely the quality indicators that reflect whether or not the State's action is efficient. In this regard we talk about the indicators for efficiency and effectiveness.

Measuring performance entails taking into account the distinction between the means used (input), process, the product (output) and the result, the effect (outcome). From this perspective a connection can be established, on the one hand, between the benefits taken and the means used to achieve them, and on the other hand, between the objectives achieved by these benefits.

Means →	**Products** →	**Effects**
Resources	**Achievements**	**Impacts**

Efficiency means optimizing the results of activities in relation to the resources used, the measurement being performed by reporting outputs (results) at the inputs (efforts); managers take into account the fact that the efforts for meeting social needs are measurable, usually quantified in value (cost of material, human, informational) while social effects are difficult to assess and may not be provided entirety.

Effectiveness - concerns the relationship between the result and the objective to be achieved. In an organization, effectiveness involves attainment of the standards, objectives, which determines a pre-defining of objectives and a subsequent measurement of results.

We can not speak of efficiency without effectiveness because "it is more important to realize well what you proposed - effectiveness - better than to realize something else - efficiency" (Drucker, P., 2001)

Internationally, the performance falls within the definition of International Accounting Standards for Public Sector. In this regard, the financial statements must provide users with aggregated information useful in evaluating the entity's performance in terms of service costs, efficiency or achievements.

The development of models for measurement the financial and non-financial performances of public sector entities represents a permanent concern for the IFAC Professional Accountants Staff Committee. Performance reporting based on International Accounting Standards for Public Sector promotes good public governance, as it is the method to have a single framework for analysis and information of the state performance and its entities, comprehensible to all partner entities.

The quality of state interventionism in the economy determines the level of the business environment performance. The more qualitative the interventionism is, the more performant the entities are. We suggest in this context that in the economic mechanism should exist a body to monitor the quality of the intervention, and also to be a minimum transmission channel, a channel that should be permanent, representing the regulation, the flow in the economic environment.

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We believe that the company's performance is closely related to state involvement in the market. Therefore, intervention should result in an increase of SMEs results, the action being particularly effective than efficient.

The indicators expressing the quality of State interventionism are based on the way the state is involved in the business. The preferred indicator for measuring the effectiveness might be the net profit of the company related to costs, taking into account, in its determination, the constant prices, eliminating as much as possible the effect of price variations.

State intervention at the economic agent level is achieved in particular through fiscal levers: direct and indirect taxes, fees and contributions.

Consequently, the impact on enterprise's performance of state interventionism, measurable by the financial and economic indicators, can have the following form:

Intervention → transmission channel → performance
(taxes) c (indicator)

where **c** – quota for state interventionism. By **c** the indicator's level decreases.

5. The influence of state interventionism on economic agent's performance

State intervention at the economic agent level is achieved by taxation measures (taxes), provision of guarantees, facilities (sometimes also suspension of some of these facilities) through policies etc.

Company performance will always be influenced by state intervention, either neutral or discretionary, or regulatory (corrective or compensatory). This may lead to a favorable situation for the firm (compensatory interventionism) or a negative one (discretionary, corrective interventionism).

Entities particularly affected are the small, young ones (especially the newly founded, start-ups) with a not very good financial condition, their performance indicators having values below those expected and with a high degree of indebtedness, firms operating in various fields, vulnerable to the financial crisis (industry, construction, services)

State intervention is reflected in the structure of firm performance by a factor **α**, which indicates the share, profitability level modification due to this intervention, respectively the enterprise-State relationship.

α has positive values, α ϵ [0,1]:

α= 0 neutral interventionism, the firm is not affected;

α = k discretionary interventionism, the state measures manifest as forms of vunerabilities, with negative implications for the entity

α= 1 the state strongly influences the firm, there is an interdependence relationship between the two entities.

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The coefficient α is perceived differently by the two sides, as the coefficient itself is "divided" into a potential coefficient (α p-desired, expected), and an effective one (α e – certainly, achieved); each of them are interpreted differently by the firm, implicitly by the state.

We note:

α a - modification at economic agent level;

αs - modification at state level;

α ap – potential modification at firm's level;

α sp - potential modification at state level;

α ae – effective modification at firm's level;

α se - effective modification at state level.

α p at the company level aims to be as limited as possible, therefore the interventionism should be weak, without significant effects, small difficulties and satisfactory taxation, so the performance to be maintained at the expected values.

α p at the state level requires an intervention by taxes, through which the budget revenues to increase.

Usually **α** is achieved in detriment of the agent, because of the taxes imposed: α ea <α es; but it can be the reverse situation, when α ea> α es, because the company avoids the payment, the shadow economy and the tax evasion are encouraged. The less the state interferes, the higher the performance level is and the results are the desired ones.

Interventionism is achieved in particular by measures to increase taxation. If the state takes positive action (for example, the profit tax reduction), simultaneously with a negative measure (VAT increase), this may cause lower impact on firm and a higher impact on population.

If the interventionism is potential, meaning if it is announced a certain measure that is not certain in the future, the implications for the company will be much smaller than if the measures are certain, therefore α will be closer to 0 for potential measures.

However, regardless the situation, effective α > potential α, generating either stimulation or inhibition of business. The coefficient α is within the range [0, 1]; depending on its value is identified the state-economic agent relationship.

Therefore:

α є [0;0,1] – state-firm independence relationship; the performance level is not affected;

α є [0,1;0,4]- relative independence; the state intervines, but does not produce semnificative effects at firm's finances level;

α є [0,5;0,7]- gentle dependence, meaning that the intermentionism is "felt", but the impact is tolerable;

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α ϵ [0,8;1]- total dependence, the interventionism has strong effects on the performance indicators(turnover, rates of return, liquidity, working capital decrease, simultaneous with the enhancement of loans).

Table 2The Enterprise-State relationship

State interventionism type	**Modification of performance from the state perspective α s**	**Modification of performance from the firm perspective αa**
neutral	α = 0	α = 0
discretionary	*α* s *α* ϵ [0,1;1] αs > α a	*α* a *α* ϵ [0,1;1] αa > α s

Source:table processed by the author

The quality of state interventionism is achieved by the difference [α p- α e]>>0

→ α p > α e

The quality of interventionism is positive and beneficial to the firm, when α p> α e. Otherwise, it is not about quality, but abuse, aspect that affects negatively the company and the results that define its state of "health".

In conclusion, the performance of the company is certainly influenced by state intervention, the influence being achieved by a coefficient α ϵ [0, 1], reflecting the share of state measures against the firm in the economic and financial indicators (by increasing or decreasing performance), and implicitly the state-entity relationship.

When α = 0 we have neutral interventionism, the firm is not affected;

α = k discretionary intervention the state measures are expressed as forms of vunerabilities, with negative implications for the entity

α= 1 the state strongly influences the firm, there is an interdependence relationship between the two entities.

The quality of state intervention is reflected by the difference [p α- α e] >> 0 → α p> α e, where **p** is the potential change **αp** and **αe** is effective modification. We talk about quality in this context, when the state intervenes at enterprise's level by positive measures (reduction of fees, providing various facilities) that would stimulate its activity and the performance indicators to maintain values.

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Conversely, when restrictions are imposed and when there are measures by which certain taxes are introduced or increased, the business is inhibited.

The firm's resistance at negative state interventionism depends on several factors that "help" at bearing the tax burden easier, or, conversely, it determines the firm not to face the difficulties, causing, in worst case, cessation of activity: the financial condition of the firm (before interventionism); field of activity; the technology used; management and staff skills; competition; the level of demand etc.

6. Some conclusions

Economic and financial activity of the enterprise is vulnerable to economic changes, so by default will be affected by financial imbalances, or state intervention. In times of crisis, smaller businesses, in particular, are the most exposed to financial difficulties, as they often do not have enough resources to adapt to changing market conditions. It is essential that they give special attention to their financial situation, especially as potential serious problems are not always immediately visible.

It is desired that the interventionism to be qualitative, positive, by taking measures (by the State) to stimulate activity, for example:

- Facilitating access by SMEs to European funds, facilities provided to SME to ensure the necessary financing, meaning the Guarantee Fund, the Guarantee Scheme for SMEs, etc.
- Loans with subsidized interest rates;
- Grants in various areas;
- Tax deductions for investments.

There is a number of causes hampering the development of companies and on which it should be acted, causes relating both to the external environment of Romania, and the internal one. According to the latest press release of NCSME, Romania's external contextual elements in the international environment - the global economic crisis, the IMF and World Bank policy towards Romania, military conflicts in areas outside Romania had small influence on the activity of SMEs. We remark that the biggest negative impact on the business environment in Romania belongs to the global economic crisis.

Internal contextual elements, on which national management has or may have a major influence negative influence, have a strong negative impact on the functionality and performance of firms, namely: evolution of the legislative framework; excessive bureaucracy; corruption and lack of capacity of the authorities to counter the economic crisis and its consequences; policy banks in Romania towards companies and predictability of environmental failure; insufficient economic management training and entrepreneurs.

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THE EUROPEAN LEGISLATION ON FOOD SALES AND THE STRATEGIES OF LOCAL PRODUCERS TO PROMOTE FOOD SALE

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Abstract : Following to establish a link between producers and consumers through effective communication tools such as product promotion and sales, Romanian food producers have realized the importance of implementing strategies to promote for achieving the long-term effects, such as consumer loyalty, brand awareness and product or change consumer behavior so as to create a favorable attitude towards the product and/or the organization. In our exploratory researches that we conducted about the sales promotion strategies on domestic producers of food, we follow up to highlight how European and national legislation on food and biological products in conjunction with advertising legislation affects advertising and promotion strategies, but also the ethical and legal effects of promotions on consumer behavior compared to those of an aggressive and unethical promotion.We also highlighted by our research carried that through own characteristics of food products unlike the rest of advertised products on the market, also the techniques for promoting food products have a special specific, while retaining own characteristic as tactical marketing and communication tool.

Keywords:food, consumer, promotion, incentive, information.

The consumer's confidence and the product promotion policy

Speaking of promoting products in general, we relate to the communication activity of the business operators, be they manufacturers or distributors, with the consumer or a market segment clearly determined, or the collective consumer, an activity in which the economic operator presents the characteristics and the benefits of the product with a view to try to convince the consumer to buy the respective product. And also generally speaking, the results of the promotion activity can be found in the short term in the increased sales volume and in the long-term in strengthening the market position of the product and/or company, including building consumer loyalty. Obviously, the promotional activity at a particular moment in the development of the economic operator may pursue other concrete results, such as the market expansion, combating the competition or launching a new product.

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To paraphrase the proverb that a battle has been won but not the war, even if, following the decision to purchase, the consumer is satisfied with consuming that product, and thus the economic operator has won a battle in his siege to the heart and mind of the consumer, the organization's concern to still attract the satisfied consumer is shaping in the ongoing activity to promote the product and company, until building complete consumer loyalty.

The current promotion policy is centred on the consumer and his needs, not the product as we may be tempted to believe from the marketing mix (product, price, placement, promotion). And the promotion activities aim at increasing the consumer's confidence in the product and/or producing/distributing company, as an intermediate step in forming the decision to purchase, increasing the consumer's confidence also being the surest way to build buyer loyalty and maintain the market position.

Currently, the consumer confidence is the objective that the business operators have in mind to achieve and maintain at high levels through the promotion policy, given that the consumers' confidence, along with the ease of comparing goods and/or services, the consumer's satisfaction and the problems encountered in the acquisition and the degree to which they have generated complaints, it is one of the indicators applicable to all markets of goods and services, and together with the other three indicators mentioned contribute to the performance indicator of the market (IPP), a composite index serving as a basis for ranking the 52 markets (21 markets of goods and 31 service markets) analyzed in EU Member States since 2008 by the European Commission Directorate-General for Health and Consumers (DG SANCO). According to the dashboard (Tenth edition, 2014) of the 52 consumer markets, published in June 2014 by DG SANCO, markets that together represent nearly 60% of household spending, the global assessment of the consumers regarding the market functioning for each country, and in conjunction with a certain common market of goods and/or services is experiencing a growth trend from 2010 to the present (whether for the period 2010-2012 there are increases in the commodities markets, 2012 is generally a year of stability, while in 2012-2013, slight downward trends are registered compared to 2011, but on a growing trend compared to 2010, while the performance of services markets has been steadily increasing as shown in Fig.1.), although the situation of market trends for each EU Member State is different.

Thus, the overall index for the market performance in Romania - IPP, according to the dash board remained stable from 2010-2013, with a slight increase, insignificant statistically, although compared to the EU average, the general result in 2013 of IPP is 75.2, it is low compared to EU IPP of 80.1 (in 2010, IPP as a market average for Romania was 74.7 and at EU level, the IPP was 77.4);

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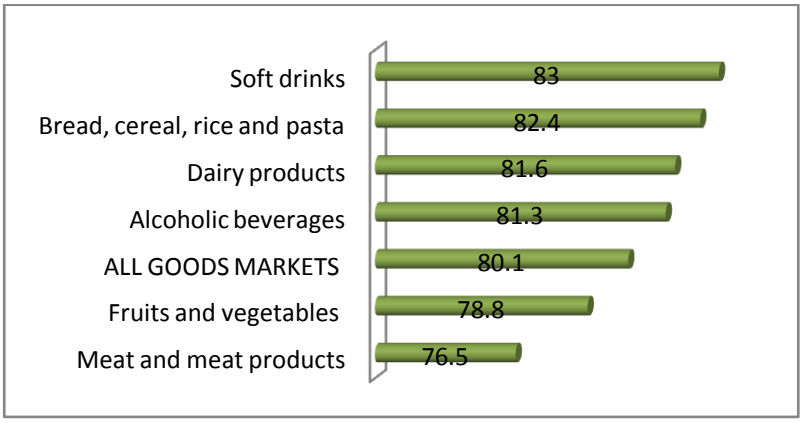
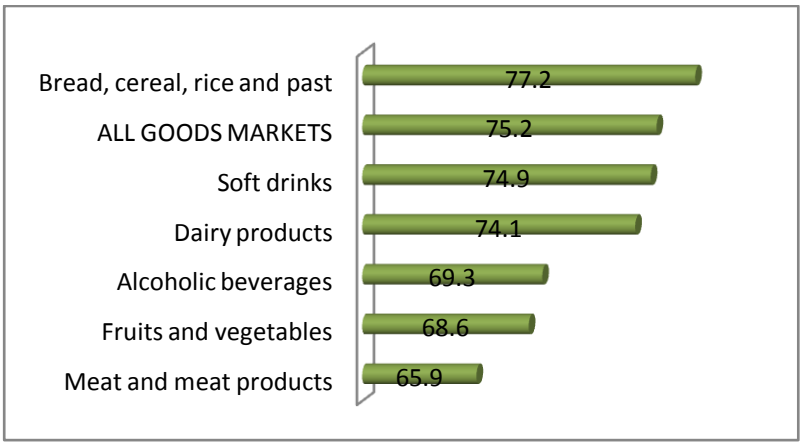
Romania compared to the EU market, the fruit and vegetable market with a IPP of 68.5 in 2013 ranks Romania on the last places compared to the market performance at EU level of 78.8; the dairy market in Romania has a performance below the average of the market, with a 74.1 IPP performance in 2013 compared to the market average of 75.2, while the dairy market performance at EU level in 2013 to be 81,6 related to the market average of 80.1 (Fig.2).



2013/2012	2012/2011	2011/2010
0	1	1,6
-0,1	1,3	0,9
0,1	0,1	-
-0,1	1,2	0,2
0	0,9	1,3
-0,4	1,3	0,6
-2,1	1,4	1,1

Figure 1.*Performance in the goods at EU level - 2013 Source: Monitoring Study DG SANCO*



2013/2012	2012/2011	2011/2010
-0,7	0,5	-0,6
-0,5	0,3	0,6
-0,1	-2,3	3,8
0,4	-3,6	-
-1,7	0,6	1,5
-1,1	1,6	-6,4
-3,2	-0,4	0,3

Figure 2. *Performance in the goods in Romania - 2013 Source: Study Monitoring DG SANCO*

The biggest decline in market performance at EU level, mainly due to the decline in the consumers' confidence, was encountered in 2012 on the meat products market, particularly in the countries affected by the scandal of the horse meat, after the balance of the meat consumption was restored following the episodes of bird flu which affected the market of poultry products. The decrease in the consumers' assessment of the meat products market in 2012, amid the publicized investigations on the processed meat products fraudulently labelled as beef, although it later turned out the contents of undeclared horse meat, was due therefore to the decline of the consumers' confidence in the processed meat products, but also the confidence in the business operators who did not ensure the security and safety of the products, the consumers feeling deceived in their expectations.

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Advertising versus promoting sales in the submix promotion

The promotion Policy, a variable and controllable element by any organization within the marketing mix (Kotler, Armstrong, 1999), also known under the name of the **"4Ps"** (McCarthy, 1960), involves organizing and coordinating the flow of information about the product and company from the trader to the consumer, but also the consumer's feedback, through promoting techniques and strategies. Given the characteristics of food (processing level, perishability, seasonality, quantitative and qualitative variability) and the particularities of food products demand (physiological and/or environmental needs of the consumer, desires, preferences, consumer segment, and not least the gastronomic habits and traditions specific to a particular people), the role of the promotional mix in the sale and distribution of food products consists in the ability to attract more consumers and to convince them to purchase more of a particular product, while the food market contains not one or two products, but dozens of similar products made by different manufacturers, with similar tastes, but different in composition and/or type of processing. In this context, a permanent customer information is obviously needed through special messages to complement the information derived from the mere presence on the market of the products, through techniques to attract the interest and attention of the consumer, through benefits felt by the consumers and associated with the product and the company.

The concept of promotion is very wide and the activities that circumscribe it are the most varied, from advertising, commercials and promotional activities to personal sales, public relations and direct promotion, given that all these activities are aimed at influencing the consumer behaviour. Thus, the definition of promotion, from the marketing perspective, must involve both the activities circumscribed and its purpose in the long term, either by a direct expression regarding the influence of consumer behaviour, or through an indirect expression regarding the growth of the sales and profitability, reason for which we consider Jerome McCarthy's definition to be comprehensive: *promotion represents the transmission of information by the seller to the potential customers - in order to influence the attitudes and consumption* (McCarthy Perreault, *1987).* Although contained in a scientific study appeared in the centralized economy of Romania before 1989, going along the same lines as McCarthy, the promotional activity is defined as *the careful information of the potential consumers and intermediaries through specific actions meant to influence the buying and consumption behaviour, to support the sales process* (Florescu eds., 1987).

And because the promotional activity is directly related to the consumer, who is presented the characteristics of the product and/or the image and importance of the company on the market, regardless of the technique and promotion strategy, it is very important that the business operator,

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through the products and market conduct confirm the information thus transmitted, information corresponding to the truth, because otherwise the potential customers will feel cheated and their confidence once lost will be hard to regain, because not only will the product be perceived as deceitful but also the company's image will be affected in a negative way.

Depending on the criteria taken into account, the promotional activity is structured differently in the literature, thus in relation to the role of the company's promotional activities in the communications system (Florescu eds., 1987) the following are identified as components: **1)** advertising; **2)** sales promotion; **3)** public relations; **4)** use of brands; **5)** promotional events and **6)** sales forces. Using the intention of persuasion as criterion (Berkowitz, Kerin, Rudelius, 1989), the components of the promotional activity are grouped as follows: **1)** advertising; **2)** personal sales; **3)** free publicity and **4)** sales promotion, because in their work, Yves Cordey and Bernard Perconte identify six categories of promotional activities: **1)** sales forces; **2)** collective demonstrations; **3)** public relations; **4)** advertising; **5)** direct mail and **6)** advertising at the point of sale (Cordey, Perconte, 1992).

We believe that regarding food products, the adequate promotional activities, depending on the product characteristics and the contact with the potential consumers are: **1)** advertising (with three segments - commercial, advertising and placement of the product); **2)** sales promotion; **3)** advertising at the point of sale and **4)** public relations with the media (specialized forms of culinary press), the first two categories accounting for the largest share in today's food market in Romania.

Advertising is frequently opposed to sales promotion, the first being considered more active and effective in the economic development, as it is considered that the effects of advertising on consumer behaviour are in the long-term, while sales promotion, combining specific instruments, stimulates the short-term purchase of a higher volume of products.

Advertising, broadly speaking, including terminologically both *advertising* (the communication of information about a product paid by a sponsor clearly identified) as well as *publicity* (communicating a message in favour of a product, a brand that is not paid for the purpose of promotion) It has three main goals: remind, inform and persuade the customers (attracting the consumers' preferences to a particular brand, changing the way buyers perceive the product, convincing the buyers to buy now) (Kotler, Armstrong, 1999).Based on these goals clearly identified, regardless of the conceptualization of communication and the circumscribed activities, publicity is a persuasive activity in the medium and / or long term, with decisive results, of which the most important is the formation / strengthening of the product and company image.

Sales promotion involves the use of techniques and means to stimulate and boost the sales of goods forming the market offer of the business operator at a certain point, at the heart of the activities

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being the consumer who has to be convinced to purchase the product, without putting emphasis on the rationalization and identification of his immediate needs, the purpose being to increase the sales, for the seller seeks the best alternative at that moment: a higher income obtained from the clients for whom the price does not matter too much, or a lower income, from the clientele for whom the lower price is important (Marder, 2002).

If ten years ago the ratio between advertising and sales promotion in the communicating activity of a company was about 60/40, currently the budget allocated by companies to promote sales reached 60% - 70% of the annual budget, the cost of promotion increasing yearly by 12% compared to a 7.6% annual increase in the expenses associated with advertising, including in the food products sector. Among the causes determining the increasing importance of the food products sales promotion we include: competition between rival brands; overcrowding of the markets with products less and less differentiated (and the promotion of sales attracts the consumer immediately, prompting him to buy); increasing demands of the well-informed consumers, with purchasing power, generally on the increase; the need to maintain the position of producers in the mature markets; the decreasing effectiveness of advertising, on the one hand due to the growth in the increasing costs (including the increase in the distribution price on the media channels), on the other hand because of the legal barriers and the consumer saturation; the increase in number of the market retailers and the special pressure on the producers to be given commercial bonuses, leading to lower costs for the business operators and the immediate growth of the profits, especially in the times of economic recession. We should not neglect the fact that today's society, characterized as a consumer society, urges the consumers to buy more and more, to consume more and more, to change as often as possible the products, for which the producers have to come up with real direct and immediate incentives in order to maintain the loyal customers.

Although both promotional activities, advertising and sales promotion have the stated purpose of inducing an acquisition behaviour in a target market (the final consumers or traders), unlike advertising, whose effect occurs after a period of time (necessary to repeat the advertising message and receive it) and consists in forming, maintaining or modifying the image of the product, sales promotion through direct incentives having immediate effect (Balaure, 1995). The same differentiation characteristic is also captured by Philip Kotler, who defined sales promotions as *granting incentives in the short term, in addition to the benefits offered by the respective product or service in order to encourage its purchase or sale of* (Kotler, 1998).

Promotion techniques in the sales of domestic food products and their impact on the domestic consumers

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In the marketing papers, the definition of sales promotion is not unanimous by all means - Kotler defines it as *a diverse set of specific instruments, most short-dated, designed to stimulate the more rapid purchase or in a larger volume of products or services by consumers or by industrial customers* (Kotler, 1997), while according to the Romanian school of marketing (Balaure, Popescu, Serban, 1994) sales promotion corresponds to *a set of techniques that are intended to enrich the offer by adding additional value to the product, price and distribution, for a limited period of time, taking into account the company's commercial objectives and in order to gain a temporary advantage over the competition.* What is common, however, are the characteristics of the sales promotion activity: short period of time, clearly defined, combining several actions and the purpose: the sales growth, both extensively and intensively.

Aiming to determine immediately the consumer to purchase the product by providing direct incentives in the short term, the economic effects of the sales promotion are felt by the retailer through the increase in the sales revenues, however, the consumer also feels a material advantage immediately (receives a free sample of another product at the same price or receives a certain amount for free, receives a product at a lower price than before clearance, or on purchasing a product, s/he acquires a shopping voucher, etc.). In other situations, the activities to promote sales are combined with advertising actions, so the long-term outcome is building consumer loyalty, who receives the advertisement and creates his/her own image of the product and / or company, but also associates an economic advantage related to the product image as an economic bonus experienced concerning that product, .

Given the characteristics of the food products, and taking into account the classification criterion regarding the course of action in sales promotion, we identify promotional techniques that drive the product to the consumer or techniques that drive the consumer toward the product. The first category of techniques, the so-called ***push techniques***, the maximum efficiency in the case of food products being secured by **price reductions** for a specific period (if the period is higher or the price of a certain brand is reduced sharply, without any other promotion elements, this action may be interpreted by consumers as a decrease in the product quality and the manufacturing cost or as an "aging" of the product on the market, the effect in these cases being obviously negative).

The forms of the sales promotion technique by reducing the price are:

a)*The promotional launch price*, when the new product or the redesigned product (packaging changed or a reformulated food brand) has for a short, widely advertised period, including through advertisements, a lower price than the normal price;

b) *Special offers* when certain events (Easter or Christmas celebrations, for example) or for short periods of time (ascertaining the increase in stocks and a decrease in product sales respectively)

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discounts are offered compared to the normal price of sale, price reductions outlined in relation to the previous prices and the shelf price. Such reductions in the sale price charged by a trader, under the laws of Romania, must be notified to the local authorities and authorized as discount campaigns, including as regards the period when they occur.

Relating to the imposition by the producer to the supplier of a promotional price reduced, the European Commission, under the Community law, accepts such a situation when new products are launched on the market, for periods of two to six weeks, without such situations being considered unfair business practices of the companies to the consumers through anti-competitive agreements between the producer and the supplier, respectively vertical anti-competitive agreements between suppliers and distributors/retailers regarding the resale price.

A special case of discounts practiced by traders is the newer lowering of price of the food product for a period of three days before the expiry of validity, these products being stowage, in which situation the traders must locate separately on shelves or stands located and signalled separately, these products (the products in the batch with a validity period close to the expiry date are taken from the usual place where the products of that company are positioned, only products from the new batches remaining in that location, with longer validity terms), apply special labels for price reduction, which show the percentage of reduction applied and the new price compared to the old price (for the reduction to be verified by the consumer) and the shelf life must be visible (not to be removed or covered by the newly applied label) - provisions adopted in March 2015 by Law no.57 / 2015 on amending Ordinance no.99 / 2000 on the marketing of the products and services on the market, while the non-compliance with those measures is considered unfair commercial practice and sanctioned.

c) *Grouped sale or the practical package offer*, especially around the holidays, is done by simultaneously selling a number of products at a price lower than the total which would result from adding the prices of all products part of the group. This type of sale, including the recommendation to the manufacturer of a selling price is highlighted for the food products thus grouped by the way they are packed (in addition to the usual presentation packaging, the products are packed in special packages indicating the application of this promotional device).

d) *3 for 2* is the technique by which 3 products at the price of 2 are offered, also in the form of discounts, and highlighted by the packaging, or other groups of products according to the scheme (n) products at the price (n-1/2) products.

e) *The giraffe technique* is a one for reducing the indirect price, in the sense that for the same price paid, the consumer obtains a larger amount of product (10% -25%) and in the case of food products, applying this technique also results from using special packaging for the application of the

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technique (e.g. the bigger yogurt plastic glass and the packaging state that 10% is free).A variation of this technique practiced by the traders is the sale of two similar products, the price of the second product purchased being reduced by 50%.

Also a push technique is granting **bonuses or rewards** on the purchase of products, a promotion technique currently used extensively, either through the *direct bonus* (offering additional gifts when purchasing the product/brand thus promoted, the additional gifts being different products such as offering a toy for the purchase of a food product for children), *the enclosed bonus* (a technique that turns the display pack into a product that can be reused by the buyer, for example, some brands of mustard are sold in packages that can be used after consuming the product as glasses or the packaging for yogurt later turns into a toy for children).

Playing techniques represent ways to promote the sales in which hazard represents the primary element. These techniques speculate the individuals' wish to obtain material benefits (sometimes very substantial) by means of a competition, in which the risk that the consumer takes is small (to buy the product thus promoted, the purchase price being much lower than the prize adjacent to the proposed game).The main playing techniques are the promotional contests, games and lotteries (Anghel, 2009).

The free trials also represent a push technique push for promotion and among the actions brought together in this technique we mention regarding food products: *the samples* (small amounts of the advertised product distributed for free to the buyer, the packaging showing the sample thus provided) and *the free gifts* (the distribution of a product as a gift to the products in the brand thus promoted, the message rendered to the consumer not being that if s/he buys a product, s/he receives the second one for free, but the second product, free of charge, is presented as a gift - knowing that only close friends, loyal customers in our case, receive gifts).

From the category of ***pull techniques***, techniques which push the consumers towards the product, in the case of food products we mention the **merchandising** - addresses the problem of optimizing the contact between the product and its potential consumer on several levels, starting with the location of the store where the product is sold, continuing with its interior design and ending with placing the goods on the display cases inside (Anghel, 2009), respectively **advertising at the point of sale,** regrouping the material means and advertising techniques directly to the point of sale (presentation, advertising columns, billboards, the presence of the mascot or animated character of the brand associated to the product, especially food products for children) part of this category being the participations in fairs, exhibitions specialized gastronomy in which tasting is a specific method of advertising for the product and for the consumer a convincing method regarding the taste quality of the products and an instant comparison to other products on the market.

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Normative regulation on food sales promotion in Europe

Given the multitude of techniques to promote the sales and food products, given the consumers' rights in relation to the characteristics of the food products and the consumers' health, the role of the legislation on the sale of food products is to ensure, on the one hand, the right to a correct information of the consumer regarding the product - by regulating the information campaigns on labelling and packaging of the products - on the other hand, ensuring the administrative and operational framework in which the producers and traders are to be controlled and monitored regarding the commercial techniques used, so those unfair techniques be detected and punished (the role of the legislator is also to define the unfair trading techniques clearly and unequivocally - as is the case of Directive 2005/29/EC on unfair business practices to the consumer in the internal market.

When advertising, selling or supplying products, regardless of the technique used to promote sales, the companies must provide **clear and accurate information** to the consumer so that this purchases knowingly, in which case the EU Regulation no.1169/2011 presently regulates the conditions for labelling the food products in order to provide correct information about the product.

Furthermore, the consumer should be protected from unfair commercial practices of the traders, for which Directive 2005/29/EC is adopted at European level, which includes an annex of the trading facts falling as non-competitive practices prohibited and punishable by law. The European consumers benefit from protection against two main categories of unfair commercial practices:

the deceptive practices, which are manifested through the trader's direct action (providing false information) or omission (failure to provide important information)

the aggressive practice, whose purpose is to compel the consumer to purchase that product

Such unfair practices are: bait advertising, false free offers, false curative properties conferred to the product, children manipulation, false offers of prizes, gifts or special benefits, pyramid schemes or insistent and undesired offers. The merchants are not allowed to use practices involving the exploitation of vulnerable consumers, such as children, sick or addicted people. For example, it is illegal to put pressure on children to determine them to buy a product or to persuade their parents to do so.

Conclusions

In terms of results in time, the two components of the promotion policy - advertising and sales promotion - we can conclude that advertising gives the reason to buy (the advertisement confers the product a market position and an image to the company), while sales promotion offers the

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immediate incentive to buy (obtaining a sample or another free product, a ticket in a raffle or a lottery with substantial prizes, and therefore a chance to win given the fact that they would not otherwise participate in the event, vouchers for future purchases from the same trader, etc.)

Although we have seen that in the recent years, the marketing business prevails on the food market in terms of sales promotion, which exceeded as budget the volume of the advertising activity, we must keep in mind that both activities, when used aggressively, can have negative effects on image of the product and company. Thus, if the sales incentives (e.g. free samples or the use of promotional gifts) are used too often by a company, and in particular with the same brand of products, they will become in time commonplace to the consumer, who will associate them involuntarily to main product, and so, in time, the consumer is no longer tempted to purchase the product (anyway, if s/he buys a product, s/he receives a free sample of another product, enough for his/her own needs) or in time, annoyed by the incentives offered for free, s/he will perceive as exaggerated the efforts to promote the sales and will consider primarily the product offered as free sample or the main product supported by incentives as a product of poor quality, his/her level of confidence in that product and/or producing company thus decreasing. The same negative effect on the image of the product and/or company results from the aggressive advertising

From the analysis done, we conclude that in many cases when the techniques of sales promotion accompany publicity actions, this might leads to circumstantial situations in which unfair commercial practices manifest, both from the producers and the distributors, for which the European legislation through Directive 2005/29/EC on unfair practices of the businesses in the internal market in regard to the consumers defines the unfair trade practices, including the aggressive and deceptive practices and requires the Member States to impose effective, proportionate and dissuasive penalties in national regulatory documents, as well as the establishment of national supervisory and control authorities regarding the consumers' rights. Thus, in order to harmonize the national legislation with the European one regarding consumer protection, Government Ordinance No.99/2000 on the marketing of products and services on the market and the Law 363/2007 on combating the unfair practices of traders in relation to the customers have been adopted, regulatory documents incriminating the unfair commercial practices (misleading and aggressive) and sanctioned as misdemeanours, measures to protect the consumers from the traders' abuses being thus adopted by the Romanian legislator in relation to the facts incriminated in the Annex to Directive 2005/29/EC.

Analyzing the European legislative regime regarding the regulations that restrict the unfair trade practices compared with the national legislative regime, we find that on the one hand, the national legislation is excessive, containing provisions by which the traders' actions are qualified as

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restrictions under Ordinance no.99/2000 for example, but not considered unfair practices in the Annex to Directive 2005/29/EC (e.g. the case of the clearance sales), on the other hand although the specialised European Directive provides for the designation of a national authority with attributions to control and sanction the traders' abuses, in accordance with the national legislation, there are several authorities with control attributions (e.g. the town halls, the police, the Ministry of Economy and the National Authority for Consumer Protection in matters of clearance sales, in the promotional or discounted sales, the national legislation generally providing the need to obtain another preliminary permit from the Supervisory Committee of the National Office for Gambling without regulations regarding this procedure being adopted, as there are no legal provisions regarding the situations exempt from this authorization).

The legislative provision which restricts the promotion activities of the traders must be flexible, so as to leave leeway to the traders in the policy to promote products within the limits laid down, but to intervene promptly through instruments of correction and competent authorities when the trader abuses his/her market position regarding the consumer, or when s/he uses deceptive techniques, vitiating the consumer's consent regarding the buying decision. Thus, against the flexible restrictive framework of Directive 2005/29/EC, in the spirit of our conclusions, we consider it necessary to review the Romanian legislation on unfair commercial practices.

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CRITICAL ASPECTS IN MEASUREMENT OF THE INFORMAL ECONOMY – METHODOLOGICAL APPROACH OF THE PHENOMENON

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Due to the nature of hidden or informal economic activity there is a specific dilemma when choosing the suitable methods for the research of the phenomenon. Structuring methods is a difficult scientific process because the different research methods varies depending on the chosen operational definition. In this study we intend to synthesize existing methodological approaches. The measurement of the informal economy has become very popular among economists, so there are a number of studies aimed to size of the informal economy based on different economic models as well. Castells, Portes and Benton (1989) identify quantitative methods to be horizontal, covering quantitative estimation of the size of the actual production and informal employment, and qualitative methods to be vertical for identifying joints between formal and informal. The purpose of this paper is on one hand the identification and presentation of the methods and techniques used to measure the informal economy, on the other hand is the synthesis of Romanian literature on used research methodology.

Keywords: informal economy, formal economy, measurement of informal economy, methodological aspects

Introduction

In the case of the informal economy (often labeled as unmeasurable phenomenon), together with the many theoretical aspects there are also various methodological approaches as well. Structuring the methods is a hardship because using the different research methods varies depending on the chosen operational definition. In this study we intend to synthesize existing methodological approaches. According to the need of more precisely measurement of the informal economy, the phenomenon and the research methodology has become very popular among economists as well. Castells, Portes and Benton (1989: 2) identify quantitative methods to be *horizontal*, covering quantitative estimation of the size of the actual production and informal employment, and qualitative methods to be *vertical* for identifying joints between formal and informal spheres. This study aims to synthesize the most popular methods used in estimating the size of the informal economy, relying on Ékes (1993: 103-118), Mungiu-Pippidi, Ionita & Mândruţă (2000), Albu (2003, 2008), Easton

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(2001), Andrei Oancea, Stancu, and Jacob (2009), Andre and Stelian (2008), Andrei Stefanescu and Oancea (2010), Ene and Hurduc (2010), Buziernescu, Nanu and Spulbar (2009), Belyó (2008) Covaci (2007) Covaci-Voicu (2008) etc.

To measure invisible earnings several methods have been developed based on different international conceptions of course each of his weaknesses which we will present. A general problem is that by any method only part of the informal economy can be studied, measured, there is no "international recipe" available that we could get a clear picture of the phenomenon. The methods used vary by time and space of the research, in more developed societies more advanced results are obtained. In a more developed society informal business and processes become more easily recordable, can be traced more easily and in more ways (Ékes 1993: 103-104).

From a technical point of view Belyó (2008: 63) distinguishes three types of methods: direct approach (survey, analyzing the statements of income), indirect (analysis of national accounts, analyzing statistics labor market approach, transactional method, individual input methods) and models (structural equation models – SEM, multiple indicators multiple causes model – MIMIC, and the dynamic multiple indicators multiple causes model – DYMIMIC); Ékes (1993: 103-118) describes six basic methods that can have subgroups, various schemes can be designed based on their methodology. The seven-mentioned methods are: the method of questioning, analyzing labor market statistics, monetary method, household statistics, estimation method (guesstimation) analysis of national accounts, fiscal method.

Questionnaires and interviews

Is the most used method in research of informal income, usually combined with other methods (mostly qualitative). The posed questions concern on one hand on the existing of informal incomes realized by the research subject, on the other hand if there were bought or not informal goods or services, which could provide informal income for others. This method can be implemented by questioning by post, which provides impersonality for subject, or by direct questionnaires, allowing interaction with research subjects. There is no consensus among researchers regarding application of direct or indirect questionnaires, those researchers who use direct questioning disprove the negative effects of face to face contact.

Interviewing is also a good research method, which ensures qualitative information about the investigated phenomenon, but when focusing on a macro-synthesis, interviewing is a costly method. Questionnaires should be designed very carefully in the case of the two above mentioned subgroups (interviewed individuals and secondary informal groups) because of the sensitivity of these subject. Researchers have to take into consideration, that informal incomes will not be declared, even ensuring total anonymity, using this research method we will not have a clear picture about the

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under-declared informal incomes, because of fear of sanctions by authorities. Questioned people will not declare income from tax evasion, bribery, gratuity etc. Those who pay for informal goods and services, providing informal incomes of others, will not declare the actual amount, not wanting to cause trouble to others, anyway the informal incomes and outputs do not appear in separate position in household spending (tip given in a month, etc.). In the questionnaire appear only amounts clearly defined as informal or undeclared income.

It is recommended, to use this method, on parallel research samples with the same structure, that provides data control for later. This method can provide macro conclusions, offers a screening about the statistical size of the phenomenon, and if is needed a more sophisticated analysis about the researched informal niche, it is recommended the combination of the research methods (Ékes 1993: 104 -105; Covaci, 2007: 537).

Labour market statistic analysis

Another quantitative method, assumes that the registered unemployment rate is not real, the registered unemployment is not a "true" unemployment. Much of registered unemployed will not engage on the formal labor market because the state aid and undeclared informal incomes offer a higher income than would provide a single job on the formal sphere. Hiring illegal labour force is advantageous for employers as well. Thus, the increasing of the unemployment percentage indirectly means the development of the hidden economy. Compliance percentage of employees to total population shows the capacity and development of the hidden economy. The weakness of the method consists in several evidences: disregards that not only unemployed or former formal employees are participating in the informal economy, there are many who along with their status as formal employee carries out its work and earn informal incomes, an agent of the informal economy was not necessarily a formal employee, could not have participated ever in the formal labor market. Thus, in the period of stagnation or even increase the percentage of formal employment, we can talk about growth, development of the informal economy because the unemployed are not the only source of labour force for the informal market (Ékes 1993: 105-107).

Linked to labor market statistics and in particular regarding to unemployment registration we have to mention some remarks. Unemployed individuals, as persons without a job who are seeking a workplace and are available for work, represent a category affected by economic changes in Romania. This as social category meeds a rigorous identification. The process requires a statistical approach of the issue of unemployment (and a rigurous statistical definition). On the interantional level, but also in Romania, defining this economic category has sparked numerous approaches.

According to the Labour Yearbook of the United Nations, unemployment's definition is based on the Resolution concerning statistics of the economically active population, employment,

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unemployment and under-employment; so the unemployed are people over a certain age, without working place, currently available for work and looking for a job. The statistical indicators, trough unemployment can be described, are determined by certain statistical methods, using different specific data sources.

The statistics of the United Nations identifies four major sources of information: labour force surveys, official estimates, social security statistics and labour offices statistics. The process for obtaining data approved by the UN is the survey, because the effective of unemployed so appreciated respect the criteria of the International Labour Office.

In Romania, according to Law no. 76/2001 on the insurance system for unemployment and stimulating labour force employment, from 1st March 2002 "registered unemployed is the person who fulfills the following conditions:

Is looking for a job above the age of 16 years and until to fulfill the conditions for retirement

Healthy, physical and mental abilities make him to be able perform a work

No working place, no legal incomes, lower legal incomes than the value of the reference social indicator of unemployment insurance and employment stimulation in force

If it would find a job it would be available to start work in the next period

It is registered at the National Agency for Employment"

In official statistics the definition of unemployment is a more rigorously process, to ensure the determination of relative and absolute statistical indicators of unemployment, and to ensure international comparability. In Romania the effective number of unemployed is determined and made public in two versions: registered unemployed and so called ILO unemployed, respecting International Labour Office criteria (Roman, 1999). „So there are justified differences in concepts and definitions that are used for the two categories of unemployment rates, in the measurement methods of calculation. National Institute of Statistics (NIS) provides quarterly ILO unemployment data based on information collected by statistical survey of labor force (AMIGO). In this case the sample size is 112,320 households annually, which represents a global fraction of survey of approximately 1.55% (namely the share of households in total population of about 7,25 million in Romania). INS rate shall be in accordance with European Parliament Council Regulation on the organization of a statistical survey on employment/unemployment. So according to ILO and NIS, unemployed are aged between 15-74 years.

National Agency for Employment (NAE) is guided by 76/2002 law, according to this, unemployed are aged between 15-65 years in case of men, respectively 16-60 for women. ILO unemployed are out of work, without working place and without any kind of economic activity realized in order to get income. Instead of this concept, the NEA takes into consideration those individuals as

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unemployed, which realize authorized activities with lower income than the unemployment benefit they would be entitled under the law. The data provided monthly by the NEA do not include people who are not registered at the employment agencies, or those who have completed the period in which they received a form of social protection and get out from the records of these agencies. "(NIS, 2011)[1]

Of the two ways of approaching the number of unemployed - registered unemployed, BIM unemployed - registered unemployment has a wider recognition in Romania, which produces a paradoxical situation. The explanation is that the number of registered unemployed is determined and published monthly since 1990, which allows identification of seasonal variations or a dynamic analysis on a longer time horizon. ILO unemployed is determined quarterly and only since 1994. Roman (1999) raises the question: are these arguments sufficient to justify widespread use and importance given the indicator "number of registered unemployed"? The answer will formulate concrete after a wide quantitative analysis, a statistical description of the informal economy in Romania, which we will apply in a future study. In this case the analytical intention was to approach the methodological weaknesses of the conceptualization of unemployment.

Monetary method

The basic idea of this method is that the informal money market means cash flow, so the analyzed amount of money in circuit can draw conclusions on the extent of informal income. The weakness of this method is that it can be used only in those countries where monetary movement checks are carried out through bank transactions rather than cash. In addition many factors affect the relation of cash and other financial sources: the opportunity cost of money, the credibility of the banking system, the extent of urbanization, the volume of taxes, the extent of criminality, the institutional condition etc.

There is no indication that the informal economy transactions are based only on cash and no checks or credit cards etc. In many cases when there is a large informal transaction the money is “saved” in foreign accounts, where resumes again in the national circuit by bank deposits already “washed” so by this do not grow sums of cash found in circulation, or if they grow it does not show the reality. Informal payments through bank transactions, use of credit cards, checks, or bank deposits affect exact opposite the used variables and their coefficient. Income derived from informal economic activity change the variables so it may look as a decrease of the informal economy.

This negative aspect is valid in the case of the nominal method of money. In addition this method does not take into consideration economic growth and inflation, even if these processes due to the

[1] Interview with the President of the National Institute of Statistics on May 4th, 2011 for economic publication Fin.ro. http://www.insse.ro/cms/files/noutati%20homeINS/Presedintele%20INS.htm.

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composition of the money found in circulation - on different notes - change. Due to inflation some banknotes are withdrawn, others are issued, so changing banknotes used in circuit or more does not show undoubtedly changes of the informal economy (Ekes 1993: 107-110).

Household statistics or control sample method

Generally in the case of this method we are talking about surveys realized in households able to declare costs and not incomes. This method operates with two identical samples of households in terms of occupations, income, property, residence, family size and composition. The first sample is centered only on the magnitude of expenditure and the other only on income. The difference between this method and the statistic is that the questions raised by this method cover all expenses and incomes of that household. The difference between declared income and expenses (including savings) shows the possible extent of the hidden economy.

The method is problematic, because collected data are not punctual, it is not guaranteed that those questioned spending will declare larger amounts than those questioned about income. And on spending tends to hide certain aspects, and it is also logical, because can be identified the total revenue expenditure. Personal expenses, which not all household members know, does not appear, other expenses are unsupported or social convicted nor those do not appear or do not appear on the actual amount etc. So if in the panel questioned about spending many households do not declare their real costs, it means that the difference between revenues and expenses will not be relevant on the size of informal income. The method could be functional, but exactly those activities and income cannot be identified and measured exactly, that would be relevant for the informal economy (bribe, tip, tax evasion, etc.) (Ékes, 1993: 110-111).

Estimation method (guestimation)

The first step in using this method would be to look at the economy in terms of income, namely the sectors where it might be possible hidden or informal income. The next step after identifying minimum and maximum income is averaging. It is difficult the likelihood estimation, about how those, receiving informal income, would be the percentage of the total income generating population. Therefore, having a standard measure to identify these people, apart from toddlers all the population appears as a potential beneficiary of informal income. And this percentage estimate is based on practical presumptive. By multiplying the estimated average and the estimated number of informal income generators can achieve the measure of different informal incomes.

By macroeconomic aggregation of these amounts we reach the estimated level of informal income in economy. The weakness of this method is the following: it is very difficult to appreciate the income generator spheres of the informal economy, because inventiveness is unlimited. The degree

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of difficulty in identifying the absolute number of those who earn informal income, is very high. Estimates based on some "empirical situations" deviate from reality (Ékes, 1993:112). However, taking into account the weaknesses of the method, it can be used in the context of Romania in achieving macro-analyzes that reflect the proportion of informal income in various economic spheres

Analysis of National Accounts

The method can be used in those states, where is calculated the deficiency residual of the GDP. The starting hypothesis is that informal incomes appear underestimated in calculating GDP, but these amounts are spent and appear in total national expenditure. There are differences between the total national income and expenditure, which refers to the size of the hidden economy. So the bigger the difference between those two amounts shows the higher proportion of the informal economy. This method can be used only in those statistical systems, which are calculating the residual deficiency. In many states, however, these shortcomings are "placed" in national statistics, "corrected" data resulting a balance between revenue and expenditure, so hidden economy does not appear in the statistics.

Participants in the informal economy, in the production of goods and services depend on each other, buying and selling goods and services to each other, these purchases remain undeclared (if an entrepreneur buys labor informally will not declare any cash offered, so get rid of taxes, also the entrepreneur will not declare the informally supplied goods, these will be converted into informal, invisible, unreported revenue). On the other hand there is a revenue side, which is extending the GDP as well, coming from the informal economy and becoming formal income through money laundering. These proceedings reduce the differences between national income and expenditure.

Regarding this method should be take into consideration that in the national accounts are more difficult to calculate costs for various reasons. The first estimates come from different taxing institutions, because expenses are calculated based on these data, so money spent on various goods and services, taxes, production etc. Differences between revenues and expenditures might reflect rather register the attitude of these institutions and not the size of the informal economy (Ékes, 1993:112-114).

The methodology of the National Institute of Statistics operates with definitions and international requirements in estimating the gray economy in the national accounts. Thus unobserved, economy includes all economic activities hidden from the statistical observation, including hidden, illegal, informal activities, and other activities missed due to deficiencies of primary data collection program. To establish the size of the underground economy it is necessary to define the conceptual framework illustrating the phenomenon discussed. According to the European System of Accounts

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(ESA) production is defined as an activity in which inputs are used to produce outputs. Entries are represented by labor, capital, goods and services, and the outputs consist of goods and services. Economic analysis based on SEC production is limited to "economic output", performed under the control and responsibility of institutional units[2].

Making estimates of unobserved economy aimed at improving the comprehensiveness of national accounts, so the quality of the provided data improves. A particular interest is given to research and developing country-specific methodologies. In this case, Eurostat adopted a general framework for the definition and estimation on non-completeness marked from N1 to N7:

N1: manufacturers who must register but they do not do it, to avoid taxes and obligations to pay social security contributions;

N2: not registered illegal producers;

N3: Producers who are not required to register as they do not have production for market; Specifically, these are non-market manufacturers involved in the production of goods for consumption (households)

N4: registered legal entities which are not included in the statistics (eg. the register system of the companies is out of date or updating procedures are not adequate);

N5: Registered entrepreneurs not included in the statistics (eg. administrative source with lists of registered entrepreneurs does not provide the statistical offices the updated lists in full form);

N6: misreporting of the manufacturer (eg. under-reporting the achieved gross output or over-reporting the intermediate consumption in order to avoid (or reduce) the payable tax on income, added value tax or social security contributions);

N7: Statistical deficiencies in the data; exp. data that are incomplete or not collected cannot be collected directly; also are included incorrectly handled, processed or collected data, by statisticians.

[2] NIS is operating with the forthcoming definitions: *Hidden economy* activities are carried out legally, but are purposely hidden from public authorities for various reasons such as nonpayment of taxes and social security contributions; avoid administrative procedures, such as completing statistical forms or other administrative action. (Hidden economy consists of: all activities hidden intentionally in order to reduce production costs, disregarding administrative standards, that is hidden from economically point of view and those activities which are not registered due to deficiency in the statistical system.) *Illegal production* includes the production of goods and services whose sale, distribution or possession is prohibited by law and production activities which are usually legal but become illegal when their implementation was carried out by unauthorized producers (ie. Unlicensed doctors). The most important illegal activities are the production and trade in drugs, prostitution, and production of pornography, gambling unlicensed production and trade on copying movies, cassettes, books and software without paying royalties, smuggling, embezzlement, bribery and extortion. For practical reasons and shortage of data, it is not typically included in the estimation of national accounts. *The informal sector* includes, as defined by the International Labour Organization, production units with a low level of organization, with little capital or labor-capital relations and demarcation, work mostly based on kinship, relationships and less on formal contracts. These units are part of the household sector. The owners of these establishments are entirely responsible for all financial and non-financial obligations imposed by the production process. If the activity of these units is intentionally hidden, in economic terms they fall within the hidden economy. (www.insse.ro)

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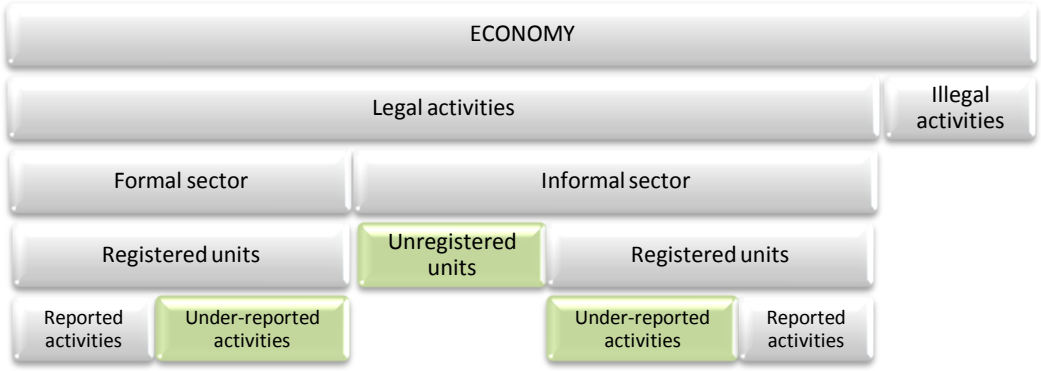
The methods used to estimate the gray economy in the Romanian statistics take into account existing data sources and estimation practice on unnoticed part of the economy. The methods used by the National Institute of Statistics have been improved year by year according to available new data sources. Since 1996 there is stability in data sources, the methodology allows comparability of data. The estimation of the gray economy, aimed at improving the comprehensiveness of national accounts in Romania, is reflected in the GDP assessment by three methods: production, expenditure and income approach. Production, primary income and expenditure directly observable phenomena are related to the following:

- The absence of economically active units from recorded statistics;
- Evasion of taxes and / or social security contributions;
- Evasion of the obligation to submit information to the tax and social authorities.

The estimation of gray economy in Romania is done both by industrial and institutional sector. Economic aggregates of all branches of activity are adjusted to improve completeness. Among institutional sectors, only non-financial corporation's sector and the household sector are affected by the adjustments. Regarding the government sector, it is considered that, by definition it is comprehensively covered by the data sources. For the financial corporation's sector and non-profit institutions serving households data sources are entirely administrative, namely the consolidated financial statements considered exhaustive. To date no adjustments were made for completeness illegal economy, due to lack of harmonized methodology and volatile data sources. The described coverage of the gray economy can be observed on Figure 1. due to the methodology taken from the INS.

Figure 1. Unobserved economy in national accounts in Romania



Note: green boxes represent unobserved economy in the national accounts

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Source:

http://www.insse.ro/cms/files/aplicatie/Metodologii%20CAM/Conturi/EC.ASC.%20in%20RO.pdf accessed on 09.06.2011

Fiscal method

The method is similar to the above presented: starting premise is that those who earn income, partly hide them from fiscal authorities. Thus the declared income will be lower than the total national income calculated based on national input-output accounts. This difference between income calculated on the basis of national accounts and the data declared by institutions shows the hidden income. This method can be used in those states, where actors of economy must declare any income, but for this reason appears the problematic dimension of the method because data for calculating national income are coming precisely from these charging and taxation institutions, so in theory there is no difference between these two statistics (Ékes, 1993:114).

Electricity consumption method

The method was developed by Kaufman and Kaliberda[3] and aims to estimate the hidden economy in relation to national energy consumption compared to the growth rate of GDP. This method compares the growth of electricity consumption and GDP growth. This can determine the difference between the estimated growth from electricity consumption and real GDP growth. According to researchers estimated growth deviation to real GDP growth is actually black economy. The surplus production that can be justified by energy consumption takes place in the informal economy, therefore do not appear in the national accounts and are not reflected in the calculation of GDP. The method has been criticized because electricity consumption differs from many other factors that were not taken into account (structural changes in a country's economy, affecting production).

This problem was corrected by Lackó (2000), by the method of electricity consumption of households. By this method the author has estimated the size of the informal economy in transition countries. (Lacko's skepticism toward Kaufman's and Kaliberda's calculations come precisely from the fact that they have not experienced an increase of the informal economy precisely in countries like Romania, with all that in other transition countries was a significant increase). The results of this method reflect production in households and all the production and unregistered service that

[3] Source: http://gazdasagkifeheritese.uni-corvinus.hu/index.php/SC_-_A_h%C3%A1ztart%C3%A1si_%C3%A1ramfogyaszt%C3%A1son_alapul%C3%B3_becsl%C3%A9si_m%C3%B3dszer accessed on 09.06.2011.

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requires electricity. Such analysis does not take into consideration those activities and incomes which not consume electricity (tip, bribery, smuggling). Also the author mentions that it was supposed that in those countries where the informal economy linked to electricity consumption is significant, perhaps the other activities of the hidden / black economy acquire significant size as well.

The premise of the model is that in every country part of household electricity consumption (in individual households) is used in the informal economy. It therefore considers that the electricity consumed by households in a given country is determined not only by obvious causes such as population size, standard of living, the geographical location of the country, the relative price of electricity or access to other sources of energy, but also depends on the extent of underground economy. On the other hand a significant percentage of unregistered businesses operating in the households, obtains income from there indirectly.

In this model economy is represented by three variables: the percentage of taxes in gross national product, the ratio between the active and inactive population, and social public expenditure in relation to gross national product. The first two variables represent obvious relations: the higher this percentage is, the greater is the amount of underground economy. A high level of taxes causes more economic activities to move to informal/underground sphere, high levels of inactive population leads to a larger supply on informal labor market economy. Regarding the third indicator, since it is bigger state shall take action to collect taxes, which will reduce the size of the informal economy.

The model has three parts. The first part is estimating electricity consumption in households. Among the variables of the model appears the size of the hidden economy per capita, which is expected with a separate model. Model variables to estimate the size of the hidden economy is read as follows:

Increasing taxes affecting labor, stimulates black labor market

Increasing taxes affecting capital, influences the decision whether to start a business in the formal or informal economy

Explanatory variable “output decline after 1989” market economies in transition countries justifies hidden production, which is not reflected in the official GDP

Inflation: in periods of economic downturn the inflation rate is also an important factor in purchasing decisions of households, because in the context of living conditions exacerbated by inflation, cheaper goods produced in the hidden economy are becoming attractive

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Public expenditure has double impact on the hidden economy: the exclusionary effect increase the size of the black economy; increased public spending allow greater expense to the monitoring, preventing individuals to participate in the black economy

In the next step the author states that the hidden economy rate per capita affects electricity consumption of the population. The result is divided by the total electricity consumption of the population, so, if can be calculated the contribution of the hidden economy to the increase of total consumption. In the last step by relying on the method of Frey and Weck (in Lackó, 2000), the author choose a basis country, for which, using previous research findings, determine the share of black economy of that country's GDP. This black economy/GDP index is divided by the percentage of the electricity consumption of households in the black economy (consumption of electricity in the informal economy/consumption of electricity total population). This is the base index. By multiplying the indexes of electricity consumption in each country with the base index we will fiind the percentage of hidden economy in GDP (Lackó, 2000:126).

Informal economy approach by models

All the methods described so far are designed to estimate the size and development of the informal economy, considering only one indicator, which should capture all the effects of the informal economy. It is obvious, however, that such effects occur simultaneously in production, employment, money markets. An important criticism is that the causes that determine the size of the informal economy are taken into account only those who link to the monetary approach (Schneider, 2002).

Structural equation models (SEM) take into account the multiple causes that determine the appearance and expansion of the informal economy and its multiple effects over time. Such models, based on the statistical theory of unobserved variables, are composed of two parts linking unobserved variables (latent) with manifest indicators. This type of modeling has been used in almost all social sciences, from sociology to economics and marketing. One of the pioneers of these models is Goldberger (in Macias & Cazzavillan, 2008).

A special case of structural equation models is the Multiple Indicator Multiple Causes Model (MIMIC). Frey and Weck-Hannemann[4] (in Macias & Cazzavillan, 2008) were the first who applied in estimating the MIMIC-model in estimation of the informal economy. This model considers the size of the hidden economy a latent variable, connected on the one hand, to the number of observable indicators (reflecting changes in the size of the informal economy) and on the

[4]Frey, B. – Weck-Hanneman, H (1984) *The Hidden Economy as an Unobservable variable*European Economic Review, 26(1), pp. 33-53.

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other hand, to a set of observable causal variables that are considered determinants of unreported economic activity.

The latter therefore requires the existence of a set of conditions and a set of indicators that are influenced by the size of the underground economy, their reliance being used to predict future changes in the size of the underground economy. The explanatory variables (causes) are: fiscal targets/GDP; individuals taxes/GDP; taxes on production and imports/GDP; corporate income tax/GDP; contributions to social security schemes/GDP; unemployment insurance/GDP; unemployment rate; self-employment/civil active population; bureaucracy index. The indicators are: real gross domestic product index; the rate of active population; M1/M2 - the growth rate of money supply in circulation. The identification procedure starts with the general model specification and continues eliminating the variables that were not significant parameters of statistical terms.

The Dynamic multiple-indicators multiple-causes model (DYMIMIC) is a dynamic version of the MIMIC model, considering multiple causes, determining the appearance and expansion of the informal economy and its multiple effects in time. The method is based on the statistical theory of unobserved variables, having two parts which interconnect unobserved variables with observable indicators. In this case the only unobserved variable is the size of the informal economy. The method involves a series of causes and a set of indicators that are influenced by the size of the informal economy, overcoming structural dependence of underground economy on these variables, this dependence is used for forecasting future changes in the underground economy. (Buziernescu, Nanu, & Spulbar, 2009), (Schneider, 2002), (Schneider & Klinglmair, 2004)

Conclusions

With this short review of possible methods using in the estimation of the size of the informal economy the goal was to underline the importance of the methodological approach in the case of this concept. In an earlier study we discussed about the obstacles regarding the conceptualization of the informal economy. As many conceptual barriers and questions as many methodological answers can we found in the literature. The presented methodological framework is not exhaustive, talking about the size of the informal economy, the presentation was focusing on screening the statistical or quasi statistical methods, and to underline the methodological discrepancies in statistical data recording and measurement problems of this economical phenomenon in an international and national context.

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OPPORTUNITIES OF INTEGRATION AND OPERATIONALIZATION OF EDUCATIONAL MARKETING IN THE CURRENT ACTIVITIES OF THE MILITARY HIGHER EDUCATION INSTITUTIONS

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Abstract: The expansion of globalization and the fierce competition in all markets have effects on the Romanian economy and society asa whole. These are also noticeable in the field of higher education in whichover the higher education institutions are exerted demographic, technological, economic, social and political factors influences.

The emerging opportunities have determined new marketing behaviors demanding not only for its integration, but also for its operationalization. The increased competitiveness in the educational services' market imposed a different approach from that of the previous periods, upon the military higher education institutions, oriented toward the consumers of the educational products/services and the results of the educational process expressing the needs and demands of their beneficiaries.

The study identifies the opportunities to integrate the educational marketing in the military higher education system, characterized mainly by resistance to change, rigor and hierarchy.

Keywords:military, higher education, Romania, marketing opportunities, educational marketing

The expansion of globalization and the fierce competition in educational market have determined for the military higher education institutions new marketing behaviors. The increased competitiveness in the educational services' market imposed a different approach from that of the previous periods, upon the military higher education institutions, oriented toward the consumers of the educational products/services and the results of the educational process expressing the needs and demands of their beneficiaries.

Technological progress, competition becoming more and more intense and the level of development of the organizations, motivates orientation mainly towards the market and the full integration of marketing, by offering quality services through the entire activity and by building organizational

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structures that promote optimal efficiency market relations in line with the expectations and needs of customers (Niculescu, 2010).

The current economical context grants quality the role of key determinant of competitiveness, more and more organizations are concerned to use techniques and tools applied in quality management that are designed to facilitate continuous improvement in performance so as to meet the needs of the customer in terms of efficiency and effectiveness (Nemeş, 2011).

In recent years, the service sector is one of the areas where there were major changes caused on the one hand the intensification of liberalization and reform of the Romanian society as a whole, the growth of the role of the market as an essential mechanism for allocating resources, and on the other hand, the development of information technology and communications, which grew more and more significantly the role of services in the national economy (Bobîrcă et al., 2006).

Services are those activities separately identifiable, basically intangible assets, education being mainly oriented toward the consumer market with dominant intangible characteristics impossible to be touched or seen or felt (Raj et al., 2013).

The dynamism of the educational services market induced the tendency to amplify the character of the entrepreneurial field, thus it became necessary a careful and continuous analysis of the functioning of higher education institutions, knowing the operating principles specific to the institutions, the approach requiring firm orientation towards the market, consumers, strategy formulation and the establishment of appropriate organizational structures (Popescu, 2004).

Among the market characteristics of services provided by educational institutions, educational services, we remark, first, state intervention, which is performed at microeconomic (eg by setting taxes, rates, granting subsidies) and macroeconomic (through public policies, such as tax), thereby adjusting the work done in the educational market (Barbu, 2011).

Education must convey effectively and also on a widespread that volume of knowledge and information adapted to the new civilization of globalization that does not overwhelm through quantity, but contributes to the development of the individual and society as a whole, tracing changes and providing consumers guidance tools that help them identify opportunities for asserting and continuous development (Cosma, 2004).

The integration into Euro-Atlantic structures, although this occurred at a considerable time after the Romanian society began to reform all areas, was an opportune time for a different approach of customers by military institutions of higher education.

The transition from mandatory military service to voluntary, the adequacy selection process of candidates for the entrance examination in the military educational institutions to the new profile of the graduate, military leader, activating in a common market with other institutions of higher

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education in Romania, admission of girls in the formation process of officers, integration into the North Atlantic alliance and the European Union, have imposed the need to change the way to inform the public, promotion, recruitment and selection of candidates, addressing military career in marketing vision (Tramontini, 2006).

The year 1990 marked the beginning of changes for the military education system, reforms and adaptations to the new social context, the educational services market. Higher education in Romania experienced major changes, registering slow pace of growth in the number of higher education institutions, faculties and teaching staff.

Starting with the academic year 1991-1992, military schools of officers were converted to military institutes, institutions of higher education integrated into the nationaluniversity-level long-term education system, with the mission to ensure basic fundamental scientific training of future officers, this certainly representing the time for military higher education institutions to meet the needs and wishes of future students through specific marketing activities.

In the next period, the military higher education institutions have covered the legal steps for recognition as military-universities, obtaining provisional authorization and accreditation of study programs, in this regard the reports of the National Council for Academic Assessment and Accreditation being favorable (Baboş, 2005).

The new approach of education in the military system allowed military higher education institutions to participate in university life, to be represented in advisory organizations held at national level: the National Council of Rectors; National Council for Academic Assessment and Accreditation; National Council for Attesting Titles, Diplomas and Certificates and also benefit from a wide international opening, participating in international relations activities: visits of information and documentation, training courses, congresses, exhibitions etc. Meanwhile, a large number of students and teachers have benefited from research grants or training programs in specialized institutions of higher education from abroad.

The conjuncture of the developing educational market after 1990 was the first opportunity for military higher education institutions to realize the fact that it is necessary to use tools and techniques of marketing for analyzing the environment in which they operate so as to increase the flow of consumers for the offered educational services. Previously, military education institutions did not approach at all the market, the educational offer and information on study programs were made known to the public before entries for the entrance examination, by military structures unrelated to education system. These were performing a first selection of candidates, while those who met the criteria and scales set had to attend the entrance examination, so this was the first contact of potential customers with military educational institutions.

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Romania's integration into NATO and European Union has exerted a significant, systematic and steady influence on human resources in the military, so the whole approach to training and human resource management has in mind the special requirements laid down by the two organizations, taking into account the development, adoption and implementation of appropriate strategies (Duţu, 2005).

In the context of major changes in the operating environment, increasing competitiveness and awareness of the multitude of messages to which the consumers are exposed from bidders, even the lack of time and the permanent sense of haste, which can be a specific feature of the XXI century, the integration of marketing and marketing communications acquires a special importance for higher education institutions in general, particularly for those in the military system (Ivanov, 2012).

The dedicated literature in the field has accumulated numerous definitions of marketing, the changes over time demonstrating the evolution of the concept and the generalization in almost all areas of social life (Petrescu, 2008).

Defined in the early stages as a set of activities that guides the flow of assets and services from manufacturer to consumer/end user (The American Marketing Association, 1960), in the 90s,marketing is seen as a social process by which consumers get what they need and want (Kotler, 1997; Kotler and Armstrong, 1999), as art of creating a value for the consumer (Kotler, 2003).

In higher education, marketing knows a broad global perspective, the increased competition in this developing field, together with the increasing number of higher education institutions, products and services offered in the educational market, are drivers for marketing integration in the university field (Starck and Zadeh, 2013).

The educational services marketing can be defined as an activity of knowledge and services transfer to customers of educational institutions to achieve their full satisfaction by obtaining an economic and personal development opportunity and making them more capable to face worldwide competition (Jadhav, 2007).

Integration is the act of incorporation, merger of several parts into a whole. When the marketing of a company is integrated,all the company compartments participate to the achievement of marketing actions and not only the marketing department. Each entity of the company participates in joint effort to satisfy the needs of consumers to get maximum profit (Sasu, 2005).

The consumer is the central element reference of educational marketing. Basically, marketing, by the whole complex of activities that are specific to it, aims to provide the goods and services which consumers require, respectively right merchandise, in the right amounts, at the right price, at the right place and at the right time. So marketing appears as an entire system of economic activities,

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referring to the programming, pricing, promotion and distribution of products and services designed to satisfy the current and potential consumer requirements (Sasu, 2008).

The higher education institution can be regarded as an organization that develops its activity on a competitive market of services offers (education, research, consulting). Regarding this aspect, the competitiveness of the higher education institution is given by its ability of adapting to the constant changing needs of the social-economical environment, to the needs of education consumers. The pressure on public higher education institutions to achieve a competitive activity is increased also by the arrival on the market of private universities,which do not have budgetary resources, are constrained to develop a dynamic and efficient activity in order to survive on the market and even draw in powerful segments from the potential clients (Popescu, 2004).

Kotler and Fox (1995) and also recent studies identify a significant number of clients from higher education institutions: students, their families, employers, society and employees of higher education institutions, the approach focusing especially on students (Roşca, 2015).

Mazzarol (1998) identifies in the field of education the characteristics of services: intangibility, inseparability, disparity and perishability, initially described by Zeithaml (1985), each characteristic needing the approach in marketing vision in order to restrict eventual problems such as educational oversupply. Education is a market targeted service, described mainly by intangibility, the knowledge supplied being impossible to touch, visualise or feel, the production and their consumption happening simultaneous, having no option for storage (Raj et al., 2013).

Taking into consideration the characteristics of educational services, the educational institutions that want to obtain success on the market have to undertake a series of activities that aim to attract future students, for more students and their families, the decision of studying in one institution or another represents one of the most important initiatives they will ever undertake (Mazzarol, 1998).

Educational institutions have the intention of becoming a popular brand, but the promotion, publicity and growth in the number of places in the admition contest is not enough (Sankaran and Kannan, 2016).

Marketing of educational servicies properly undertaken can build the brand image of institution having a great influence to the improvement of the quality of the educational services, infrastructure, facility, curriculum. All of these this will bring the satisfaction of customers (Jadhav, 2007).

Comparing the bussiness environment to the educational one, especially that of higher education, it can be concluded, relating to marketing implementation, that in both sectors the marketing processes can be evaluated only in association to the way they are perceived by customers. The effectiveness of educational activities carried in universities can be improved by infliction of

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marketing principles. Marketing in higher education can be defined as a response to needs and wishes of customers, those being pupils, parents, graduates, employers and financial supporters of educational processes and finishing with the larger community (Motekaitienė and Juščius, 2008).

Military institutions of higher education should first understand what it is and what it does educational marketing, starting from the need to approach marketing in the field of military education, given to the tight competition between all institutions of higher education on the Romanian market of educational services.

Integration of marketing in higher education requires analysis and comparison between colleges and universities with what is happening in the business sector. In higher education, as in business, it is possible to see the characteristics of the exchange process (Motekaitienė and Juščius, 2008).

Military institutions of higher education should integrate educational marketing on an operational basis, first with actions of small spread (such as creation or update of the web sites of military institutions of higher education or participation in educational fairs), switching to the design and implemantation of a marketing communication strategy.

Running campaigns to promote the educational military system, the educational offer, in all media, has not generated any effect of increasing the demand for educational services provided by military institutions of higher education to a level that ensures a customer segment with a powerful motivation for the military career.

Integrated and in relation with the environment in which they activate, educational institutions provide educational services and scientific research, the product offered consists of abilities gained by the students, as a result of involvement from the academic and research community. The product must satisfy the requirements and expectations of customers, being at the same time consistent with the requirements of the society (Buzărnescu, 2004).

Educational marketing relies on a completely different approach towards traditional marketing principles, thus, educational institutions need in order to achieve the performance of satisfying target customer needs from the market segment where they operate, in the context of globalisation, having to apply attractive and diversified educational programs. Representing a fundamental part of the educational policy and educational management of educational institutions, the educational marketing policy should be developed through the study of motivation and simbolic representations of consumers according to their specific behaviour. Educational marketing explores the posibilities of satisfying cultural and educational needs of educational institutions customers, education relying on values that are connected to human needs. As a marketing approach, the main concern of educational institutions is focused on delievering products and educational services, according to the educational requirements of customers, in constant change, in the context of current economic

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reality. The global challenges of educational merketing are based on an advanced technology and on high speed communications towards the satisfaction of educational needs of customers (Birău, 2014).

The concept of smart defense was introduced by the general secretary of the NATO in 2011 and adopted during the Chicago summit in May 2012, a solution of maintaining the ability of fulfilling the assumed missions, as a response fom the allies to the growth in complexity of the international security environment (Ene, 2015), increases the role and importance of military institutions of higher education in forming specialists for military and civil structures. The establishment of new priorities in the field of defense, forced by the evolution of the budgetassigned, as well as the introduction of a system of financing military institutions of higher education, based mostly on own revenues, represent opportunities for applying marketing principles. Educational marketing proves a necessary instrument for approaching the market and the target customers, the quality of future students, of students and graduates of military institutions of higher education sustaining the fulfillment of missions and objectives set by educational institutions and the Romanian military system.

The marketing strategy of military institutions of higher education must answer to rapid changes in the marketing environment, to the rapid growth of competition, on national and international grounds, due to globalization (Pistol, 2015).

Although the reformed curricula based on the requirements and needs of consumers, employers, organizing campaigns of promoting the educational offer to the target audience, we appreciate that the military institutions of higher education do not have a culture of marketing sufficiently developed, especially in the educational marketing. The favorable image of the Army, the favorable positioning of the military system among public confidence, attractive benefits granted during school attendance and opportunities for career advancement, creates a somewhat dormant state and waiting the military institutions of higher education in relation to the educational market, customers and potential customers.

The approach of organizational integration of marketing in the military institutions of higher education requires, in our view, the establishment of structures of marketing at the Ministry of National Defence and in each military higher education institutions, which, having a position in the institutional flowcharts, which can foster effective decisions, resource allocation, personnel, technology and sufficient information that could begin to integrate the educational marketing on the basis of strategies, marketing plans and programs.

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THE FORMS OF TORT LIABILITY AND THEIR CLASSIFICATION

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Abstract :The author analyzes the issues proposed by doctrine and jurisprudence on tort liability forms and their classification. If we examine the whole legislative panel in this matter shows that there are several hypotheses or cases of tort or contractual. Tort assumptions are of two kinds: some covered in the new Civil Code and other legislation developer regulated Civil Code.

Key-words:classification tort liability, cases of tort or contractual liability, tort liability in the Civil Code, forms of legal tort liability.

The legal regime of legal tort liability is the rule in civil liability.

Tort liability can be defined as that form of legal liability which consists of a report of obligations under which a person is indebted to repair injury caused by his action or, in cases provided by law, the injury caused by his action or in cases provided by law, the damage for which it is responsible.[1]

New Civil Code (art.1349) provides that any person may be held liable, and if this person has discernment, then she will have overall responsibility for all damage caused, regardless of whether the act generating the damage is an action or inaction.[2]

A person will respond but only for his own deed, but also vicarious, for workers, animals or ruin the building, where appropriate, and if required liability for damage caused by defective products, it must be founded on the basis of special laws.[3]

If we examine the whole picture law in this matter shows that there are several hypotheses or cases of tort or contractual. These assumptions make up what might be called tort liability system and can be sorted by several criteria, including mind: classification after the legal headquarters of the regulations that apply to the classification after their foundation.[4]

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Tort assumptions are of two kinds: some covered in the new Civil Code and other legislation developer regulated Civil Code.

A. Assumptions tort covered in the new Civil Code (Article 1349 and Article 1357 to 1380). New Civil Code regulates three cases of tort liability: Liability for damage caused by the wrongful act own liability for damage caused by vicarious and liability for damage caused by animals, things and ruin the building.

a) Liability for damage caused by its own act (art. 1357-1371).[5]

Art. 1357 new Civil Code in conjunction with art. 1349 par. (1) and (2) establishes the rule of principle that the obligation to repair the damage caused in an unlawful act committed with guilt arises directly and immediately charged to the author of that act. Typically, each man responds only to its own facts. No liability for another, or else cannot return unless specifically provided by law. It is a known principle, logical and traditional in our civil law.

As an element of tort liability, wrongful act means any act by which, in violation of a legal rule, it causes damage to the subjective rights belonging to a person or its special interests. We must understand that according to the principle "who exercise their right not prejudice anyone," wrongful act, as part of tort is any act by which breach norms of lens are caused harm subjective right or legitimate interests of a other people.[6]

b) Liability for damage caused by the actions of others.

New Civil Code drafters took into account and solutions doctrinal, jurisprudential and legislative really were and are promoted in this area and in other European countries, to respond promptly and effectively to social necessities. This explains the fact that the material is reorganized content of the new regulations. Tort liability, it is almost exclusively devoted almost an entire chapter (Chapter IV, Title II, Book V has, art.1349 and 1351-1395). Vicarious liability for his establishment in the Section 4, Article 1372 - 1374. Examination of these texts allows easy to state that covered only two cases or cases in which a person can be held responsible for damages caused to a third party by the wrongful act of another or others.[7]

The principle of liability for damage caused by its own deed may be sometimes insufficient, to the extent that its author is a person who has not held liable or questionable solvency. In such cases, the victim is likely not to obtain reparation which would otherwise be entitled. Therefore, in

[5] *Legea 287/2009 privind Codul Civil* republished in Official Gazzette, Part I, no.505/15.July.2011
[6] George Bârligeanu, Laura Mihaela Ştefan, Minodora Achim, *Răspunderea juridică*, Tribuna Economică Publishing, Bucureşti, 1999, p.26-28.
[7] Liviu Pop, *Reglementarea răspunderii delictuale pentru fapta altuia în textele Noului Cod Civil*, in „Dreptul", no.5-2010, p. 11-38.

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order to protect the victim, the Civil Code established alongside liability for the acts of its own, in some cases, self-responsibility and the responsibility of another person than the author harmful act.

Consecration contractual liability for damage caused by vicarious be explained by the existence of a special relationship between the perpetrator and the person called harmful by law to respond to repair that damage; These special relationship exists when the offender is harmful in the sphere of authority of the person responsible.

Liability for vicarious appears as an additional protection of the interests of the victim; sometimes it is added or may be added to its own liability for the acts and engage only in relations between the person liable and the victim injury. This accounts under certain conditions the right of recourse against the perpetrator of the person responsible illicit and harmful.

Romanian Civil Code regulates two cases of liability for damage caused by vicarious:

- liability of persons who are required supervision of a minor or a court banned for damage caused by the misconduct of a third party under the supervision of the (art. 1372 new Civil Code);

Art.1372 is established in a general injury liability for injury caused by the misconduct of a minor or a person placed under interdiction, liability which one who undertakes the responsibility under the law of contract or a judgment has obligation to supervise the offender harmful.[8]

- principal responsibility for damage caused by illegal acts of servant or tort (art. 1373 new Civil Code).

It should be noted that the principal responsibility for the acts of its servant or pepuşilor governed by the new Civil Code art.1373 occurs only when servant causes injury to a third person by an unlawful act contractual, tort ie. Conversely, when the wrongful act and the damage is committed servant in the performance of a contract concluded by his principal to another person and thereby the other Contracting Party which is usually the creditor contractual and causes injury through failure to enforce the broad sense of the contractual obligations, we are in the presence of a contractual civil liability for acts of another, separate art.1519 expressly regulated in contractual obligations enshrined title.[9]

As regards vicarious liability, remember that this is a form of tort which consists in the obligation to repair the damage caused by the wrongful act committed by others. Such form can be held responsible for the acts of the minor or a person under interdiction, as well as its servants.

[8] Ibidem, p.15.
[9] I.Deleanu, *Grupurile de contracte şi principiul relativităţii efectului contractului – răspunderea contractuală pentru fapta altuia,* in „Dreptul" no. 3-2002, p.15-17, I.Lulă, I.Sferdian, *Discuţii cu privire la răspunderiea contractuală pentru fapta altuia*, in „Dreptul" no.8/2005, p.75-96, L.Pop. *Tratat de drept civil.Obligaţiile, vol.II Contractul*, Universul Juridic Publishing, Bucureşti, 2009, p.694-707.

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Liability for the acts of the minor or a person under prohibition means that a person who, under the law, a contract or of a court is obliged to supervise a minor or a person placed under interdiction, responsible for the damage caused by these people (ie may be required to repair the damage nature, pay compensation, etc.). This form of liability subsists even if the offender has no discernment and not responsible for his own deed. The person liable to supervision is released (exempted) from liability only if he proves that he could not prevent the harmful event. Parents or, as appropriate, tutors are exempt (exempt) from liability only if the child proves that the act is not the consequence of how fulfilled their duties arising from the exercise of parental authority, but is due to other causes.

Liability of the principal for servants assumed at that, pursuant to a contract or in law, exercise direction, supervision and control (principal) on the one who fulfills certain functions or assignments in his interest or of another (servant) is responsible for damage caused by the latter. Principal responsibility will be coached by proving that the victim knew or, depending on the circumstances, could know at the time he committed the prejudicial act, the servant acted without.[10]
c) Liability for damage caused by animals, things or ruin the building any connection with the duties or functions assigned purpose.

Social life has shown that a person can suffer damage which was caused them without human deed, for one thing, animal or ruin a building. If we apply the usual rules of civil liability in such cases, unable to prove that the damage sustained is the act of a person, the victim would find the situation unfair burden to bear that her injury. This explains the fact that in order to protect the interests of the injured, civil law established the responsibility for animals, things and ruin the building. This is a direct responsibility of the person who has legal guarding the animal, work or, where appropriate, the owner of the building that caused the damage.

The New Romanian Civil Code regulates the liability as follows:
- Liability for damage caused by animals is legal security man (art. 1375 in conjunction with art. 1377);
- Legal guardian liability for damage caused by working under his charge (art. 1376 in conjunction with art. 1377);
- A building owner's liability for damage caused by the ruin of that building (art. 1378).

B. Special assumptions of tort law governed developer Civil Code.

This category includes:

[10] http://www.ziaruldeiasi.ro/recomandari-zdi/formele-raspunderii-civile-in-noul-cod-civil~ni7r83

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- Liability of public authorities for damage caused by acts of power (administrative) illegal (Law no. 554/2004 on administrative);
- State liability for damage caused by judicial errors (art. 96 of Law no. 303/2004 and art. 505-507 C. pr. Pen.);
- Liability for damage caused by defective items (Law no. 240/2004);
- Liability for damage or environmental damage (Government Emergency Ordinance no. 195/2005 on environmental protection);
- Liability for Nuclear Damage (Law no. 703/2001);
- Torts healthcare professionals and providers of medical goods and services, healthcare and pharmaceuticals for damage caused patients (Law no. 95/2006 on health reform). In principle, the responsibility of doctors and medical units for medical malpractice is contractual; But there are several situations in which civil liability for damage caused by tort patients have a legal regime that requires putting into question.

Each of the specific situations of tort in the above list shows some peculiarities regulatory regime that gives legal part derogatory to the general arrangements of this responsibility which has its headquarters in art. 1357-1371 New Civil Code, which sets out the conditions of liability for damages caused by a person's own act.[11]

Depending on its fundamental criteria, tort liability is divided into: subjective liability and strict liability:

A. Subjective tort liability. The new Civil Code system, as in the old Civil Code, tort is based in principle on the idea of guilt proven. Thus, according to art. 1357 new Civil Code: "(1) Whoever causes injury to another by an unlawful act committed with guilt, is obliged to repair it. (2) Author injury easiest answer for misconduct ".[12] Text governing the liability of any person for its unlawful conduct and injurious; this is the general rule and natural value principle. And as for his own deed liability is based on his culpability, it follows that, in principle, tort law is subjective. All other cases of liability, apart from liability for damage caused by his own deed, are particular assumptions of liability, derogatory nature.[13]

B. Objective tort liability. Tort liability is there and is committed without proven or presumed guilt of the person responsible. Its objective foundation is the idea or obligation to guarantee objective, which is to support, as appropriate, the risk of power or risk activity. The idea warranty sometimes

[11] *Legea 287/2009 privind Codul Civil* republished in Official Gazzette, Part I, no.505/15.July.2011
[12] Ibidem.
[13] http://legeaz.net/dictionar-juridic/felurile-raspunderii-civile-delictuale-si-clasificarea-lor

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longer attaches the idea of fairness. There are cases when the security objective is accompanied by the precautionary principle

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CONSIDERATIONS ON THE IMPORTANCE OF RELATIONSHIP MARKETING IN THE ONLINE ENVIRONMENT FOR SERVICES COMPANIES

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Abstract: In order to use the potential provided by the online environment with maximum of efficiency, services companies should take their marketing decisions by taking into considerations the relations they have with all their stakeholders and they should particularly focus on building long-term relations with their clients. The Internet offers a proper environment for the creation, maintenance and development of long-term relations with each and every client, by offering customized online services în order to insure the foundations of the attachment process of clients (loyalty, fidelisation programs, exclusivity) through a better communication, thus triggering differences in their online behaviour. Therefore, in this era of great technological advancements, the implementation of informatic programs which efficiently ensure good customer relationship management has become necessary for the clients' satisfaction at the highest level possible.

Rezumat: Pentru a folosi potenţialul furnizat de mediul virtual cu maximum de eficienţă, companiile de servicii trebuie să îşi modeleze deciziile de marketing ţinând cont de relaţiile pe care le au cu toţi stakeholderii lor şi, în special, de construirea unor relaţii pe termen lung cu clienţii. Internetul oferă mediul propice pentru crearea, menţinerea şi dezvoltarea relaţiilor pe termen lung cu fiecare client în parte, oferind servicii online personalizate în vederea fundamentării procesului de ataşament al clienţilor (loializare, programe de fidelizare, exclusivitate) printr-un grad mai mare de comunicare cu aceştia, determinând astfel diferenţe în comportamentul lor în mediul online. Prin urmare, în acest mileniu, implementarea programelor informatice care asigură cu eficienţă managementul relaţiilor cu clienţii a devenit necesară pentru satisfacerea clienţilor la nivel superior.

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Keywords: Relationship marketing, online services, virtual environment, Internet, customer relationship management, online consumer behavior

Introducere

Era informaţională a determinat apariţia marketingului online şi a revoluţionat modul în care organizaţia creează, comunică şi oferă valoare consumatorului, influenţându-i comportamentul în mediul virtual. Datorită comerţului electronic s-au dezvoltat noi modele de interacţiuni personale şi tranzacţii impersonale, cu un grad mai mare de interactivitate şi disponibilitate, care au produs mutaţii în relațiile companiilor atât cu consumatorul individual, cât şi organizaţional. Pârghiile de putere s-au modificat în favoarea consumatorilor online, care sunt din ce în ce mai informaţi şi mai pretentioşi.

Marketingul relațional în mediul virtual

Prin urmare, ansamblul relațiilor unei companii (cu clienții, cu angajații, cu furnizorii, cu distribuitorii etc.) este deosebit de important întrucât relațiile determină valoarea acesteia în viitor, iar aceste relații, precum și capitalul lor relațional, sunt mai prețioase decât patrimoniul tangibil al companiei (Kotler, 2004). Considerat de Bruhn în egală măsură, o normă, o metodă şi un ansamblu de relaţii (Bruhn, 2001), marketingul intern reprezintă o extensie a marketingului relaţional, manifestat în interiorul companiei, aspect subliniat în numeroase abordări (Hooley, Saunders, Piercy, 1998), având ca principal obiectiv încurajarea comportamentului angajaţilor pentru stabilirea unor relaţii durabile cu clienţii.

Marketingul relaţional se află astfel într-o legătură antagonistică cu marketingul tranzacţional, care se concentrează pe atragerea de clienți noi, schimbarea cu ușurință a furnizorilor, intermediarilor etc. în funcție de oportunitățile oferite, fără a avea ca scop crearea și menținerea unor relații de lungă durată cu deținătorii de interese (stakeholderii) (Pop, N. Al., 2006).

Marketingul relaţional are următoarele şase dimensiuni esenţiale, care reliefează cu succes caracterul distinct al acestuia (Gordon, 1998 în Filip, 2009):

Marketingul relaţional doreşte să creeze *noi valori pentru clienţi* şi apoi *să le împartă* cu aceştia.

Marketingul relaţional *admite rolul central* pe care îl deţin *clienţii*, atât în calitate de *cumpărători*, cât şi în *definirea valorii* pe care o doresc.

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Companiile care adoptă filosofia marketingului relaţional pot proiecta şi integra procesele, comunicaţiile, tehnologia şi personalul pentru *a furniza o valoare superioară clienţilor*.

Marketingul relaţional presupune *eforturi permanente* de *colaborare* între *cumpărători* şi *vânzători*.

Marketingul relaţional admite *importanţa veniturilor aduse de client* pe parcursul *ciclului său de viaţă*, respectiv a perioadei în care este clientul organizaţiei (în engleză, termenul este *customer lifetime value*).

Marketingul relaţional vizează construirea unui *lanţ de relaţii în cadrul companiei*, cu ţelul de a *crea valoarea dorită de client* (marketingul intern este esenţial pentru atingerea acestui obiectiv) şi, concomitent, între *organizaţie* şi principalii săi parteneri, adică *furnizorii*, *canalele de distribuţie*, *intermediarii* şi *acţionarii*.

Astfel, putem spune că există o **legătură intrinsecă** între **marketingul online**, parte integrantă a marketingului direct, **şi marketingul relaţional**. Acesta din urmă, prin faptul că favorizează un grad mai mare de comunicare cu clientul şi favorizează iniţierea unor extraneturi cu clienţii organizaţionali, poate fi facilitat de utilizarea extensivă a Internetului pentru crearea şi menţinerea legăturilor de durată cu toţi stakeholderii.

Majoritatea companiilor din zilele noastre sunt conştiente că au de-a face cu clienţi din ce în ce mai bine informaţi şi mult mai pretenţioşi. Pentru a-i satisface la nivel superior, organizaţiile vizează **construirea** de **relaţii online de lungă durată cu clienţii**, prin implementarea programelor informatice care asigură baza unui eficient ***management al relaţiilor cu clienţii (CRM)*** şi a ***marketingului interactiv*** practicat cu succes în mediul virtual. Targetarea clienţilor este astfel mult mai eficientă şi se face într-un mod în care marketingul tradiţional nu o poate realiza. În acest context, companiile trebuie să conştientizeze că noul tip de consumator ia deciziile de cumpărare navigând pe Internet, *marketingului tradiţional* trebuindu-i *suprapus marketingul online*, care permite *individualizarea produselor* sau *serviciilor* şi astfel poate satisface consumatorii în mod superior.

Este important să se facă distincția dintre marketingul relațional și managementul relațiilor cu clienții (Bălan, 2007): în timp ce marketingul relațional vizează managementul strategic al relațiilor cu toate categoriile de deținători de interese

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(stakeholders), managementul relațiilor cu clienții se referă la managementul strategic al relațiilor cu clienţii prin utilizarea noilor tehnologii informaționale.

Potrivit lui Kotler şi Keller (2008, p. 231), ***managementul relaţiilor cu clienţii*** este „procesul de gestionare a unor informaţii detaliate despre clienţii individuali şi de exploatare atentă a tuturor punctelor de contact cu clientul, în scopul maximizării fidelităţii. Un punct de contact cu clientul este orice ocazie cu care clientul întâlneşte marca şi produsul."

Un consumator poate avea următoarele tipuri de relaţii cu un produs sau serviciu(Fournier, 1998 în Solomon, 2009, p. 42):

ataşament conceptual de sine – produsul / serviciul ajută utilizatorul să îşi stabilească propria identitate

ataşament nostalgic – produsul / serviciul are rol de legătură cu sinele trecut

interdependenţă – produsul / serviciul este parte din rutina utilizatorului

Iubire – produsul / serviciul provoacă legături emoţionale de căldură, pasiune sau altă emoţie puternică.

Ceea ce stă la baza managementului relațiilor cu clienții este marketingul cu baze de date, orice companie care dorește să facă oferte personalizate trebuie să dețină baze de date cu toți stakeholderii ei. Pentru **constituirea bazei de date a clienţilor** unei companii trebuie avute în vedere mai multe aspecte. Primul aspect important îl reprezintă *tipul informaţiilor* pe care organizaţia le obţine despre clienţi – istoria tranzacţiilor pentru fiecare cumpărător, date demografice, date psihografice. Apoi este importantă *obţinerea acestor informaţii* cu ajutorul *forţei de vânzare*, a telemarketerilor. De asemenea, *întreţinerea* şi *actualizarea permanentă a informaţiilor* au o importanţă aparte în managementul relaţiilor cu clienţii. 20% dintre informaţiile unei baze de date îşi pierde actualitatea anual. În cele din urmă, **utilizarea productivă a informaţiilor** este cea care **face diferenţa** în realizarea marketingului individualizat (one-to-one marketing) prin adaptarea completă la client (Kotler, 2004).

Astfel, este recomandată dezvoltarea unei *baze de date* cu informaţii detaliate despre clienţii actuali şi potenţiali, urmând a le analiza acestora reacţia la constituirea bazei de date şi la pericolele securizării şi folosirii neadecvate a datelor personale. Astfel, este recomandabil să fie practicat *marketingul cu permisiune* (Godin, 1999 în Kotler, 2004, p.

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91), care se referă la întrebarea clienţilor privitor la *tipul de informaţii* pe care sunt dispuşi să le ofere, *ce mesaje sunt dispuşi să accepte* şi ce *mijloace de contact* preferă.

Asemenea, **cercetările** în **marketingul relațional** pot fi utilizate **online** deoarece organizațiile pot utiliza **bazele de date** cu clienții actuali și potențiali, fiind mult mai ușor pentru aceștia să răspundă online deoarece nu există constrângeri privind momentul din zi când ei ar trebui să răspundă, exceptând termenul limită al culegerii datelor privind cercetarea deasfășurată. Un bun mod este de a oferi stimulente respondenților astfel încât numărul lor să fie cât mai mare, precum cadouri sau posibilitatea de a participa la concursuri cu premii consistente (Teodorescu, Stăncioiu, Mitu, Moise, 2009).

Internetul poate fi considerat *o unealtă interactivă individuală* folosită pentru *a gestiona relaţii individuale cu clienţii* la *nivelul fiecărui consumator*. Stewart Alsop a vorbit despre *avantajele serviciilor personalizate* de Internet oferite de Amazon.com încă din 2001 (Alsop în Peppers și Rogers, 2004, p. 97-98). Cu toate acestea, majoritatea companiilor încă nu maximizează beneficiile care pot rezulta din interactivitatea consumator-prestator în mediul virtual (Cetină, 2009).

Nu este totul despre organizaţii care vând consumatorilor, adică despre comerţul B2C, deşi „Internetul este ceea ce a determinat în cea mai mare măsură mişcarea relaţiilor cu clienţii în zona de B2C.” Astfel, chiar dacă marketingul relaţional a fost întotdeauna o unealtă standard în spaţiul B2B, tehnologiile din ziua de azi dau posibilitatea mult mai mult decât înainte să se gestioneze procesele de funcţionare reale ale acestor relaţii individuale, de la nivelul întreprinderilor. Procedând astfel, compania se asigură că relaţia însăşi aderă la întreaga întreprindere, nu numai la reprezentanţii de vânzari sau la alţi angajaţi care conduc activitatea (Peppers și Rogers, 2004).

Mai mult decât atât, explozia spaţiului virtual a revoluţionat contactele de la consumator la consumator – comerţul C2C, creând o nouă lume a comunităţilor virtuale.

Se pune firesc întrebarea: *Îi va apropia Internetul pe oameni* sau îi va conduce spre lumi virtuale individuale? Americanii îşi petrec mai puţin timp cu prietenii şi cu familia, mai puţin timp făcând cumpărături în magazine şi mai mult timp lucrând acasă după orele de program. Mai mult de o treime dintre respondenţii americani care au acces la Internet au declarat că stau online cel puţin 5 ore pe săptămână. Mai mult, 60% dintre utilizatorii de

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Internet au spus că au redus timpul petrecut în faţa televizorului şi o treime au mărturisit că petrec mai puţin timp citind ziare (Solomon, 2009).

Tehnologiile digitale facilitează personalizarea produselor, serviciilor şi a mesajelor promoționale spre deosebire de instrumentele tradiționale de marketing. Mediul online permite ca marketerii să își adapteze elementele mixului de marketing la nevoile consumatorilor mai repede și mai eficient și să construiască și să mențină relațiile cu consumatorii la o scală mult mai mare. Folosind noile tehnologii, marketerii pot aduna și analiza informații din ce în ce mai complexe despre modelele de cumpărare ale consumatorilor și caracteristicile personale ale acestora și pot repede analiza și utiliza informațiile pentru a targeta grupuri mai mici și mai concentrate de consumatori. Pe de altă parte, aceleași tehnologii permit consumatorilor să găsească mai multe informații despre produse și servicii (inclusiv prețuri) mai repede, mai eficient și, de cele mai multe ori, din confortul propriilor lor case. Prin urmare, mult mai mult decât înainte, marketerii trebuie să se asigure că produsele și serviciile lor furnizează beneficiile și valorile corecte și sunt poziționate eficient pentru a ajunge la consumatori. (Schiffman & Kanuk, 2009).

Prin urmare, precum în lumea reală – în mediul offline – există atât aspecte pozitive, cât şi aspecte negative în lumea virtuală, în efervescentul mediu online aflat în continuă expansiune.

Concluzii

În ziua de astăzi, atât consumatorii, companiile producătoare, cât și furnizorii de servicii se întâlnesc în mediul virtual în modalități care nu au mai fost experientate până acum. Transmisia extrem de rapidă a informațiilor afectează viteza cu care se dezvoltă noile tendințe și direcția acestora, în special datorită faptului că lumea virtuală îi încurajează pe consumatori să participe la crearea și distribuția de noi produse (Solomon, 2009) prin intermediul serviciilor online. Cu toate acestea, este important să distingem între promovarea activității proprii a întreprinderii (de exemplu, asigurările) și furnizarea de servicii suplimentare pentru a îmbunătăți oferta de produse (de exemplu, achiziția de produse online sau rezervarea vacanțelor). Cea mai mare parte a utilizărilor Internetului

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se referă la serviciile suplimentare de transfer informațional legate de produs și nu de prezentarea online a produsului (Lovelock *et al*., 2008).

Pentru a-şi folosi potenţialul în mediul virtual cu maximum de eficienţă, organizaţiile din domeniu trebuie să îşi modeleze deciziile de marketing ţinând cont de relaţiile pe care le au cu toţi stakeholderii lor şi să vizeze construirea unor relaţii pe termen lung cu clienţii în vederea fundamentării procesului de ataşament şi a comportamentului lor în mediul online.

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GENERAL REPORT ON SUBJECTS IN THE MATTER OF LEGAL GENERAL THEORY OF LAW

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Abstract:Any legal relationship has its source in acts of reason and subjects the legal relationship can only people, either individually or grouped in organized forms may enter law relationships among themselves and with the state, with state bodies, organizations economic or non-governmental organizations, the condition being that they possess legal capacity, capacity utilization, capacity, to holders of rights and obligations.
Key-words: legal relationship, subjects, legal capacity, rights, obligations.

Before beginning an analysis of the problem of subjective rights holders, it must draw the attention to the fact that, often, using notions of person in a legal sense, of law subject and personality is confused. We understand by the notion of law subject a right holder. By juridical personality we understand the ability of being active or passive holder of subjective rights and obligations recognized by the objective right of each person. A person in a legal sense designates any entity capable of being the subject of rights and obligations, or, in a broader sense, by legal functions.[1]

Any legal relationship is rooted in acts of reason. The right, cannot, therefore be, but only a rational order in society by systematizing activities that may occur in it. The right is thus the result of man's rational thinking. If we want to clarify the relation between law and civil law issues, we are obliged to refer to the relationship between man and righteous. Man-made law, the law, is not in itself a source of legal relations; under conditions determined by the legal standard of objective law, it must always intervene a social fact, producing certain legal effects, consisting in birth, modification or termination of specific civil legal relations. Law and legal subjects are, therefore, distinct concepts,

[1] Dan Claudiu Dănișor, Ion Dogaru, Gheorghe Dănișor, *General theory of law*, ed.a-2-a, București, ed,C.H. Beek, 2008, p. 313.

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but closely interrelated; subjects of law cannot exist without the legal norm and legal norm appears to be the work of law subjects.[2]

Only people can be subjects of legal relations, either individually or grouped in organized forms. The State recognizes and protects people with such a quality, if needed by achieving specific credentials of the rightholders in various legal relations. The legal report's analysis in various papers, meets both the notion of ''subject of legal relation "and the" subject of law ".

Man is the subject of law; he participates in legal relations as a holder of rights and obligations under this quality recognition by rules of law. This ability of law recognized by human rights, of having legal obligations and rights, is called legal capacity. The law fixes both the moment of legal ability and its scope, the volume of rights and duties that can make the content of a legal relationship.[3]

Existence of a legal order requires at least two people. From a legal point of view, people may be individuals or individual subjects or legal entities collective subjects, the most numerous being legal persons.

Some subjects of legal relations may have rights, others may have obligations, or they might have both rights and obligations in a corollary. There are, then, legal relations where only one of the subjects is individualized, and on the other hand the holder of the obligation is undetermined and is represented by all other persons who must refrain from impeding in any way the exercise by the holder of the subjective right.For example, in a report of property, the holder of the subjective right is able to exercise unfettered prerogatives that the law grants him, while all others (erga omnes) are bound by the abstention from any action that would prevent him to enjoy his property. It can be seen that, while the owner is individualized, the other undetermined subjectis, individualizing only when the breach of its obligation prescribed time abstention.

A similar situation is found in its criminal law branch, where for example, holders of subjective rights (right to life, physical integrity, dignity, etc.) are individualized and

[2] Ernest Lupan, Dana A. Popescu, *Civil law, individual*, Bucureşti, ed. Lumina Lex, 1993, p.5-6.
[3] Nicolae Popa, *General theory of law*, universitary course, ediția 3, Bucureşti, ed.C. H. Beek, 2008, p. 218-219.

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those of obligations are unidentified, they personalizing when committing an offense, which gives rise to criminal legal relationship.[4]

Only people may be subject to legal relationship either individually, as individuals, or organized into different groups as collective subjects of law.

In order to be subject of law, the individual must have legal capacity. This designates the general and abstract ability of a person to have rights and obligations in the legal relationship. Legal capacity is governed by legal rules within each branch of law. We can therefore distinguish a legal capacity civil, criminal, administrative, etc.

Legal capacity is general, when it is not visated by a specific area and special when referring to a specific area, branch institution (ex. The legal capacity of military, of civils, etc.). Typically, organizations have a special legal capacity, because it is created for a specific purpose, being precisely their jurisdiction.

In general, legal capacity is unique. In the branch of civil law there are two aspects: legal capacity of use and legal capacity of exercice.[5]

Capacity of using is the general and abstract ability, recognized by the law of all people to have rights and obligations. The capacity of utilization is obtained, in principle, at birth, not conditional on mental integrity.

As an exception, the ability to use of a person may begin even before birth, being affected by how the condition that the fetus was born alive – due to the principle,, infans conceptus pro nato habetur quoties de commodis ejus agitur" "(conceived child should be considered designed as born, whenever it comes to its interest).

Exercise capacity is the ability of the person recognized by law to exercise its rights and to assume obligations within the framework of concrete legal relations.

Recognising the exercise capacity by the legislator, takes into account certain objective data about the opportunity to appreciate the person who knows the significance of his actions and the ability to anticipate the consequences of his actions.

Thus, in order to acquire the ability to exercise, two conditions must be met: the existence of capacity utilization and the existence of discernment. It is presumed to be indiscriminate and thus deprived of legal capacity, minors under 14 years and mentally

[4] Carmen Popa, *General theory of law*, Bucureşti, ed. Lumina Lex, 2001, p.236.
[5] Ion Craiovan, *Elementary Treaty of general theory of law*, Bucureşti, ed.ALLBeck, 2001, p. 246-247.

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deficient or alienated placed under judicial interdiction. Minors between 14 and 18 law recognizes a limited legal capacity, and with achievement of 18 years, exercise capacity is full.

It follows that the individual may be capable of utilization without having legal capacity. So the person who has legal capacity has involved that kind of use.[6]

Legal subjects (its individual or organizations), having legal capacity, don't automatically occur as bearers of rights and obligations determined concrete legal relations; they appear as holders faculty recognized by law to have rights and obligations in the future.

Legal capacity analysis, from the standpoint of theory of law, involves considering the characteristic features circulation of participation in all branches of law. Legal Capacity category substantiation of theory of law is a legal aspect of legal scientific methodology; for this reason, the approach can not be limited to a science branch; he must highlight the significant qualities of being a subject of law in all legal relationships and to put aside individual differences, insignificant event in a legal capacity or in another branch.

In view of all forms of manifestation of legal capacity, in legal theory, it was concluded that the classification of legal capacity can be achieved in general ability and special ability. General legal capacity is the ability to participate as a holder of rights and legal obligations, in principle, in all legal relationships, without the fact that the law conditions such a participation on fulfillment of some qualities. Special legal capacity is the possibility recognized by the law to participate as a subject of law, in relation to certain conditions to be met (eg: collective civil law issues, administrative law state bodies etc.).[7]

After the conduct of legal relations, as individual actions or activities as collective actions, the subjects of legal relationship may be classified as: individual subjects and

[6] Radu I.Motica, Gheorghe Mihai, *General theory of law*, București, ed.All Beck, 2001, p.210 – 211
[7] Nicolae Popa, *General theory of law, ediția 3*, București, ed.C. H. Beck, 2008, p. 220 – 221.

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collective subjects. Individual subjects are,in civil law, individuals, and in constitutional law, citizens, etc. Collective subjects are, also, considered variable, as branches of law.[8]

The subjects of juridical reports classified in: individual subjects – person, as subject – and colective subject. This clasification takes into account by the fact that the human activity can take place in the form of individual and collective actions. Collective subjects have their fundamental in real existence of the collective form of activity.[9]

The phisical person designate the individual, conceived as a bio-psycho-social entity, to whom the law recognizes the ability to participate in the legal life, becoming legal subject of legal relations.

The individual has the longest range of participation in the sphere of legal repport and concerns: state citizens, foreigners and stateless persons, as human individuals.

In principle, citizens of the country can participate in all legal relationships, rejoicing in this sense by the general legal capacity.

In certain limits, it can have the quality of legal subject, foreigners and persons without citizenship, the reglementating competence of these relations belonging to international public law.[10]

The quality of legal subject is attributed and recognized to human by the state, through legal regulations concerning his condition. In order that person participates in a legal relationship, he must have legal capacity. Legal capacity means general ability and abstract ability of individual to have rights and obligations in the legal relationship.

Subjects of juridical report could be both individuals and juridical persons. In this context, the terme of „person" has a technical sense than the ordinary language, designating not only the person but also a social group. The word „person" indicates a characterique that is commun also to the individual, but also to the social group, ie. that of subject of right and obligations. The individual is accepted as a holder of rights and obligations, as it is a rational being endowed with free will, capable aware of their rights and the obligations, which aims to be pursued by his conduct, by his actions. In modern

[8] Nicolae Grădinaru, I. Mihalcea, Tiberiu Savu, Mihaela Agheniței, Florentina Dorobanțu, *General theory of law*, Bucuresti, Editura Independența economică, 2005, p. 97.
[9] Anita Naschitz, *Theory and technique in the process of law creation,*București, editura Academiei, 1969, p. 88.
[10] Radu I.Motica, Gheorghe Mihai, *General theory of law,*, București, ed.All Beck, 2001, p. 211-212.

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society, the quality of legal subject is recognized to any individual, without discrimination, restraint of legal capacity being allowed exceptionally and this, only as protection of the individual.[11]

Instead of persons of individual law subjects, there are legal collective subjects. Those subjects can be classified as: the state, state authorities, juridical persons.

The state is subject of law in the following juridical reports: in the sphere of international law, in the sphere of constitutional law, in the field of property relations.

The state is the subject of international law, either directly on the basis of treaties, conventions which they conclude with other states, other than those concluded by certain organizations to import or export. Those treaties and conventions suppose the complying, the conclusion and implementation of their principles of law, universally accepted and international recognized.

The state is the subject of law in the constitutional relationship as holder of sovereignty in legal relations on the territory of the State, acting on creating new provinces or regions, or redistribution or division of administrative-territorial. In the case of the federal state also law subjects and component states are law subjects. Between the federal state, on the one hand, and the member states, on the other hand, there are born legal relations in many areas, which are subject to special regulations.

The state is subject and the right ownership of means of production. It must be said, however, that concrete legal relations in the civil circuit, there are state organizations that actually have the right to direct operational management of property assets of the state. State law appears as right subject in those foreign trade, when they are concluded commercial representations in the name of the state.[12]

Public authorities - legal subjects. In the process of realizing the law, participation of authorities - the legislative bodies, government bodies, organs of justice - is performed in relation to the power reserved by the Constitution and laws of organization and functioning of each category of bodies and each body part. Vested with competence, these subjects participate as carriers of state authority in one area or another. As subjects

[11] Sofia Popescu, *General theory of law*, Bucureşti, ed. Lumina Lex, 2000, p. 228-229.
[12] Dumitru Maziliu, *General theory of law, ediția a-II-a, revizuită și adăugită*, Bucureşti ed.All Beck, 2000, p.307-308.

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of law, public authorities fulfill at least three categories of skills: the exercise of state administration in various fields, solving the problems of the legal claims of legal subjects over others and ensuring to the constraint state where necessary, restoring order violated recover damages. Parliament is the subject of constitutional law in relations concerning, for example, election or revocation of the government, control of the activity of some organs etc

In the field of public social order, defense and free exercise and unhindered constitutional rights of citizens, of the defense of public or private property and the state order, they participate as subjects of law, prosecution and the Interne Ministery and Administrative Reform. These organizations participate in the name of the State in legal complexe relations, by material and procedural law, where there is manifested the state authority, expressed in volume of rights conferred to the organs and causing them numerous skills and procedural guarantees as well as special control sistem. Analyzing the authorities participation at legal relationships, we can retain that specific to this participation is the fact that their rights in comparison with other topics, constitute at the same time, also their obligations. If the person may dispose by the exercise of its rights, in return the public authority is obliged to exercise rights (Financial organ is obliged to apply and collect tax, the court is obliged to solution the case which has been vested, the prosecuting authority is obliged to act for the discovery of a perpetrator, etc.).[13]

Legal persons are collective people, with organizational self-reliant (implying a definite structure), their own assets, distinct from the members that make it up and in agreement with the general interests of society, that should not contravene to the morality and public order.[14]

The legal entity is a social entity self-contained organized, with its own patrimony and a determinant purpose in accordance with the general interest, which has its own legal existence and it is capable, as such, to be subject of legal reports.

Such persons are called improperly << collective subjects >>. This agreement is fundamentally wrong. Not the collective of people associates in order to create a legal

[13] Nicolae Popa, *General theory of law, universitary course, ediția 3*, Bucureşti, ed.C. H. Beek, 2008, p. 224-225.
[14] Radu I.Motica, Gheorghe Mihai, *General theory of law,* Bucureşti, ed.All Beck, 2001, p.213.

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entity, appears as a matter of law, but the legal entity in its quality of subject of individual right. The teams have no rights. Only their legal personification creates rights, not those of the group, but of the organization that takes different personality in comparison with that of the group members.

It does not matter the nature of legal relations. Whether there are relations of private law or public, legal persons, social organizations that have the quality of being subject of legal relation, appear as legal entities, ie. as entities endowed with legal personality.

The characteristic elements of the legal person are, in terms of the general theory of law: independent organizing; its purpose in accordance with the general interest; own patrimony distinct from those of associations and legally distinct individuality.[15]

According to dr.Carmen Popa, the main categories of juridical persons are:
public juridical persons: state and its organs, administrative-territorial units
(County, city, town, village), prefectures, town halls. Since they can participate as legal persons in civil and commercial relationships, their legal capacity is higher than the other juridical persons.
b) mixed legal person created by law, but which whom they have competences and structures related also on private law: public organizations in the economic sector, where the initiative of creating belongs to the state, but by mode of action and management have private nature, commercial, as they are for example, autonomous administrations and companies, in which the state is the majority shareholder, professional associations established on the basis of professional activity of public interest and established by law (associations of lawyers, notaries, doctors, etc.).

c) Legal persons established by the will of private individuals, such as political parties established according to art.1 law nb. 27/1996[16], unions formed under art. 19 of Law 54/1991[17], associations and foundations that can be set up in accordance with O.G. nr. 26/2000[18] , companies formed under Law no. 31/1990[19] completed and modified by O.G.

[15] Dan Claudiu Dănișor, Ion Dogaru, Gheorghe Dănișor, *General theory of law, ed.a-2-a*, București, ed,C.H. Beek, 2008, p. 320-321.
[16] Legea nr. 27/1996, publicată în M.Of. nr. 87 din 29 aprilie 1996.
[17] Legea nr. 54/1991, publicată în M.Of. nr. 54 din 01 august 1991.
[18] O.G. nr. 26/2000, publicată în M.Of. nr. 39 din 31 ianuarie 2000.

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no. 22/1997[20] (collective companies, limited partnerships, limited liability companies, joint stock companies), as well as handicraft, consumer credit established by their members by pooling the basis of their expressed consent of activity and means of production,etc.[21]

Legal personality does not exhaust the capacity of law subject to collective subjects, and there are collective subjects that are not legal entities (eg. The courts).[22]

It should be understood that there are only two ways to be subject of legal relations: either the quality of an individual or the legal entity. The concept of person in the legal sense is exclusive. Only if a reality is recognized by law as a person she can participate as such in legal relations.[23]

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[19] Legea nr. 31/1990, republicată în M.Of. nr. 1066 din 17 noiembrie 2004.
[20] O.G. nr.22/1997 publicată în M.Of. nr. 200 din 20 august 1007.
[21] Carmen Popa, *Teoria generală a dreptului*, București, Lumina Lex, 2001, p.245-246.
[22] Radu I.Motica, Gheorghe Mihai, *General theory of law*, București, ed.All Beck, 2001, p. 214.
[23]Dan Claudiu Dănișor, I. Dogaru, Gh. Dănișor, *General theory of law, ediția a 2-a*, ed.C. H. Beck, București, 2008, p. 324.

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MODERN (LIBERAL) CONSTITUTIONALISM AND DEMOCRACY. FEATURES, INTERACTIONS, CONNECTIONS

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Abstract:Democracy, like constitutionalism, projects the interaction between people (demos) and power (kratos). The people are the ones holding the political power, which can be exercised directly (direct democracy) or mediated by representatives (indirect democracy). In the latter case, the power conferred to representatives can not be used against its original holders. When this exercise becomes abusive, democracy - alone – lacks the institutional levers necessary to negotiate or to eliminate politico-social conflicts between legal order and social order.

Democracy's tools are not, through isolation, capable to prevent or resolve power abusing. The theoretical and practical tools offered by the ideology of constitutionalism are the ones designed, through their nature and purpose, to prevent and, when is required , to resolve conflicts between political power and state power.

In this article, we will highlight the features of modern constitutionalism (liberal) and of democracy, the connection and interaction between them, emphasizing, thus, what we call constitutional democracy.

Keywords: constitutionalism, constitution, democracy, people, political power, state power

Constituţionalismul moderna apărutşis-a dezvoltatprincultivarea unor valori, principii,instituţiişimecanismemenitesăsteaîmpotrivaabsolutismului monarhicşiîn favoarea egalităţiişilibertăţiiindivizilor[1].Articolul 16 din*Declaraţia franceză a drepturilor omului şi cetăţeanului*din 1789 stabilea că*orice societate încare*

[1]G.SARTORI,*Constitutionalism:APreliminary Analysis*,AmericanPoliticalScienceReview,Vol.56,nr.4, 1962,p.853.C.H.MCILWAIN,*Constitutionalism:AncientandModern*,CornellUniversityPress,Ithaca,New York,1947.

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garanţiadrepturilornuesteasigurată,niciseparaţia puterilorstabilită,nu areconstituţie.Caatare,constituţionalismulmodernşi-apropus garantarea eficientă a drepturilor şi libertăţilor fundamentale ale omului, respectiv promovarea principiuluiseparaţieiputerilorcauninstrumentalsiguranţei cetăţenilor. Separaţia şiechilibrul puterilorînstata devenituninstrumentpentruîmblânzirea puterii statale. Prinprismacoordonateloracestuiprincipiu constituţional,pusînlegăturăcu principiulsuveranităţiipopulare/naţionale şiprincipiulguvernământuluireprezentativ,s-a născut regimul parlamentar (mai întâi, în variantasa dualistă[2]).

În consecință, se proiectează și legătura dintre constituționalism și democrație, raportul de putere dintre puterea politică, aparținând poporului/ națiunii, și puterea statală.

La începutul evoluţiei statelor moderne, puterea statală era considerată a fi suverană în mod necondiţionat. Era o putere ce nu putea să fie limitată. Această concepţie poate fi observată, de exemplu, la T.Hobbes[3]. Democraţia a apărut în peisajul constituţionalismului în momentul în care s-a promovat ideea că un guvernământ poate funcţiona în mod legitim doar dacă are la bază consimţământul guvernaţilor. O astfel de viziune decelăm încă din secolul al XVII-lea, în lucrările lui J. Locke[4]. Suveranitatea poporului, în acea etapă istorică, a fost evaluată – teoretic – ca o emancipare colectivă. J. Locke a accentuat ideea că poporul era originea legitimităţii guvernantului şi că binele indivizilor care îl compun, tradus sub forma unor drepturi naturale, nu putea să fie ignorat. Astfel a justificat suveranitatea poporului. Potrivit raţiunii sale, valabilă şi astăzi, puterea guvernantului nu poate să fie exercitată împotriva poporului, întrucât cel dintâi nu are decât o putere conferită de cel de al doilea – guvernatul.

Maxima potrivit căreia *ceea ce afectează pe toţi, trebuie să fie aprobat de toţi* s-a referit, la acea vreme, la ideea că nu poate exista o putere legitimă fără consimţământul

[2]Răspundereapoliticăaguvernuluierabidirecţională;acestarăspundeaatâtînfaţaparlamentuluicâtşiîn faţamonarhului. Dublarăspundereafostoconsecinţăalimităriitreptateaputeriimonarhului.Apariţia constituţionalismului modernliberals-aidentificatcumonarhialimitatăşi,lascurttimp,curegimul parlamentar dualist.Expresialimitării şiechilibrării puterilorînstatacontinuatsăpunământul încentrul procesuluidemoderare.Putereasaatrebuitsăfieredusăşimaimultpentruaseputeadaunconturmai puternic regimului reprezentativ. Drept urmare, spre sfârşitul secolului al XIX-lea, s-a aşezat o putere executivă clardeţinutădeunguvern răspunzătordoarînfaţaparlamentului–regimul parlamentarmonist (M. MORABITO,*Histoireconstitutionnelledela France(1789-1958)*,9 édition,Montchrestien,Paris,2006,p. 305).

[3]T.HOBBES,*Despreomşisocietate*, traducere deO.GramaşiM.Mamulea, Edit.ALL, Bucureşti,2011.

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guvernaţilor şi nu la instituirea unor proceduri de vot. Semnificaţia maximei era una de ordin moral. Guvernantul era ţinut să guverneze în interesul comun. Scopul era, deci, să se afirme că societatea este atât sursa cât şi obiectul autorităţii politice.

În altă ordine de idei, suveranitatea populară nu era activă, ci pasivă. Din acest punct de vedere, idealul democraţiei nu era încă conturat. Absenţa opoziţiei echivala cu menţinerea consimţământului. Prin *demos* şi *kratos* s-a făcut distincţie între guvernantul bun, legitim, care era devotat poporului, şi guvernantul rău, care îşi cultiva doar propriul interes. Sub acest aspect, ideile democratice s-au legat de idealurile constituţionale prin poziţia antidespotică. Astfel, constituţionalismul a preluat şi înglobat *demos*-ul şi *kratos*-ul pentru a justifica şi măsura legitimitatea acţiunilor guvernantului.

Ideea participării active a poporului la guvernare a apărut mai târziu. J.J. Rousseau a exclamat cerinţa guvernării poporului prin el însuşi. Teoria sa despre voinţa generală, ce trebuia să fie transformată în lege, ignora, însă, voinţa sau interesele minorităţii. Conform filosofului francez, minoritatea trebuia să fie recunoscătoare majorităţii pentru faptul că, prin conturarea unei voinţe generale, o elibera de riscul trăirii unor greşeli. Faptul că minoritatea putea să fie privată de drepturi fundamentale nu a contat pentru J.J. Rousseau, în pofida faptului că a caracterizat drepturile individului ca fiind indivizibile şi inalienabile. În numele formulei din urmă, Rousseau a respins ideea reprezentării[5]: *Suveranitatea nu poate fi reprezentată din aceeaşi raţiune că ea nu poate fi înstrăinată. Ea consistă esenţial în voinţa generală şi voinţa generală nu se poate reprezenta. Toate legile pe care poporul în persoană nu le-a ratificat, nu sunt legi.* În schimb, pentru Montesquieu, antipodul lui J.J. Rousseau, guvernământul reprezentativ era indispensabil, întrucât autoguvernarea nu era doar periculoasă, înlocuind absolutismul monarhic cu cel democratic, ci şi imposibilă. Acesta a pornit de la ideea suveranităţii naţionale, potrivit căreia suveranitatea aparţine naţiunii ca entitate colectivă. De vreme ce voinţa natiunii nu putea să fie exprimată de ea însăşi, a delegat - în întregul ei-, printr-un mandat colectiv şi general, puterea unor reprezentanţi generali.

[5] J.J. Rousseau a acceptat ideea reprezentării doar sub forma în care cei aleşi nu erau decât simpli mandatari ai celor reprezentaţi, urmând să facă cunoscută voinţa imperativă a acestora – era vorba de un mandat imperativ (J.J. ROUSSEAU, *Contractulsocial*,Edit.Mondero,Bucureşti,2007).

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Moderarea ideii poporului guvernant a dus la ideea participării poporului la guvernare. Este vorba de trecerea la *democraţia indirectă*, caracterizată ca un sistem în care coexistă principiul reprezentativităţii şi principiul democraţiei pure (directe), în sensul că, pe lângă organul legiuitor ales, mai sunt instituţionalizate şi mijloace de intervenţie directă a poporului în procesul legiferării.

Astfel, democraţia, asemeni constituţionalismului, a început să determine interacţiunea dintre popor (*demos*) şi putere (*kratos*).

Poporul deţine puterea politică şi o utilizează în mod nemijlocit (democraţie directă) sau mijlocit, prin reprezentanţi (democraţie indirectă). Potrivit principiilor democraţiei indirecte, reprezentanţii trebuie să fie aleşi *în mod corect* pentru a exercita puterea de stat *în mod legitim*. Această putere, dobândită prin votul de încredere al poporului, îşi menţine caracterul legitim atât timp cât este exercitată *în interesul şi beneficiul celor reprezentaţi*[6]. Din moment ce democraţia este un sistem de guvernare în care cetăţenii participă la procesul de conducere, puterea conferită reprezentanţilor nu poate să fie folosită împotriva titularilor puterii politice. Totuşi, când exercitarea puterii devine abuzivă, democraţia – singură – nu dispune de pârghiile instituţionale necesare pentru a elimina conflictele politico-sociale din ordinea de drept şi ordinea socială. Ba mai mult, raporturile de putere create prin democraţie tind, prin felul competenţelor atribuite, să intre pe căi opuse, contrare scopurilor ori obligaţiilor iniţiale. Instrumentarul democraţiei nu este, în mod izolat, apt să evite abuzurile de putere. Instrumentele teoretice şi practice oferite de ideologia constituţionalismului modern sunt cele care, prin natura şi scopurile lor, sunt apte să prevină şi, după caz, să soluţioneze conflictele dintre puterea politică şi puterea statală.

Sesizăm şi o dificultate în a reţine faptul ca democraţia poate fi efectivă în absenţa unui fond constituţional. *Poate să existe democraţie fără drepturile constituţionale: libertatea de exprimare, libertatea de asociere şi dreptul de a alege şi a fi ales?Poate să existe o societate liberă, o societate capabilă să decidă asupra unor probleme politice şi sociale, în lipsa unor instituţii reprezentative (democratice) care să opereze într-un cadru constituţional?* Privind problema dintr-o asemenea perspectivă, democraţia se

[6] Puterea de stat nu este altceva decat o parte instituţionalzată a puterii politice. Ne aflăm în faţa unui raport de la întreg la parte şi invers.

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întrepătrunde cu constituţionalismul, rezultând o *democraţie constituţională*. Constituţionalismul, punând accent pe libertatea individului, este compatibil cu principiile democraţiei. Ba mai mult, după caz, fiecare îşi conturează eficacitatea pe bază de reciprocitate. Constituţionalismul modern (liberal) garantează drepturile şi instituţiile care fac democraţia posibilă[7]; în lipsa lor, nu ar putea să existe cu adevărat o societate deliberativă, democratică.

Constituţionalismul garantează democraţia, dar nu şi invers. În acest sens, în doctrină se apreciază că democraţia este de succes atunci când este completată de principii şi instituţii constituţionale[8]. Se vorbeşte despre o democraţie constituţională acolo unde principiile democratice şi constituţionale se împletesc cu succes şi-n practică, având drept scop proteguirea libertăţii şi egalităţii indivizilor.O constituţie democratică efectivă face ca factori precum averea sau statutul social să nu influenţeze posibilitatea exercitării drepturilor şi libertăţilor consacrate constituţional. Forţa economică a unui individ poate să fie decisivă pentru obiectivarea scopului unui drept, spre exemplu obţinerea unui mandat de reprezentare – ca finalitate a dreptului de a fi ales –, fără să se reţină o lezare a spiritului constituţionalismului ori democraţiei. Împletirea principiilor constituţionale cu cele democratice impune regula potrivit căreia averea, statutul unei persoane sau orice alte asemenea împrejurări nu trebuie să aibă valoarea unei *chei de acces* la drepturile şi libertăţile recunoscute de legea fundamentală. Bineînţeles, aceasta realitate nu trebuie să fie privită prin prisma unei egalităţi absolute în drepturi. Unele drepturi sunt exclusive. Egalitatea în drepturi nu denotă faptul că oricare este calificat pentru orice – pentru valorificarea tuturor drepturilor –, ci faptul că oricine care îndeplineşte anumite criterii general valabile poate să devină subiectul exercitării anumitor drepturi, cum ar fi drepturile exclusiv politice.

[7]J. I. COLON-RIOS, *Weak Cosntitutionalsim: Democratic Legitimiacy and The Question of Constituent Power*, Victoria University of Wellington Legal Research Paper No. 33/2012, p.1, http://ssrn.com/abstract=2120240 , pagină accesată în data de 04.05.2016.

[8] N. WALKER, *Constitutionalism and the Incompleteness of Democracy: An Iterative Relationship* (July 28, 2010). University of Edinburgh School of Law Working Paper No. 2010/25, http://ssrn.com/abstract=1650016, pagină accesată în data de 23.04.2016; W. OSIATYINSKI, *Constitutionalism, Demcoracy, Constitutional Culutre*, în "Constitutional Cultures", M. Wyrzkowski (ed.), Institute of Public Affairs, Varsovia, 2003, p. 150.

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Democraţia este un mod de guvernare ce permite poporului să participe la conducerea statului. Precum constituţionalismul, democraţia s-a născut în favoarea libertăţii poporului şi îşi păstrează rostul şi natura specifică atât timp cât acest sens este menţinut. Drept urmare, atunci când reprezentanţii ignoră voinţa poporului, raportul de reprezentare nu mai exista, pierzându-şi legitimitatea. De aceea se consideră că orice revizuire constituţională ar trebui să treacă prin filtrul electoratului pentru a fi legitimă. Se deduce că nu doar puterea legislativă ar trebui să poată propune revizuiri, ci şi poporul. Principiile democraţiei stau drept piloni în susţinerea ideii potrivit căreia cetăţenii trebuie să aibă posibilitatea de a propune, de a delibera şi de a decide asupra celor mai importante transformări constituţionale prin căi participative clare, cum ar fi votul. Constituţionalismul modern (de factură liberală) a îmbrăţişat această viziune democratică[9], instituind astfel de mecanisme deliberative şi participative (ofensive şi defensive) în mâinile guvernaţilor, ca garanţii împotriva abuzurilor. Acolo unde puterea de revizuire a constituţiei stă exclusiv în contul puterii legislative, fără a fi nevoie de o confirmare populară, democraţia este scoasă din peisaj, chiar dacă, la modul principial, se consideră că voinţa reprezentanţilor evocă – în mod indirect – voinţa poporului. Democraţia nu se confundă cu ideea că deciziile trebuie să fie luate, în virtutea raportului de reprezentativitate, numai de cei care au fost puşi, prin vot, în poziţia de reprezentanţi. Privită doar dintr-un asemenea unghi, democraţia ar putea favoriza concentrarea puterii în mâinile guvernanţilor[10], împrejurare împotriva căreia constituţionalismul s-a dezvoltat.

Putem spune, aşadar, că ideile constituţionalismului dau rost practic democraţiei, previn "tirania majorităţii", în vreme ce democraţia dă contur raţional protecţiei individului împotriva abuzurilor din partea reprezentanţilor. Unele drepturi constituţionale sunt constitutive pentru democraţie, iar altele stau drept garanţie. Puterea nu poate fi folosită în contra celor care au conferit-o spre exercitare în numele şi-n interesul lor. Puterea de stat, în baza principiilor constituţionalismului şi democraţiei, este o putere delegată, o putere derivată şi condiţionată.

[9] J. I. COLON-RIOS, *op. cit.*, pp. 4-5. (http://ssrn.com/abstract=2120240)
[10] Una din obiecţiile lui Jean Jacques Rousseau împotriva democraţiei reprezentative era că reprezentanţii, după ce sunt aleşi, nu mai pot fi controlaţi de alegători: *Poporul englez se crede liber, dar greşeşte. El este liber doar în timpul alegerilor parlamentare: membrii parlamentului fiind aleşi, poporul iar cade în sclavie şi devine nimic*. (J. J. ROUSSEAU, *op. cit.*, p. 108.)

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Democraţia constituţională poate fi privită, sub accente democratice, ca reprezentând puterea majorităţilor anterioare asupra celor prezente şi viitoare[11]. Bineînţeles, aceasta nu înseamnă că, dacă realităţile constituţionale se schimbă, constituţia nu se poate modifica. Democraţia constituţională nu evocă un dictat al majorităţii, ci o legitimitate a majorităţii, o legitimitate care nu trebuie să fie artificială. Legitimitatea nu e veşnică. Legitimitatea este recunoscută ca atare atât timp cât îşi menţine fundamentul, scopul pentru care a fost recunoscută. Dacă motivele şi datele sociale care au generat-o nu îi mai pot sta drept fundament, înseamnă că aceasta nu mai exprimă o voinţă majoritară, o voinţă populară. Astfel, o constituţie trebuie să fie deschisă revizuirii, dar într-un mod nuanţat. Ea trebuie să protejeze, cu cerinţa valabilităţii, acele valori percepute ca fiind specifice identităţii poporului, respectiv acele reguli ce s-au dovedit ori sunt considerate a fi esenţiale pentru cultivarea unui regim constituţional autentic. Dacă se impun revizuiri largi, o nouă voinţă populară se poate transpune, prin intermediul unei puteri constituante, într-o nouă lege fundamentală. Cea din urmă, odată constituită, nu acordă o nouă constituţie, ci consemnează realitatea noii ordini constituţionale ce trebuie confirmată de o majoritate populară, potrivit principiilor democraţiei. Constituţia este un element de legătură cu viitoarele generaţii, bazat pe considerente de protecţie, şi nu pe idei de constrângere.

Într-o asemenea ordine de idei, întrebări interesante se pot ridica în cazul transplanturilor constituţionale[12], *e.g.*: poate o lege fundamentală transplantată să formeze o legătură subiectivă între generaţii, mai cu seamă între prima generaţie şi cea imediat următoare?; supravieţuirea unei Constituţii de-a lungul mai multor schimburi de generaţii presupune concluzia existenţei unei legi fundamentale efective, care respectă principiile constituţionalismului modern?; acceptările temporale succesive din partea poporului indică un transplant constituţional de succes şi, implicit, o legătură subiectivă între

[11] A. LARRY, *Constitutional Rules, Constitutional Standards, and Constitutional Settlement: Marbury v. Madison and the Case for Judicial Supremacy,* Constitutional Commentary, Forthcoming, Vol. 20, Issue 2, 2003, p. 373 (pp. 369-378).

[12] Fenomenul transplantului constituţional se referă la situaţia în care un sistem de drept preia norme, instituţii, concepte constituţionale şi chiar regimuri politice din alte sisteme de drept; transplantul constituţional poate fi înţeles şi ca un proces prin care «elemente constituţionale» se răspândesc şi exercită influenţe pe plan internaţional. În explorarea problematicii circulaţiei modelelor juridice în lume întâlnim numeroase metafore: împrumut juridic, transpoziţie juridică, import juridic, iritaţie juridică, fertilizare juridică ş.a.. Pentru o scurtă analiză asupra *transplantului constituţional*, a se vedea R.C. ROGHINĂ**,** *Transplantul constituţional*, RDPb, Edit. Universul Juridic, nr. 4/2012.

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generaţii? O constituţie impusă poate să se transforme într-o constituţie proprie, care să nu fie tolerată, ci acceptată datorită proteguirii sociale pe care o implică? Răspunsurile pot varia, ipotezele implicate fiind numeroase. Cert este că analiza unui transplant constituţional nu se face doar prin prisma formelor normative şi instituţionale transplantate, ci şi prin prisma conţinutului acestora. Toate elementele puse sub analiza trebuie să fie raportate la desfăşurarea lor – negativă sau pozitivă – din practică. Reperele teoretice ale analizei trebuie să fie elementele constitutive ale ideologiei constituţionalismului, cele care – prin efectivitatea lor practică – duc la reţinerea unui regim constituţional autentic, bazat pe o constituţie incontestabilă.

De asemenea, dacă raportăm democraţia la Constituţie, ca şi mod de evaluare, trebuie avute în vedere anumite chestiuni. Existenţa unei legi fundamentale scrise nu este suficientă pentru încadrarea unui sistem de drept în constituţionalism. Constituţia poate să formuleze un sistem de guvernare totalitar, deci antidemocratic. Pentru a caracteriza un stat ca fiind democratic, trebuie să descoperim dacă legea fundamentală a respectivului stat oferă alegeri regulate, corecte şi accesibile cetăţenilor sub forma dreptului de a se asocia politic şi de a-şi exprima liber opiniile politice fără teamă de represiune. De asemenea, după cum deja s-a subliniat, realizarea democraţiei presupune şi existenţa unor mecanisme constituţionale de adoptare şi revizuire deschise participării populare, atât în forma discuţiilor libere, cât şi a iniţiativelor constituţionale şi a votului aprobativ concret.

Democraţia are nevoie de o constituţie într-o formă scrisă? Cert este că există democraţie şi acolo unde nu există o constituţie scrisă. Spre exemplu, Marea Britanie este o ţară democratică care respectă principiile constituţionale fără să aibă parte de o lege fundamentală scrisă. Ca atare, considerăm că întrebarea corectă este: *are democraţia nevoie de o constituţie?* Dacă ne referim la democraţie ca la un mod de transpunere instituţională a voinţei majorităţii membrilor unei societăţi, constituţia nu pare să fie necesară pentru ca suveranitatea poporului să-şi găsească proiectare socială prin exercitarea puterii de câte reprezentanţi[13]. Principiile suveranităţii poporului şi, indirect, ale suveranităţii parlamentului, ca organ reprezentativ suprem, par a fi suficiente pentru deziderateleе populare. Dar, după cum istoria dreptului ne arată fără echivoc, fără o

[13]W. OSIATYINSKI, *op. cit.*, p. 152.

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diviziune a puterii, fără o diluare instituţională a acesteia şi fără o garanţie efectivă pentru protecţia drepturilor şi libertăţilor fundamentale ale omului, puterea tinde să devină abuzivă[14].

Constituţionalismul îmbracă democraţia, îi umple golurile şi o confirmă în practică[15]. Democraţia poate fi o ameninţare la adresa drepturilor individuale atunci când, de exemplu, o majoritate parlamentară este tentată să manipuleze drepturile politice pentru a-şi creşte şansele de a fi reconfirmată în urma alegerilor[16]. De aceea, democraţia, privită ca o combinaţie dintre principiului reprezentativităţii, principiul separaţiei puterilor şi principiul general al limitării puterii statale, nu poate să supravieţuiască în afara practicilor constituţionale[17]. Nu există o democraţie modernă fără principii constituţionale[18].

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[15]W. OSIATYINSKI**,** *op. cit.*, p. 152**.**
[16]*Ibidem*, p. 153**.**
[17]*Ibidem.*
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THE IMPACT OF TECHNOLOGICAL CHANGES ON HUMAN RESOURCE MANAGEMENT

Elena Sabina Hodor

PhD

Abstract: In the current economic environment, the technological innovations have direct influences on the business markets, suppliers, distributors, competitors and customers. In most of the cases, adopting technology contributes to the strengthening of the competitive position of the organizations. There is also an indirect influence that propagates in the company's internal environment. This can lead to changes in the implementation of the production processes, marketing practices, human resource management, even in general management actions. Nowadays, employees are working fulltime in computerized production systems, which requires a different type of human resource management than had in the past the civil operators from the industrial market. The emergence of the new call centers for customers and teleworking (working away from the computer, connected to the network), are involving changes in the structure of the labor market and require new skills to the employees. This paper aims are to clasterizeze the main types of technologies that influence human resources development, and analyze both, the causes and the consequences after the introduction of various technologies in the staff duties.
Keywords: technology, human resources, total rewards, knowledge, work conditions.
JEL Classification:M54, O15, O32.

INTRODUCTION

In general, technology includes tools, machinery, equipment, procedures and know-how. The technological advances may develop new markets, or change the relative positions of firms in industries. Thus, as a consequence, the obtaining of products and services can be made more effective. The latest technological advances are in computers, lasers, robots, satellite networks, fiber optics, biometrics, cloning, and so on. These and

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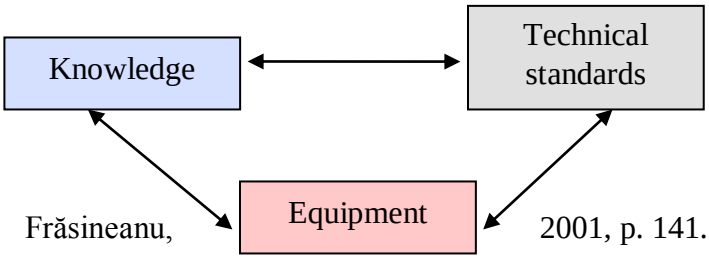
other related fields have improved the direction for significant operational improvements in the workforce.

Technology it is an aggregate of equipment, rules (technical rules) and knowledge, used to design a certain product, taking into account the profit obtained per product. Generally speaking, technology consists in three elements with equal value, as it follows:

Figure 1: The relationship between the defining elements of technology



Source: Băloiu and Frăsineanu, 2001, p. 141.

Equipments are mechanisms which allow to process the raw materials in order to obtain the final products;

Technical standards are rules to be followed in the operations of producing the products expected in given conditions. Know-how it is a key component which connects all these rules;

Knowledge brings theoretical background and is underlying the transformations that can appear in the production process.

As can be seen, technology it is one of the internal factors within an organization. This it means that only the company can act on it (can adapt it, fully or partially replace it). Regarding human resource management analysis and concidering the influences of new and different technologies, we are taking into account not only the production technologies, but also all the new technologies that can influence human resources, including the external environment. Of course, the diversity will be closely linked to the specificity of the company considered: a services organization usually works with information and communications technology (software, computer programs, etc.), for a butcher it will be analyzed human resource management taking into acoount the machines used (for the preparation of meat, for slicing products, and so on).

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THE MAIN TYPES OF TECHNOLOGIES

Technologies can be classified into the following main technological groups:

Communications technologies (e.g. phone central);

Technologies for managing production (e.g. scanners in supermarkets, forklifts, etc.);

Information technologies (e.g. software);

Production technologies (e.g. presses to produce sunflower oil, juice bottling machines, etc.).

The essential characteristics of technology are (Băloiu and Frăsineanu, 2001, p. 16):

Are used combined in most cases (e.g. to produce juice carbonated we need machines for washing fruits and separation of the shells of the pulp and juice, the filtration of the slurry obtained, pasteurization and filling; all are combined with specific know-how and knowledge that must be applied);

Are complex and costly (new technologies for engaging in activities of a firm requires highly skilled personnel for proper handling and effectively);

Are expansive (a new technology introduced on the market will generate even more successful emergence of others);

Are providing high value added (relying more on intelligence and less on matter and energy);

Are transversal (a technology can be used in several areas, totally different; e.g. a laser can be used in medicine-as a bistoury, in clothing industry-where it is useful in tailoring, in mechanics -where it is needed to process materials, and also ininformatics-where it proves its usefulness in reading CDs;

Are contagious (easily to be transferred from a domain to another).

The recourse to new technologies it is conditioned first of all by economic reasons (profit and competitiveness), the analysis of the financial status being indispensable and complementary for the discussions about the technological factors.

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Technological progress remains one of the main drivers for the competitive companies. Actually, it is used in order to increase the competitiveness. Therefore, the economic literature has emerged the concept of "technological vigil" (Băloiu and Frăsineanu, 2001, p. 403), which it means an organized activity composed from searching and structuring information needed to develop a company. This organization keep pace with trends in new technologies, in an environment that it is continually changing.

Depending on the way the company will choose to acquire, develop and then use technology, it will be observed the organization's technology strategy. This strategy will answer to three important questions: "What technologies will adopt and use the company?", "How technologically advanced it should be?", "What percent should have new technologies from total technology?".

CAUSES AND CONSEQUENCES OF USING TECHNOLOGY ON HUMAN RESOURCES

Armstrong (2009) includes technology in the contextual factors group that influence human resources policies and practices, along with competitive pressures and adverse effects on organization's employees. The author explains that the introduction of new technologies can lead to the need for new professional skills and new ways of working processes-which cand involve an extension of the qualified employees (including multi-skilled people) or a reduction of qualification simultaneously with the reduction of the jobs (restructuring the activity).

Technological change can influence (Sărătean, p. 45):

The jobs;

The nature of the work;

The working conditions.

It is possible that a technological change to suppress, and, simultaneously to create new jobs. As an example, the insertion of informatics in most areas led to the disappearance of posts dealing with archiving, filing, etc., and the emergence of others like- programmers, system engineers, analysts, etc. Another example it is the introduction of robots in handling objects-on the one hand are eliminated jobs related to

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manual charge and discharge and on the other hand are created new jobs in maintenance and repair robots, and so on.

In the most of the cases, the introduction of new technologies, rather suppress than create jobs. But analysts from this field believe that, on long term, technological changes do not lead to large reductions of positions because it lead to better productivity and competitive position on the market, which ultimately, are conductig to increases in the workload and thus, there are created new jobs for work. Instead, the joint effect of these deletions and creations of jobs are modifiying the distribution of the jobs by sector: there are massive migrations from primary and secondary sectors to the tertiary one.

Jean-Marie Peretti believes that "the acceleration of technological changes causes a more pronounced aging of the skills of the workforce", as they are influenced by the work content and skills required (Peretti, 1994, p. 18). Therefore, enterprises must monitoring the market for new technologies ("technological watch") and anticipate these influences on human resources management. Also, firms should ensure the training and development for the required skills in order to bring innovation in technology, as well as a possible recruitment of qualified staff.

An example of changing the nature of the work as a result of new technologies it is the teleworking: employees are working at home, using computer, phone and Internet to send letters and data at work. As a result, organizations and employees realize that are making savings on rents and transport. What must be considered here by the human resources department it is that these employees should be trained to perform this type of work, and being monitoring in the process of work on the obtained performance.

New technologies and the new created jobs often conduct to improvings on the physical context of the work (most modern technology involve a modernized space, a favorable climate conditions, and so on). But we can highlight also even the negative effects of new technologies: stress increased due to increased complexity, health problems (headaches, visual disturbances, etc). The working conditions can conduct also to better collaboration between managers, technicians and analysts, since their implementation requires a correlation between all company departments concerned. This will create confidence in the company, and development.

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The following table refers to the reducing of the number of employees as a result of new technologies, and it explains the causes of this measure and the consequences, offering recommendations to manage the possible scenarios:

Table 1: Staff reduction (causes, consequences) and the management of the remaining employees

CAUSES	**CONSEQUENCES**	**POSSIBLE ACTIONS**
Automation	Reducing wage expenses	Anger, distrust, and the shock must be treated properly
Restructuring	Removal of the surplus employees	Provide information on why the action had to be taken
Merger	Improves business operation if products and services are integrated successfully in a new company	Inform employees about how will be helped the firm and the employees on long-term
	There are shocks for those who leave the company	
Acquisition	There it is a shattering impact on employee motivation and morale, if it is not managed properly	Inform the employees about the benefits after purchasing and taking adaptation measures at the new job
Competitive pressures		Install a trusted environment in organization and execution of tasks by the employee left behind in order to save the company

Source: adapted from *A guest lecture on impact of technology on HRM,* P. B. S. Kumar, http://www.citehr.com/142252-technology-impact-hrm.html [accesed 2016].

Regardless of the cause for making dismissals, there must be encouraged the remaining staff, because the company must carry out the proposed objectives. Thus, the personnel must be motivated, supported, informed about the beneficial aspects of these actions, even if outsiders are perceived negatively the situation.

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On the grounds that technological change and are leading to boost productivity, "organizations must employ a concerted effort on the levels of research and development activities and human resources" (Sărătean, p. 45). Human resources have to adapt to the new context and new technological requirements of the jobs through training and a proper skills management, in order to obtain stability on long-term perspective, based on the future needs of the organization and personal goals of each employee. Skills management it is in turn correlated with activities such as: evaluation, compensation, career planning, etc.

CONCLUSIONS

The problems involved in using new technologies require human resource management, and are viewed in terms of skills, flexibility and adaptability. Thus, human resources managers will need to consider:

The current organization of work and changes that may occur in that area, which may lead to changes in the recruiting and selection of human resources;

The main techniques and technologies used in the enterprises in operational activities (production) and also in the functional area (for administration) are key points to establish quantitative and qualitative development needs of staff and give the need for the required staff;

The predictable innovations in production processes that require employees with new skills need time for preparation. The human resources department must be interest in this vital point, and have to warn the company that it isn't profitable to invest in technical and sophisticated technology if there are no investments at least equally in human resources.

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CAN CLIMATE CHANGE INFUENCE PROTECTED DESIGNATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS FOR WINES?

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Abstract:We intend to ascertain in this article, if climate change can influence protected designations of origin and geographical indications throught its impact on the characteristics of a wine. The effects of climate change are a real issue for vineyards and wine producers. We are wondering if the methamorphosis of wines induced by climate change will enhance a (re)dimension of the European PDO and PGI system from the climate adaptation perspective. As a result, we will analyze if the destructiveness of climate change could flourish in the creation of new grapes and the development of new wine-making regions and could generate any possible change in the European PDO and PGI system.

Key words: denomination of origin, wine, geographical indication, terroir, climate change.

We intend to ascertain in this article, if climate change can influence protected designations of origin and geographical indications throught its impact on the characteristics of a wine in Europe. A protected designation of origin (PDO) for wines is a sign, which acknowledges that a particular product's "*quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;*"1. A protected geographical indication (PGI) is "*an indication referring to a region, a specific place or, in exceptional and duly justifiable cases, a country, used to describe a product [which] possesses a specific quality, reputation or other characteristics attributable to that geographical origin;*"2 The connection between a specific geographical environment and the characteristics of a product is the main criterion for juridical

1 Article 93, paragraph 1, letter a) -i) from Regulation (EU) no. 1308/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.

2 Article 93, paragraph 1, letter b) -i) from Regulation (EU) no. 1308/2013.

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protection. This unique interaction is described in the technical file of PDO or PGI. As an effect, climate destructiveness can influence geographical indications from around the world.

Support for the idea is found in article 94, paragraph 1 and 2 from Regulation (EU) no. 1308/2013, according to which an application for a PDO/PGI shall include a technical file with information about product specification. The description of the PDO/PGI wine will consist in the principal analytical and organoleptic characteristics [article 94, paragraph 1, letter i), ii)], which are very much influenced by the climate of a region. As an example, "*Grape varieties best suited to a cool climate tend to produce wines that are more subtle with lower alcohol, crisp acidity, a lighter body, and typically bright fruit flavors. Those from hot climates tend to produce bigger, bolder wines with higher alcohol, soft acidity, a fuller body, and more dark or lush fruit flavors.*"(Gregory V. Jones, 2014) This description illustrates the effects of climate change for wine features. As a result, all the fluctuations of the wine characteristics will be fill in the technical file of a PDO, which will enhance changes in the PDO wine system.

Douro, Lisbon and Vinhos Verdes are PDO and Portuguese wine-making regions3. In a scientific study (H. Fraga, J.A. Santos, J. Moutinho-Pereira, C. Carlos, J. Silvestre, J. Eiras-Dias, T. Mota and A.C. Malheiro, 2015, p. 10 - 15) referring to grapevine phenology for these three regions, it was pointed out that climate change influences grapevine development cycle. As a result of this study, the budburst, flowering and veraison will shorten and could affect wine characteristics because of " *...high alcohol content and excessively low acidity, altered colour and aroma.*" Being in accordance with other studies referring to wines from France, USA, Australia and Germany, these outcomes underline the impact of climate change during the XXI century. As a consequence, the new characteristics of the wines must be acknowledged in the technical file of the PDOs.

The interaction between climate and wine is depicted by the word terroir in juridical language. Terroir is a French concept that describes a specific combination of the natural factors from a region, such as climate, soil and topography. (G. Adams, C.Austin, R.Baudains and other, 2010, p. 22 - 25) The balance of this combination is essential for the definition given by the European Commission: "*le goût du terroir* as: *a distinct, identifiable taste reminiscent of a place or locality...Foods and beverages that evoke the term terroir have signature qualities that link their taste to a specific soil with particular climate conditions. Only the land, climate and expertise of the local people can produce the product that lives up to its name."* (Kal Raustiala and Stephen R. Munzer, 2007, p. 344)

3 http://www.winesofportugal.info/pagina.php?codNode=18012

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As a result, the description of theinteraction between climate and wine is a core element of the technical file of a PDO/PGI. We underline this through the provisions of article 32, paragraph 1, letter a) and article 35, paragraph 1, letter a) from Romanian Law no. 164/ 2015 referring to grapevine and wine. Also, article 49, paragraph 2b, from the same law, stipulates that the employees of National Office of Vine and Wine Products will verify if grapevine owners respect the agricultural and environmental conditions. According to French regulations, the connection between terroir and product qualities is an essential element of the technical file of a PDO - AOC.4

The unique combination of the geographical factors, from a certain space, is a prime criterion in order to obtain juridical protection for a PDO. Natural factors are essential for the acquired characteristics of a wine. Also, "*the grapes from which the product is produced come exclusively from that geographical area;*"(article 93, paragraph 1, letter a) -ii) from Regulation (EU) no. 1308/2013). If all the grapes come exclusively from a certain region, how can producers maintain their PDO protection within the climate change framework. According to article 93, paragraph 1, letter a) -iv) from Regulation (EU) no. 1308/2013, a wine with a PDO will be "*obtained from vine varieties belonging to Vitis vinifera*;". Vitis vinifera is a species of Vitis, which is known since the Neolithic period. The main area of cultivation are Mediterranean region, central Europe and South Asia.[5] We are wondering, if famous wine-growing regions, such as Bordeaux or Champagne will cease to exist. The answer is the creation of experimental varieties of grapes that will adapt to hot summers. As an example, in Bordeaux it "*will be fermenting tiny batches of wines from an experimental vineyard growing 52 grape varieties largely unknown to the region.*" (Henry Samuel, 2015) In this context, new varieties of grapes will create wines with different qualities. Even if the geographical name registered as a PDO will be the same, the features of the wine will vary. Due to this, European world will be divided between old and new wines, old and new PDOs.

On the other hand, Henry Samuel ascribes in his article that after the experiment mentioned above "*...the grower syndicates for Bordeaux's appellations will look at the data and choose a handful of grape varieties they believe might produce a wine with characteristics typical of their appellation."* Can a producer obtain a wine with the same characteristics in the context of climate change? The study of terroir elements reveals that "*Climate provides the most identifiable differences in wine styles for nearly all wine drinkers. The general characteristics of wines from a cool climate vary distinctly from*

4 Consult the Guide to applicant for a Protected Designation of Origin Regulations, http://www.inao.gouv.fr/eng/Official-signs-identifying-quality-and-origin/PDO-AOC
5 https://en.wikipedia.org/wiki/Vitis_vinifera(accessed at 2.04.2016)

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those from a hot climate. [...] pinot noir is grown mostly in cool climates with growing seasons that range from roughly 14 to 16 degrees Celsius in places such as Burgundy or Northern Oregon. Although pinot noir can be grown outside these climate bounds, it readily loses the style and quality for which it is known." (Gregory V. Jones, 2014) The combination of new or old grapes varieties and climate change generates an exploratory perspective of (re)dimensioning the PDO scheme. Because grape varieties, style of a wine and geographical area are described in the technical file of a PDO, the interaction between climate change, terroir and grapes will create new PDO for wines or old PDO, as geographical name, with different wine characteristics.

Within this context, article 15 from Romanian Government Order no. 115/2010 stipulates that National Office of Vine and Wine Products could request the transformation of a PDO into a PGI, if the conditions for a PDO are no longer fulfilled in accordance with its technical file. As an effect, PGI appears to be a solution, when climate change influences a PDO characteristics.

Referring to geographical indications, "*at least 85% of the grapes used for its production come exclusively from that geographical area;*"(article 93, paragraph 1, letter b) -ii) from Regulation (EU) no. 1308/2013). A similar provision is written in article 35, paragraph 1, letter b) from Romanian Law no. 164/ 2015. Global warming will impact in a positive or negative way the 85% of the grapes from the PGI geographical area. However, 15% of grapes from a different region is not an insignificant percentage, because it seems to pave an easier adaptation to climate change. This is an advantage of a PGI in comparison with a PDO.

The interaction between the consequences of climate change and law provisions reveals that it would be preferable a less restrictive paradigm of juridical protection. This idea is expounded through a comparative research, between an appellation of origin, Roussillon from France, and a geographical indication, McLaren Vale from Australia, about the challenges that climate creates for vineyards. One of the main conclusions is that French legislation is very restrictive and discourage innovations about new grapes, wine making practices and geographical boundaries. Though, these provisions will frame a certain quality and style of the wine without legal solutions for an adaptation to climate change. As a result, the registered French PDO will disappear in the future. (Anne-Laure Lereboullet, 2013, p. 331 – 332)

The article was written, as a mosaic of references to different European countries, in order to illustrate that the effects of climate change are a real issue for vineyards and wine producers. The examples discussed above provide support forthe idea that redrawing the map of PDO and PGI is not

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imaginary, because of the change in the features of the wine. The destructiveness of climate change will flourish in the creation of new grapes and the development of new wine-making regions. Through this antonymic association, we would like to underline the feasible effects of climate change.

The effects of climate change are experienced in other areas on the globe. The conquest of new wine-growing regions, as an antidote to global warming, redraw the bounderies of the PDO and PGI map. (John Gladstones, 2011) Wines from South Africa obtained protection through the registration of geographical names, as a PGI or PDO, in Europe6. Futhermore, the new organoleptic features will have to be written in the technical file of the PDO or PGI. As a result, the same geographical names will identify wines with slightly different or novel characteristics. Though, the influence of climate change is not just an European subject.

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THE POLIQUALIFICATIONS OF THE EMPLOYEES: CAUSES, REWARDS AND NEW JOBS

Elena Sabina Hodor

PhD

Abstract:Currently the actions taken by human resources specialists are not limited to the administrative level, but also involve activities such as: design and implementation of practices that norm the work performed, career management for employees, evaluating performance and its objectives, the management of total reward and so on. In all these situations it is necessary to process a large volume of information in a short time, in order to keep the activity effective. However, as a necessity to this condition, the computer software used in human resource management, Internet and Intranet are indispensable. The technological revolution continues to cause rapid changes in the demand for labor. Changes due via technological innovation may cause that a trade that it is asked today, tomorrow to be obsolete and technically overused. Until this moment were almost totally eliminated the professions that require repetitive tasks. The technological factor was the premise for this change. The purposes of this paper are to analyze the causes of the multiple qualifications of the employees, to describe the changes appeared in total rewarding and to specify the new jobs that appear on the market.

Keywords: multiple qualifications, total rewards, technology, new jobs on the market, career management.

JEL Classification:M54, O15, O32.

INTRODUCTION

Every organization it is based on two systems: the informational system and the decisional one. The informational system it is designed to provide the "raw material" (information) to the decisional system. The latter will process the information in order to be implemented where needed (Popescu, p. 420).

The information system includes equipment, software, processes, data, people-having the aim to provide the necessary elements that an organization needs for the decisional system.

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The informatic system it is part of the information system and carry out activities of collection, storage, processing and transmitting data using IT components (different software, techniques and procedures, modern communication means, even specialized staff).

For implementing the two systems together with others required by an enterprise, are necessary some system analysts, who understand both, the concrete expectations of the company and also the information technology and possibilities, limitations, and so on.

HUMAN RESOURCE MANAGEMENT: INTERNALIZATION OR OUTSOURCING?

Often organizations use databases or other software of low capacity, which cannot streamline human resources management. In this context, there are two alternatives for human resources specialists:

Implementing a platform D. E. R. P. ("Digital Enterprise Resource Planning"-planning of all the resources of the organization in a computerized way);

Totally or partially externalization for human resources functions.

The first option it is suitable when staff that it is dealing with human resources management exploits at maximum parameters the investition in that platform. The most modern platforms allow online access to data and securit of any data. The most important advantages for platform D. E. R. P. are: data accessibility, improvements of inter-departmental communication, the reducing of the quantitative documentation and of the time required to the administrative actions, providing specific reports, control over data collection and possible errors, and last but not least lower costs.

Outsourcing it means the transfer of human resources management activities to foreign companies, that are skilled to make this "art". In this case, the main advantages are: decreases of the costs, organizational flexibility, the externalization of the risks, the company focuses more on its own targets (customers, marketing, etc.), human resources managers use their skills for the strategic problems. The disadvantages of total or partial outsourcing of the human resources function are: the outsourced service can not be anymore a competitive advantage for the enterprise, the company' s employees will feel threatened, career management becomes more difficult and the management of data becomes difficult to integrate in the new company (Prodan, p. 11).

INFORMATIC SOFTWARE FOR HUMAN RESOURCE MANAGEMENT

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Human resource management "tasted" the first software in the '70s, when it was useful only for payrolls. After '89s, the novelty for human resource management was the introduction of the Internet, which it is currently arranging mostly the supply and demand for jobs.

Information systems for human resource management (ISHRM) can vary according to the nature of the decisions that are modelled. Thus, there are three main types of systems that can be applied on human resource management: operative human resources information systems (OHRIS), tactical human resource information systems (THRIS) and strategic human resources information systems (SHRIS):

Table 1: The classification of ISHRM

OHRIS	**THRIS**	**SHRIS**
IS for selection of candidates	IS for recruitment	IS for human resource planning
IS for the evidence of the labor posts and personnel	IS for professional formation and training	IS for sustaining the negotiations with the workers
IS for the evidence of working time	IS for the analysis and design the posts	
IS for the evidence of performance management		
IS for external reports		
IS for calculating the salaries		

Source: adapted from *Sisteme informatice integrate utilizate în managementul resurselor umane,www.erp-romania.ro/index.swf*[accesed 2015].

In the following lines are a few of examples of human resource management information systems:

SAP Human Resources package it is a computer application for human resources management developed by the German Company SAP ("Systems, Applications, and Products in Data Processing"), which currently operates in 50 countries and has no less than 109000 customers (SAP, 2016). Sap Human Resources it is applicable to any type of company and the main operating areas are (SAP, 2016):

Administrative activities on human resources;

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Management of employee relations;

Career management of human resources;

Strategic analysis of human resources.

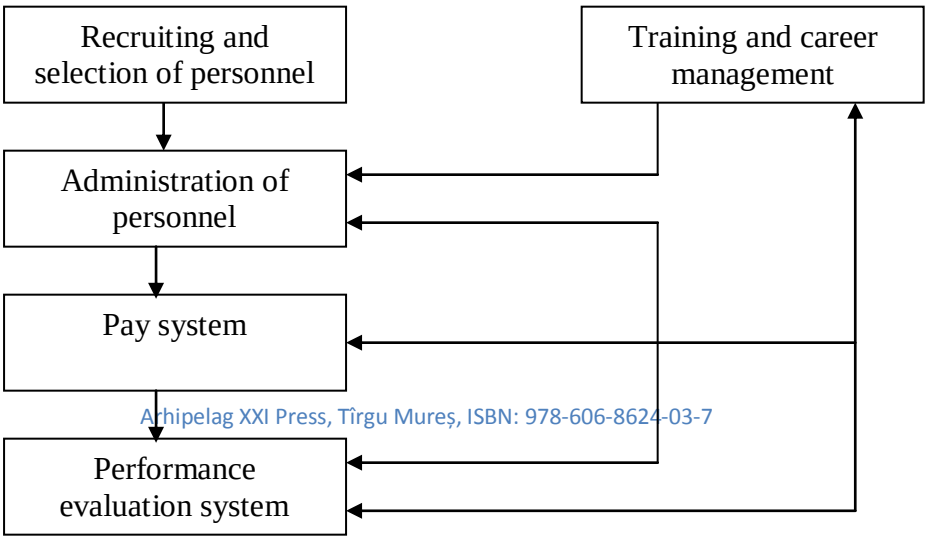
In Romania, example of companies that have implemented the SAP system for human resources mananagement are: Agricola International, E.On Gas Distribution, General Fluid, Tornado Sistems, Distrigaz Sud, Dedeman, Albalact, Vel Pitar, IT Agricantus.

The case of Dedeman

The Dedeman IT Director, Ovidiu Gavrilă, specifies that before implementing the SAP system, the company's turnover was 18 million euros, and after implementation, became 100 million. "I think a large part of this increase was made possible using the SAP system", he says (Studiul pieței românești de software profesional SAP, 2016). In line with the global leaders in retail applications that use this system, Dedeman found in SAP human resources the perfect system to produce expansion in Romania. The essential advantage of its implementation was the comparability of the selling points which had similar conditions. Once one of the workstations get less profit than another or even losses, that was restructured or closed.

Human resources application SIVECO of the Siveco Romania Company is leading data modeling through flexibility and adaptation to economic and legislative changes from Romania (Siveco România, 2016). It is divided into four modules, which separates the main activities of human resources management, as it follows:

Figure 1: The general structure of the application SIVECO, human resources component



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Source: adaptated from Roşca C., Vărzaru M., Roşca I. Gh., *Resurse umane. Management şi gestiune*, Ed. Economică, Bucureşti, 2005, p. 522.

The SIVECO application includes all the activities of human recources management, operational and tactical ones. The four modules are interconnected and the essential advantage it is that it can operate both on local area networks and remote (LAN, WAN).

Examples of romanian companies that are using the application SIVECO for the human resources component are: Citibank, Tiriac Air, Raiffeisen Bank, Carpatair, National Agency for Employment, Ministry of Foreign Affairs and National Meteorological Administration.

The case of Carpatair

The partnership between Carpatair and SIVECO Romania started in 2005, when the aerian company was newly arrived on the market (Positive results for SIVECO Romania, 2016). The integration of the application within the company, including the human resources component was possible because it was expected a good collaboration between provider-client and high services analysis before implementation. The advantages of the software at that moment were: the securiting data until elementary data, the increasing of operational efficiency, the lowering of the costs, improving communication within the system and outside it and the increasing of the profitability.

Referring to the information systems for human resource management, human resources department must put into balance the needs of the organization and the needs of the employees with the concrete possibilities to modeling of the variable taken into account, the available software offered, and to propose to top management to acquire a proper human resources application that favor the company's processes.

THE JOBS OF THE FUTURE

To predict the evolution of the jobs on the market specialists consider that must take into account several aspects (Popescu, 2009, p. 571):

Today, the society focuses on saving time;

Automation it is vital for organizations;

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There it is a need for efficiency of the tasks undertaken at work;
The enterprises always are looking to reduce costs;
There it is a need to improve the reliability and the management;
There it is a need to make things easier to use;
It is necessary to take into account the impact of the economy on the external environment and internal of the organizations.

In the activitiesc where are involved high technology and head hunting practice, human resources management staff will be able to attract employees through higher pay, more benefits, etc. If employees are more than enough, the job involves an average use of technology ("basic technology"- such as scanners in supermarkets or other simple machines), the selection of personnel will target people willing to work on a salary somewhat lower, as the duties and responsibility considered.

The European Employment Mobility Portal (EURES) offers the following statistics with reference to the demand for labor in Europe (The European Job Mobility Bulletin, 2016):
Financial domain and sales: 29800 vacancies in Germany, 2800 in Belgium and 3500 in France;
Sales and demonstrations area: 11300 vacancies in Germany, 2600 in Austria, and 5600 in Belgium;
Personal care and companionship: 23600 vacancies in the United Kingdom, 11300 in Germany, 1800 in France;
Health Insurances: 9900 vacancies in Germany, 3400 in Belgium, 24500 in United Kingdom;
Electrical and electronic equipment: 26600 vacancies in Germany, 1600 in Belgium, 9200 in United Kingdom;

Some experts already predict which jobs will be in the next generation. Five new professions in the next 20 years in Europe will look like this (Popescu, 2009, pp. 572-573):

Specialist in genetic scan. In the future it is expected that the department of human resources management will have to hire technicians to extract and analyze DNA from potential employees, in an attempt to test if they have a predilection to consume drug or to make other activities that could endangerthe the productivity at work.

Employee into a manufacture of mechanical robots. The functions that the robots carry on the market today are simple: carpet cleaning, filtering pool water, etc. In the future, there are predictions that their price will fall, so most middle-income families will be able to purchase robots that perform more complex actions (robots for company or personal assistants).

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Specialist in film holograms. Divertisment it is present at home with Internet access, DVDs, and retain people in their homes as long as possible. To watch 3D movies, customers will not be able to afford the specialized equipment and to maintain it in their home. As a solution, people will appeal to cinema. Thus, given the technology and the consumer behavior, it will appear on the market the demand for this type of specialists.

Manager for hydrogen stations. According to a research carried out by the manufacturer Ford, if the hydrogen would be used in mass, it will have greater advantages terms of the price, compared to the other fuels used today.

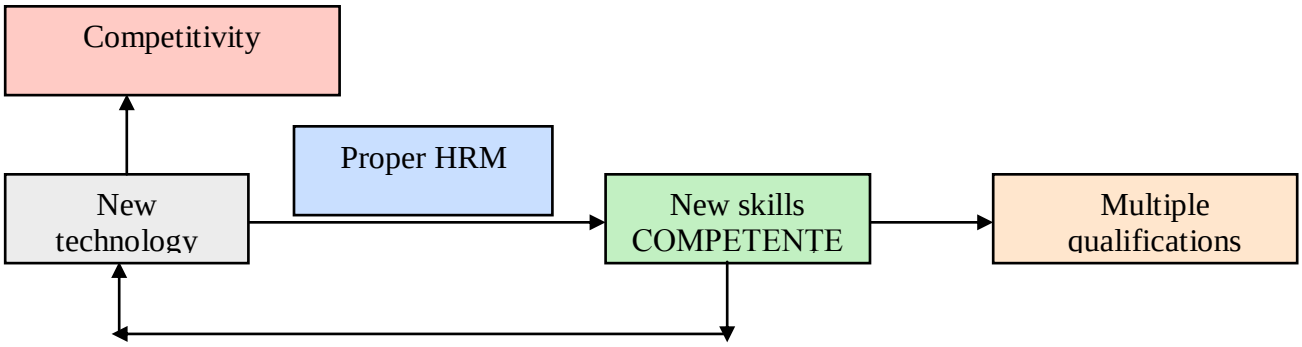
Travel guide in space. Experts believe that in future will be choosed travels into space for entertainment.

Other professions of the future in Europe will continue to develop in multimedia, assuming combination from television, radio, graphics, text and digital technology. Examples of such jobs already present on the market are: the games writers, the animation and text specialists (creators of 3D digital universes), web designers (creators of pages and websites), and so on.

CONCLUSIONS

As it was already shown, the future jobs provided by the specialists are closely conditioned by new technologies that are emerging on the market. Basically, we to deal with a circuit that automatically it is extended to new technological trends:

Figure 2: The acquiring of multiple qualifications circuit



The newly appeared technology determines companies to acquire it in order to be competitive, while, at the same time, the workforce becomes retrained, and achieve new skills. When a different new technology appears, employees will again specialize in order to keep up with the coming changes. Thus, employees will become multi-skilled. An appropriate human resource management involveto

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adapt the practices to the operational, tactical and strategic objectives of the company. Thus, on the one hand, new technologies will be implemented successfully, and on the other hand, human resources will be qualified according to the technological and professional required skills.

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FINANCING EDUCATION: ECONOMIC, POLITICAL AND CULTURAL IMPLICATIONS

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Abstract: *The purpose of the article is to emphasize how different types and methods of financing education (i.e. public funds or private funds; direct subsidies for schools and universities or governmental school vouchers) impact schools, communities, teaching methods and quality of education, freedom of parents and students to choose the type of education they receive etc. The paper will summarize the main theoretical arguments and positions regarding the problem of financing formal education, outlining the economic, political and cultural impact of subsidizing education.*
Keywords: education, public schools, subsidies, vouchers, full tuition, compulsory attendance laws

There is a close connection between the actual state of schools, the prevailing philosophy of education and the ideas of how formal education should be organized and ultimately financed. Current systems of education are planned by national governmental agencies and guided by international or supranational organizations and institutions. For instance, the benchmarks set by European Commission in Education and Training 2020 Strategy (ET 2020)[1] are based on governmental planning, compulsory attendance laws and subsidies (EC 2009). ET 2020's objectives are focused mostly on school enrollment:
at least 95% of children between the age of four and the age for starting compulsory primary education should participate in early childhood education;
the share of 15-years olds with insufficient abilities in reading, mathematics and science should be less than 15%; the rate of early leavers from education and training should be less than 10%;
the share of 30-34 year olds with tertiary educational attainment should be at least 40%;
an average of at least 15 % of adults (age group 25-64) should participate in lifelong learning.

[1] Council conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020'), *Official Journal of European Union*, (2009/C 119/02)

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Taking a look on the following statistics: (a) the percentage of participation in early childhood education of children between 4 years and the starting age of compulsory education; (b) the percentage of all 18-year-olds who are still in any kind of school and (c) the participation in tertiary education, one could easily draw the conclusion that most of today's man and woman are generally schooled or highly schooled. At the European level the percentage of all 18-year-olds who are still in any kind of school varied between 70% and 80% in the last 10 years.

However, there is an important difference between "schooling" and "education". The briefest way to explain this distinction is by pointing out that many schooled people may be uneducated, and many highly educated people may be unschooled. On the basis of this distinction many critics of current school systems emphasized, with good reasons that the focus on school enrollment and early specialization misses the essential points. This criticism is not at all recent. Albert Jay Nock expressed this concern and disappointment with the American school system eight decades ago, pointing out that most of the American schools offer instruction and training, not education:

"*A candidate is certificated — is he not? — merely as having been exposed satisfactorily to a certain kind of instruction for a certain length of time, and therefore he is assumed eligible to a position which we all agree that only an educated person should fill. Yet he may not be at all an educated person, but only an instructed person. We have seen many such, and five minutes' talk with one of them is quite enough to show that the understanding of instruction as synonymous with education is erroneous. They are by no means the same thing.*" (Nock 2007, pg. 6-7)

The problem raised by A. Nock many years ago not only persisted, but in the meanwhile became more critical than ever. One of the main shortcomings of the bureaucratic and quantitative approaches to education ("school as many people as possible as much time as possible") remains the quality of educational act and even more importantly the purpose of education. Could public schools ensure that kind of education that forms minds and characters capable of independent critical analysis and judgment? Could public schools ensure that kind of education that make people assume and follow the truths they discover and learn? Focusing mainly on school enrollment, vocational education, forced training and also banishing liberal arts education from schools' curricula goes rather in the opposite direction.

Most of the core features of current educational systems are taken for granted, uncritically and backed mainly by political activism than credited by experience, tradition or even theoretical studies, and critical analysis. In this context, the analysis of forms and methods of financing education is important

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because it raise a crucial question: who should be responsible for education in society (governments, international or supranational agencies and institutions, families, local authorities etc.)? Basically, there is a close connection between who pays for education and who really have the control of education in a society in terms of philosophy, methods, standards of education and curricula.

Economic and Social Implications of Subsidies in Education

The economic and social implications of different forms and methods of financing formal education represents a classical topic for applied economics analyses which, generally, emphasizes the effects of different types of allocation of scarce resources between competing ends and claimants. The fundamental questions that need to be addressed in such analysis were concisely formulated several decades ago by Armen Alchian (1969) in his article, "The Economic and Social Impact of Free tuition": (1) who should bear the costs of education and, (2) if somebody else than the students should pay for their education, in what form the financial aid should be given?

Armen Alchian (1969) realized a detailed analysis regarding economic implications of subsidies in college education and of the methods by which these subsidies are provided. There are basically two methods of providing subsidies: by offering students aid in the form of zero tuition or in the form of grants-in-aid or scholarship. Zero tuition means that government finances directly colleges' activities, students and their parents having less influence and control on education in this situation. Alchian pointed out that often administrators and members of state universities and colleges which are financed directly by government favor zero tuition out of self-interest and not because they genuinely think that this is the best form of financing education.

If the students or their parents pay full tuition for their education they have greater role in choosing the type and quality of education. If the students receive financial aids in the form of scholarship or grants-in-aid, they still have greater influence and control of their education than in the case of zero tuition. However if grants and scholarships are conditioned in some respects, the students and their parents do not have full control of education; they must comply with the rules and conditions established by those who ultimately provides the funds.

Armen Alchian critically analyzed three basic arguments usually brought forward in favor of subsidies in education: (1) subsidies are useful for the poor students; they provide educational opportunities to the poor; (2) cultural education need to be subsidized because it is not profitable on the market but

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nonetheless it is desirable; (3) students and parents requires less educational services than necessary because they ignore the social benefits of education, therefore subsidies are necessary.

First argument is rejected by Alchian in a two-step analysis. Foremost, he rejected the idea that college students are in fact poor: even if their current earnings are very low or they do not earn something, the present wealth value of their future earnings may be greater than those of the average persons. There are two kind of wealth, according to Alchian: inanimate wealth of capital goods and human wealth. Therefore Alchian concludes:

"*College calibre students with low current earnings are not poor. Subsidized higher education, whether by zero tuition, scholarships, or zero interest loans, grants the college student a second windfall—a subsidy to exploit his initial windfall inheritance of talent. This is equivalent to subsidizing drilling costs for owners of oil-bearing lands in Texas*." (Alchian 1968)

Once A. Alchian defended the idea that young caliber student are not in fact poor, the second step of the analysis followed easily: offering students educational opportunities is not incompatible with requesting them to repay later (out of their enhanced income) the funds received. Excepting the cases of donations provided by private foundation or charitable organizations not asking for repayment means to endorse redistribution: "to grant students a gift of wealth at the expense of those who do not attend college or who attended tuition colleges and paid for themselves." (Alchian 1968) However, the idea of offering students educational opportunities does not need to entail the redistribution or transfer of wealth.

The other two arguments taken into consideration by A. Alchian refer to subsidies for the cultural education or for more education in general. Both situations involve the tacit acceptance of wealth redistribution (as any other case of subsidization). Even if redistribution of wealth would be *per se* acceptable and justified in the case of education it does not produce any clear net social gain as expected by the advocates of educational subsidies. For example, if, due to subsidies, more engineers graduates and enter on the market, the prices of engineering services will decrease. Consequently the income of all engineers will be lower than would have been without subsidies. Indeed, in this case it is clear that there is no clear net gain for social output: only a transfer of wealth from more experienced engineers to those newly entered on the market and also a redistribution of wealth from all taxpayers who had to cut a part of their income and forgo some of their own needs toward all those benefitting from lower prices of engineering services. Moreover, even if there are cases of identifiable net social

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gain based on subsidization of education, there is no prove of further available *incremental* net social gain from *further* education in any situation.

Education between Externalities, Paternalistic Concern for Children Education and the Bad Record of Public Schools

Milton Friedman sustained that governmental intervention into education can be justified on two grounds: positive externalities (or "neighborhood effects") and paternalistic concern for children's education. In the case of formal education, the argument of the positive externalities is that the education of a child accrues not only to the educated pupil and its family, but also to other members of society; on this ground it is sustained that government must impose a minimum required level of schooling for all children. This imposition comes along with laws requiring compulsory attendance to classes and taxation for ensuring the required level of formal instruction. The benefits of additional subsidized education (other people benefit from the schooling of those of greater ability and interest and a minimum level of literacy and knowledge on the part of most members of a society) are balanced against its costs. According to Friedman (2002), "most of us, however, would probably conclude that the gains are sufficiently important to justify some government subsidy". However, Friedman admitted that on the ground of "neighborhood effects" argument, the subsidies for purely vocational training which bring benefits mostly to the students cannot be justified.

Instead of pointing any cons for Fridman's argument it is worth noting that nearly two decades later Friedman himself changed his position – at least regarding the alleged benefits of compulsory attendance laws. On the basis of the researches he made in the history of schooling, M. Friedman admitted that schooling was nearly universal both in United States and United Kingdom before either compulsory attendance laws or government financing of public schools existed. Moreover, taking into consideration the bad record of public schools, Friedman concluded that compulsory attendance laws were not necessary to achieve the required standard of literacy and knowledge in a society (Friedman 2002, p. 88).

Thus, in the 6th chapter of the book *Free to Choose* ("What's Wrong with Our Schools"), written together with his wife, Rose D. Friedman (as well as in the well-known television series made after this book) Friedman noted and debated the deplorable situation of schools managed by bureaucrats:

"*Parents complain about the declining quality of the schooling their children receive. Many are even more disturbed about the dangers to their children's physical well-being. Teachers complain that the*

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atmosphere in which they are required to teach is often not conducive to learning. Increasing numbers of teachers are fearful about their physical safety, even in the classroom. Taxpayers complain about growing costs. Hardly anyone maintains that our schools are giving the children the tools they need to meet the problems of life." (Friedman & Friedman 1980, p. 151)

Friedman admitted also that in the cases where parents were more involved in choosing and paying for the education of their children the situation of schools was much better than in those cases were schools were administered and controlled by government and its agencies.

"*We believe that the growing role that government has played in financing and administering schooling has led not only to enormous waste of taxpayers' money but also to a far poorer educational system than would have developed had voluntary cooperation continued to play a larger role."* (Friedman & Friedman 1980, p. 187)

The Hidden Implications of Subsidies through Educational Vouchers

Although Friedman admitted that compulsory attendance laws are unjustified, coming to the conclusion that parents and not governments must be responsible or in charge for the education of their children (or students for their own education), he still endorsed educational subsidies by sustaining educational vouchers as a transitional tactic toward a private school system.

The main idea behind the educational systems based on vouchers is to subsidize individuals to buy education instead of subsidizing institutions (schools, universities) to offer educational services. Friedman really believed that it is possible to remove through a clever scheme the control of government over education while keeping subventions.

Gary North (1993) rightly criticized the pseudo-market scheme proposed by M. Friedman, pointing out that state-funded vouchers are part of a program of state licensing, involving legal barriers to entry against those who cannot meet the standards imposed by governments and also, most significantly, against those *who work in terms of rival standards*. Friedman's scheme of subsidizing education through vouchers does not settle the crux of problem: bureaucrats remain in control of the education while students and parents had only the power to choose between previously approved by government schools. In addition, Friedman's voucher plan did not relieve anyone of the burden of taxation for schooling.M. Friedman (1993) admitted that his proposed plan of educational vouchers does not relieve anybody of the burden of taxation, but claimed that in an educational system based on

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vouchers students and parents would have wider choice regarding the type of education they receive for them or their children than in a system based on direct subsidies to public schools.

Nevertheless, contrary to M. Friedman claim, an educational system based on vouchers could be worse than a system with clear-cut private schools and public schools, given the impact it might have on the educational offer. Apart from the fact that students that pay for education using vouchers cannot buy educational services that do not comply with bureaucratic standards, private schools have additional incentives to comply with such standards. Vouchers programs create incentives for private schools to follow government requirements concerning education because only in this manner they could preserve profitability. Otherwise they'll be disadvantaged competing with other schools that comply. This will undoubtedly have an important impact on the type of educational offer in the community, in terms of ideology, objectives, content and methods of education. Therefore, it is more likely that in an educational system based on vouchers the conformity with government approved standards will be greater and educational offer more limited and less varied than otherwise. The bottom line is that usually those who pays for education ultimately control the educational offer. Choosing between different methods of financing education ultimately means to choose between letting the education under the control of governments or supranational institutions and giving to families and students the power to really choose the type of educational services they receive. Moreover, given the fact that an educational system based on vouchers leads to more bureaucratic control over the methods, content and ideals of education, it cannot work either as a transitional tactic toward a genuine private school system.

Education: Respect for Truth and Persons*versus* Social Engineering

According to some philosophers, formal education in its fundamental orientation should be a political instrument furthering a certain type of society. Usually the claim that formal education should be compulsory and financed from public funds came along with a social and political philosophy, proposing definite social, political or religious ideals and projects of reforming society and changing people accordingly. This was exactly the case of the first modern movement for compulsory state education, taking place in the Protestant States of Germany at the beginning of 16th century, in the context of Reformation (Rothbard 1999, pg. 20-21) (Gatto 2003). In the late 19th century and the beginning of 20th century a similar view regarding the instrumental role of education in changing society and furthering political ideals was expressed by progressivist philosophers of education, like

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John Dewey. "Education is the fundamental method of social progress and reform" wrote Dewey (1897) in his article, *My Pedagogic Creed*.

In opposition with the progressivist view is the idea that the fundamental role of education is to perfect "inner" personality of man – i.e. making human beings more human, helping individuals to fulfill their true nature (Weaver 2000). This task could be accomplished neither trying to adjust the individuals to a favorite scheme of collectivized living, nor shaping their personalities according to an abstract ideal and focusing mainly on outward economic and social conditions:

"*If man were merely an animal, his «education» would consist only of scientific feeding and proper exercise. If he were merely a tool or an instrument, it would consist of training him in certain response and behavior patterns. If he were a mere pawn of the political state, it would consist of indoctrinating him so completely that he could not see beyond what his masters wanted him to be. Strange as it may seem, adherents to each of these views can be found in the modern world. But our great tradition of liberal education, supported by our intuitive feeling about the nature of man, rejects them all as partial descriptions."* (Weaver 2000, p. 186)

Speaking from a traditionalist perspective, R. Weaver (2000, p. 194) emphasized the idea that no education can be considered civilizing and humane unless it respect persons and truth. Weaver's main insight is that true individuality and true community are based on such respect for persons and truth. "Humanity implies spiritual community" not a "community in a sense of number of atoms"; "individualism in the true sense is a matter of the mind and the spirit" and "it means the development of the person not the well-adjusted automaton" to the social conditions (Weaver 2000, pg. 192, 195). Educating man's inner personality and character, helping human beings to fulfill their true nature is the best way individuals as members of society can acquire power and means to influence community where they live in the most effective and altruistic manner.

In opposition, progressive philosophers rejected the idea of perfecting through education the "inner" personality of man, considering that this type of education lead to social division. They promoted instead the subordination of educational ideal to the political ideal. Nevertheless educational system must be independent enough to expose and explains truths and values regardless of the prevailing political ideologies. Such a perspective challenges deeply the architecture of the modern system of education where the purpose, the objectives, the methods and content of education are explicitly subordinated to the social ideals which in turn are derived from the prevailing political ideologies. To the extent that education became a statist affair there could be no assurance that the content of even

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science courses will be kept free from social and political ideologies. In terms of practical influence on education the progressive philosophers rejected or undermined studies and disciplines that from a traditionalist perspective make the human being a more "aware, responsible and resourceful person" (Weaver 2000, p. 190). Mathematics, language, history and philosophy are more and more marginalized or presented in a diluted and unattractive manner in progressive contemporary approaches and curricula.

However, the independence of the educational system remains crucial if respect for truth and persons is to be preserved both in education and society. But education, its content, objectives, methods and ideals promoted cannot be independent if subsidies and laws of compulsory attendance laws are fully enforced in almost every contemporary country. Even private schools are not allowed to work with rival standards, if granting them operating license is conditioned by complying with government approved standards regarding methods, content and objectives of education. In this context, apart from private schools another insufficiently considered solution is homeschooling. Although homeschooling does not automatically means liberal arts education, homeschooled children had the opportunity to receive an education much more fitted for their type of personality. Families practicing homeschooling are usually much more implicated in the process of children's education and are much more united and interested in educating pupils' character, teaching them moral virtues. Moreover, families joining homeschooling associations are usually very interested in the quality of education and independent evaluations of homeschooled children showed that their academic performance surpassed the average performance of children that followed conventional schools (Klicka 2010, p. 124). Finally and most significantly, in countries where homeschooling is permitted it represents an opportunity for families and students to follow rival standards than those promoted in contemporary education and schools most of them deeply influenced by the progressive philosophy of education.

Conclusions

Different types and methods of financing education (i.e. public funds or private funds; direct subsidies for schools and universities or governmental school vouchers) have a decisive impact on schools, communities, teaching methods and quality of education, freedom of students and parents to choose the type of education they receive for them and their children. Basically, there is a close connection between who pays for education and who really have the control of education in a society in terms of philosophy, methods, standards of education and curricula.

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Bad records of schools managed by bureaucrats prompted authors analyzing educational systems to search for methods of removing bureaucratic management of schools, while preserving at the same time subsidies. Educational vouchers programs have been proposed in this sense. Our research led us to the conclusion that it is more likely that educational system based on vouchers bring more bureaucratic control over the methods, content and ideals of education, leading to more conformity with government approved standards and disadvantaging schools working with rival standards.

Progressive philosophy of education prevails in contemporary educational systems: the objectives, the methods and the content of education are explicitly subordinated to the social ideals which in turn are derived from the prevailing political ideologies. To the extent that education remains a statist affair, the independence of educational system continue to be a crucial problem. If the values promoted through education are to transcend transitory political debates and ideals, if the respect for truth and person is to be preserved regardless prevailing political ideologies and purposes, if the role of education is to help humane beings to become more humane and to understand the true sense of community, educational system must be independent enough so that educators to be allowed to expose and explains sometimes unpopular truths. A step forward in the right direction from a practical point of view is to remove education from the hands of bureaucrats while raising public awareness (i.e. students, parents, families) of the true nature of contemporary educational systems and also of the prevailing philosophy of education.

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ECONOMICS: SCIENCE OF HUMAN ACTION VERSUS SOCIAL PHYSICS

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Abstract: The trend toward progressive professionalization and specialization which currently characterize mainstream economics led to an increasingly fragmented and unrealistic perspective on the economic problems prevailing in society. The restoration of a comprehensive, unitary and, especially, realist perspective on human society in general and on economic affairs in special tends to remain an unattainable goal as long as the approaches in terms of natures, essences, principles and final causes of economic phenomena have been abandoned and replaced by expositions of increasingly abstract and reductionist models. The current state of economic science is not coincidentally, it is in fact the direct consequence of of the uncritical transfer of the methodology of natural sciences into the realm of social sciences.

The objective of the present paper is to summarize the main shortcomings and dangers of the uncritical transfer of the methodology of natural sciences into the realm of social sciences, (especially, economics) and to synthetically outline the two opposing perspectives regarding the nature of economics: economics as the science of human action versus economics as social physics.

Keywords: human action, social physics, finalism, teleology, scientism, methodological dualism, methodological monism

Introduction

Economics as social physics is the defining paradigm of present mainstream economics. As Philip Mirowski (1989) emphasized, the economists' practice of transferring models and concepts of physics into theory of economics can be traced back to Adam Smith, David Ricardo and other economists or social thinkers before them. Even if someone is not entirely in agreement to every aspect of Mirowsi's interpretation of the history of economic science, his main thesis is hard to be dismissed. For instance, neoclassical economists like Léon Walras or W.S. Jevons explicitly intended to use analogies and metaphors borrowed from physics in order to transform

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economics into an exact science. Léon Walras (1874), in his *Elements of Pure Economics*, emphasized that pure theory of economics is a science which resembles the physical and mathematical sciences in every respect and that economists are entitled to use the same methods as those used in physics and other natural sciences. By the second half of the nineteenth century, natural sciences' methods became the criterion of theoretical relevance for all sciences. With a few notable exceptions, social scientists eagerly adopted the methods of natural sciences in the realm of social studies, ignoring the very nature of their object of study. The opposing paradigm is outlined, among others, by several nineteenth and twentieth century Austrian economists, like Carl Menger, Ludwig von Mises and Murray N. Rothbard, who emphasized that the methods of studying human actions should be different than those used to study stones, molecules and planets that cannot choose their courses, moving in a strictly and mechanical determined manner.

In the following two section of the paper two aspects will be tackled: (1) the main shortcomings and dangers of the uncritical transfer of the methodology of natural sciences into the realm of social sciences, (especially, economics) and (2) the most significant differences between two opposing perspective on economics: economics as science of human action *versus* economics as social physics. The proposed paper is a theoretical and argumentative review, aiming to refine existing arguments, to bring new arguments, and also to discuss relevant examples and cases for the announced topic.

Scientism: the Uncritical Transfer of the Methodology of Natural Sciences into the Realm of Social Sciences

The uncritical transfer of the methodology of physical science into the study of human action is, in fact, the hallmark of positivism. The influence of positivism in philosophy of science and social sciences was conspicuously manifested from the middle of nineteenth century to the first half of twentieth century. The unprecedented development of modern natural sciences resulted in the belief that methods used in natural sciences possess some inherent virtues. It was thought that comparable success would be achieved by social sciences if similar methods were accepted and used in the study of human action. The methods used in natural sciences became the criterion of theoretical relevance in general. As E. Voegelin (1987, pp. 5-6) emphasized, outside the sphere of influence of positivism or neo positivism, the idea that different objects of study require different methods was considered an elementary truth. For instance, it is not surprising if a political scientist who tries to understand the meaning of Plato's *Republic* will not use mathematical

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methods, while a biologist who study cell structure will not use methods of classical philology and principles of hermeneutics. Also, if the purpose of the researcher is to understand the source of order in human society and its validity starting from philosophical concepts and theories, like Platonic *Agathon*, Aristotelian *Nous*, Stoic *Logos*, and Thomistic *ratio aeterna*, then metaphysical speculation and theological symbolization are the right methods of research.

The uncritical transfer of concepts and methods from physical science into the study of human action is the very basis of scientism. The danger of scientism in the study of economic phenomena was noticed and emphasized among others by representatives of Austrian school of economics.

Ludwig von Mises (2007, p. 243) explained that in economics, there are two main varieties of scientism – pan physicalism and behaviorism – both aiming to replace the teleological treatment of human action with a purely causal treatment. Both varieties of scientism decline to recognize the fact that men aim purposefully at definite ends and denies any essential difference between natural sciences – like physics or biology – and social sciences. Nevertheless, according to Mises, social events and facts can only be explained by resorting to teleological methods. Rejecting finalism in the sphere of human action means to reject the only method that works and it is appropriate in studying social phenomena. F. A. Hayek (1955, p. 16) emphasized that scientism represents a "very prejudiced approach which, before it has considered its subject, claims to know what is the most appropriate way of investigating it." M. N. Rothbard (2011, p. 3) pointed out that scientism is "the profoundly unscientific attempt to transfer uncritically the methodology of physical science to the study of human action". The key to scientism, according to M. N. Rothbard, is its denial of human conscience and will, which "takes two main forms: applying mechanical analogies from the physical sciences to individual men, and applying organismic analogies to such fictional collective wholes as «society»." (Rothbard, 2011, p. 10)

Some of the analogies from physical sciences (concepts, methods etc.) noted and criticized by Rothbard (2011, pg. 10-13) are the following:

Man as servomechanism, which means that man is conceived as merely a complex form of machine; in this case it is forgot that machines unlike human beings are devised by man to serve its purposes and cannot act differently or adopt new goals other than those established by its creator.

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Social engineering, which basically means that all aspects of social life can be planned and shaped exactly in the same manner as engineers design and build bridges or any other technological products.

Building modelsof economy and society instead of theories; while in engineering building model means to devise an exact replica in miniature maintaining the exact quantitative proportions, relationships and structures existing in the real world, in economics and models consists in concepts and equations which cannot exhaust the complexity of an economy.

Measurement and **mathematical methods**. Given the positivists' dogma that science means measurement, the idea that social sciences must use mathematical methods seemed unquestionable. But measurement is possible only if an objective extensive unit exist to serve as measure. Also, in economics the magnitudes are intensive (e.g. utility, preference, choice etc.) and therefore they are not measurable like any other extensive magnitudes. According to Rothbard (2011, p. 12), this is one of the main reason why using mathematical instruments in social sciences and philosophy represents an illegitimate transfer from physics. Moreover, mathematical relations are functional implying that variable are interdependent and entities do not provide themselves causes for their actions while in the realm of human action the cause of actions is self-generated by individuals. Therefore the mathematical concept of interdependent function is not appropriate in the sciences of man unless a deterministic and mechanist view of human action is presupposed, denying the existence of free-will. Also, Rothbard (2011, p. 13) explained why the concept of "variable" in the sphere of human action does not make sense. The idea of "variable" is intelligible if there are some identifiable constants, while in the realm of human action, the free-will precludes the existence of quantitative constants, including constant units of measurement. Furthermore, using mathematical instruments such as calculus in the sphere of human action is completely inappropriate, according to Rothbard (2011, p. 13), because of assuming "infinitely small continuity", which legitimately may describe deterministic paths and events. Instead human action can occur only in "discrete, non-infinitely-small steps", which are large enough to be perceivable by a human consciousness (2011, p. 13). M.N. Rothbard notes also that a series of concepts like "equilibrium", "elasticity", and "velocity of circulation" and "friction" are transplanted from physics and are potentially misleading.

Organismic analogies of scientism by which consciousness or other organic qualities are attributed to social wholes are contested by M. N. Rothbard (2011, pp. 14-16) because such

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analogies connote also a mechanistic and deterministic view on human action, individuals being considered merely "determined cell" of such collective organic wholes. For instance, social wholes like nations, market economy etc. are considered sometimes like entities that "choose", "react" or "act" while individuals' activities are viewed as determined by the behavior of such organic collectivities etc.

Economics: Science of Human Action *versus* Social Physics

The main insight of scientists and philosophers that reject scientism, *i.e.* the use of the methodology of physical sciences into social and human sciences is that the methodology of science must depend on the object of study and also it must be subordinated to the objectives of research. As E. Voegelin (1987, p. 4) noted, "*if the adequacy of a method is not measured by its usefulness to the purpose of science, if on the contrary the use of method is made the criterion of science – then the meaning of science as truthful account of the structure of reality as the theoretical orientation of the man in his world, and as the great instrument for the man's understanding of his own position in the universe is lost.*"

The object of study in social science is represented by human actions and human interactions. Therefore, a genuine scientific approach must take into consideration the essential characteristics of human actions and human interactions and not an abstractedly conceived social physics. Ignoring such important aspects, like free-will, human consciousness, the teleological nature of human behavior (*i.e.* the fact that man aim purposefulness at definite ends). pervert the meaning of science which basically aims to give a truthful account of reality (social and physical). Just because human action cannot be properly studied or explained using methods that proved useful in the case of natural sciences it does not prove that things like ends, means, choices, free-will or human consciousness doesn't exist or that there are no other appropriate methods of studying them. Not least, if individuals' ends and values are not properly taken into account by researchers the objects of study of social sciences would be dramatically changed. For instance, in the case of economics, if purposeful behavior of individuals is not accepted as a reality, economic science would be a purely technological discipline. Even more dramatically, if it is assumed that human choices are purely mechanical and that no weighing of alternatives and genuine decision from the part of individuals takes place, then theory of value, theory of exchange and theory of prices – which represent the core of any treatise of economics – would be more appropriately simple

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chapters in applied mathematics textbooks. The fact that economics became more and more a sub-branch of applied mathematics is not coincidentally, it is the consequence of adopting a determinist and mechanistic view on social phenomena and of rejecting the finalist approach in social sciences.

Among Austrian school economists, Carl Menger and Ludwig von Mises endorsed finalism in scholarly research. Carl Menger explains that „*the goal of scholarly research is not only the cognition, but also the understanding of phenomena. We have gained cognition of a phenomenon when we have attained a mental image of it. We understand it when we have recognized the reason for its existence and for its characteristic quality (the reason for its being and for its being as it is)*." (Menger, 1985, p. 43) Ludwig von Mises pointed out that finalism cannot be completely ruled out neither in natural sciences nor in social sciences. Mises emphasized also that the finalist approaches must be undertaken in social sciences for pragmatic reasons just as causal approach was followed in natural sciences because of its effectiveness: "*The reason for the natural sciences' neglect of final causes and their exclusive preoccupation with causality research is that this method works.*[…] *But the same pragmatic proof that can be advanced in favor of the exclusive use of causal research in the field of nature can be advanced in favor of the exclusive use of teleological methods in the field of human action. It works, while the idea of dealing with men as if they were stones or mice does not work.*" (Mises, 2007, p. 248) Also, M.N. Rothbard emphasized the importance of introspection, although behaviorists and positivists deride this kind of approach as unscientific: "*each human being knows universally from introspection that he chooses. The positivists and behaviorists may scoff at introspection all they wish, but it remains true that the introspective knowledge of a conscious man that he is conscious and act is a fact of reality*" (Rothbard, 2011, pp. 4-5)

Although economic phenomena such as exchanges, prices, profits manifest themselves empirically, their essential characteristics are intentional. For instance, every market exchange involves a teleological aspect: people exchange goods because they value more the thing to be acquired than the thing to be given in exchange. Other examples that perfectly illustrates the role of teleological contexts in defining economic concepts are: the definition of the economic good given by Menger (2007, p. 52) in *Principlesof Economics*, and Mises's definitions of human action, human cooperation, production, human society, division of labour (Mises 1998). For instance, according to Mises, human action "*is will put into operation and transformed into an*

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agency, is aiming at ends and goals, is the ego's meaningful response to stimuli and to the conditions of its environment, is a person's conscious adjustment to the state of the universe that determines his life."(Mises, 1998, p. 11) Also, according to Mises, cooperation is the result of a deliberate effort to harmonize human actions; society is, par excellence, an intellectual and spiritual phenomenon (Mises, 1998, p. 14) and production is a spiritual, intellectual and ideological phenomenon. Also, material changes are the result of changes in the spiritual world according to Mises (1998, p. 141).

Austrian school economists' thesis is that the essences of economic phenomena consist in their teleological and intentional content. Positivists deny the "scientific" character of teleological approaches. The essence of this opposition is captured also by the antithesis between methodological dualism and methodological monism. The teaching that the procedures of physics are the only scientific method of all branches of science and that the language of physics is the universal language of all branches of knowledge, without exception denotes the acceptance of methodological monism. In opposition methodological dualism implies that there are many cases when the object of study and the purposes of research require different methods and different approaches. The main arguments in favour of adopting methodological dualism are emphasized by Ludwig von Mises (2007, pp. 1-2): firstly, humans differ fundamentally from other objects in the external world and secondly as far as h it is not yet known if and how external events (physical, chemical, physiological) affect an individual's thoughts, ideas, and judgements of value, this ignorance splits the realm of knowledge into two separate fields, the realm of external events, commonly called nature, and the realm of human thought and action and forces the social scientist to adopt a dualistic approach to these two classes of phenomena.

Conclusions

The main conclusions of the present paper are that: (a) scientism denies any essential difference between natural sciences – like physics or biology – and social sciences and on this basis embrace a monistic perspective from a methodological point of view, *i.e.* the idea that the methods used in natural sciences possess some inherent virtues, being the very criterion of theoretical relevance; (b) the methods used in physical sciences are not appropriate for studying human action and social phenomena mainly because essential features like free-will, human consciousness, purposeful behavior cannot be taken into account using such methods (c)

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dogmatic adherence to methodological monism changed significantly not only the form of presentation but also the content of social science; for instance, economics became more and more a sub-branch of applied mathematics, increasingly resembling a technical science (d) the restoration of a comprehensive, unitary and, especially, realist perspective on human society in general and economic affairs in special require a shift of focus in social sciences researches from a purely causal treatment to a teleological treatment of human action and social phenomena.

The triumph of positivism in philosophy and sciences in general changed dramatically the methods and content of social sciences. Economic science slid from an essentialist and teleological perspective to a mechanistic and atomistic conception about human society and market economy. From this latter perspective, individuals are either absorbed into an abstractly conceived organic whole, or it are defined as merely functions integrated into a complex mechanism. Bringing back the banished questions and judgements about natures, essence and final causes from the corner of meaningless sentences to the centre of legitimate accepted knowledge may be the right way to overcome reductionism and lack of realism that characterize current mainstream economics, and to restore intelligibility in the treatment of economic problems both in theory and practice.

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COLLECTION SECURITY MANAGEMENT, BASED ON FACIAL RECOGNITION, AT UNIVERSITY LIBRARIES

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Abstract: Facial recognition is a technique that uses unique facial features to identify an individual. The automated face recognition system is a challenging problem and has gained much attention over the last few decades. This method has an advantage over password and access card authentication in that it is based on something you are, which is not easily copied or stolen. This article follows the advantages and disadvantages of implementing a security system based on facial identification in a university library.
Keywords: biometrics, face identification, surveillance, security system, university library.

1. Introducere

Datele biometrice sunt cracteristici care diferă de la o persoană la alta (sau grup de persoane), fiind importante în multe aplicații de securitate, cum ar fi accesarea unei clădiri, sau a unui sistem, identificarea unei persoane de interes într-o anumită circumstanță, precum și în a stabili dacă acțiunile unei persoane prezintă o amenințare.[12]

Biometriaesteunproces utilizatpentru aidentifica sauautentifica identitateaunui individfolosind oricaredintr-o seriedecaracteristici fizicesaucomportamentale.[5]

Cei mai utilizați factori fiziologici din domeniul biometric sunt:

- *Recunoașterea irisului* - este o tehnică care folosește pattern-uri de culoare și formă în iris pentru a confirma identitatea unei persoane.
- *Recunoașterea facială* – este o tehnică ce folosește caracteristici faciale unice pentru a identifica un individ.

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- *Recunoașterea vocii* – este o tehnică care utilizează un tipar de voce, pentru a analiza modul în care o persoană spune un anumit cuvânt sau o secvență de cuvinte unice pentru acel individ.
- *Recunoașterea amprentelor* digitale este o tehnică care utilizează distribuția terminațiilor și bifurcațiilor de pe deget pentru a confirma identitatea unei persoane.[10]

În scopul identificării, sistemele biometrice necesită două etape de funcționare: înscriere și autentificare. În decursul etapei de înscriere, se obțin datele biometrice, legate de o identitate cunoscută, și codificate pentru stocare, recuperare și corelare. Dispozitivele senzoriale, cum ar fi un scanner de amprente, sunt folosite pentru a colecta datele.Unșablonde referință esteapoi creat,urmând a fi stocatîntr-o bazăde date centralizatăsauunsistemportabildescentralizat, cum ar fi unsmart cardsau un telefon mobil. Verificarea are loc atunci când cineva pretinde o identitate particulară, de exemplu, pentru a obține acces la un laborator de înaltă securitate. Sistemul biometric compară datele noi scanate, cu o versiune înregistrată anterior. Accesul este apoi acceptat sau respins.[5]

Atât marile, cât și micile biblioteci, se confruntă cu problema securității colecțiilor. Parolele pot fi uitate, sparte sau observate intenționat sau neintenționat de o altă persoană. Uitarea parolelor sau pierderea „smart-cardurilor” înseamnă o pierdere de timp prețios pentru administratorii de rețea și utilizatori. Trăsăturile anatomice nu pot fi copiate ușor și nici pierdute.[3] Biometria poate fi integrată în securitatea bibliotecilor, ajutând atât personalul, cât și utilizatorii.

2. Identificarea facială

Recunoașterea facială este o tehnologie care folosește computerul pentru a analiza imaginile feței și a extrage caracteristicile pentru recunoașterea identității subiectului.[15]

Fața captată trebuie să fie comparată cu un număr foarte mare de imagini înregistrate, deoarece sistemul funcționează ca o bază de date, iar cu ajutorul algoritmului de căutare facială, se poate face măsurarea punctelor nodale, cum ar fi:, oasele feței, lățimea nasului, linia maxilarului, distanța între ochi, adâncimea orbitelor, bărbia.[9];[1]

Recunoașterea facială este folosită în diverse domenii, cum ar fi: supraveghere și controlul accesului, dar și în scopul interacțiunii om-calculator. Securitatea informațiilor și marketing-ul electronic utilizează acest sistem de asemenea, datorită timpului rapid de procesare a informației.[4]

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Detectarea facială poate fi considerată ca fiind un caz specific de detectare a obiectelor, intitulat "detectarea obiectului dintr-o clasă". În "detectarea obiectului dintr-o clasă" ("object-class detection"), sarcina este de a găsi locațiile și dimensiunile tuturor obiectelor dintr-o imagine care aparțin unei anumite clase. Detectarea facială poate fi considerată ca fiind un caz mai general de localizare a feței. În localizarea feței, sarcina este de a găsi locațiile și dimensiunile unui număr cunoscut de fețe (de obicei unul). Dedectarea facială nu conține aceste informații suplimentare.[13]

Atunci când datele de intrare pentru un algoritm sunt prea mari pentru a fi prelucrate, vor fi transformate într-o reprezentare redusă, a unui set de caracteristici.După etapa extragerii caracteristicilor, segmente ale feței sunt extrase din imagini. Dacă folosim direct aceste segmente, pentru extragerea caracteristicilor, apar niște dezavantaje. În primul rând, fiecare segment conține, de obicei peste 1000 de pixeli, care sunt prea mari pentru a construi un sistem de recunoaștere robust. În al doilea rând, segmente ale feței pot fi luate de la diferite aliniamente ale aparatului de fotografiat, cu diferite expresii faciale, iluminări și pot suferi de ocluzie și confuzie.Pentru a depăși aceste neajunsuri, extragerea caracteristicilor este efectuată prin arhivarea informației, reducerea dimensiunii, extracție cu scoatere în relief și curățarea zgomotului de imagine. De obicei, după această etapă, un segment al feței este transformat într-un vector cu dimensiune fixă sau un set de puncte de reper și a locațiilor corespunzătoare acestora. Transformarea datelor de intrare în setul de caracteristici se numește extragerea caracteristicilor.[13]

Printre diferitele tehnici biometrice, recunoașterea facială nu este cea mai fiabilă și eficientă metodă. Cu toate acestea, un avantaj cheie este faptul că nu necesită un ajutor (sau aprobare) din partea subiectului de testare. Sistemele proiectate în mod corespunzător, instalate în aeroporturi, multiplexuri, și alte locuri publice pot identifica indivizi din rândul mulțimii.[13]

3. Modele de recunoaștere facială

Un număr de algoritmi actuali de recunoaștere a feței folosesc reprezentări ale feței găsite prin metode statistice necontrolate. De obicei aceste metode găsesc un set de imagini de bază și reprezintă fețe ca o combinație liniară a acestor imagini. Analiza componentelor principale (PCA) este un exemplu foarte popular de astfel de metode. Baza imaginilor găsite de către PCA, depind doar de relațiile dintre pixeli pereche în imaginea bazei de date. Într-o sarcină, cum ar fi

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recunoașterea feței, în care informațiile importante pot fi conținute în relațiile de înaltă ordine dintre pixeli, pare a fi rezonabil să ne așteptăm ca imaginile de bază mai bune, să poată fi găsite prin metode sensibile la aceste statistici de înaltă ordine. Analiza componentei independente (ICA) o generalizare a PCA, este o astfel de metodă.

Într-un articol de specialitate Martinez A.M. and Kak, A.C., au făcut o analiză a modelelor PCA (Analiza componentelor principale) versus LDA (Analiza lineară discriminantă), în cadrul paradigmei bazate pe recunoașterea obiectului. În general, se crede că algoritmul bazat pe LDA sunt superioare celor bazate pe PCA, dar cei doi au arătat că acest lucru nu este întotdeauna adevărat. Concluzia lor generală este că, atunci când setul de date de formare este mic, PCA poate depași LDA si, de asemenea, că PCA este mai puțin sensibilă la diferite seturi de date de formare.[7]

Xu Yong, Zhang Zheng and all. propun un nou algoritm de detectare a feței, luând în considerare axa de simetrie a acesteia, prin proiectarea unui cadru care să producă un dicționar aproximativ al axei simetrice virtuale, pentru creșterea preciziei de recunoaștere a feței. Autorii consideră că este de remarcat faptul că noul algoritm de producere a fețelor virtuale simetrice față de axă, este matematic, foarte maleabil și ușor de implementat. Rezultatele experimentale demonstrează superioritate în recunoașterea facială a imaginilor feței virtuale obținută prin folosirea metodei propuse de ei, față de imaginea feței originale.[14]

Într-un articol de specialitate, Kim, Dong-Ju, Shon, Myoung-Kyu and all., propun o metodă de preprocesare și o tehnică de extracție facială îmbunătățită, pentru un sistem de recunoaștere al feței puternic iluminat. Sistemul propus constă într-un nou descriptor de preprocesare, un descriptor caracteristic de iluminare puternică, și un modul de fuziune ca etape secvențiale. Acest sistem introduce un model binar-central îmbunătățit, ca descriptor de preprocesare si un diferențial al componentelor de analiză 2-D, ca descriptor al caracteristicilor, pentru a realiza o îmbunătățire a performanței.[6]

Muhammad Bashir, împreună cu Abu-Bakar Syed Abd Rahman prezintă un algoritm de detectare a profilului feței bazat pe caracteristicile singularităților curbate, ce pot fi aproximate cu foarte puțini coeficienți și într-o manieră non-adaptativă, oferind o bună reprezentare direcțională și putând capta informații de margine a feței umane, din unghiuri diferite. În primul rând, o schemă simplă de segmentare a culorii pielii bazată pe HSV (Hue-Saturation-Value/ Nuanță-Saturație-Valoare) și YCgCr (luminance-green chrominance-red chrominance/ luminanță-verde

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crominanță-roșu crominanță) modele de culoare folosite pentru a extrage blocuri de piele. În testul de performanță, rezultatele au aratat ca algoritmul propus poate detecta fețele profilului în imagini color cu o rată de detecție bună și rată scăzută de neidentificare a feței.[8]

4. Concluzii

Recunoașterea facială poate fi considerată o tehnologie ușor de implementat și accesibilă, deoarece majoritatea soluțiilor utilizează camerele built-in (sau o cameră web relativ ieftină) pentru a funcționa. Dotarea bibliotecilor cu un astfel de sistem de securitate poate avea numeroase avantaje, printre care se numără: imaginea este capturată de la distanță, fără a se folosi contactul fizic, ușurând accesul utilizatorilor în bibliotecă (fără legitimație de intrare). De asemenea sistemul capturează imagini în spații publice, ajutând la prinderea răufăcătorilor. Se pot folosi baze de date legale (în colaborare cu poliția sau alte organe de stat care folosesc astfel de baze de date).

Actualele modele de identificare facială pot avea probleme cu identificarea persoanelor în condiții de iluminare slabă și cu detectarea stării de viață a individului, o condiție necesară pentru a asigura un nivel competitiv de securitate.[10]Variația condițiilor de iluminare este una dintre cele mai mari provocări în recunoașterea facială de la distanță. În special, atunci când imaginile sunt captate de la distanțe mari, nu ai control asupra condițiilor de iluminare. Ca rezultat, imaginile captate suferă adesea de lumină extremă (din cauza soarelui) sau de lumină slabă (din cauza umbrei, vreme rea, seara, etc).[11]

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ENVIRONMENTAL IMPACT ON GENERAL HEALTH. ATTITUDES, OPINIONS AND TYPES OF BEHAVIOR

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Abstract: The current paper approaches in a comprehensive manner a series of aspects regarding the state of health and the access to medical services for the people from different backgrounds. An important side of the correlation between the social environment and the state of health resides in the fact that on its' bases prevention programs may be formulated in order to draw the attention upon the types of behaviour that people must change for reducing the risk of disease.
Keywords: health, access to medical services, social environment, prevention programs, risk of disease.

Introducere

Corelația dintre mediul social și starea de sănătate este un subiect de mare importanță, deoarece evidențiază factorii de risc asupra sănătății, prezenți într-o măsură mai mică sau mai mare, în anumite comunități. Pe baza acestei corelații, se pot formula programe de prevenție specifice anumitor medii sociale, cum ar fi în mediului urban: programe împotriva sedentarismului, de diminuare a stresului, crearea de benzi pentru biciclete, dezvoltarea zonelor pentru recreere, programe împotriva drogurilor. Iar în mediile rurale, izolate, sau defavorizate, ar avea relevanță programe de igienă corporală și orală, campanii împotriva alcoolului sau programe de încurajare a populației pentru realizarea controalelor medicale de rutină.[4]

Organizația Mondială a Sănătății definește sănătatea ca o "stare completă de bine din punct de vedere fizic, mental și social, care nu constă doar din absența bolii sau infirmității".[20] Starea de sănătatea este un concept multidimensional, de-a lungul timpului fiind formulate numeroase opinii și definiții contradictorii cu privire la acesta. De asemenea, starea de sănătate este condiționată de o serie de factori: pe de o parte, factorii care țin de condițiile generale de viață și de educație, iar, pe

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de alta parte, factorii de risc specifici, cărora sistemele de îngrijire a sănătății trebuie să le facă față. [16]

În ceea ce privește mediul social, Comisia Europeană de sănătate a dat următoarea definiție a mediul social al unui individ : „condiţiile sale de trai şi de muncă, nivelul venitului, nivelul educaţional, precum şi comunităţile de care aparţine". [22] Elizabeth Barnett și Michele Casper au definit starea de sănătate astfel: „*mediile sociale umane cuprind mediul fizic înconjurător aflat în vecinătate, reacțiile sociale și mediile culturale cu care grupuri definite de oameni funcționează și interacționează*".[1] De asemenea, fac parte din componentele mediului social „*infrastructura, structura industrială și ocupațională, piețele forței de muncă, procesele economice și sociale, bogăția, serviciile sociale și de sănătate, relațiile de putere, guvernamentale, relațiile rasiale, inegalitățile sociale, practicile culturale, arta, practicile și instituțiile religioase și credințele despre loc și comunitate*".[1]

Relația dintre mediul social și starea de sănătate

Rezultatele din sănătate, cum ar fi speranța de viață, pot fi afectate de factorii mediului social, la fel ca și calitatea vieții.[10];[12] Capitalul social reprezintă „*procesele și relațiile dintre oameni și organizații care conduc la realizarea unui obiectiv de interes social reciproc*". Acesta este asociat cu noțiuni cum ar fi coeziunea socială, suportul social și participarea socială.

În studiile de specialitate, s-a putut observa că există o relație foarte strânsă între mediul social și starea de sănătate. Oamenii care sunt conectați într-o manieră puternică și diversificată cu ceilalți ajung sa aibă o viață mai sănătoasă și mai fericită decât cei care sunt mai izolați. Relațiile sociale de susținere pot reduce probabilitatea ca un individ să adopte comportamente nesănătoase minimalizând impactul stresului de zi cu zi, sau evenimentelor stresante.[3] Oamenii mai izolați, care dau dovadă de o lipsă de implicare socială, pot ajunge să dezvolte simptome depresive [6] sau handicap.[12]

Măsurarea stării de sănatăte a populației

Indicatorii stării de sănătate sunt relativ numeroși, dar diferiți în ceea ce privește semnificația și performanța. Printre cei mai reprezentativi indici de măsurare a stării de sănătate se pot menționa:

Indicele de activitate a vieţii zilnice realizat de Katz – acesta măsoară starea de sănătate urmărind incapacitatea de a efectua activitățile zilnice, pe perioada unui an.[14]

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Indicele C.I.R.S.(Cumulate Illnes Rating Scale) - acest indicemăsoarăpovarabolilor cronice, luând în consideraregravitateaacestora, fiind unuldintre instrumenteleexistente pentru amăsuramulti-morbiditatea.[11]

Gorgono şi Woodgate - au înglobat un indicator care adună scorurile acordate, în funcție de gradul de prezență a diferitor stări, pentru 10 aspecte ale sănătății.[14]

Indicele de sănătate fizică - propus de Belloc, Breslow şi Hochstein măsoară starea de sănătate în funcţie de incapacitatea de a realiza activităţile zilnice, prezenţa bolilor cronice şi estimarea propriei energii, în raport cu vârsta, urmând ca respondenţii să fie clasaţi în una din cele şapte grupe stabilite de autori.

QALY (quality adjusted life) - anii de viaţă câştigaţi reprezintă media aritmetică dintre speranța de viață și măsurarea calității anilor de viață rămași de trăit. Acest indice i-a înconsiderare atâtcantitatea, cât șicalitatea vieţiigenerate deintervențiile medicale. [15]

DALY (disability adjusted life year) - reprezintă suma valorii actuale a anilor de viață pierduți datorită mortalități premature și valoarea prezentă a viitorilor ani de viață ajustați la severitatea medie (frecventa și intensitatea) cu privire la oricehandicap mental saufizic cauzat deo boalăsau rănire.[6]

SIP (Sickness Impact Profile) - Profilul impactului bolii a fost folosit pe scară largă pentru boli cardiovasculare, dar durează 20- 30 de minute să completezi cei 136 de itemi ai săi (Vandenburg MJ., 1993).[19]

NHP(Nottingham Health Profile) a fost dezvoltat în Nottingham din factorii consideraţi de laici relevanți pentru calitatea vieții.[8] Acesta a fost folosit pe scară largă pentru boli cardiovasculare. Profilul de sănătate Nottingham cuprinde 38 de itemi împărțiți în şase domenii: energie, reacţii emoţionale, durere, somn, izolare socială şi mobilitate psihică. Acest chestionar este format din întrebări dihotomice, „da/nu”, pentru fiecare item. Scorul final este calculat şi ponderat, dând naştere la o serie de scoruri de la zero (cea mai bună sănătate posibilă) la 100 (cea mai precară sănătate posibilă).

SF 36(The Short Form- 36) – este un chestionar ce cuprinde 36 de întrebări sau itemi, împărțite în opt secțiuni, sau domenii, și o singură întrebare despre sănătatea din anul precedent. Acest instrument măsoară: funcționalitatea socială (2 itemi), funcționalitatea fizică (10 itemi), limitarea fizică de rol (4 itemi), limitare emoțională de rol (3 itemi), sănătate mintală (5 itemi), energie/ vitalitate (4 itemi), durere corporală (2 itemi) și percepția generală despre sănătate (5 itemi). Răspunsurile, din șase domenii ale chestionarului, suntînregistrate peo scală, scorurile fiecărui

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domeniu fiind codate, adunate și transformate într-o scală de la zero (cea mai precară sănătate posibilă) la 100 (cea mai bună sănătate posibilă). [18];[5]

HRQOL(health-related quality of life) - Măsurarea sănătății în funcție de calitatea vieții (HRQOL) este utilizată în mod tradițional pentru evaluarea stării de sănătate percepută a pacienților și a rezultatelor din domeniul sănătății, cu scopul de a ghida managementul bolii și de a evalua eficacitatea tratamentului.[9] Acest instrument este un indice de măsurare a sănătății comunitare, iar măsurătorile statistice asuprapopulație bazate pe HRQOLsuntfolosite pentru a urmărisănătatea comunitățiiîn timp, pentru a examinavariațiile de sănătateîn rândulpopulației țintă și pentru a identificăcomunitățilesaugrupurile decomunitățicu starea de sănătateprecară, pentru a se putea interveni.[9]

Formularul scurt –36 (The Short Form- 36; SF-36) Profilul sănătății Nottingham (Nottingham Health Profile; NHP) și Profilul impactului bolii (Sickness Impact Profile; SIP) [2] sunt trei dintre cele mai evaluate chestionare ”generice” care se aplică la o serie de boli și permit compararea bolilor între ele.

Metodologia cercetării

În studiul de față s-a dorit determinarea satisfacției față de starea de sănătate și față de unitățile sanitare învecinate, a două comunități care prezintă un standard socio- economic diferit. Pentru a observa dacă elementele mediului social, cum ar fi vârsta, ocupația, mediul de rezidență, venitul, intervin în auto-percepția stării de sănătate a respondenților, s-a realizat corelarea celor două variabile.[4]

Pentru realizarea acestui studiu au fost formulate următoarele ipoteze de cercetare[4] :

Persoanele din mediul urban sunt mai satisfăcute de starea lor de sănătate decât cele din mediul rural.

Persoanele cu un nivel de pregătire mai ridicat sunt mai mulțumite de starea lor de sănătate, decât cele cu un nivel de pregătire mai scăzut.

Persoanele satisfăcute de starea lor de sănătate, merg de mai puține ori la medicul de familie, decât cele nesatisfăcute.

Pentru testarea ipotezelor și evaluarea satisfacției față de starea de sănătate în rândul populației au fost investigate două loturi de respondenți cu medii de rezidență diferite, și anume: orașul Brașov și comuna Dumbrăvița Bârsei. Studiul a cuprins două loturi de 100 de respondenți, iar metodologia de lucru utilizată a fost aplicarea unui chestionar, format din 31 de întrebări.[4]

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Respondenții au fost înștiințați înainte de completarea chestionarelor cu privire la regimul de confidențialitate al datelor colectate. Chestionarul a fost conceput pe baza operaționalizării conceptului, plecând de la definiția și factorii stării de sănătate. Ca urmare, întrebările chestionarului au urmărit funționalitatea socială a respondeților (muncă, activități recreative), limitarea de rol din cauza problemelor emoționale (anxietate, depresie), limitarea de rol datorată unor probleme de sănătate fizică (activități casnice, durere, vitalitate, oboseală), precum și riscuri bazate pe comportamentul respondenților (riscuri profesionale, obiceiuri alimentare și consum). [4]
Primul lot de subiecți au fost aleși în mod aleator, prin regula din trei în trei case, deoarece fac parte din mediul rural și astfel, fiecare sătean a avut posibilitatea de a participa la sondaj. [4]
În mediul urban, chestionarele au fost aplicate în mai multe locații, deoarece fiind o așezare cu un număr mai mare de locuitori, s-a dorit intervievarea unor respondenți cât mai diferiți din punct de vedere al mediului lor social. Astfel, au fost realizate chestionare în cadrul firmei Tex Brașov, în cadrul primăriei Brașov, Universității Transilvania precum și unor rude și cunoscuți. [4]
Prelucrarea datelor a fost realizată folosind programul SPSS (Statistical Package for the Social Sciences), iar graficele au fost efectuate în programul Excel. [4]

Rezultate și interpretare

Ipoteza 1. Persoanele din mediul urban sunt mai satisfăcute de starea lor de sănătate decât cele din mediul rural.

Analiza datelor a fost realizată folosind testul x^2 (Chi- Square). Acesta demonstrează dacă există asociere între două variabile și testează asocierea dintre variabile nominale și ordinale. Astfel, variabila care arată mediul de rezidență al respondenților, a fost corelată cu variabila care măsoară satisfacția față de starea de sănătate. [4]

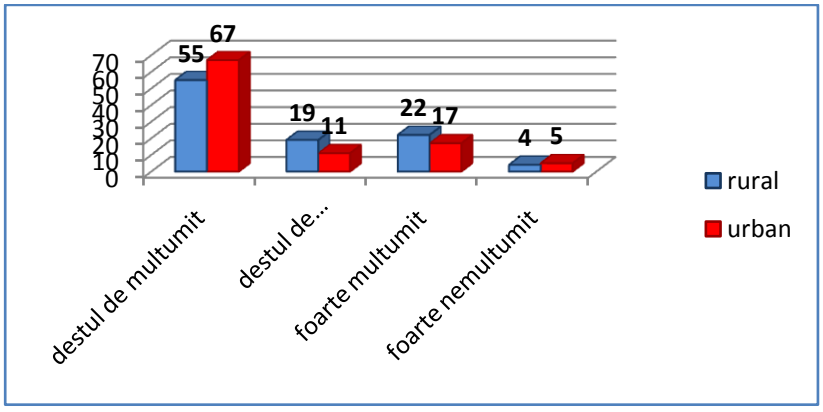

Figura nr. 1 Mulțumirea față de starea de sănătate în funcție de mediul de rezidență. [4]

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	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	4.066[a]	3	.254
Likelihood Ratio	4.096	3	.251
Linear-by-Linear Association	.010	1	.922
N of Valid Cases	200		

Tabelul nr. 1 Diferențe de semnificație în mulțumirea față de starea de sănătate, în funcție de mediul de rezidență. [4]

În continuare, vom formula două ipoteze, ipoteza de nul (H_0) care se referă la situația cea mai nefavorabilă și ipoteza alternativă (H_1), opusul celei de nul.

H_0 - nu există asociere între mediul de rezidență și mulțumirea față de starea de sănătate

H_1 - există asociere între mediul de rezidență și mulțumirea față de starea de sănătate

Probabilitatea de garantare a rezultatelor este P 95%, marja de eroare 5% reprezintă probabilitatea de a greși, iar în aceste condiții, probabilitatea de testare a ipotezei de nul (p) va avea valoarea de 0,05.

Regula generală de testare pentru o probabilitate de garantare a rezultatelor de 95%: $x_{calculat} < x_{critic}$ => se respinge ipoteza de nul H_0; unde: $x_{calculat} = p_{calculat}$ (Sig.)și $x_{critic} = p$, iar p = 0,05

Conform testului Chi-square, $p_{calculat} = 0,254$ este mai mare decât $p_{critic} = 0,05$ de unde rezultă faptul că se acceptă ipoteza de nul H_0 , conform căreia nu există asociere între mediul de rezidență și mulțumirea față de starea de sănătate. [4]

Ipoteza potrivit căreia persoanele din mediul urban sunt mai satisfăcute de starea lor de sănătate decât cele din mediul rural se respinge, deoarece rezultatele arată că nu există asociere statistică semnificativă între mediul de rezidență și mulțumirea față de starea de sănătate. În studiul realizat, 67 de respondenți din mediul urban, dintr-un total de 100, s-au declarat destul de mulțumiți cu privire la starea lor de sănătate, iar în ceea ce privește mediul rural, 55 de respondenți, dintr-un total de 100, au avut aceeași opinie. În consecință, în mediul urban au existat mai mulți respondenți destul de mulțumiți de starea lor de sănătate decât în mediul rural, dar diferența nu a fost destul de pronunțată pentru a avea semnificație statistică. În continuare, valorile sunt de asemenea foarte

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apropiate, 17 oameni din mediul urban și 22 din mediul rural, sunt foarte mulțumiți de starea lor de sănătate; 11 din mediul urban și 19 din mediul rural, se consideră destul de nemulțumiți de starea lor de sănătate; iar 5 din mediul urban și 4 din rural, sunt foarte nemulțumiți de starea lor de sănătate. [4]

Ipoteza 2.Persoanele cu un nivel de pregătire mai ridicat sunt mai mulțumite de starea lor de sănătate, decât cele cu un nivel de pregătire mai scăzut.

Analiza datelor a fost realizată folosind testul x^2 (Chi- Square), care demonstrează dacă există asociere între două variabile. Variabilele folosite au fost nivelul de pregătire și satisfacția față de starea de sănătate. [4]

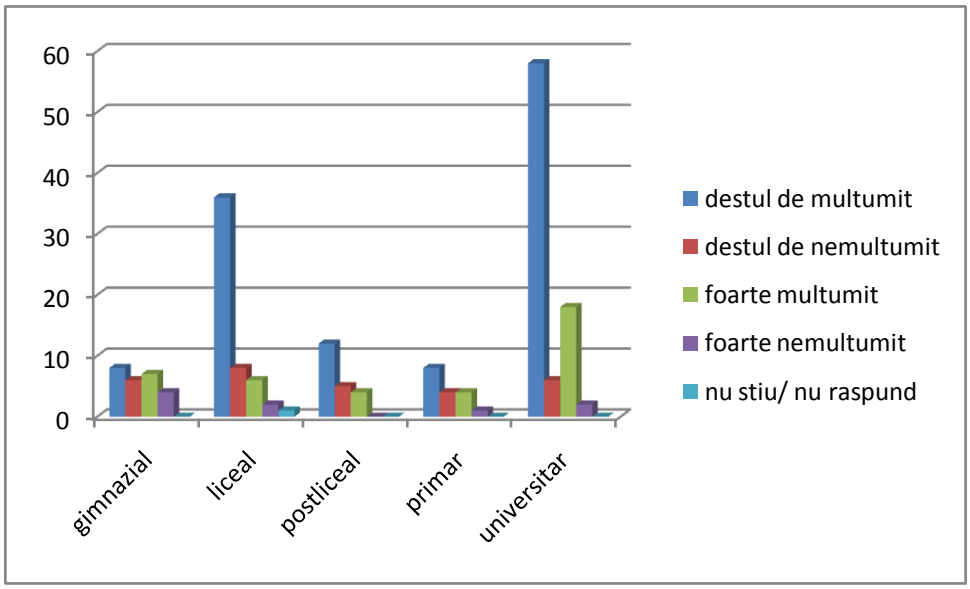

Figura nr 2 Mulțumirea față de starea de sănătate în funcție de nivelul de pregătire [4]

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	24.518[a]	12	.017
Likelihood Ratio	23.950	12	.021
Linear-by-Linear Association	5.280	1	.022
N of Valid Cases	200		

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Tabelul nr. 2 Diferențe de semnificație în mulțumirea față de starea de sănătate, în funcție de nivelul de pregătire[4]

În continuare, vom formula cele două ipoteze (de nul, alternativă):

H_0 - nu există asociere între nivelul de pregătire și mulțumirea față de starea de sănătate

H_1 - există asociere între nivelul de pregătire și mulțumirea față de starea de sănătate

Regula generală de testare pentru o probabilitate de garantare a rezultatelor de 95%: $x_{calculat} < x_{critic}$ => se respinge ipoteza de nul H_0; unde: $x_{calculat} = p_{calculat}$ (Sig.)și $x_{critic} = p$, iar p = 0,05

Conform testului Chi-square, $p_{calculat} = 0,017$ este mai mic decât $p_{critic} = 0,05$ de unde rezultă faptul că se respinge ipoteza de nul H_0, deci există corelație între nivelul de pregătire și mulțumirea față de starea de sănătate. [4]

Ipoteza conform căreia persoanele cu un nivel de pregătire mai ridicat sunt mai mulțumite de starea lor de sănătate, decât cele cu un nivel de pregătire mai scăzut se confirmă. Astfel, dintr-un număr de 84 de respondenți cu studii universitare, 58 sunt destul de mulțumiți de starea lor de sănătate și 18 sunt foarte mulțumiți. [4]

Ipoteza 3. Persoanele satisfăcute de starea lor de sănătate, merg de mai puține ori la medicul de familie, decât cele nesatisfăcute.

Analiza datelor a fost realizată folosind testul Gamma, potrivit pentru variabile ordinale. S-a comparat variabila care măsoară mulțumirea față de starea de sănătate, cu variabila care arată cât de des obișnuiesc respondenții să meargă la medicul de familie. [4]

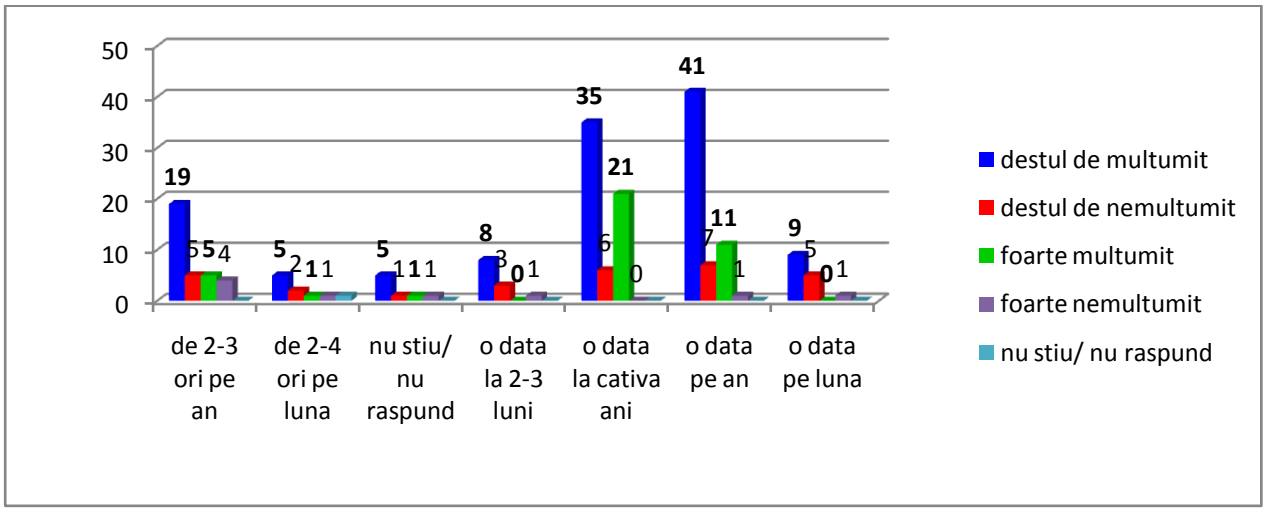

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Figura nr. 3 Mulțumirea față de starea de sănătate, în funcție de frecvența vizitelor făcute medicului de familie. [4]

	Value	Asymp. Std. Error[a]	Approx. T[b]	Approx. Sig.
Ordinal by Gamma	-.446	.078	-5.102	.000
Ordinal				
N of Valid Cases	192			

Tabelul nr. 3 Diferențe de semnificație în mulțumirea față de starea de sănătate în funcție de frecvența vizitelor făcute medicului de familie. [4]

După calcularea valorii coeficienților, se testează dacă acele valori sunt semnificative din punct de vedere statistic. Coeficientul de asociere ne arată intensitatea legăturii între două variabile. Dacă coeficientul este mai mare ca 0 există o relație direct proporțională între cele două variabile, iar dacă acesta este negativ, există o relație invers proporțională între cele două variabile.

H_0: Gamma = 0 (dacă coeficientul nu este semnificativ diferit de 0, nu există corelație între cele două variabile)
H_1: Gamma ≠ 0 (atunci când coeficientul este semnificativ diferit de 0, există corelație între cele două variabile.

Regula generală de testare pentru o probabilitate de garantare a rezultatelor de 95%: $x_{calculat} < x_{critic}$ => se respinge ipoteza de nul H_0; unde: $x_{calculat} = p_{calculat}$ (Sig.)și $x_{critic} = p$, iar p = 0,05

Conform testului aplicat, $P_{calculat} = 0$ este mai mic decât $p_{critic} = 0,05$ de unde rezultă că se respinge ipoteza de nul H_0, ceea ce înseamnă că există corelație între mulțumirea față de starea de sănătate și frecvența vizitelor făcute medicului de familie.
Coeficientul Gamma este egal cu -0,446, semnul minus indică o asociere inversă, adică cu cât crește nivelul de satisfacție față de starea de sănătate, cu atât scade frecvența vizitelor făcute medicului de familie, ceea ce duce la confirmarea ipotezeipersoanele satisfăcute de starea lor de sănătate, merg de mai puține ori la medicul de familie, decât cele nesatisfăcute. Conform rezultatelor, 35 de persoane destul de mulțumite de starea lor de sănătate și 21 foarte mulțumite, merg la medicul de familie o

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dată la câțiva ani. De asemenea un număr mare de persoane, 41 destul de mulțumite și 11 foarte mulțumite, merg la doctorul de familie o dată pe an.

Concluzii

O cercetare comparativă a sistemelor de sănătate din Europa, Indexul European de sănătate (EHCI) arată faptul că România se regăsește pe ultimele locuri în ceea ce privește performanța sistemului de sănătate si anume pe locul 27 din 31 de țări participante. [7]

Acest lucru se poate datora și faptului că în perioada anilor ’90, starea de sănătate a populației din România s-a degradat datorită căderii economice, urmând să înregistreze progrese abia după anii 1999-2000 într-un ritm mai redus decât celelalte state post-comuniste din Centrul și Estul Europei. De asemenea populația română nu dispunea de o educație foarte bună în ceea ce privește prevenția și îngrijirea sănătății fiind afectată de noile riscuri apărute o dată cu trecerea la economia de piață și modernizarea rapidă cum ar fii consumul de tutun, alcool, ”fast-food” etc.[6]

În ultimii 20 de ani s-au menținut sau poate chiar s-au accentuat inegalitățile între starea de sănătate a oamenilor și accesul acestora la serviciile de îngrijire în funcție de mediul de rezidență și în funcție de regiunile țării mai mult sau mai puțin dezvoltate.[6]

În urma cercetării realizate putem specifica faptul că în analiza satisfacției față de starea de sănătate, un rol deosebit îl joacă mediul social, prin toate implicațiile lui la nivel de pregătire a respondenților, mediu de rezidență, nivel socio-economic etc.

În urma studiului realizat se poate concluziona cu faptul că oamenii se declară în general mulțumiți cu starea lor de sănătate. Nivelul de pregătire a influențat în mod categoric satisfacția față de starea de sănătate, observându-se cum cei cu studii universitare sunt mai mulțumiți de starea lor de sănătate în comparație cu cei care au avut mai puține condiții de a studia. Acest lucru se poate explica prin faptul că oamenii cu o educație superioară au acces la un stil de viață mai sănătos și la programe de educație sanitară.

În ceea ce privește limitele în cercetarea de față, unul din impedimente a fost faptul că nu au putut fi puse în evidență toate variabilele cuprinse în mediul social al unui individ și astfel au fost probabil omise, noi ipoteze de cercetare, care ar fi putut da noi direcții de cercetare. O altă limitare se concretizează în disponibilitatea de a alege o comunitate rurală mai izolată și în posibilitatea de a aplica mai multe chestionare.

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http://ec.europa.eu/health-eu/my_environment/social_environment/index_ro.htm

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RESEARCH REGARDING THE PRESENCE OF THE ANIME CULTURE'S PRODUCTS ON THE ROMANIAN MARKET AND THEIR IMPACT UPON THE CONSUMER BEHAVIOR

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Abstract: The anime products are the new trend on the international animation market, including Romania. These products are related with the anime culture, also a new cultural identity, coming from Japan, with a rapid spread all over the world.This study is a research on the Romanian consumer behavior regarding the following aspects of the new market of the anime's cultural products, such as: the target audience,the most watched animes,the importance of the correct subbing, the subbing preferences,the preference for anime related products . The results of this study lead us to some conclusions regarding the new challenges for the Romanian market, in the present time.

Keywords: anime, market, Romania, behavior, consumer

1. Introduction

Since 70s, the Japanese animation began to make its way into the top of the western consumer preferences, starting with the american ones. The Japanese animation is a style of animation, defined by its own artistic style and the richness of themes, being addressed to all age categories. This animation style is called "anime" (Steiff, 2010). The import of animes and the acquiring of licenses by the entertainmentcompanies, from the anime producers in Japan, with the purpose of localization of the anime, by subtitling and dubbing, proved to be a very profitable business. The animes for youths and adults quickly made their way on the mass-media products market meant for the american entertainment, and those aimed for the children began to rival with the Disney productions and other western animations, which were and still are aimed, mostly, only for this age category (Denison, 2010). After 1989, along with the intensification of the intercultural exchanges between the European countries and America, anime also began to make its way into the top of the European consumer. A short while after 1989, the Romanian TV started to broadcast anime films such as: "Windaria", "Pheonix: Space Fire Bird", followed by anime series, such as: "Macron One", "Saber-Rider", "Sailor Moon", "Candy Candy", "Sandy Bell". In the late 90, appear other series, some of them being well known also in the present, like: "Pokemon", "Dragon Ball Z", "Inuyasha",

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"SamuraiX", "Full Metal Alchemist". All these broadcasted animes were subtitled or dubbed in Romanian. In this period, not only the Romanian television broadcast anime series, but also many other TV channels, like ProTV. After 2000, also appears the TV channel specialized in animes broadcast, namely "A+", which has resumed many of the anime series broadcasted by the other TV channels, adding some new ones, all of them being subtitled in Romanian. Afterwards, "A+" TV channel becomes "Animax", enriching its programes with J-Pop music, often being on the sound tracks of the broadcasted animes, as well as with other elements related to the cultural identity of the anime consumer.

2. The impact of the anime culture's products upon the consumer behavior

The research method was a survey conducted following the ESOMAR guidelines, upon a lot of 422 persons, and the conclusions on these results. The first question(**Figure 1**) was: "*How familiar is the fact that anime is an animation style*?"

KNOWLEDGE OF THE ANIME NOTION	RESPONSES
Extremely familiar	343
Verry familiar	53
Moderate familiar	12
Little familiar	4
I do not know what anime is!	4

Table 1. Knowledge of the anime notion(416 responses)(Source: author's own survey)

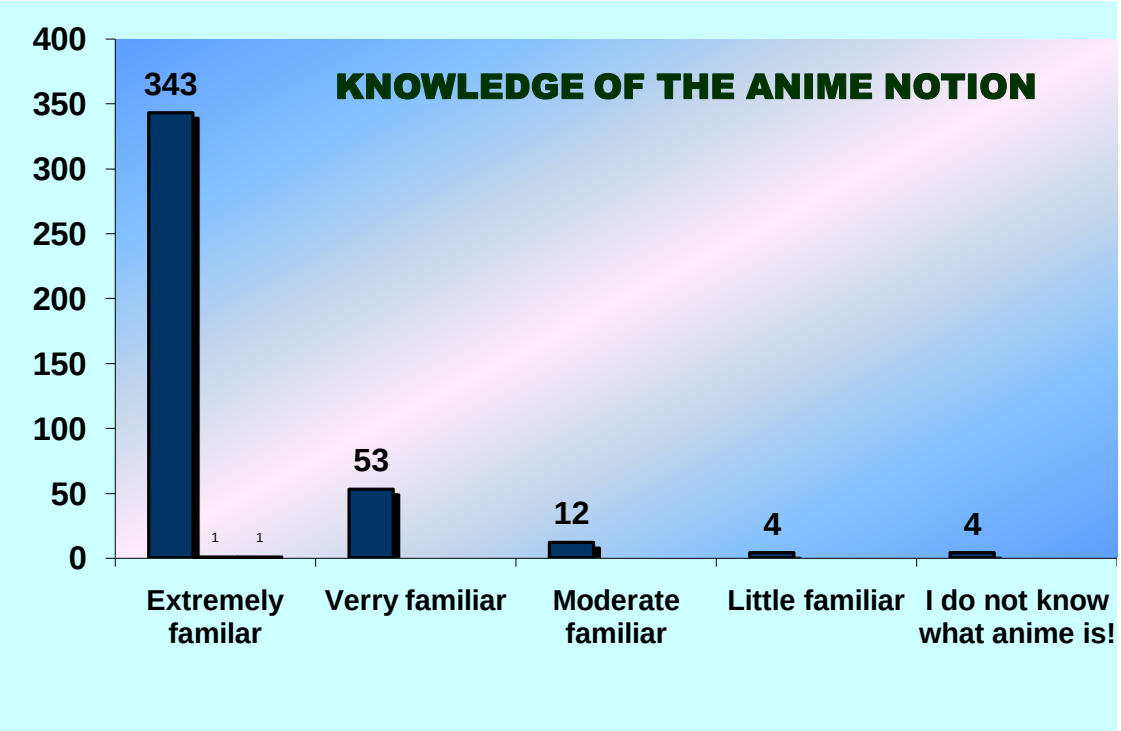

Figure 1.Knowledge of the anime notion(Source: Table 1)

The second question was: "*Which are the animes watched as a child or as a teenager*?" (**Figure 2**) From the answers received to this question, we conclude that the most watched films were: *Pokemon, Naruto, Death Note*.

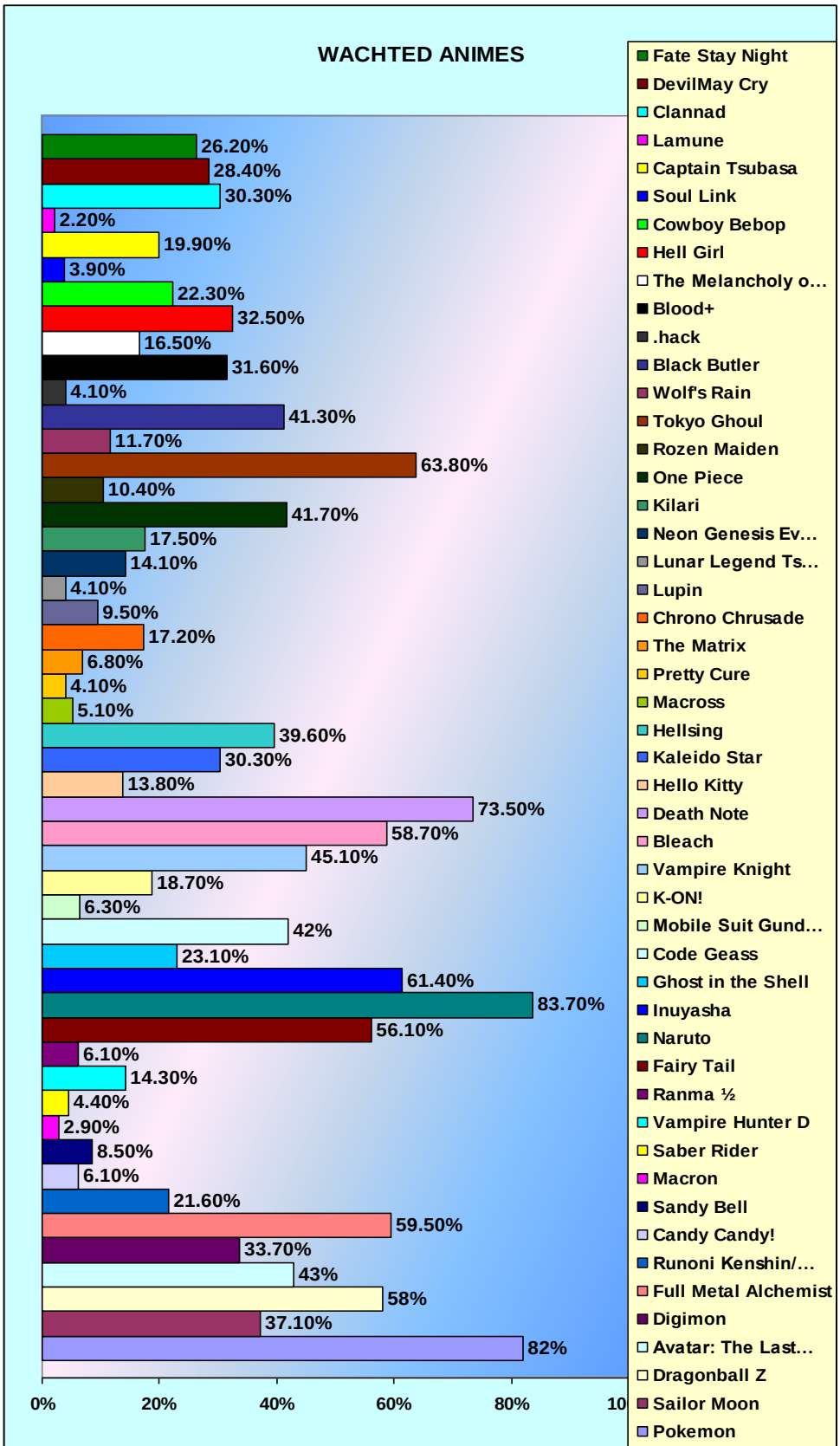

Figure 2. The most watched animes(Source: author's own survey)

Next question**, "***Which adjective would you associate with anime*?" had 413 responses, the most used being: interesting, artistic, surprising, special.(**Figure 3**)

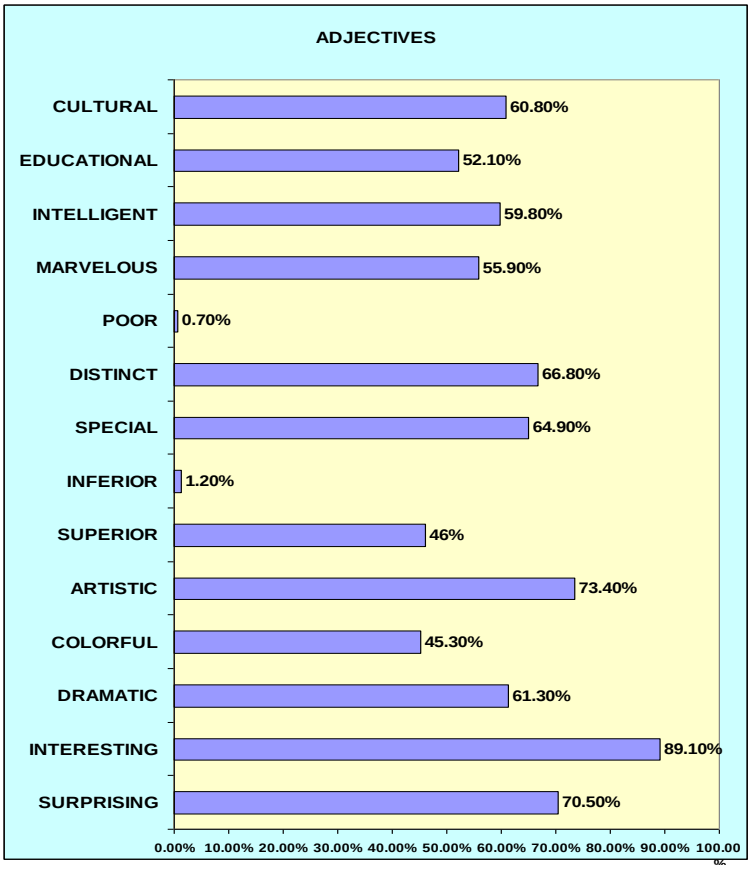

Figure 3. Adjective associated with anime(Source: author's own survey)

When they were asked about the importance of the correct subbing, they responded: from 412 people who answered this question, 277 found it to be very important, other 110 people answered

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that it is of some importance, 16 said it is important, the rest of them, that is only 9 people didn't considered it important at all.(**Figure 4**)

SUBBING PREFERENCES	NUMBER PERCENTAGES

Table 2. The importance of the correct subbing(Source: author's own survey)

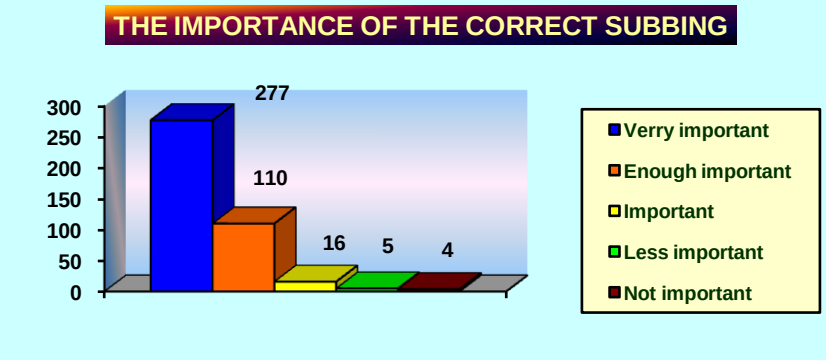

Figure 4. **The importance of the correct subbing** (Source: Table 2)

THE IMPORTANCE OF THE CORRECT SUBBING	NUMBER
Verry important	277
Enough important	110
Important	16
Less important	5
Not important	4

"*Do you usually watch animes subtitled in Romanian or English*"? (414 responses) From the results that although the number of respondents who received answers, it subtitled in English is slightly larger of those who prefer the Romanian subbing, the percentages are close. Consequently, we conclude that about half of the respondents prefer the animes subtitled in Romanian, and because the anime subbing in Romania is done at the present time by fansubbing groups, it results a great interest for the localization of anime in our country.(**Figure 5**)

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KNOWLEDGE OF THE FANSUBBING	NUMBER	PERCENTAGES
Romanian	192	46.4%
English	222	53.6%

Table 3. Subbing preferences(Source: author's own survey)

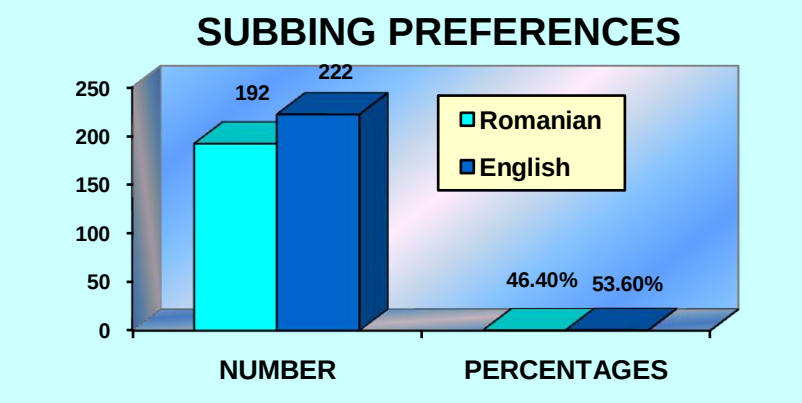

Figure 5. Subbing preferences(Source: Table 3)

Concerning the above, at the question "*Do you have knowledge of the existence of fansubbing groups in Romania*?", the answer given by the majority of the respondents was affirmative. (**Figure 6**)

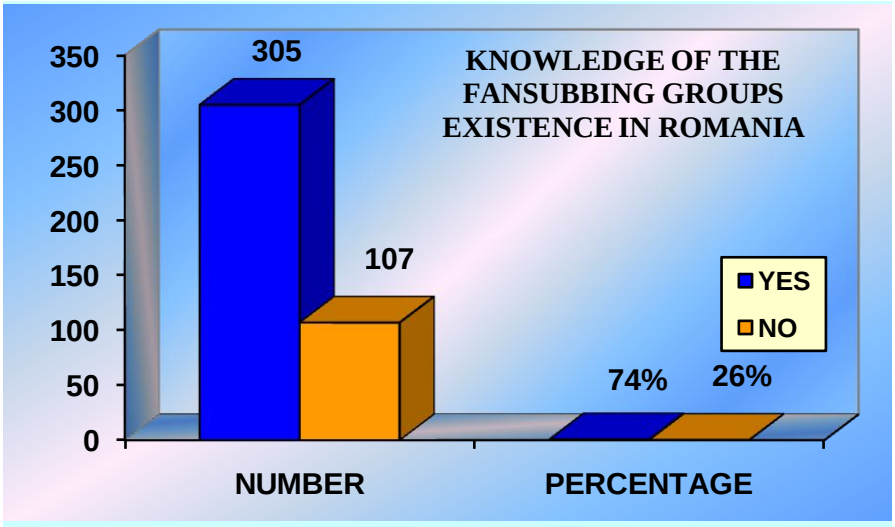

Figure 6.Fansubbing groups existence in Romania(Source: Table 4)

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	GROUPS EXISTENCE IN ROMANIA		
	YES	305	74%
	NO	107	26%

Table 4. Fansubbing groups existence in Romania(Source: author's own survey)

"*How often do you watch animes subtitled by the fansubbing groups from Romania*?"(413 responses) From the total number of persons who answered this question, about 70% are watching to some degree the animes subtitled by the fansubbing groups from Romania, percent which comes close to those who have knowledge of the funsubbing groups(73%).

The three subcategories of those who prefer the subbing done by the fansubbing groups, have verry close percentages, due to the external factors such as: free time, geographical location, age, and so on (**Figure 7**)

THE FREQUENCY OF WATCHING ANIMES SUBTITLED BY THE ROMANIAN FANSUBBING GROUPS	**NUMBER**	**PERCENT**
All the time	73	17.7%
Often enough	122	29.5%
Sometimes	93	22.5%
Never	125	30.3%

Table 5. The frequency of watching animes subtitled by the Romanian fansubbing groups(Source: author's own survey)

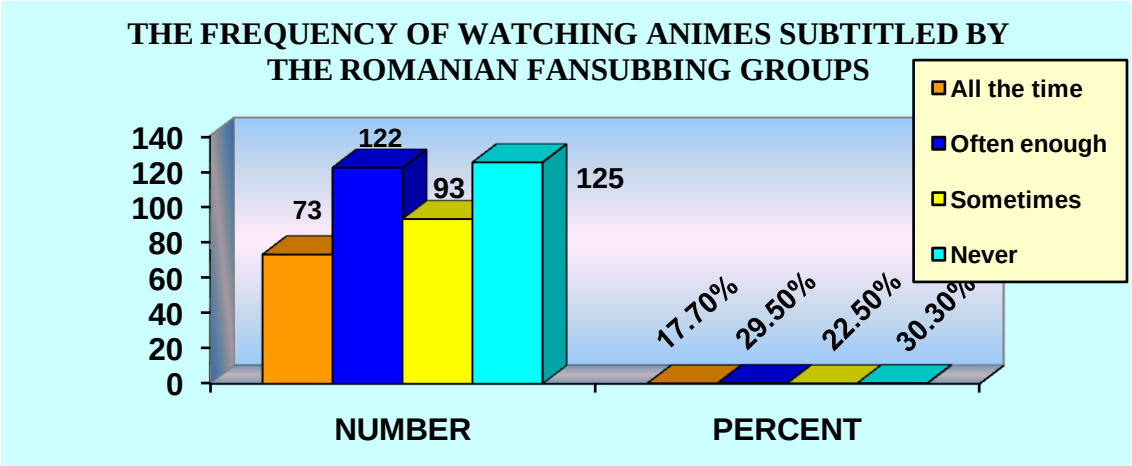

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Figure 7. The frequency of watching animes subtitled by the Romanian fansubbing groups(Source: Table 5)

"*Would you acquire anime Blu-ray/DVDs, officially subtitled by profesionals, from stores*?" From the 410 responses to this question, nearly half of them were positive. This fact, corroborated with the significant interest for the Romanian fansubbing groups, also with the existence of a great interest for the correct subbing, leads us to the conclusion that in our country, an anime market has already formed, more specifically, a well defined demand for the anime DVDs and Blue-rays, subtitled in Romanian.(**Figure 8**)

PREFERENCE FOR ACQUIRING OF OFFICIALLY SUBTITLED ANIMES	**NUMBER**	**PERCENT**
YES	200	48.8%
NO	210	51.2%

Table 6.Preference for aquiring the officially subtitled animes (Source: author's own survey)

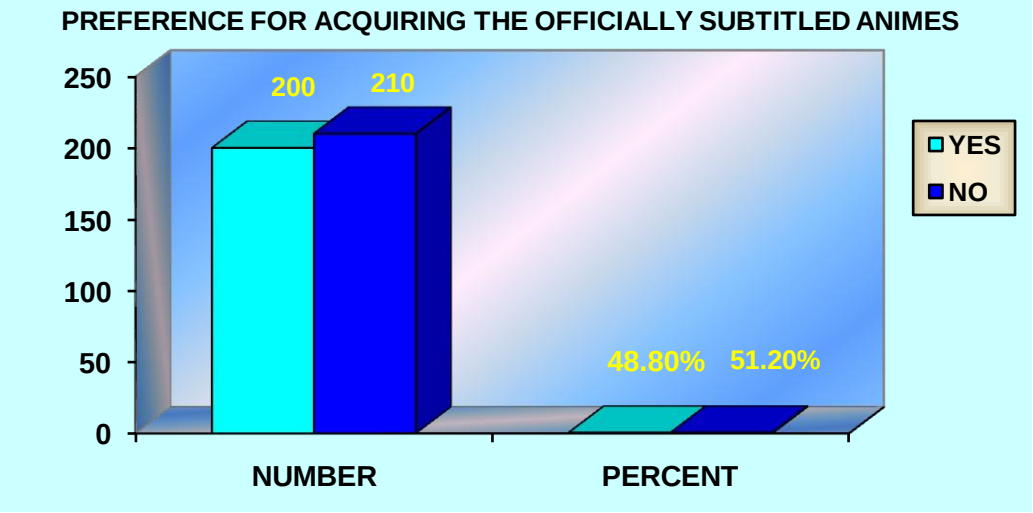

Figure 8. Preference for aquiring the officially subtitled animes (Source: Table 6)

As a consequence of the existence of the mentioned segment of market, there is also a demand for the anime related products. This confirms the assumption that, in most cases, the anime fan gains a cultural identity, fact which determines him to purchase these related products. The large majority of the respondents, namely 76.3% have acquired such products. Regarding the purpose of purchasing these derivatives, the majority stated that they have bought for them (308 of 410), which

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reinforces the previous findings. This comes to underline the ramification and development of the anime consumer's needs also for the anime related products, all of these being in the context of the affirmation of the new cultural identity of anime.

"*Have you ever purchased a product having a relationship with anime (manga, posters, figurines, cards, dolls, clothes and other products bearing the trademark, logo or other distinguishing feature that puts you in connection with anime)*?"(414 responses)

PREFERENCE FOR ANIME RELATED PRODUCTS	**NUMBER**	**PERCENT**
YES	316	76.3%
NO	98	23.7%

Table 7.Preference for anime related products(Source: author's own survey)

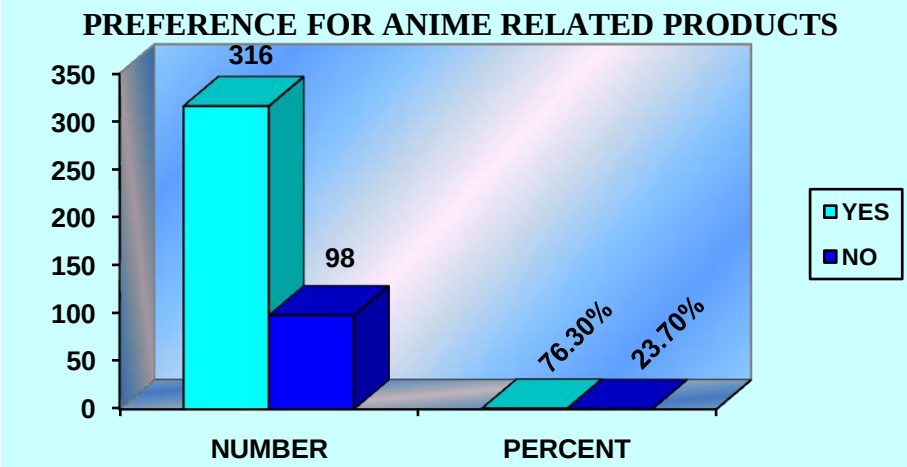

Figure 9. Preference for anime related products(Source: Table 7)

b) "*For what purpose have you bought the goods mentioned in the previous*?"(410 responses)

THE PURPOSE FOR ACQUIRING ANIME RELATED PRODUCTS	**NUMBER**

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For me	308
To make a gift	12
Because a friend asked me to buy them for him	1
I did not buy	89

Table 8.The purpose for acquiring anime related products(Source: author's own survey)

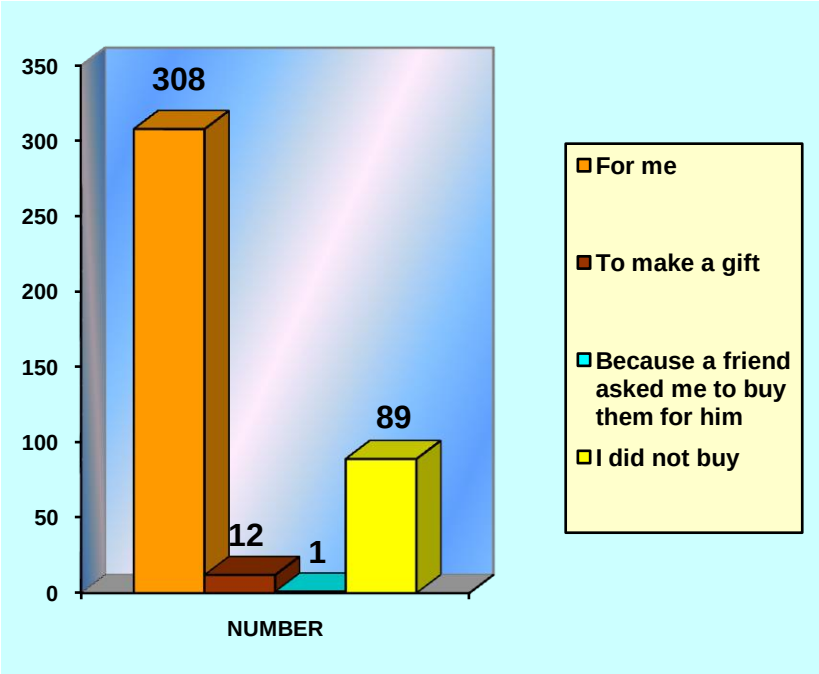

Figure 10. The purpose for acquiring anime related products(Source: Table 8)

The need for a more precise determination of the target group of consumers, led us also to the analyse of age and sex for the participants involved in this survey.

To the age related question have responded 409 participants, of which the large majority are young people, with ages between 18 and 25 years.(**Figure 11**) Regarding the sex, this indicator is of no significance, because the men and women percentages are nearly equal.(**Figure 12**)

"*In what age group do you belong*?"(409 responses)

AGE GROUPS OF THE RESPONDENTS	**NUMBER**
Between 18 and 25 years	365
Between 25 and 30 years	35
Over 30 years	9

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Table 9.Age groups of the respondents(Source: author's own survey)

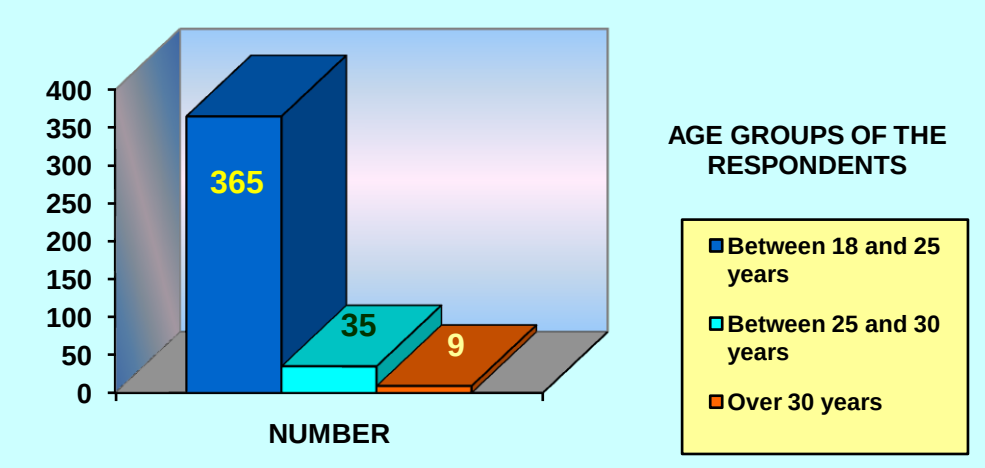

Figure 11. Age groups of the respondents(Source: Table 9)

SEX OF THE SURVEY PARTICIPANTS	NUMBER	PERCENT
FEMALE	204	49%
MALE	212	51%

Table 10.Sex of the survey participants(Source: author's own survey)

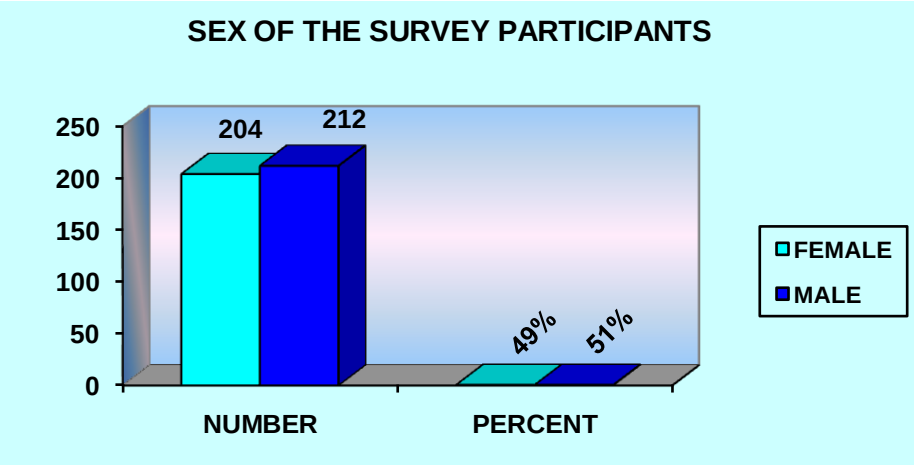

Figure 12. Sex of the survey participants(Source: Table 10)

3. Conclusions

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This study states the existence of a new market segment, reserved for the products of the anime culture in Romania. More exactly, we have demonstrated the demand for the anime Blu-ray discs and DVDs, subtitled in Romanian, in short, the demand for the localization of animes in Romania, with the purpose to legalize this localization so that these products to be presented on the shelves, in stores, among the other mass-media products, like the films or series subtitled in Romanian.

As a result, it is necessary and beneficial for the Romanian consumer, that the companies in charge of subtitling or doubling the mass-media products, to acquire licenses from the Japanese producers of anime. It is well known that these licenses are not so expensive and the costs of their acquiring will be easly amortized by the sales prices of the Romanian market localizated products, a market which already exists, as we have demonstrated.

In this regard, there is the example of other countries, in which this investment was very successful, such as America, where, even before this market segment was established and discovered, Japanese animation products made their own place in the top of the American consumer preferences.

We have to remember that in 2005, over 60% of the world animation products were produced in Japan(JETRO), the anime being already known, since then, in many European countries, including Romania.

New data show that (JETRO) on the anime products market in America, sales figure in 2009 was estimated at 2.741 trillion dollars, which demonstrates the profitability of the investment in such products.

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INHERITANCE RIGHTS OF THE SURVIVING SPOUSE

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Article 4 paragraph 1 of Law no. 319/1944 provides that "the surviving spouse, who has no home of his own, until performing the output of possessions and, in any case, for at least one year after the death of his spouse, in addition to the right of inheritance according to the provisions above, will have a right of habitation of the house where he lived, if this house represents part of the succession".

In principle, this right of habitation is identical in nature with the ordinary habitation, representing therefore a real right over another's goods, consisting in the right to use (live) exclusively in the own interest the house being part of the succession, not simply a dept security (location).

Key words: surviving spouse, right of inheritance, the Civil Code, succession, right of habitation.

Legal basis

The inheritance rights of the surviving spouse are currently regulated by Law no. 319/1944 on the right of inheritance of the surviving spouse, by which the provisions of articles 679, 681-684 of the old Civil Code which regulate this field were implicitly repealed. Today, the surviving spouse comes in competition with all four classes of legal heirs, having the right to forced heirship and some other specific rights.

The *Civil Code* in Chapter III entitled "Legal heirs" incorporates the provisions of the current law no. 319/1944 on the right of inheritance of the surviving spouse. All these matters are discussed in articles 970-974 and treated in an approach adapted to the actual needs.

Inheritance conditions required by law to the surviving spouse

In addition to the general conditions required to any heir, the surviving spouse must meet the condition that, at the beginning of the succession sequence, he may have the quality of spouse. If the rights of the other legal heirs are based on kinship with the deceased, the rights of the surviving spouse are based on his legal quality of spouse. Cohabiting relationship does not confer any right of succession to the surviving concubine.

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The Civil Code maintains this condition, inserting it in article970, according to which the surviving spouse heirs the deceased spouse only if, at the beginning of the succession sequence, there is no final decision to divorce.

Having the quality of spouse at the beginning of the succession sequence, there is of no matter the duration of the marriage or the financial situation of the surviving spouse or his sex, whether or not they were actually separated, whether or not they had children and even that divorce proceedings were instituted, as long as there is no irrevocable decision for divorce.

Since marriage may be ending and thus the quality of spouse, by its dissolution by divorce, by declaring its nullity or annulment, I will make some remarks about these assumptions.

In case of divorce, the quality of spouse remains valid until the decision for divorce becomes irrevocable (art. 39, Family Code).

If death occurred during the process of divorce, marriage is terminated by death, in this case, and the surviving spouse will enter the succession sequence with the quality of spouse[1].

If the judicial declaration of the death of one of the spouses occurred, if declaration of death is canceled and the surviving spouse got remarried, according to article 22 of the Family Code, the first marriage is considered dissolved on the completion of the second. The remarried spouse will obviously be able to inherit only the spouse of the second marriage, and not the one of the first marriage.

In case of absolute or relative nullity of marriage, since this is considered retroactively abolished, heritage is no longer an issue even if one spouse's death occurred before the court's decision of absolute nullity or the reference for relative nullity. The quality of spouse is retroactively abolished by the judicial decision to cancel the marriage.[2]

Under the provisions of article 23 of the Family Code, regulating putative marriage, the spouse in good faith retains the quality of spouse in a valid marriage until the decision that was found or declared void remains irrevocable. This means that if one spouse dies in the time period between the completion of marriage and the irrevocable decision of cancellation or declaration of invalidity of marriage, and the surviving spouse was in good faith, he retains the right to enter the succession sequence as the surviving spouse[3].

The Court ruling on the invalidity of marriage is required to determine the good or bad faith of the spouses in marriage[4]. It is the only exception to the reciprocity principle of the legal succession vocation. If death of one spouse occurs after the irrevocable decision that dissolved the marriage,

[1]Ion P. Filipescu, *Family Law Treaty*, ALL Publishing, Bucharest, 1993, p.200.
[2]Fr. Deak, *Inheritance Right Treaty*, Actami Publishing, Bucharest, 1999, p.124.
[3] Ion P. Filipescu, *op. cit.* p.196.
[4] The Supreme Court House. Guidance decisions no. 3/1974, in the C.D. 1974, p.11-14.

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nor the good faith and especially the bad faith retain their succession vocation, after losing the quality of spouse.

Rights conferred by law to the surviving spouse

Law no. 319/1944 provides that the surviving spouse has the following categories of rights:

a right of inheritance in competition with each class of heirs (art. 1);

a special right of inheritance on furniture and household items as well as wedding gifts (art. 5);

a temporary habitation right on the house (art. 4).

a. Inheritance rights of the surviving spouse in competition with each class of heirs.

The surviving spouse doesn't represent a part of any class of heirs, but according to article 1 of Law no. 319/1944, he comes in competition with all four classes of heirs. He is neither removed, nor does he remove the relatives of the deceased spouse from the succession sequence.

The *Civil Code* maintains this position, showing in art. 971 paragraph 1, concerning the inheritance vocation of the surviving spouse, that he enters the succession sequence in competition with any of the classes of legal heirs and in their absence or if none of them doesn't want or cannot come to inherit, the surviving spouse collects all inheritance.

According to article 1 of the law, he has the following succession shares, shares that are found and maintained in art. 972, paragraph 1 of the *Civil Code*:

- In competition with the descendants of the deceased (class I) he has a share of 1/4, regardless of their number;
- In competition with the privileged ascendants and collateral privileged (class II), when they come together to share inheritance, he has a share of 1/3, and if he comes in competition, either only with the privileged ascendants or the collateral privileged ascendants, he has a share of only 1/2 of the inheritance;
- In competition with the ordinary ascendants (class III) or with the ordinary collaterals (class IV) he has a rate of 3/4 of the inheritance, regardless of the number of those who compose this class of heirs.

Establishing the appropriate share of the surviving spouse has precedence over that of the other heirs. This means that the share of the surviving spouse shall be charged to the legal heirs of the deceased spouse.[5]Consequently, the other heirs' share is reduced with the share of the surviving spouse, without any exception.

[5] Fr. Deak, *op. cit.*, p. 128-129;

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The *Civil Code* establishes in art. 972 paragraph 2 that the share of the surviving spouse in competition with the legal heirs of different classes is determined as if he had come in competition only with the nearest of these classes.

To establish the share of the surviving spouse one must take account of the heirs actually coming to inherit, this means one mustn't consider shameful heirs or heirs who gave up the inheritance and ex-Heredia, with the condition, in this latter case, that they aren't forced heirs.

Concerning the legal character of the inheritance rights of the surviving spouse, as they result from Law no. 319/1944, they are the following:

- The surviving spouse is a forced heir;
- The surviving spouse is required to report donations received from the deceased spouse during his lifetime, but only in competition with the descendants of the deceased;
- The surviving spouse is not a saisine heir, so that in order to take possession of the inheritance he shall obtain an heir certificate;
- The surviving spouse can come to inherit only on his own behalf, representation being excluded.

Jurisprudence[6] has established in accordance with the Civil Code that the unreported generosities performed to the surviving spouse who is not the parent of the descendents that he comes into competition with may not exceed the share of the descendent with the smallest share and cannot, in any case, be more than 1/4 of the succession.

This is a special available share, which is included in the ordinary available share, without being able to aggregate with each other and without being able to reach the legal reserves, in which case the limits should be reduced to the limit of the legal reserves. If the special available share is less than the ordinary available share and the deceased has not made any liberality for this difference, the division shall be made according to article 1 of Law no. 319/1944.

For this situation, the *Civil Code* provides the same thing, but stipulates expressly who deserves the difference between the ordinary and the special available share of the descendants, and also that the provisions apply properly in the case when the descendant became ex-Heredia in the advantage of the surviving spouse, who is not his father. On this occasion all controversy from the doctrine on this institution are removed.

Assuming the existence of two or more persons claiming succession rights as surviving spouses (bigamy, polygamy), the inheritance left by the bigamist deceased or a share of this inheritance prescribed by law for the surviving spouse, in competition with different classes of legal heirs, get equally divided between the spouse of the valid marriage and the innocent spouse of the void

[6]The Supreme Court House, Civil Section, decision no. 1615 of august 8, 1972, in R. R. D. no. 4/1973, p.175-176.

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marriage, the innocent spouse in good faith being the victim of common and invincible error, not knowing that the deceased had two marriages[7].

The Civil Code has dealt also with this new approach and inserted it in art. 972 paragraph 3, providing that, if after the putative marriage, two or more persons have the quality of surviving spouse, the preset share is divided equally between them.

b) Special inheritance right of the surviving spouse over the furniture and objects belonging to the household and over the wedding gifts

Law no. 319/1944, through art. 5, gives the surviving spouse, if he does not come in competition with the descendent heirs, apart from his or her succession share, a special inheritance right of the surviving spouse over the furniture and objects belonging to the household and over the wedding gifts

This new provision is also maintained in the Civil Code, art. 974 and it has the following content, "If he doesn't come in competition with the descendant heirs, the surviving spouse inherits, apart from the share established according to article 986, the furniture and the objects belonging to the household that were concretely affected to the joint use of the spouses".

In competition with the first class descendants of the deceased, the goods enter the succession sequence and will be divided between heirs according to the succession share. The legal provision is justified by the intention of the legislator to ensure the natural continuation of life of the surviving spouse. The surviving spouse collects these goods over his succession share from the other goods.

In this category fall the goods serving at furnishing the household of the spouses', the television, the radio, the carpets and the objects that by their nature are designed to serve the household. We must take into account the living standard of the spouses, because according to it we will determine from case to case, to what extent they represent an objective necessity to the future of the living spouse. We may also include here those goods which didn't satisfy a need, but a commodity or a joint pleasure of the spouses[8].

This category does not comprise the goods that due to their nature cannot be used by the spouses in the household or they weren't affected by the joint use of the spouses. The goods affected to the household shouldn't be equal to those of the peasant household with other mission and purpose, being tools of production and which do not cover the inner living of the spouses' household[9].

[7]Ioan Adam, Adrian Rusu, Ioan Adam, Adrian Rusu, *Civil Law. Succession*, All Beck Publishing, Bucharest, 2003, p.118-119.
[8]The Supreme Court House, Civil Section, decision no. 2218/1971, in R. R. D. no. 8/1972, p. 160;
[9] Fr. Deak, *About the special inheritance right of the surviving spouse on goods belonging to household, II*, in R. R. D. no. 11/1988, p. 16-22. ;

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In judicial practice, it was also decided that, from the perspective of law enforcement of the provisions of article 5 of Law no. 319/1944, it isn't very important whether the spouses have lived together continuously or were in fact separated and the location of goods at the time of the death[10]. In case of an irrevocable separation, under article 5 of Law 319/1944, only those assets that were acquired until the failure of living together can be inherited.

For the surviving spouse to benefit from this class of goods, it is provided that the deceased should not have gained his share of the these goods through donations or bequests, these acts being valid, because the surviving spouse, although he's a forced heir, cannot force heirship on this class of goods. The surviving spouse being a forced heir and his forced heirship like the one of the other forced heirs couldn't be violated, the goods presented by article 5 of Law 319/1944 and which have been the object of liberalities will be included in the succession to establish the forced heirship.[11] The surviving spouse will be deprived of this special right only if the predeceased spouse has had through liberalities the entire part of this class of goods.

In case of putative marriage, determined by bigamy, the special right of the surviving spouse is realised according to the household goods concretely affected. The surviving spouse of the valid marriage will collect the goods affected to the joint use of the spouses, while from the void, but putative marriage, only the spouse in good faith will collect the goods from the common household with the deceased, without taking into account the value of those goods.

The special right to inherit of the surviving spouse, introduced by art. 5 of Law no. 319/1944, includes wedding gifts in addition to furniture and objects of the household. These can be given to the spouses at the celebration of their marriage, no matter if these gifts were given to both spouses or to either one of them, by third parties including the gift given by a spouse to the other spouse.

Thus it was specified that the gifts given by third parties only to one of the spouses and those of the surviving spouse given to the deceased, do not comprise the category of those provided by art.5 of Law nr.319/1944, because these belong to him and they do not enter the succession property as we have the situation of the share of the common goods appropriate to the surviving spouse. Some authors [12]argue that the law applies only to the gifts offered to both spouses, because those given to the deceased by third parties merge the inheritance property of the deceased and they are not collected under any special law by the surviving spouse.

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[10] H. A. Ungur, *About the special inheritance right of the surviving spouse on goods belonging to household, I*, in R. R. D. no. 11/1988, p. 11-16.
[11] Fr. Deak, *op. cit*., p. 139;
[12] M. Eliescu,*SuccessionCourse*, Humanitas Publishing, Bucharest, 1997,p. 139-146; C. Stătescu, *Civil Law, Transport Contract, Intellectual Creation Rights, Inheritance, Didactică şi Pedagogică Publishing, Bucharest, 1967,* p. 147;

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The special right of the surviving spouse is also a right of legal inheritance, affected to the purpose prescribed by law, having a special destination and it is no need to presume an unexpressed bequest of the deceased by the legislator, but if this one has such an intention, nothing prevents to implement it, within the legal limits.

According to the provisions of art. 703 of the Civil Code, the prospective inheritor, guilty of hiding or stealing succession goods, cannot collect the hidden goods; he will lose the share of these goods that would have belonged to him.

The sanctions provided by article 703 of the Civil Code for hiding or removing such a good, when it isn't in competition with the descendants, aren't applicable to a surviving spouse, who deserves however, under Article 5 of Law no. 319/1994, besides the legal succession share, also the movable goods that make up the household.

c) The habitation right of the surviving spouse

Therefore, paragraph 1 of art.4 of the Law provides that "the surviving spouse, who has no home of his own, until performing the output of possessions and, in any case, for at least one year after the death of his spouse, in addition to the right of inheritance according to the provisions above, will have a right of habitation of the house where he lived, if this house represents part of the succession".

It shall be deducted from what the legislator says that the following conditions must be fulfilled by the surviving spouse in order to have the right of habitation of the house:

- At the date of the opening of the succession sequence the surviving spouse should have lived in the house that makes the object of the habitation right. In the doctrine it was decided that it isn't necessary that at the moment when death occurred, the spouses should have lived together;
- The surviving spouse has no other house of his or her own;
- The surviving spouse does not become, by inheritance, the exclusive owner of the house. In this case he cannot be the owner of an occupancy right because in principle it is not allowed for someone to have a dismemberment of ownership on a property that belongs to the owner exclusively. (*neminem res sua servit*). In the event that he is only coheir with others, by virtue of the occupancy right, he can use the house according to the needs and only related to the share acquired by inheritance;
- The house on which the right of habitation is constituted must be part of the succession, in whole or in part, being the exclusive property of the deceased or in share with the surviving spouse or another person. Obviously, in case of common property on shares or joint property, the right of habitation shall cover only the part which belonged to the deceased. The rightful part of the joint

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property belongs to him in another title, while he cannot have any rights derived from his spouse's inheritance over the rightful part which belongs to a third party;

-The deceased should have not removed by testament the habitation right of the surviving spouse as this one is a forced heir only related to the goods mentioned in article 1of Law nr.319/1944[13].

According to art. 973 paragraph 1 of the *Civil Code* the surviving spousewho hasn't any right to use another house according to his need, has of a habitation right over the house he lived until the opening of the inheritance, if the house is part of the inheritance.

The new regulation provides, distinctly from the old one, the express provision according to which the surviving spouse shouldn't be owner of any house appropriate to his needs. This opinion was accepted by the doctrine and jurisprudence and it has been applied in the actual regulation.

The habitation right of the surviving spouse, deduced from the old regulation, had the following legal characters:

- It is a legal right that has as object the living house, and to the extent of using the house, his owner can use the land, including the common parts;

- It is a temporary right that lasts until the execution of the exit from the co-ownership or until the remarriage of the surviving spouse. This provision is maintained in the Civil Code in art. 973, paragraph 4 and it contains the following "The habitation right turns off to division, but not earlier than one year from the date of opening the inheritance. This right shall cease, even before the expiration of one year in case of remarriage of the surviving spouse";

- It has a strictly personal character as it cannot be transferred or entailed in favour of another person unlike ordinary habitation regulated in art. 565-575 or the Civil Code. On the contrary, according to art. 4, par. 2-3 of Law no. 319/1944, the other joint heirs have the right to restrict this right if the house is not entirely necessary to the surviving spouse, and according to art. 4 par. 4-5 of the law, they can buy another house to the surviving spouse elsewhere. The content of this provision has been accepted also by the *Civil Code* in art. 973 par. 3, remaining up to date, the legislator being currently in agreement to this solution "Any of the heirs may require, either to restrict the right of habitation, if the house is not entirely necessary to the surviving spouse, or to change the object of habitation, if they provide another suitable house to the surviving spouse". From the personal and inalienable character follows the imperceptible character, the creditors of the surviving spouse not having the right to follow it;

- It has a free character, the surviving spouse being exempted to give the bail provided by art. 566 of the Civil Code and also to pay the rent to the heir who has obtained the ownership of the house.

[13] Fr. Deak, *op. cit.*, p. 150.

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The approach of the *Civil Code* inserts in art. 973 paragraph 2 the provision according to which the right of habitation is free, inalienable and imperceptible. Therefore, besides the legal characters outlined by the doctrine and jurisprudence, these tree will join them successfully, because the legislator considered them necessarily to insert, on opportunity clarifying the conflicting discussions on this topic.

The right of habitation of the surviving spouse being regulated in 1944, and over time more regulations have been effective, the question was to which extent they have prejudiced the right regarding housing. Special locative legislation, as mentioned in the literature[14], didn't abrogate the right of habitation, neither that of common law, nor the one regulated by Law no. 319/1944.

If both spouses were renters, the surviving spouse will have the right to use the house derived from the rental agreement, also if only the deceased spouse was the owner of the rental agreement (art. 27 of Law no. 114/1996). The surviving spouse will continue to use the house by virtue of the habitation right only if this has been the exclusive property of the deceased spouse or their common property, or with a third party, on shares or joint property.

After the cease of the habitation right, if the house is not assigned to his after division, the surviving spouse will pay the rent and he can be discharged under the conditions of the common law.

A useful provision is included in the *Civil Code* in art. 973 paragraph 5 according to which all the disputes regarding the habitation right is settled by the competent Court to judge the heritage division, which will decide urgently in the Council Chamber. This provision is useful for knowing the competent Court to which the action shall be instituted and, at the same time, through this decision an uniformity of the cause is ensured, in the sense that the Court endowed with the division can successfully give a decision regarding the right of habitation and therefore there will be an economy and a depletion of the Courts.

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THE IMPACT OF PROPERTY ASSESSMENT FOR TAXATION IN ACCORDANCE WITH THE 2016 FISCAL CODE

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Abstract: Under the new Fiscal Code, valid for 2016, there was a need to assess the buildings used for carrying out economic activities. Thus, the taxation of buildings according to ownership was replaced by the taxation of buildings according to designation. Under these conditions, transitioning from an assessment performed with the method of comparison approach to an assessment performed through the method of cost approach, the result was lower tax values. Moreover, the study I have conducted shows the difference between the value of a sqm obtained from the comparison of market values in an apartment, a house, a commercial space or a warehouse and the value of a sqm obtained by applying the cost method. The obtained results make us think about a reality: if the value of a sqm obtained using the cost method is as much as it is at that point, than how do contractors justify the prices they request for their constructions? Let us hope that the market will reposition buildings prices.

Key-words: assessment, assets, comparison approach, cost approach, Fiscal Code

Introduction

The evaluation of tangible assets must be performed, according to Romanian legislation, at least once every three years for legal entities and at least once every five years for individuals, if the latter are conducting a business in their privately owned buildings.

While the provision concerning legal entities exists since a few years ago, starting with 2016, the Fiscal Code includes the provision related to individuals, and the method for tax calculation for individuals is stipulated in articles 457-459 of the Fiscal Code [1].

These new provisions of the Fiscal Code were aimed at changing the method for tax calculation so that, if by late 2014, property tax was calculated and paid, starting with 2015 the calculation and payment is performed depending on the destination of the building. Also, it is the first time when the physical depreciation is taken into account for the calculation of a building's taxable value. This is a good thing, because when the taxable value was being calculated at market prices, it did not take into account this depreciation, and buildings older than 30-40 years had the same tax regime as relatively new buildings, no older than 5 years.

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2. Cost approach

According to the new provisions of the Fiscal Code, the taxable value of buildings is calculated through the cost approach method, with two methods, elaborated by and Matrix Rom SRL, both entities being agreed by both ANEVAR and the Ministry of Public Finances.

Cost approach is an evaluation method also provided in OMFP no. 1802/2014 [2] which, at point 266, par. (1) specifies that "a tangible asset recognized as an asset must be initially assessed at the cost or determined according to the evaluation rules of the present regulation, depending on the manner in which it enters the entity".

Thus, the evaluation of tangible assets for tax purposes requires the document attesting the acquisition of the building. This document can be a Purchase and Sale Agreement, a building permit and a Reception Protocol, if the building was constructed or a Certificate of Inheritance. In my practice, I have come upon all previously listed property titles.

Also, all property titles have to be accompanied by a Real Estate Register excerpt which should indicate the ownership of the building. Until 2006, these Real Estate Register excerpts did not contain the broken down surfaces of the assessed buildings. That is why a 1.4 coefficient was provided, to be applied to the surface of the buildings to be assessed if it is impossible to perform measurements of the exterior surfaces of the buildings.

Although the value of this coefficient seems high and there is a concern that the taxable value would be increased, the taxpayers should not fear, because after applying the physical depreciation coefficient provided by GEV 500 of ANEVAR, the values are reasonable.

In this situation the Mayor Offices have collected more or less money for the budget, depending on the values determined by the evaluation reports. There were situations where the taxable values were higher than last year, which is not uncommon and these situation mostly occurred in the case of newly constructed building, which did not benefit form the physical depreciation coefficient.

3. Comparative study

Based on the results obtained from the evaluation reports, I can make a small comparative study between the values obtained as process/sqm, expressed in Euro, for apartments, houses and industrial warehouses, buildings which were the subject of evaluation reports in Cluj-Napoca.

Please find below the values thus obtained:

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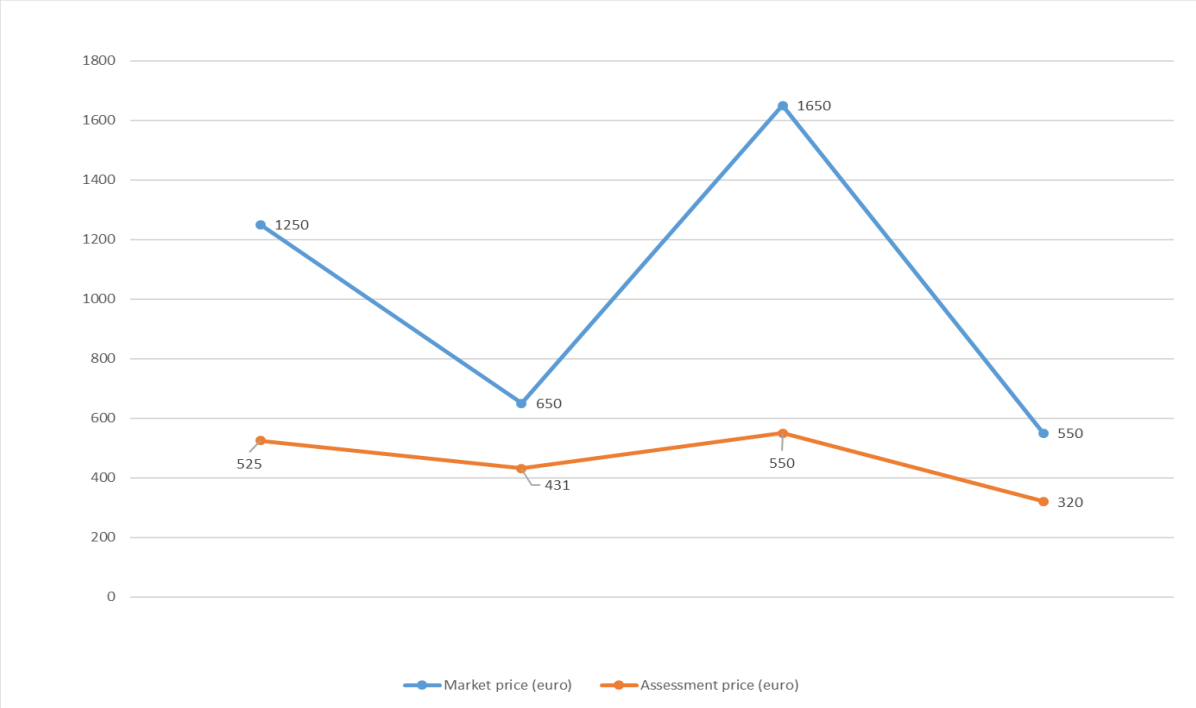

Figure 1. The value of the prices in the market as compared to the prices in the following evaluation

(*Source*: Processing of the author after the [4], [5] and [6])

As we can see, the values obtained from market information are significantly higher in the majority of the studied cases, in apartments, houses, commercial space and industrial warehouses.

In the case of apartments (column 1), we can say that the price difference is mainly given by the location of the apartments and secondly, the price difference is given by the interior finishes. To a lesser extent, this difference is also influenced by the level (floor) where the apartments taken into account for this comparative study are located.

In the case of houses (column 2), the first factor influencing their price is their size, the second factor is their positioning within the Cluj-Napoca neighborhoods, and the third factor is represented by the degree of finishing, which, like in the case of apartments, is higher in case of newer buildings.

In the case of commercial space (column 3), the difference is given in the main construction thereof, the difference appearing in the case of spaces in BCA compared with those constructed of brick, secondary and this difference occurs due to the surface and the facilities with utilities, the cost being higher in the case of commercial premises finishing with superior. And last but not least is the importance of their location.

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In the case of industrial warehouses (column 4), the difference mainly resides in their method of construction, the difference occurring in the case of warehouses built from prefabricated panels, compared to the ones built from BCA, and secondarily, this difference is given by the surface and facilities, the cost being higher for warehouses also equipped with offices and not only spaces reserved for lockers.

4. Conclusions

At this time, we cannot make an assessment related to the value collected by the Mayor Offices after this calculation method for the taxation of buildings and that is why it was surprising when Prime Minister Dacian Ciolos made the following statement related to the modification of the taxation system for buildings. "There are talks about transitioning to taxation based on the market value of buildings by giving up on the current system, which is based on their location. The contradiction comes from the fact that the market value is significantly influenced by the location of the property, and currently the taxation system does not take into account the location of the building". [7]

Let's hope that this approach of buildings tax will not change so quickly and is allowed to be properly implemented, so that we may only talk about its change in a few years.

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THE VULNERABILITIES OF ROMANIAN ECONOMY REVEALED BY THE 2016 COUNTRY REPORT

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Abstract: European Union has been confronted in the last ten years with persistent macroeconomic imbalances that has been reflected in large and lasting external deficits and surpluses. These deficits and surpluses accentuated the negative effects of the financial crisis started in 2008. The implementation of the monetary policy measures has been obstructed both by these major imbalances and by the constant losses of competitiveness and of accumulation of indebt. As an answer to this challenge, the European Union institutions adopted, at December 13th, 2011, the so-called "Six Pack" European Union laws, having the goal to strengthen the fiscal and macroeconomic surveillance in European Union countries and in the euro zone, introducing a procedure concerning the macroeconomic imbalances (MIP). The surveillance of the imbalances in the MIP framework is a part of the European Semester, which represents the instrument of economic governance in the European Union. The country report contains the in-depth review from the MIP. For Romania, the country report for 2016, evaluates the Romanian economy in the light of the annual analysis of growth, elaborated by European Commission for 2016. This paper emphasizes the vulnerabilities which influences the Romanian economy, as revealed by the in-depth review of the Romania country report for 2016.

Key words: European Semester, country report, macroeconomic imbalances, procedure

Introduction

The European Union has been confronted in the last ten years with persistent macroeconomic imbalances, reflected in large and lasting external deficits and surpluses, which accentuated the negative effects of the financial crisis that has been started in 2008. The application of the common monetary policy measures has been therefore hampered, the macroeconomic challenges for the member countries continued and contributed – by the contagion phenomena – to the Euro zone threats.

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As a response to this challenge, the European Union institutions adopted, on December 13th, 2011, the so-called "sixpack" European union laws, in order to secure the macroeconomic and fiscal surveillance in the Euro zone and in the European Union countries. This law pack introduced a procedure for the surveillance of the macroeconomic imbalances in the member countries, *the Macroeconomic Imbalances Procedure* (MIP), in order to early identify and correct the macroeconomic imbalances, especially those that contaminate other member countries. The imbalances surveillance within MIP is a part of the European Semester – the instrument of economic governance in the European Union, which establishes the general economic and social priorities, offering next year policy orientations for the member countries.

The starting point of the annual cycle of the Macroeconomic Imbalances Procedure is represented by the Alert Mechanism Report, which aims to identify and correct the imbalances that block the efficient functioning of the economies of the member countries and the overall European Union economy, and that can endanger the correct functioning of the monetary and economic union.

The dashboard that represents a basis for the Alert Mechanism Report contains 14 fundamental indicators with guidance thresholds, and another larger set of auxiliary indicators, in order to detect, for the member countries, the potential economic imbalances that need policy measures.

Initially, ten indicators have been chosen as relevant, but the latest years evolutions imposes the addition of 4 more relevant indicators, the first one being the growth rate of the indebt in the financial sector, to better reflect the link between the real economy and the financial sector. Starting with 2015, there have been included in the dashboard three indicators for the labor force employment, as an actual result of the Commission commitment to consolidate the analysis of the macroeconomic imbalances: the labor force participation rate, the long term unemployment, and the young people unemployment. The relevance is given both by the long lasting negative evolutions regarding the labor force employment, and by the social aspects which can unfavorably impact on the potential growth of the GDP, leading to greater macroeconomic imbalances.

The publication of the 2016 Alert Mechanism Report, on November 26th, 2015, initiated the 5th annual round of the MIP. The Report identifies the member countries that should make supplementary, more profound balances in order to evaluate if they are affected by imbalances that need policy measures.

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The Commission recommendations for the 2016 concern the same - like in 2015 - three fundamental pillars for the European Union economic and social policy:

- the encouragement of the EU member countries (including Romania) to participate at the Europe investment plan, by activating the necessary public and private investments;
- the continuation of the structural reforms supposed to modernize the economies of the member countries, in order to correct the imbalances, to increase the productivity and to reach a higher level of convergence;
- the elaboration of a responsible budget policy, focused on the achievement of the requirements of the Stability and Growth Pact.

Based on the economic analysis of the dashboard from MIP, the Commission reveals that there is a necessity for supplementary, more profound balances, because imbalances have been identified in the previous round for the majority of countries: Belgium, Bulgaria, Germany, France, Croatia, Italy, Hungary, Ireland, Netherlands, Portugal, Romania, Spain, Slovenia, Finland, Sweden and the United Kingdom. For the first time, there will be established, as well, detailed balances for Estonia and Austria. For the member countries that benefit of a financial support (Greece and Cyprus), the surveillance of the imbalances and the monitoring of the corrective measures take place in the framework of the corresponding support programs. For Czech Republic, Denmark, Latvia, Lithuania, Luxemburg, Malta, Poland, and Slovakia, there is no need for a detailed balance for the time being and the continuation of the surveillance within MIP it is no more justified. However, there is a need for a careful surveillance and a continuous policy coordination, in order to evaluate if there are excessive imbalances, if the imbalances persist or increase, if they correct, in such a way that the member countries can identify the emergent risks and to propose policies that will lead to the economic growth and to the increasing of the employment.

The Country Report Romania for 2016

The Alert Mechanism Report for 2016 identifies Romania as a country that needs a detailed balance. Therefore, the country report includes the detailed balance from the Macroeconomic Imbalances Procedure; it contains the annual analysis concerning the social and economic challenges for the European Union member countries. For Romania, the Country Report for 2016, published in February 26th, 2016, evaluates the economy of Romania in the light of the annual analysis of growth, made by the European Commission. The survey recommends three priorities for the EU's economic and social policy 2016: re-launching investment, pursuing structural reforms to modernise Member States' economies and responsible fiscal policies.

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This report is structured in three sections: 1.Scene setter: Economic situation and outlook 2.Imbalances, risks, and adjustment issues and 3.Additional structural issues. The second section of the country report contains the detailed balance from the Macroeconomic Imbalances Procedure, focusing on risks and vulnerabilities shown in the Alert Mechanism Report for 2016.The issues analyzed in this section are : the determinants of recent improvements in the current account deficit and net international investment position; the structure of its external financing; the effects of rising labor costs, improved international competitiveness in terms of Romania; the solidity of the financial sector and the potential impact of the emergent national laws on the financial stability; the implications of the ongoing fiscal loosening on Romania's growth trajectory and on debt sustainability; the real estate market with credit developments; measures regarding the offer, considering both public investment (particularly infrastructure) and investment barriers. Summary of the conclusions of the in-depth review is described in the evaluation matrix of the MIP which ends this section, focusing on imbalances and adjustment issues relevant for the MIP.

The vulnerabilities of the Romanian economy revealed by the country report

The key findings of the in-depth review covered in the country report and the challenges of the Romanian economy, are found in Table 1:

Table 1: Country Report Romania 2016 - findings / challenges

Main findings	**Specific challenges**
Economic growth in the last 3 years has been significant, among the highest in the European Union, due to strong exports (abundant harvests, massive industrial production in the years 2013-2014) and the gradual recovery of domestic demand since 2014. It estimated that real GDP grew by 36% in 2015 due to increased consumption and investment recovery; is expected to boost the growth rate above potential GDP in 2016 (4.2% - in response to tax incentives), following that in 2017 to moderate this growth (3.7%).	The real challenge for the government in terms of economic growth would ensure its sustainability and a balanced growth .

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The vulnerabilities associated to the external position have been reduced in a context of strong economic growth. The net international investment position significant negative has improved since 2012 and it expects to maintain this trend, but it remains sensitive to macroeconomic shocks. The main drivers of this improvement were a strong growth of the nominal GDP and a reduction in current account deficits. Although the net international investment position has a large negative value, sspecific to the economies that are in a phase of catching, such as Romania, trajectory is descended.	Although it found to reduce those vulnerabilities, the net international investment position remains sensitive to macroeconomic shock; recent trends but also the expectations from the European Commission, according to a simulation of unfavorable macroeconomic developments shows that the main risks affecting the net international investment position arise from shocks to inflation and growth. From the point of view of competitiveness although cost competitiveness was restored after 2010, however the pressures may reappear if the current acceleration of wage growth is sustained and exceeding gains in productivity. In terms of competitiveness not based on the costs, may be strengthening this competitiveness challenge in terms of the transition to an economy with a higher added value.
Although conditions in the labor market were favorable and the labor market was stable, with an estimated gradual improvement of it, despite the increase in employment, particularly in sectors with high added value, yet still problems of a structural nature they were in 2015: the employment rate has improved but is still below the EU average; vulnerable groups have limited access to the labor market; lack of coordination between measures nationally funded and financed by the European Social Fund lead to competing	The government will have to focus on strengthening labor market on the following measures: labor market integration of young people, especially young undocumented and long-term unemployed; stimulating internal and external mobility, focusing on highly skilled workers; implementation of the national strategy to reduce early school leaving; increasing the supply and quality of

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systems; early school leaving rate is high; preventive and remedial programs are limited; the percentage of young people who are not in employment, education or training are above the EU average; active employment measures are not sufficiently varied to meet specific needs of various groups of the labor market; the adequacy of unemployment benefits is low and further degrade; labor market and social challenges are interconnected and there is big gap between rural and urban areas.	early childhood care and education; elaborating by the Ministry of Labor of an integrated catalog of services funded both by the European Social Fund and the national budget; developing a strategy for social dialogue; accelerating the implementation of dual education .
After the unfavorable developments in 2014, banking sector profitability was restored in 2015 and were consolidated prudential banking indicators, but recent legislative developments could exert pressure on the banking sector and financial stability. Despite capital reserves and liquidity encouraging overall banking sector continues to be exposed to internal sources of vulnerability. Over the last two years have been legislative initiatives that have been discussed, not yet finalized , implementation of laws already in force or of bills can put pressure on the banking sector : for the moment , the current version of the law on commissioning payment and the impact of certain decisions of courts applying the law on unfair terms. Another negative impact on banks might have the provisions on legislative initiatives on the conversion of foreign currency loans	The banking sector remains so vulnerable to some initiatives national legislative: implementing the law on unfair contract terms ('unfair terms') and the law on giving in payment, applying it retroactively, pose a serious challenge to the stability of the banking sector, with implications for the entire economy (the current version of the law on payment commissioning may have um negative impact on domestic demand and consumer confidence and investor).

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in local currency loans.	
Strong economic growth in 2015 was enhanced by tax cuts and wage increases in the public sector and ad hoc decisions taken and approved outside the budget process, without providing for their funding under national law. From January 2016 came into effect new measures that will continue expansionary fiscal year 2017. Thus public finance deficit is expected to increase more than three times as percentage of GDP in just two years, leading to compromise of budgetary consolidation, gradually realized in last years. Lack of vision on medium and poor implementation of fiscal rules are the main factors behind the pro-cyclicality.	An expansionary fiscal policy in an environment of strong growth is a cause for concern. Adopting an expansionary fiscal policy in an environment of strong growth, which stimulates primarily the internal consumption without first taking further measures which aimed the offer could stimulates new internal and external imbalances.
Poverty and social exclusion is among the highest in the European Union, especially among children and the Roma. Social transfers have limited impact on poverty reduction; provision of social services is insufficient; lack of a coherent adjustment mechanism; activation and labor market integration of social assistance beneficiaries were limited. Although progress has been made, the results remain unsatisfactory.	Effectiveness of social protection and health system continues to be a serious challenge.
Effectiveness and efficiency of public administration are limited; the ability of public institutions to develop and implement policies in a strategic and coordinated way is strongly influenced by both the unstable	Accelerating reform of public administration; reorganization of public procurement so as to increase transparency and efficiency; development of e-government to improve the

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organizational structure, weak administrative capacity and inconsistent policies in terms of human and financial resources and the politicization and lack of accountability of civil servants. Add to this the complexity of administrative procedures, the volatility of fiscal policies and the widespread use of emergency ordinances government, which creates uncertainty and hampers the investment decisions.	efficiency of public administration; supporting interoperability at national and better providing digital services representing several priorities on public administration.

Sourse: European Commission, European Semester Documents 2015, 2016

Conclusions

In February 2015 the Commission concluded that Romania was experiencing macroeconomic imbalances, which require policy action and monitoring particularly. The 2016 Alert Mechanism Report, which initiated the 5th annual round of the Macroeconomic Imbalances Procedure, identified Romania as a country that needs an in-depth review. The risks arising from these macroeconomic imbalances come from: the relatively large negative net international investment position (NIIP), a weak medium-term export capacity and while financial sector stability was preserved, external and internal vulnerabilities of the banking sector remained.

Therefore, on February 26, 2016, the annual Country Report for Romania was issued, containing an evaluation of the economy of Romania in the light of the annual analysis of growth. The analysis made by the European Commission recommends that it should consider three priorities for the economic and social policy of the European Union in 2016: the restart of the investments, the persistence in the structural reforms, in order to modernize the economies of the member countries, and the using of responsible budgetary policies.

The analysis presented in the Country Report for Romania 2016 leads to a number of conclusions:

- negative net international investment position continues to be a source of macroeconomic vulnerability; net debt related to foreign investment contributes around -39% of GDP to the net international investment position;
- expansionary fiscal policy in an environment of strong growth is a cause for concern; adoption of an expansionary fiscal policy in an environment of strong

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growth, which stimulates primarily the internal consumption without first taking further measures which aimed the offer could stimulates new internal and external imbalances;

- liquidity of the banking sector has improved due to deleveraging; despite capital reserves and liquidity encouraging overall banking sector continues to be exposed to internal sources of vulnerability; it remains vulnerable to some initiatives national legislative: in particular the law on debt discharge, in its current form, poses a serious challenge to the stability of the banking sector, with implications on the whole economy; it could impact negatively domestic demand as well as consumer and investor confidence;
- other sources of vulnerabilities are the implementation of the law on abusive clauses and legislative initiatives on the conversion of foreign currency loans into local currency loans.
- the solid economic growth determined the increase of the macroeconomic resistance; the current account debts, previously unsustainable, have been corrected and it is estimated that it will remain under control, at a level under 3% of the GDP until 2017;
- although the stability of the financial sector has bees ensured by the regulation authorities by decisive measures, with the European Commission support, however, some legislation initiatives can become a threat in this respect;
- the difficulties in implementing the structural funds programmes hamper public investment so that basic transport and other infrastructure remain underdeveloped, generating a bottleneck to growth in Romania;
- in the same time, Romania achieved limited progress concerning the implementation of the 2015 specific recommendations for each country.

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CHARACTERISTICS OF THE ROMANIAN MONETARY POLICY

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Abstract: In this paper[1] we intend to highlight some features of the monetary policy of the National Bank of Romania (NBR) between 2007 and 2014. We make some correlations in order to show how the monetary transmission mechanism has worked, as well as in order to capture the factors that have affected positively or negatively the transmission mechanism of the monetary policy in Romania. Thus, we compare the National Bank of Romania's reference interest rate with the interest rates on loans and on deposits of commercial banks in order to specify whether the monetary policy interest rate has been or not a signal pursued by commercial banks. Also, we compare inflation with monetary policy rate, the interest rates on loans and on deposits. NBR's monetary policy transmission depends on several factors, including the structure of the loans and deposits of commercial banks operating in Romania, the stock of non-performing loans, the structure of the Romanian banking system. As a result, in the article we analyze the elements that measure these factors (e.g., private sector credit in lei and foreign currency, the NPL rate, the share of net assets and of social capital of banks with majority Romanian capital in the total Romanian banking system).

Key words: monetary policy, transmission mechanism, interest rate, Romanian banking system, factors of influence

Introduction

The monetary policy, like many other macroeconomic policies, faces strong interconnections; it receives and sends signals from/to the entire economy and also from/to the international environment. The requirement for a balanced monetary policy comes from the need to integrate and solve problems in connection with the free movement of capitals, the volatility of exchange rate and of interest rates, financial contagion, judicious regulation of the commercial banks system, active and preemptive supervision, etc.

[1]The article is based on the research project "Directions and challenges of the Romanian monetary policy in the postcrisis domestic and international context" elaborated in the Center for Financial and Monetary Researches "Victor Slavescu", in 2015, under the coordination of Camelia Milea, PhD.

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From the perspective of joining the Euro zone, Romania must take into account the fact that monetary policy and fiscal-budgetary policy will be the only instruments of macroeconomic policy available to the authorities in order to support the balanced development of our country's economy. The conduct of the monetary policy of the National Bank of Romania (NBR) must aim medium-term price stability, by anchoring the inflationist anticipations, and also ensuring a proper level of liquidity on the monetary and foreign exchange markets, as well as the correction of the distorted position of interest rates on loans and on deposits in relation with the monetary policy interest rate – all of them being prerequisites of a sustainable revival of the crediting process and, implicitly, of the sustainable development of the Romanian economy.

Within this context, we consider to be necessary an overall analysis of NBR monetary policy, more specifically, of the transmission of the NBR monetary policy impulse towards the real economy. Therefore, in this article we intend to highlight a few characteristics of NBR monetary policy between 2007 and 2015. We shall make several correlations in order to mark out how the monetary transmission mechanism has worked, as well as to catch the factors that had positive or negative influence on the transmission of the monetary policy in Romania.

Correlations within the sphere of the monetary policy in Romania

The analysis begins with a review of the monetary policy interest rate evolution in the period 2007-2015, which shows two points of inflexion (June 26th, 2007 and August 1st, 2008). Until June 26th, 2007, the monetary policy interest rate displayed a decreasing trend, followed by an increase until August 1st, 2008, determined by the challenges that the Romanian economy had to cope with in terms of nominal and real convergence. After August 1st, 2008, the monetary policy interest rate has had a decreasing trend drawn by the effects of the international economic and financial crisis, and implicitly by liquidity contraction.

Thus, between June 1997 – the third quarter of 2008, NBR's operations on the monetary market aimed almost exclusively to withdraw the surplus of liquidity from the banking system. In the last quarter of 2008, on the background of the on-going decrease of the structural surplus of liquidity within the banking system, there have been made operations to supply liquidity. Subsequently, due to the wide movements of the autonomous factors of the liquidity there has been an alternance, not necessarily synchronized, of the direction of using the main monetary market instrument of the central bank (NBR, 2015).

NBR's data show that the monetary policy has been implemented in Romania in two different situations. Between 1996 and 2002, the real monetary policy interest rare was negative, which decreased the trust in the national currency and the demand for money, which fuelled the domestic

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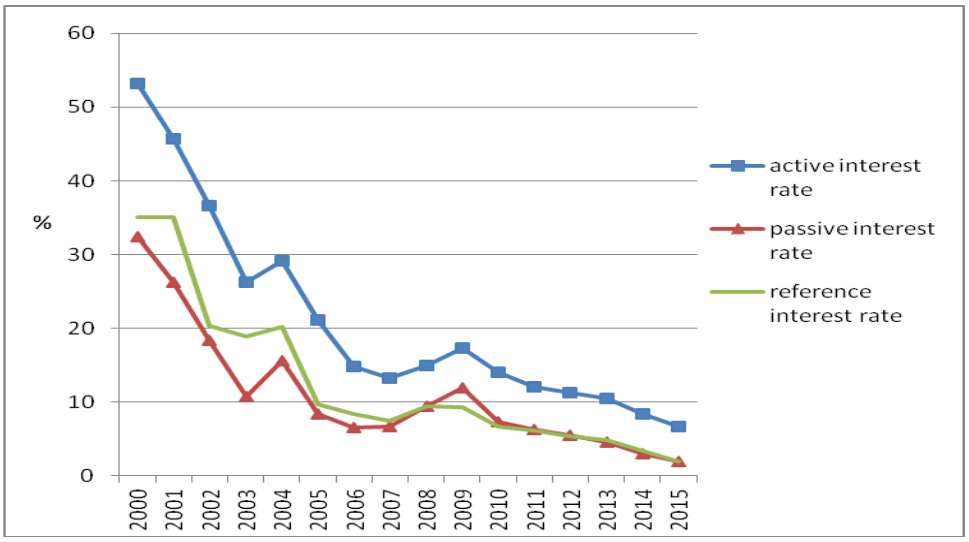
inflationary process. As of 2003, the real monetary policy interest rate has been positive, which has increased the demand for the Romanian leu and, implicitly, its appreciation. Furthermore, inflows of foreign capitals seeking for profitable opportunities have been drawn in, which supported further the appreciation of the national currency and which supplied liquidities on the monetary market.

Hereinafter, we compare the reference interest rate with the interest rates on loans and on deposits of the commercial banks (Fig. 1), in order to see whether the monetary policy interest rate has been or not a signal followed by the commercial banks.

Several ideas emerge from Figure 1. Thus, we may notice that both the interest rate on deposits and the interest rate on loans have followed, throughout the analyzed period, the trend imposed by the monetary policy interest rate, however, keeping a certain gap from the reference interest rate.

Figure 1 – The evolution of the reference interest rate, and of the active and passive interest rates in Romania, between 2000 and 2015



Source: NBR data

The decrease of the active interest rate for the loans in Romanian leu, following the reduction of the reference interest rate in the period 2010-2015, represent the condition for the revival of lending in national currency.

The monetary policy interest rate has been almost always enframed by the interest rates on loans and on deposits, except for the period of crisis (2008-2012). This evolution shows the behaviour of the banks during the period of crisis, which have preferred to draw in deposits.

Throughout the analyzed period, the interest rate on deposits was much closer to the monetary policy interest rate than the active interest rate, which shows the prudent behaviour of the commercial banks operating in Romania, as well as their high inclination towards profit.

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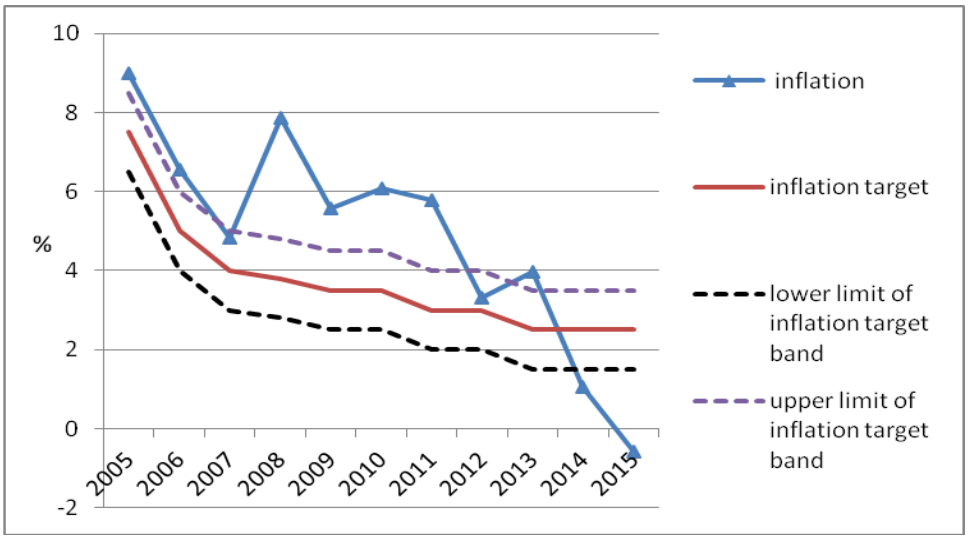
Another idea inferred from the analysis of the graphical representation refers to the perfectly synchronized evolution of the active and passive interest rates, although the band separating them has narrowed slightly. We consider, also, that this evolution shows the cautious behaviour of the commercial banks from Romania, and their determination not to reduce the profit margin.

The inflation in Romania has been consistently higher than NBR's targets in the period 2005-2013. Although most years of this period the inflation has been close to the upper limit of the inflation target interval, there have been several years when it exceeded by far the upper limit of the inflation target band (2008-2011), because during this period, the evolution of the two indicators was contrary. Thus, the inflation target displayed a decreasing trend, while inflation has increased in 2008, 2010 and 2013 compared to the previous years, because of the international economic and financial crisis. In 2014, for the first time, the inflation was lower than the lower limit of the inflation target interval (Fig. 2). This situation continued in 2015, when inflation has been negative. One may notice that there are several years in which NBR didn't accomplish its monetary policy goal, although, in terms of trend, it managed to decrease the inflation gradually.

Figure 2 – The evolution of the inflation and of the inflation targets in Romania, between 2005 and 2015



Source: NBR data

The inflation decreased continuously and strongly between 2000 and 2007, 2005 being the first year when the inflation in Romania had one-figure values.

Comparing inflation with the monetary policy interest rate, with the interest rates on loans and on deposits in the period 2000-2015 (Fig. 3), we may notice that the monetary policy interest rate, the

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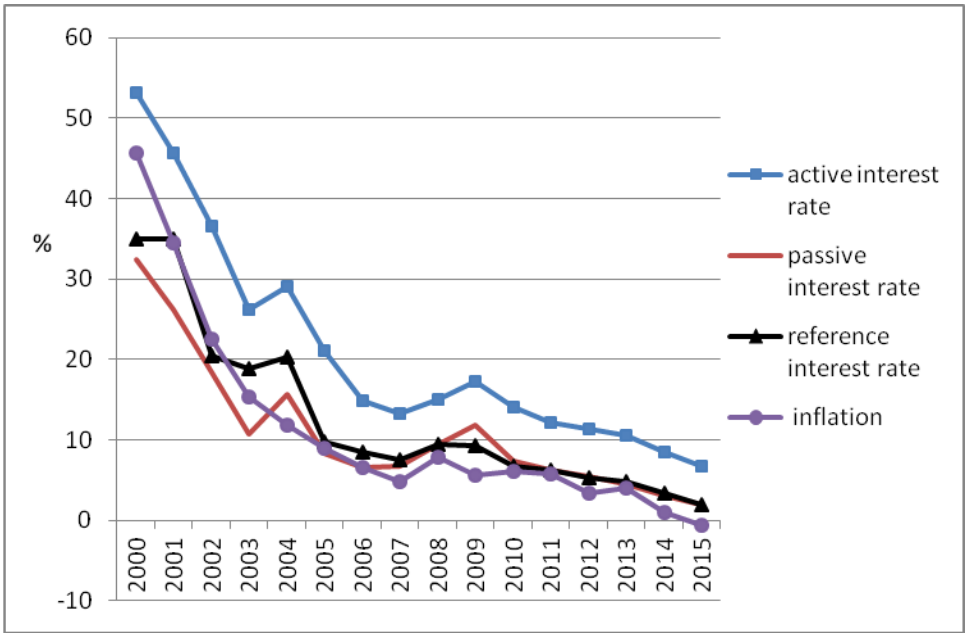
passive interest rate and inflation have had rather close values throughout this period, and even more so after 2005.

The inflation exceeded the passive interest rate between 2000 and 2003, which means that saving was not stimulated during this period. The two indicators were almost equal the following few years, which still didn't support saving. Inflation was constantly lower than the passive interest rate as of 2007, which has stimulated saving and impeded on lending, loans being more expensive.

Figure 3. The evolution of the interest rates and of inflation in Romania, between 2000 and 2015



Source: NBR data

After 2002, the reference interest rate was higher than inflation.

One may say that as of 2007, NBR's objective for disinflation has found a more favourable environment for substantiating, since the decrease of private consumption and the stimulation of saving have brought furthermore the reduction of the pressure exerted by the aggregate demand on the growth rate of consumer prices.

The transmission of NBR's monetary policy also depends on the structure of the loans and deposits of the commercial banks operating in Romania.

Analyzing the loans granted to the private sector in national currency (lei) and in foreign currency (Fig. 4), we notice, as of 2012, an increasing trend for the loans in national currency (lei), and a decreasing trend for the loans in foreign currency, the evolution of the shares of the two types of

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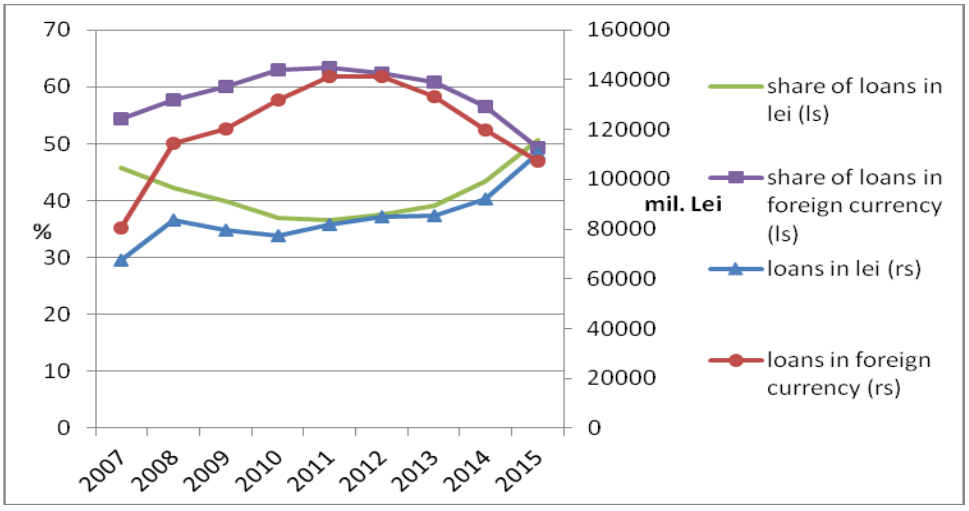
loans within the total volume of loans granted to the private sector in Romania being the same. 2015 is the first year when the proportion of loans in lei exceeds that of loans in foreign currency.

This evolution influences positively monetary policy transmission in Romania, but it has to be accompanied by a stronger reduction of the euroization phenomenon within the economy, which would allow a better transmission of the monetary policy impulses.

The decrease of the volume of loans granted in foreign currency was due both to the fast cross-border disintermediation following the shrinking of credit lines from the mother banks towards their branches in Romania, and to NBR's regulations regarding loans in foreign currency, as well as to the governmental support for buying houses programs using loans in lei.

Figure 4 – The evolution of the loans in lei and in foreign currency, granted to the private sector in Romania, between 2007 and 2015



Source: NBR data

The financial intermediation (calculated as a proportion of the private sector loans within the GDP) has decreased from 35.6% in 2007, to 30.5% in 2015 (after peaking to 39.9% in 2009), on the background of less loans granted in foreign currency.

Figure 5 shows that both foreign currency deposits and national currency (lei) deposits of the private sector have increased during the surveyed period, the growth of the deposits in lei being more important, on the background of a decreasing passive interest rate. This evolution can be explained by the positive real passive interest rate after 2007. Although the lending in foreign currency decreased as proportion within the total volume of loans, being better correlated with the volume of foreign currency deposits, and the deposits in lei cover properly the loans granted in lei, an imbalance can be, however, noticed between the volume of loans and that of deposits in foreign

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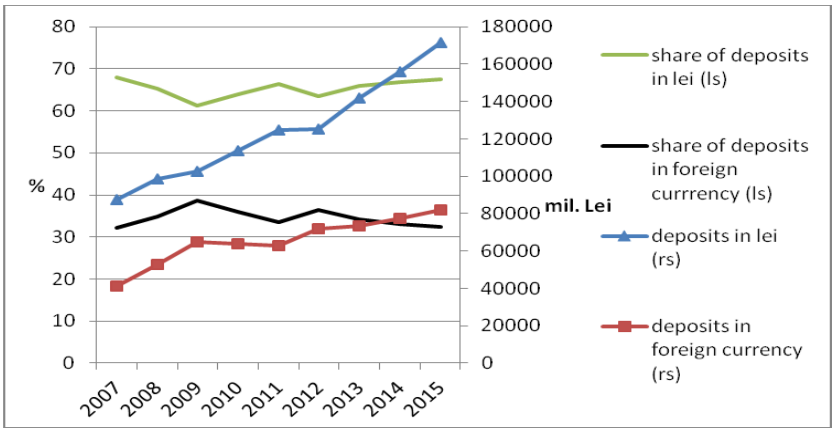
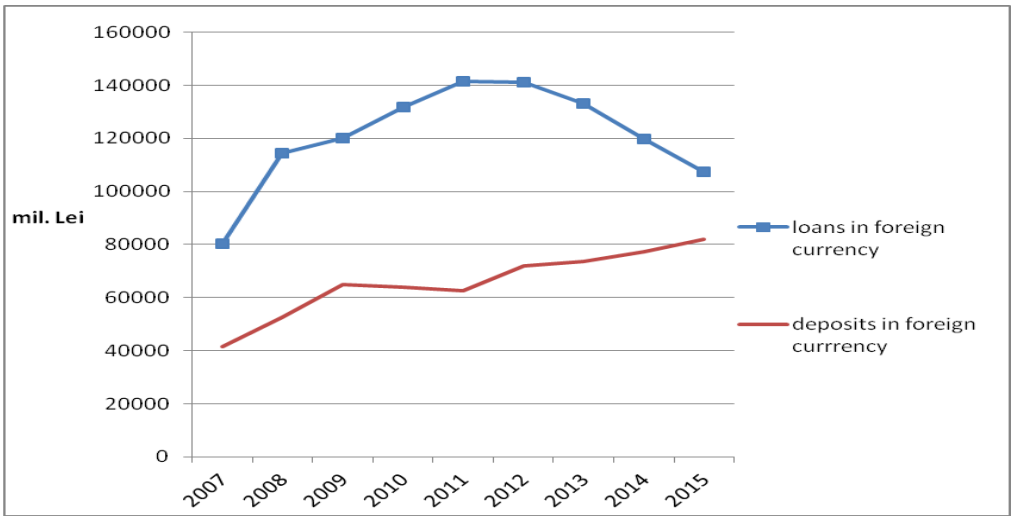
currency (Fig. 6). This calls for further internal reorganization of the commercial banks' portfolios of products and services, so that the banking system and the economy, in general, should feel less and less the burden of loans in foreign currency.

Figure 5 – Deposits in national currency (lei) and in foreign currency in Romania, between 2007 and 2015



Source: NBR data

Figure 6 – The evolution of loans and deposits in foreign currency in Romania, between 2007 and 2015



Source: NBR data

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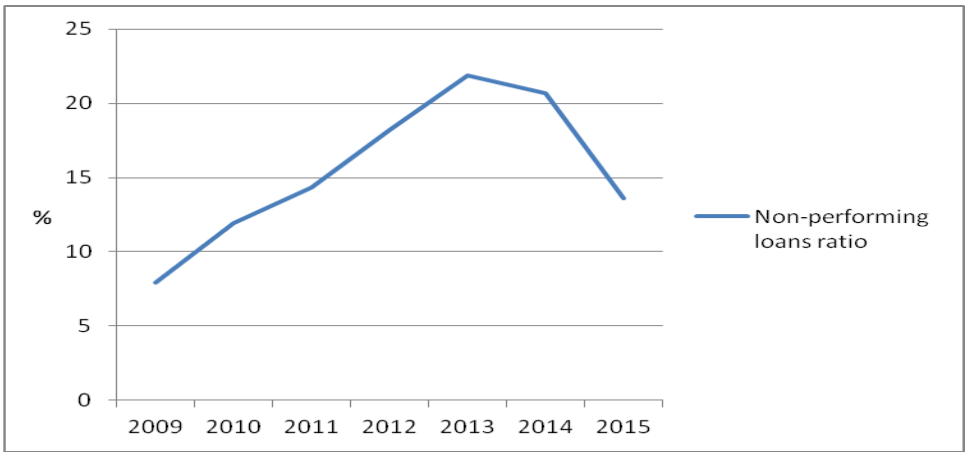
We have also analysed the non-performing loans ratio[2]. This indicator (Fig. 7) increased continuously and sharply throughout 2009-2013. Its evolution can be explained by the effects of the economic and financial crisis, which generated the decrease of the incomes and, therefore, the deterioration of the payment capacity of debtors. The shrink from 2014 is caused by the change in the calculation methodology for this indicator[3]. But comparing data calculated according to the same methodology, one can see a reduction tendency of the non-performing loans throughout 2015 compared to 2014.

Figure 7 – The evolution of the non-performing loans ratio in Romania, between 2007 and 2015



Source: NBR data. The data from 2014 and 2015 of the indicator are calculated based on EBA's definition.

The significant stock of non-performing loans hindered the efficient transmission of NBR monetary policy, among others due to the "resistance" of the active and passive interest rates to the change of the monetary policy interest rate, on the background of the commercial banks' aim to recover the loss caused by loans granted in the past which were no longer given back by the debtors.

[2] The non-performing loans ratio (gross exposure of the non-banking loans and interests classified as second category loss, whose debt service > 90 days and/or for which court actions against the action or debtor have been started/ total loans and interests classified, pertaining to non-banking loans, excluding the elements outside the balance sheet).

[3] As of May 2014, it is no longer calculated the indicator "Non-performing loans ratio", determined on the basis of the reports done according to NBR regulation no.16/2012 regarding the classification of loans and placements (applicable only to the banks that use the standard approach in assessing credit risk); instead, the indicator is determined on the basis of the reports made by all the banks: both those using the standard approach in assessing credit risk, and those applying internal rating models. It has been replaced by Non-performing Loans Ratio (EBA definition) starting with December 2015 (Non-performing exposures from loans and advances/Exposures from loans and advances). In line with EBA's definition, implemented in the national framework via NBR Order no. 6/2014, non-performing exposures are those that satisfy any of the following criteria: 1) they are significant exposures which are more than 90 days past due; 2) the debtor is assessed as unlikely to pay its credit obligations in full without realisation of collateral, regardless of the existence of any past due amount or of the number of days past due.

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Within this context, in 2014, NBR has developed a four-stage plan to clean the portfolios (e.g. excluding from the balance sheets the fully provisioned non-performing loans; whole provisioning and exclusion from the balance sheets of the loans with a debt service over 360 days, as well as of the loans granted to bankrupt companies), which has brought about the reduction of the non-performing loans ratio from 21.9% in 2013, to 13.6% in 2015, but this deteriorated the profitability indicators due to the higher expenditure with provisions (loss of 4.7 billion lei, the highest from the outburst of the crisis) (NBR, 2015).

Another element which influences the mechanism of monetary policy transmission is the structure of the Romanian banking system in terms of the proportion of net assets and social capital of the banks with majority domestic capital within the entire banking system from Romania.

In 2007, in Romania there were 42 credit institutions, 32 of them being banks, Romanian legal entities, while 10 were branches of foreign banks. There were 26 banks with majority foreign capital, 3 credit institutions with majority Romanian private capital and 2 credit institutions with whole or majority government capital.

At the end of 2015, there were a total of 36 credit institutions, from which 7 were subsidiaries of foreign banks. In 2014, there were 40 credit institutions, of which 9 were branches of foreign banks, and 31 Romanian legal entities. In terms of social capital, the Romanian legal entities had the following structure: 25 credit institutions, with majority private foreign capital, 4 credit institutions with majority Romanian private capital and 2 credit institutions with whole or majority government capital.

Although, in the period analyzed, mergers and takeovers have taken place between some of the banks on the money market, the number of credit institutions from the Romanian market, and the structure of the banking system have remained about the same, which shows a rather high stability of the Romanian banking system.

In terms of net assets, according to the balance sheets, the banks with majority Romanian capital held 9.8% in 2014, while the banks with majority foreign capital held 80.1%. The branches of foreign banks held 9.8% (Fig. 8).

Figure 8 – The structure of the Romanian banking system according to the net assets, in the period 2007 - 2014

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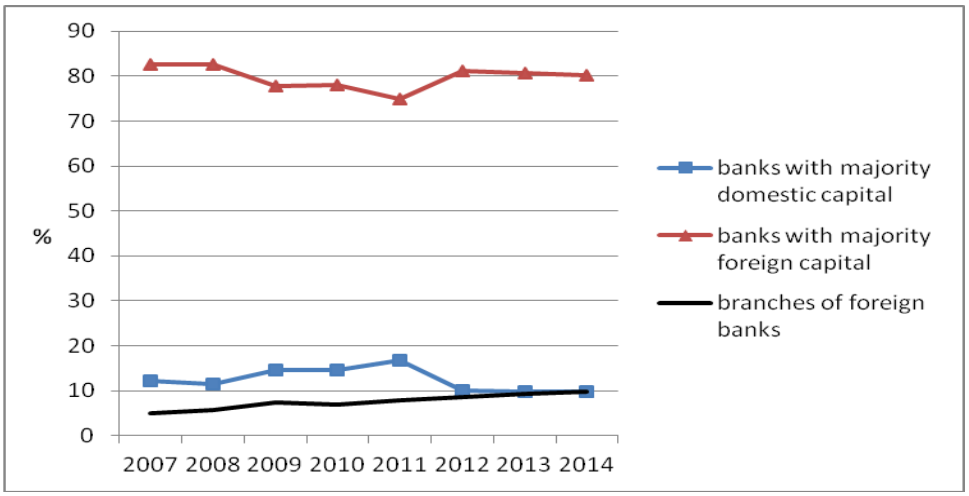

Source: NBR data

Analysing the evolution of the banks with majority domestic capital within the Romanian banking system in terms of net assets (Fig. 8), one may notice that they are clearly dominated by the banks with majority foreign capital throughout the entire surveyed period. Although the proportion of the net assets of banks with majority Romanian capital increased from 2009 to 2011, it decreased afterwards until 2014, included.

The same situation can be noticed in terms of social capital of the banks with majority Romanian capital (Fig. 9). Therefore, the Romanian banking system is strongly dominated by the banks with majority foreign capital.

Figure 9 also shows an unfavourable evolution for the Romanian economy, namely the decrease of the proportion of banks with majority domestic capital within the Romanian banking system, in terms of social capital, starting from 2012, although the trend of this indicator had been ascending from 2007 to 2011.

Figure 9 – The structure of the Romanian banking system according to social capital, in the period 2007-2014

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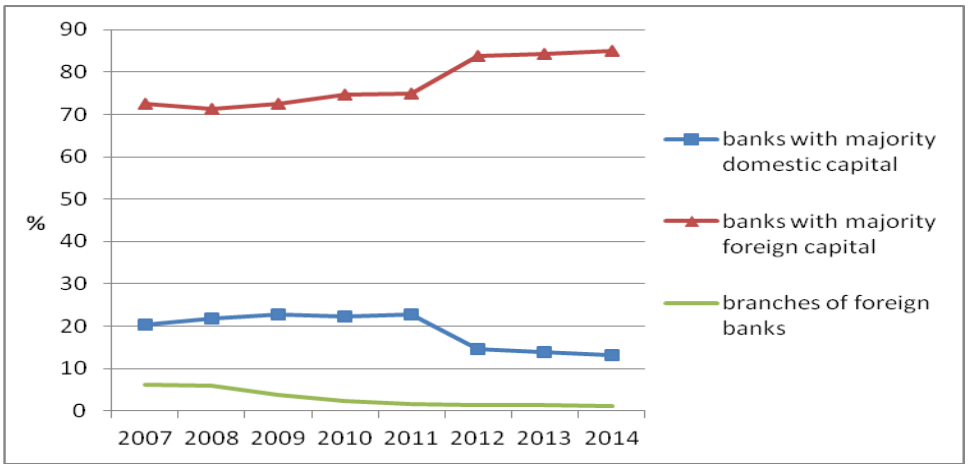

Source: NBR data

Therefore, the domination of the Romanian banking system by the banks with majority foreign capital represents a major hindrance in the transmission of NBR's monetary policy impulse towards the real economy.

Figures 8 and 9 show a rather constant evolution of the Romanian banking system's structure in terms of social capital and of net assets, which translates into a rather significant stability of the Romanian banking system.

Conclusions

Within a context defined by global financial interdependence and increased uncertainty, monetary policy should be characterized by commitment, dynamic consistency, transparency, responsibility, qualitative evaluation, avoidance of excessive fluctuations and flexibility, a set of attributes that unavoidable involve a specific level of complexity (Solans, 2000).

The decrease of loans in foreign currency and the increase of loans in national currency (lei), starting with 2012, has influenced positively the monetary policy transmission in Romania, but this evolution must be supported by a stronger reduction of the euroization phenomenon, in order to allow for a better transmission of monetary policy impulses.

The improved capitalization of the Romanian banking system also concurred to the alleviation of the challenges to the Romanian monetary policy.

On the other hand, the intensification of banks' efforts to clean up their balance sheets affected negatively the profitability of the banking system, with effects towards increased aversion to the decrease of active interest rates, despite the repeated reduction of the monetary policy interest rate.

Among the impediments in the monetary policy impulse transmission towards the real economy, one may mention: the important stock of non-performing loans; the significant dominance of the

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foreign capital within the Romanian banking system and the reduction of the proportion of banks with majority domestic capital within the Romanian banking system in terms of social capital and net assets, as of 2012; the intensification of banks' balance sheets cleaning-up activities.

Based on the analysis in the paper, we can conclude that the monetary transmission mechanism is not working properly in Romania (the commercial banks don't observe exactly the signals transmitted by NBR).

We consider to be necessary a proper mix of macroeconomic policies (monetary, fiscal-budgetary and income) in order to ensure the sustainability of the disinflation process, as well as to anchor the medium-term expectations, with a view to prevent the boost of macroeconomic imbalances and to ensure a sustainable and lasting economic growth. Within this context, fiscal policy must play a key-role in securing the external equilibrium. The fiscal policy should provide more room for manoeuvre for the imbalances between saving and investment in the private sector, and should avoid the adoption of a pro-cyclic behaviour. At the same time, the income policy should not put too much pressure on the demand and should avoid materializing the risk that the rate of wages rise exceeds labour productivity dynamics.

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CHANGING LEADERS IN THE DIGITAL AGE. ORGANIZATIONAL CHANGE

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Abstract: The success of any organization depends most of all on decisions of those at different levels of management and in the current social and economic conditions making the right decisions has become a difficult task. If the initial decision making in management theory was considered exclusively human activity, after increasing the amount of data and the difficulty of their management and processing, decision-making is supported by information and communication technologies. This has led to interdisciplinary approaches to the study of decisions in the computerization decision and the development of decision support systems .

Digital technology is transforming businesses, economies, societies and increasingly affecting the accountancy profession. This presents many opportunities to serve businesses and the wider public interest better by improving the way accountants work, enabling valuable new services and providing access to fresh markets and networks. But the digitization of the economy also raises risks of marginalization and irrelevance if the profession fails to adapt. To maximise the opportunities and manage the risks of a fast-changing business environment, it must evolve to deliver valuable and relevant tasks, build differentiated skills and encourage responsive organizations.

Key words: digital age, organizational change, managers, leadership, decision making process.

Different epochs produce different kinds of leadership – with different patterns of hierarchical authority, different skill sets and attitudes, and different institutional incentives. Societies today are experiencing significant changes potentially as far reaching as the transition from agricultural to industrial societies. Today's epoch is in the

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early stages of a transition from an industrial based society to a post industrial, digital society, and leadership patterns are beginning to reflect that transition. The new society -- variously called information society, knowledge society or networked society -- is marked by four key structural changes reshaping leadership rapid and far reaching technological changes, especially the digitalization of information and communications technology accelerated globalization; a shift toward knowledge as the central factor of production (i.e. from brawn to brains); and more distributed, less hierarchical organizational forms with greatly accelerated movement within and across organizations and sectors. In this highly dynamic environment, leadership innovation and adaptability are critical, especially the leader's capacity to channel the right knowledge to the right people at the right time in the right place.[1]

The technological advances of the digital age have allowed the global workforce to be better connected, more collaborative, and have greater personal impact than ever before. When we think about leadership in the digital age, we must distinguish between two related but different leadership categories. The most inclusive is "leadership in the digital age", which refers to leadership in any institution or sector embedded in the broader transitions toward a more knowledge intensive society. All leaders whether leaders in health, the arts or in manufacturing must be aware of the new constraints and opportunities ICTs provide, and use them effectively. The second, "digital leadership" refers to leadership in the core sectors of the knowledge society – the three 'C's of computing, communications and content (broadcasting and print), and now multi-media. The two styles of leadership are closely - many leadership innovations originated in the core ICT sectors and diffused from there, such as the use of website portals to link customers and suppliers. Digital leaders can be defined functionally by their contributions to the transition toward a knowledge society. These include awareness building, resource mobilization, operational leadership and structural leadership. Awareness building leaders convince sections of the population to attend to the new ICTs as resources that can help them achieve their goals. Resource mobilizing leaders convince social actors to obtain and deploy valuable resources to spread ICT more widely, whether money or high

[1] http://www.cidcm.umd.edu/leadership/Leadership_in_the_Digital_Age.pdf

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level political support. Indeed, mobilizing an effective pro-diffusion political coalition is an essential element of digital leadership and leadership in the digital age more broadly. Leadership is also expressed through operational activities, whereby leaders, often in government or private companies, actually provide and manage the hard and soft infrastructures, and the applications, at the core of the knowledge society. When some notables are able to convince audiences that the information revolution is not only about using ICT tools but shifting toward a new kind of distributed, digital society, they are engaging in structural leadership. [2]

Digital leadership innovation is not static but changes through time. (cf. Rogers) Since technology innovation is so highly dynamic the mix of leadership skills required also changes. For example, the Internet industry passes through pre commercial, commercial, competitive and consolidation phases. Each has a slightly different mix of leaders interacting across the public, private, research and civil society sector. First driven by campus and think tank-based leaders in the research and development community, later in the commercial and competitive phases leadership initiative shifts to entrepreneurs. In each phase the technological, political and resource challenges are rather different and demand different mixes of leaders. In the early period of the transition awareness building and resource mobilizing skills are useful. In later period, operational skills are especially valued. In Silicon Valley, the development, manufacture, commercialization and marketing of silicon chips and the personal computer was variously led by such leaders as William Hewlett (Hewlett Packard), Andy Grove (INTEL), and Steve Jobs (Apple Computer).[3]

Clearly, workplaces are now optimized for high levels of workforce engagement. Or are they?

According to the results of Gallup's 2013 Global Workforce Study, only 13% of people in 142 countries reported they were engaged in their work, while nearly a quarter reported they were "actively disengaged."

The theme of the 7th Annual Global Drucker Forum was *Claiming Our Humanity: Managing in the Digital Age.* They said that the first step in claiming our humanity is

[2] Ibidem
[3] Ibidem

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creating workplaces that optimize human engagement. Creating these workplaces starts with leading people differently. Here are four observations about managing engagement in the digital age[4].

1. Managing engagement requires new leadership skills.

This subject was of interest to scholars and practitioners since the time of Frederick Taylor. However, the rise of the global economy and the coming of the digital age have made the engagement question much more complex. Organizations everywhere are coping with unprecedented levels of competition and pressure to perform. These organizations are facing a legion of issues that include the need to become more global, the need to simultaneously become more frugal and more innovative, the need to manage new and different stakeholders, and the need to cope with political uncertainty, energy issues, and other factors over which they have no control. For many organizations, the search for competitive advantage is focused on maximizing human performance — and the question of how to create and sustain a highly engaged workforce is taking on new meaning and urgency.[5]

A hundred years ago, managing employee engagement was a much more stable proposition. Changes affecting the workplace occurred — but at a much slower pace. Today, literally everything in the workplace is changing from the volume and complexity of job-related data to the nature of work itself. In the digital age, managing engagement occurs in an environment of nearly continuous change. New leadership skills are required.

Put yourself "in the middle." Leaders should position themselves between the chaos of change and their people. Engaging leaders use their experience, insight, and knowledge of the organization's business and culture to help people make sense of changes and to better participate in them.

Invest in your people. Leaders should personally invest more effort in talent development during periods of high change. By doing this, engaging leaders use change as a medium for accelerating the professional development of the workforce.

[4] https://hbr.org/2015/06/managers-in-the-digital-age-need-to-stay-human
[5] ibidem

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Focus on a higher purpose. In times of uncertainty, engaging leaders use higher purpose to keep people focused on their ability to shape the future of the organization.

Leave no one behind. "False urgency" is a phrase we use to describe a phenomenon sometimes mentioned by the executives. False urgency occurs when change anxiety becomes so high that fear takes over and the only thing that matters is staying on schedule. Suddenly, there is "just no time" for things like human development and engagement, and the workforce is left behind. Engaging leaders refuse false urgency and stay focused on people when the stakes are highest.

The executives reported that when they followed the above actions, people were able to stay more positive, focused, and engaged during periods of change. An event that was perceived as a personal threat was reframed as an opportunity for personal development — and to shape the future of the organization.

2.Managing engagement starts on the front lines.

Until recently, much emphasis has been placed on the C-suite's role in improving engagement. However, a growing amount of data from Gallup, Bain & Company, the *Wall Street Journal*, McKinsey[6], and others is indicating that supervisors play a key role in workforce engagement. In fact, a recent study by Gallup found that they account for up to 70% of the variance on engagement.[7]

However, in spite of growing evidence of the importance of supervisors in workforce engagement, organizations have been slow to implement changes in how supervisors are developed. But nowadays leadership development activities for first line supervisors are often more transactional than transformational. By this I mean that supervisor development focuses more on building technical skills than on building the higher level capabilities needed to motivate and engage people. Said simply, many current leadership development programs do not adequately prepare supervisors to create work environments optimized for engagement. It may be time to take a careful look at the curriculum your organization uses to train supervisors.

[6] http://blogs.wsj.com/atwork/2014/06/19/are-you-spending-enough-time-with-your-boss/
[7] http://www.gallup.com/services/182138/state-american-manager.aspx

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Senior leadership is also critically important in building workforce engagement in myriad ways. For example, their support in re-creating the role of supervisor is critical. Perhaps even more important is their role in creating, reinforcing, and modelling an organization-wide culture of engagement.

3.**Managing engagement is *personal*.**

In his study, Gallup found that workforce engagement was higher when managers 1) have some form of daily communication with their employees, 2) make a concerted effort to "get to know" their employees and help them feel comfortable talking about any subject, and 3) personally help employees develop in their jobs. Clearly, a key ingredient in highly engaged workplaces is leaders who are personally involved with people.[8]

4.Managing engagement is about everyone.

About a century ago, the great Mary Parker Follett wrote a classic article entitled "The Essentials of Leadership." The idea of "followership" elevates the role of people in organizations by suggesting that everyone has both leadership power and responsibility. Everyone is responsible for leading themselves — and for being a fully contributing member of their team. To Follett, followership was active and important. It completed the equation that is leadership.

So, for teams to become more engaged, they need to have more than engaging leaders—they also need engaging members. We each have the responsibility to our organization, our team, and ourselves to "self-engage." Earlier, it was suggested that many of today's leadership development programs do not develop engaging supervisors. Likewise, today's programs don't develop — or even acknowledge — the role of followership. A key way to create engaging workplaces is to define and develop followership as a formal part of leadership development.

More and more it seems that the digital age can enable us to do more than merely claim our humanity: It can foster a renaissance for human achievement in organizations. A great first step is creating workplaces optimized for workforce engagement.

[8] http://www.gallup.com/services/182138/state-american-manager.aspx

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According to Roffey Park, organisations will need to shift from old command-and-control leadership styles to become more:[9]

user-centred, in the sense that all customers using your products and services can be defined as users;

collaborative, which means not just good team-working, but also allowing yourself and others to challenge each other and engage in robust dialogue regardless of their position or status;

supportive of innovative ways of working, which implies more experimentation and risk-taking and a willingness to learn from mistakes;

agile and able to adapt to changing contexts, rather than being wedded to long-term plans; and

willing to let teams become autonomous in order to drive change and transformation.

But in order to support the "democratising potential of digital", Hearsum warns, HR must stop conflating digital with HR technology: "This is part of it, but not the same. In the same way that many managers haven't kept pace with 'digital', neither have many HR people and they're often still working with outmoded notions of leadership," he adds. "But there is an argument that if you embrace the digital mindset, the relationship with HR changes too." Part and parcel of this changing relationship is a higher level of trust, which also means changes to the role of HR, as Hearsum concludes: "Rather than talk about getting closer to the business, HR becomes part of it. And a clear decision is made that you're there to collaborate with people – if you don't, how are you going to meet them where they are? Because you won't be in dialogue and so won't be able to hear them."

Therefore, improved technology capabilities open up fresh possibilities in organisational models which will likely result in greater competition. But, as with individual skills, predicting success in this fast-changing environment will be difficult and good organisations will need to be highly responsive and flexible if they are to thrive. For example, organisational models will need to exploit trends such as automation and globalisation to maximise efficiencies and minimise costs. But they will also need to

[9] http://www.personneltoday.com/hr/leadership-digital-age-needs-change/

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attract and retain increasingly high-skilled employees who may have more choice in career paths and different attitudes to employment. This could lead to alternative models which emphasise employee empowerment, engagement and flexibility.

Are successful organisations likely to be big or small? On the one hand, the economics favour big organisations. They concentrate power and encourage economies of scale in processing information. Data-driven services are improved by having more data, rewarding those in possession of large data sources. The economics of network effects leads to a small number of dominant platforms, as most users want to be on the biggest network. Using data to understand customers and personalise services also enables large organisations to reduce the advantage that some small organisations get from more direct customer contact.

Therefore, the growing importance of data and technology-driven services could favour large organisations. They have the resources to invest in robust and resilient infrastructures, as well as the skills and talents they need. They have economies of scale and can potentially take more risks.

But digital technology is also a democratising force, connecting anyone with internet access. The openness of systems and the low cost of using many platforms and applications can therefore aid smaller organisations. The digital infrastructure facilitates business models with few staff and other physical assets, lowering the costs of starting up businesses and entering markets. Smaller organisations can be more responsive, innovative and specialist. There are also options to build more flexible networks of specialists rather than full-service firms, or for greater collaboration and co-operation across and between organisations.

But there is unlikely to be a one-size-fits-all solution, with different models competing and collaborating depending on the context. We see this approach today in financial services markets. There are many start-ups which are developing data-driven solutions for a variety of financial services. Large technology companies are also developing offerings, especially around payments and consumer credit. In some cases, they are competing directly with the large incumbent banks, and potentially taking some market share. But in other cases, banks are partnering with or buying up start-ups with good ideas. As a result, we see a developing eco-system of big and small companies,

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sometimes competing and sometimes partnering to provide innovative customer services[10].

So, in the end, we should all remember that, every one of us possesses a "portfolio" of leadership styles and each one has its place. A surgeon may be a Commander in the operating room, a Communicator with patients and a Collaborator when performing research. [11] However, the styles that created value for many leaders decades ago are less effective with today's empowered stakeholders — and since 95% of companies are not Network Orchestrators, we suspect that most leaders lack strength at co-creation. The digital, cultural and asset revolution provides a fantastic opportunity for shared success — increased growth and profit for businesses, and increased value for customers — but creating network-based businesses will require openness, adaptation and the development of new leadership skills

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LOW CO_2 EMISSIONS ECONOMY– THE NECESSITY TO IMPLEMENT IN THE EUROPEAN UNION

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Abstract: Inthe current period, even if we relateto the climate changes or at the irrational exploitationof the natural resources, both of they puta negative fingerprint on the abilities of the next generations tobenefitofa standard of livingat leastas well as the current generations. The researchaims to designingand following upof steps which will ensurethe transformation of the current model ofindustrialized economy, characterized by apronouncedpercentageof the greenhouse gasesemissions (GHG), into amodelof economy with reduced emissions of these gases whoaim at reducingof possible risks deriving from thechanging of the environmental conditions. Later, I extended theresearch on the so-calledGreeneconomywithlow emissions of carbon dioxide (CO_2) at EU level, and it appears that, the essence of the conceptof sustainable growth is itself the long term objectiveof the European Union, that is tobecomeenergy-efficient and withan economywith lowcarbondioxide emissions.

Keywords: sustainable economy, economy with low GHG emissions, emissions of CO_2, targets,measures

Introduction

At present, we face a pronounced pollution of the environment that we live in and in which we develop our economic activities. The recent international economic crisis records continuous and irreversible deterioration of the surrounding environment, with negative effects on human subjects as well, prove the capacity and the reduced limits of reaction of the economic system towards the major instabilities regarding the surrounding environment.

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The transformation of the international economy in one with reduced carbon emissions comes as a certain solution. We tried to discover scientifically grounded solutions in what regards the internalization of the environmental issues in an economic approach. The treatment and study of governing sustainable development is very complex and the reduction of carbon dioxide emissions represents only a stage.

The determination to choose a proper public policy is more obvious as the sectoral dimension used in public administration has to be modified, giving way to integrated approaches that are coordinated in a horizontal plan. Moreover, the increase of the globalization and integration level brings about a vertical integration of the public policies that will have to include convergent objective of sustainable development.

Public Policies - Low-Carbon Economy

The majority of the EU countries and its member states proposed that the Kyoto Protocol should continue with a new period of 8 years after 2012, as it is the only structure that provides compulsory commitments of reducing emissions of gases with greenhouse effect.

The 18th conference of the United Nations Organization regarding climatic changes - Doha in Qatar, had as an objective the attempt to advance the negotiations on limiting the emissions of gases with greenhouse effect and the preparation of the future global agreement with compulsory value for all the states that are Parts. So, once with the ending of a new period of commitment under Kyoto, the new juridical agreement will become functional, obliging all the parts and having a global inclusion. (The Kyoto Protocol included countries responsible for only 13-16% of the global GES emissions and it is prefigured to become effective from 2020.

At present, there are designed and followed the steps that will ensure the transformation of the present pattern of industrialized economy with reduced GES emissions. There is the possibility that this stage to end in the year 2050. Thus, ambitious objectives are required, such as: changeover, major transformations of the conventional industries, supporting new non-pollutant industries, increasing energetic efficiency, continuance of innovation and indentifying those solutions which ensure the substitution of the products with an energy intensive content, functioning, organizing and developing a new market.

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At the basis of the *pattern of the economy with reduced carbon emissions* it is taken into account the stimulation of that behaviour of the individuals/economic agents that pursues to reduce the possible risks that result from the change of environmental conditions. The human activities are responsible for the present high level of emissions; the environment, the ecosystem as a whole went through transformations, at the moment recording its incapacity to recover/go through destructive activities. At present, either we report ourselves to the effects of the climatic changes or to the irrational exploitation of natural resources, both they put a negative manner on the possibilities of the future generations to benefit of a standard of living at least the same as the present generations.

The pattern aims not only at responsible behaviour but also at technologies with favourable consequences both for the economic system and for the environment.

The solutions of the new economy take into account three categories of public policies objectives:

- decreasing the quantity of energy that a certain activity needs, that is *reducing the request for carbon;*
- decreasing the quantity of emissions of gases with a greenhouse effect on the unit of produced energy, thus *reducing the intensity of carbon;*
- *developing the capacity to absorb of carbon* by collecting it.

The growth of energetic efficiency, regenerative energies (wind, solar, geothermal, marine), the development of non-pollutant technologies, the increase of collecting and depositing carbon, bio fuels, electrical vehicles or those with hydrogen, the decrease of cutting trees, the encouragement and support of forestation, all these highlight themselves as the optimal solutions to reduce the GES emissions or to adapt to the new climatic conditions. (Table 1)

Table 1:

Optimal solutions to reduce the GHG emissions

	2020	**2050**	**2100**
Decreasing the request for energy	Creation and functioning of carbon markets	Electrification of infrastructure and growth of the role of	Electrification of the whole infrastructure and of transport

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	and institution of standards	underground transport	
Decreasing the energetic intensity	Collection and underground storage of carbon, exhaustive regulations and planning regenerative energy	Collection and storage of carbon, at the same time with the growth of regenerative energy, average extension of nuclear energy	"Intelligent" electricity networks, energy storage at large scale
Increasing the capacity to collect carbon	Creation and functioning of the market of preserving the capacities to collect	Increasing the capacities and maintaining some installations in order to retain the carbon from the atmosphere	Collection of carbon to develop on functional markets

Source: Programme for Sustainability Leadership, Cambridge Institute

The public policies to reduce the GES emissions should be based on three components: taxing carbon, technological policy and excluding barriers of behavioural change.

In order to achieve the pattern, the general frame includes:

a. the exigencies for adapting and disproof for the national plans;

b. ensuring the legal frame for the technological and investment transfer;

c. constitution and functioning of the financing and/or transaction mechanisms.

The target of reducing emissions rises to 50% in 2050 at a global level, being distributed as follows:

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- the developed states - reduction 80-90% with an intermediate target of 30-40% until 2020, having as a reference year - the year 2000;
- the emergent states- targets without any coercion until 2020 and adaptable targets under 50% reduction depending on the accomplishment capacity;
- elaborating some targets with coercion for the sector of navigation and internal and external aviation until 2025 and the indicatives until 2050.

The effort of the countries members of the EU joins a series of governmental organizations (ONU, OECD) and non-governmental (World Wide Fund for Nature) that provokes us both for adopting some active environmental policies which lead to the reduction of the GES emissions level and for adopting some adaptation policies as a measure of defending against climatic changes.

Within the pattern of the economy with reduced intensity of carbonthere will be countries that opt in favour of imposing taxes on pollution, others may choose the option of creating a market of emission certificates, any of the methods of internalizing external expenses are applicable. For example, in the domain of electric energy, the last option is appreciated, because of having a limited number of licenses that can ensure the reduction to zero of the emission of gases with a greenhouse effect in a shorter period of time. Also, they are completed with other measures as a consequence of the complex links that exist in global economy.

Green economy withlow CO_2 emissionsat EU level

The gist of the concept of sustainable growth is the long-term objective of the EU themselves, that becomes effective from an energetic point of view and with an economy with reduced emissions of carbon dioxide, which in fact defines Europe Agenda 2020.

The global academic environment, after several systematic and repeated activities with forecast character oriented towards the future, considers that four stages are necessary for a sustainable economy:

1. The economy with reduced carbon dioxide emissions;
2. The "decarbonised" economy;
3. The economy with a low climatic risk;
4. The sustainable economy. (Table 2)

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Table 2:

Transition towards sustainable economy

Failures of the present economy	**Positive actions**	**Targets of positive economy**
Short-term orientation	Long-term orientation	Development
Inequitable distribution	Promoting equity	Equity
Unclear indicators	New indicators	Innovation
Externalizing expenses	More responsibility	Participation
Governing failures	Good governing	Accessibility
Divided purpose	Definite purposes	Diversity
Improper values	Creating the values of sustainability	Sustainability
Education deficiency	Education	

Source: Cambridge Programme for Sustainability Leadership (CPSL), 2009

According to the table presented above, the transformation of economy will extend on a long period of time and as a result of the limits and factors of rigidity of the present economic system, it will not be made quickly as essential transformations will be needed in all the fields of activity and in the way of thinking, style of life, education, health and political organization. In other words, it is necessary to transform economy and economic policies and to transform social and cultural values.

The European Union aims at *reduced shares of dioxide of carbon emissions with 20%* until 2020 (reference year - 1990) (reducing with 20% GHG emissions compared to 1990 represents only a reduction with 14% compared to the level from 2005), as well as *the growth of both the energetic efficiency* with 20% and the weight of *the production of energy from sources of regenerative energy* - 20-25% from of the level of the final consumption of energy.

According to the reports of the European Committee, reaching this number of 20-25% of regenerative energy would have a multiplier effect for creating work places (over

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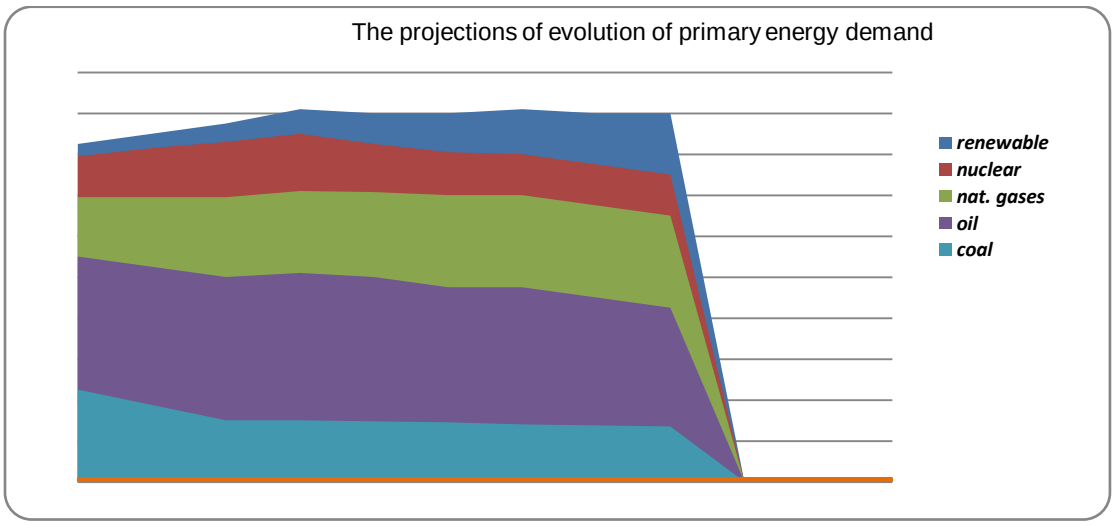
400.000), while the economy with reduced carbon emissions would create new opportunities and open new product markets (the European Committee, 2012).

As in the European Union just like in other countries, the energetic sector generates approximately 60-80% from the whole GHG emissions, also being the sector of activity in which we record the highest quantities of GHG emissions per thousands tons of oil equivalent. The European Union admitted the un-sustainability of its energetic policy, so that it has been consecrated the decision of integrated approach of the two policies. (Figure 1)

Figure 1: Primary energy demand until 2030 in EU



Source: data processed by the author

The member states engaged in fulfilling the reduction targets even if within the European Union there have been controversies regarding two aspects: 1. *the weight of regenerative energy* in the final consumption of energy; 2. the problem of *nuclear energy*, if it is neuter or not from an ecological point of view. The conclusion is that the *growth of credibility of the European policy is firmly linked to the way in which decisions are put into practice.*

Within the legislative pack, the relative targets are specified and the European Committee established the absolute targets of reducing the GES emissions in the period 2009-2013;

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generally speaking, the targets of reducing emissions are set in correlation with the objectives that the member states established and with their achievements.

On one hand, the Committee did not give the member states flexibility regarding the targets, on the other hand, in what regards public policies and the measures that come in achieving these targets, the modalities are about to be established by the national governments, also allowing the transfer of annual allocations of emissions among years/states and the application in limited values of the credits based on projects within the mechanisms of the Kyoto Protocol.

Clean Development Mechanism (CDM) or Joint Implementation (JI), two mechanisms through which the reductions of emissions resulted from investments and transfer of technology implemented in other countries are accounted for (and calculated as reductions of emissions through compensation) in the portfolio of the investing country.

The market of the emission certificates represents the main tool through which the European Union tries to quicken the innovation of technologies and the change of the economic agents' behaviour.

The reduction share established is divided into two categories:

the reduction for the sectors covered by the ETS (the transacting scheme of the emission certificates, including the sector of internal and external aviation), reported to the level of GES from 2005; and it represents a common effort of the EU;

the reduction for the sectors that are not included in the transacting scheme, having as reference year 2005; they are only in the task of the member states.

Starting with 2012, the sector of aviation was included in the scheme and the industry of aluminium and non ferrous metals - 2013 alongside the energetic industry, the metallurgic industry, the cement industry, the chemical and petrochemical, the industry of processing glass and fibreglass of processing ceramics, the industry of paper and carton, which were comprised in the scheme.

The non-ETS sector aims at transport, agriculture and services, in the activity sectors that are not comprised in the ETS, excepting the international marine sectors and those comprised in Land Use, Land-Use Change and Forestry-LULUCF, being characterized by a large number of economic agents, but which have a low individual impact on the environment; however, if these sectors are taken together, they rejoin 60% of the total

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quantities of GES emissions; reported to GDP (PIB)/ inhabitant, each country contributes to the non-ETS targets; the national targets are different, depending on the wealth of the states.

In support of the institutional effort there appears the need of participating in a much larger spectre of the companies and economic sectors; as market elements to be introduced other sectors and harmful substances too.

In the Report "Environmental Outlook to 2005", published in 2012, the Organization for Economic Cooperation and Development stated that "the consequences of the lack of actions are the expenses of the lack of actions in support of the environment, but also quantification in an economic orientation. The same organization in the report "Better Policies for Better Lives" (2014) states that without implementing the new environmental policies, it will be recorded a request of energy with over 75% bigger in 2050, especially because of emerging economies (over 82% will still come from conventional economy), which will cause the increase of the level of GES emissions with an average of 55%, especially from the growth of the level of carbon dioxide with 75%, indentifying the following risks:

- diminishing of biodiversity with 11% especially in Africa, Asia, Europe;
- reducing of forest areas with 12 %;
- an increasing trend of water request depending on the requests from the processing industry (over 400%), of the thermal electrical stations (over 150%) and of the domestic consumption (over 120%); the risk of water shortage will increase, especially in the North and South of Africa, Central and South Asia, about 40% of the world population will experience this deficiency, this is concluded in the Report.

The agreement and transposition in the European legislation of the International Environmental Report (2009, 2013) established that the overtake of the carbon dioxide concentration in the atmosphere of 460 parts per million would have as an effect the increase of medium global temperature; IPCC (Intergovernmental Panel on Climate Change, a scientific organism that provides the scientifically bases of the evaluations and decisions of the ONU Convention on climatic changes), in its fifth evaluation report (AR5, October 2014) by making a total of all researches helped the understanding of the results of the most recent scientific, technical and socio-economic researches regarding

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the climate of climatic changes, their adaptation and attenuation, emphasized the fact that this process of global warming becomes irreversible. This way of thinking names the basis of the International Agreement regarding Climatic Changes (Copenhagen, 2009) itself, also ensuring continuity with the aim of a global agreement and regulation regarding the decrease of the emissions of gases with a greenhouse effect (GHG).

Conclusions

The existence and operation of the external factors that block the normal functioning of the economic system and highlight its cyclicality, indicate the fact that the process towards a sustainable development of the world economy is irreversible and inevitable; *if the market mechanism is not regulated and the parts do not agree in finding the solutions to external pressures, there is the risk for crises to increase and deepen;* moreover the economic and social policies of the governments are short-term and medium-term oriented towards economic growth, protecting a certain style of living of individuals, subsidization of consecrated industries.

At present, the states member of the EU implement policies and measures in accordance with the target of the Union to reduce with 20% the GES emissions; the groups of African countries and of small insular countries showed a different position; asserted that the period of eight years will diminish the efforts of reducing the emissions requesting the maintaining of the period of five years (2013-2017). Russia, Japan and New Zealand did not assume compulsory targets of reducing emissions as a consequence of the high level of energetic efficiency of their economies (any internal additional effort to reduce emissions becomes expensive and a little feasible from an economic point of view; one takes into account the marginal expenses to reduce emissions - in the country with old technologies, their replacement determines a substantial reduction of emissions to accessible expenses; the countries with top technologies - have already reduced the GES emissions, the improvement of these technologies implies extremely high expenses). The three countries announced that they will continue having commitments under the Convention (including the USA), just that the nature of these commitments is voluntary.

The solution identified - the parts can establish new targets, even more ambitious that the current ones, but those that they can propose after 2015 - the so-called ambition mechanism.

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The environmental challenges are best treated by the market based policies or policies type order-and-control, while the support of the technological progress is generally made through non-selective measures that stimulate the creation and propagation of new knowledge regarding certain districts, technologies, companies or fields of activity.

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CONCEPTUAL DELIMITATIONS BETWEEN RESPONSIBILITY AND ACCOUNTABILITY

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Abstract: Responsibility is an obligation imposed by law or recognized, private or public, to do or to give an account of it or another under his care. Liability is regarded as a fundamental institution of law, which tends to occupy the centre of the law in its entirety, reflecting the state of progress of society, the conscience and social responsibility. Between notions of accountability and responsibility there are differences not only the terminology but also substance, for which the content appears necessary to define the concept of social responsibility and implicitly, of legal responsibility. Legal responsibility is prior offense, unlike responsibility, which occurs only after the occurrence of the act or legal document generator. The liability is determined by the competent authority thereafter responsibility or after the act, and administrative coercion occurs only when the liability is not done willingly. Responsibility is linked to the internal dimension of the agent, while the external dimension of its responsibility.

Key-words: responsibility, liability, law, legal, society

DELIMITĂRI CONCEPTUALE ÎNTRE RESPONSABILITATE ŞI RĂSPUNDERE

În mod tradiţional, *răspunderea juridică este analizată ca o instituţie fundamentală a dreptului, ce tinde să ocupe centrul dreptului în totalitatea sa, reflectând stadiul evoluţiei societăţii, nivelul conştiinţei şi responsabilităţii sociale*.[1] Dintotdeauna am putea susţine, în limbajul juridic românesc, în mod paradoxal, mai bogat sub acest aspect decât cel francez, după cum vom arăta în continuare că s-a făcut distincţia între noţiunea de responsabilitate şi noţiunea de răspundere, ce intervine pe tărâmul răului

[1]*Antonie Iorgovan*, Tratat de drept administrativ, vol.II, ed.a 4-a, Editura All Beck, Bucureşti, 2005, p.589.

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înfăptuit. Cu toate acestea, sub aspect strict terminologic, cercetând dicţionarul limbii române moderne constatăm că răspunderea este definită ca „faptul de a răspunde, responsabilitatea", iar responsabilitatea la rândul ei este definită ca „obligaţia de a efectua un lucru, de a răspunde, de a da socoteală la ceva, răspundere", fiind pus astfel semnul egalităţii între responsabilitate şi răspundere[2]. În dicţionarul Petit Larousse, se regăseşte doar termenul responsabilité[3] asupra căruia vom reveni, de unde concluzia că termenul responsabilitate din limba română nu pare să aibă echivalent în limba franceză, singurul termen cunoscut fiind acela de răspundere, tradus în limba franceză prin cuvântul responsabilite. În aceste condiţii, vom observa că, tradiţional, termenii de răspundere şi responsabilitate sunt socotiţi ca interesând domeniul dreptului. În filosofia dreptului se porneşte de la teza că în orice societate există un sistem de valori instituit de aceasta, în funcţie de care îşi construiesc conduita membrii societăţii. În acelaşi sens, se susţine, conduita lor este conformă sistemului de valori al cetăţii, cât timp indivizii, raportându-se activ la acest sistem de valori, îl recunosc, şi-l însuşesc, şi-l apropriază, transformându-l în propriul lor sistem de valori, ei trăiesc în armonie cu ceilalţi, cu ei înşişi şi cu societatea, ei sunt responsabili[4]. În schimb, la un moment dat poate să apară o îndepărtare de la acest sistem de valori, o negare a acestuia, care naşte problema, firească, a consecinţelor unei asemenea conduite. În acest moment apare reversul, care reprezintă tot o raportare activă, dar de data aceasta a cetăţii la cetăţean, o reacţie faţă de comportamentul acestuia, neconform normelor instituite de ea; cetăţeanul devine răspunzător.[5]Din cele analizate până în prezent reiese faptul că răspunderea intervine atunci când încetează responsabilitatea. Într-o lucrare de drept civil francez [6] din perioada interbelică, găsim o explicaţie etimologică a noţiunii de responsabilitate precizându-se că termenul cuprinde latinescul verb "spondeo", care înseamnă a promite solemn, a garanta, a răspunde pentru cineva, iar în contractul verbis din vechiul drept roman semnifică

[2]*Dicţionarul Limbii Române Moderne*, Editura Academiei R.S.R., Bucureşti 1958, p. 695 şi 713.
[3]*Petit Larousse*, Libraire Larousse, Paris, 1965, p.910.
[4]*Mihai Florea*, Responsabilitatea acţiunii sociale, Editura Didactică şi Pedagogică, Bucureşti, 1970, p. 15.
[5]*Verginia Vedinaş*, Drept administrativ şi instituţii politico-administrative. Manual practic, Editura Lumina Lex, Bucureşti, 2002, p. 581.
[6]*Henry Lalou*, La responsabilite civile, Dalloz, Paris, 1923, p. 13. Astfel, Henry Lalou a legat ideea de „responsabilitate" de cea de „obligaţie", care rezultă dintr-o încălcare a legii, ca urmare a săvârşirii unui delict sau cvasidelict, tratând numai una dintre formele responsabilităţii juridice, respectiv responsabilitatea civilă.

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legarea solemnă a debitorului faţă de creditorul său, pentru a executa o anumită obligaţie asumată prin contract şi substantivul "res" care înseamnă lucru, motiv, cauza, realitate, afacere, interes, avantaj etc.[7] În Instituţiile lui Gaius se arată că o obligaţie verbis se încheia solemn printr-o întrebare şi un răspuns precum: "Făgăduieşti solemn că vei da?" (Dari spondes_ - "Făgăduiesc solemn!" (Spondeo); "Vei da?" – "Voi da!"; "Promiţi?" – "Promit!"; - "Te legi?" – "Mă leg!"; "Promiţi cu bună credinţă?" – "Promit cu buna credinţă!"; - "Vei face? – "Voi face!"[8]. În limba latina, spondeo, respondeo, sponsum, sponsă, sponsio, înseamnă a promite, a se obliga faţă de zei.[9]În absenţa unei teorii generale asupra responsabilităţii, precum şi a folosirii relativ ambigue a noţiunilor de "responsabilitate, răspundere şi constrângere", vom formula câteva consideraţii, încercând să lămurim conţinutul acestor concepte spre a putea constata dacă au acelaşi înţeles, iar dacă nu au, se pune firesc întrebarea care ar fi semnificaţiile şi utilitatea fiecăreia dintre ele.[10]Celebrul dicţionar Larousse, de exemplu, consemnează pentru termenul de "responsabilitate" mai multe înţelesuri: "Obligaţia de a repara dauna cauzată altuia, fie de el însuşi ori de către o persoană care depinde de el, sau de un animal ori un lucru aflat sub paza sa; obligaţia de a suporta pedeapsa prevăzută pentru infracţiunea comisă; capacitatea de a lua o decizie fără avizul prealabil al autorităţii superioare; necesitatea pentru un ministru de a-şi abandona funcţia atunci când Parlamentul i-a refuzat încrederea, responsabilitatea ministerială caracterizând regimul parlamentar; responsabilitatea colectivă [11] – faptul de a considera pe toţi membrii unui grup ca responsabili solidari pentru actul comis de către unul din membrii grupului"[12].

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[7] În Larousse de la langue Francaise *Lexis*, 1979, p. 1692, se arată: cuvântul „responsabil" vine de la „responsus", construcţie ce pleacă de la „respondere", introducerea sa în limba franceză se situează către anii 1100, cuvântul „responsabilitate" nu este introdus decât după anul 1783 şi înseamnă obligaţia de a repara.

[8]*Gaius*, Instituţiunile (sub redacţia lui Aurel N. Popescu), Editura Academiei Române, Bucureşti, 1982, p. 220.

[9] Idem, p. 220, nota 45.

[10] „Lipsa de distincţie între termenii răspundere şi responsabilitate pare să fie un fenomen general, comun nu numai în literatura juridică, ci şi în aceea etică, filosofică, sociologică şi chiar lingvistică." *Mihai Florea*, op.cit., p. 26.

[11] În timpul Revoluţiei Franceze, prin Decretul din februarie 1790, s-a legiferat responsabilitatea colectivă a comunelor şi a locuitorilor sau numai a comunei, ori a locuitorilor, pentru mişcări şi organizări de revolte, iar prin Legea poliţiei rurale din 1864, în România se prevedea că atunci când, într-o comună s-a dat foc, sau a fost o tâlhărie, un furt, ceilalţi locuitori trebuiau să sară să prindă autorii, pentru că altfel vor fi răspunzători.

[12] Nouveau petit Larousse, Librairie Larousse, Paris, 1971, p. 802.

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Identificăm în acest context, alături de răspunderea civilă şi răspunderea penală, formele milenare ale răspunderii juridice şi răspunderea specifică dreptului public, de care ne vom ocupa în mod special în cuprinsul cercetării noastre.Din definiţia de mai sus se desprinde ideea că responsabilitatea constituie o obligaţie impusă sau recunoscută de lege, persoanei private sau publice, de a face ori de a da socoteala pentru ea sau pentru altul aflat în grija sa. De asemenea, se observă că responsabilitatea are caracter general declarativ, dar, în acelaşi timp, s-a afirmat în doctrina română, că, în mod greşit, în definiţie, se arată că responsabilitatea operează după săvârşirea actului declanşator al acesteia şi în baza unei acţiuni a celui vătămat.[13] "Obligaţia" generică din această definiţie – care nu este altceva decât responsabilitatea – este anterioară faptei, fiind prevăzută mai întâi în lege. "De remarcat că prin formularea dată, însuşi sensul şi conţinutul juridic al termenului, este prezentat incomplet, unilateral, privit numai din perspectiva încălcării, nu şi a respectării – chiar impuse – a normei juridice; ca şi cum responsabilitatea ar fi un fenomen, care intervine întotdeauna post factum, un factor care acţionează numai pe tărâmul răului deja făptuit (consecinţă a nerespectării unei obligaţii) şi nu un fenomen care în primul rând, veghează curent şi permanent la respectarea normelor şi a raporturilor sociale în condiţiile funcţionalităţii lor normale.[14] Într-o subtilă analiză ştiinţifică se fac precizări de mare utilitate pentru demersul nostru ştiinţific. Reţinem îndeosebi următoarele: responsabilitatea este unul din principiile fundamentale ale dreptului; ea însoţeşte libertatea şi exprimă un act de angajare a individului în procesul integrării sociale; libertatea este o condiţie fundamentală a responsabilităţii; fiind strâns legată de acţiunea omului, responsabilitatea apare ca fiind intim corelată cu sistemul normativ; nivelul şi măsura responsabilităţii sunt apreciate în funcţie de gradul şi conţinutul procesului de transpunere conştientă în practică a prevederilor normelor sociale; responsabilitatea a fost plasată, în mod absolut, pe terenul moralei, dar cercetările mai noi scot în evidenţă necesitatea conturării acestui concept şi în planul dreptului. Principiile morale, vezi morala, sunt, de cele mai multe ori, aserţiuni complexe despre

[13]*Valerică Dabu*, Răspunderea juridică a funcţionarului public, Editura Global Lex, Bucureşti, 2004, p. 30-31.
[14]*Mihai Florea*, op.cit., p. 28.

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ceea ce este just sau ceea ce este injust[15]; printr-o gândire reducţionistă (constând, în principal, în reducerea dreptului la dreptul penal, prin înţelegerea rolului său doar într-un cadru protectiv-represiv) s-a considerat mult timp că dreptului nu i-ar fi caracteristică decât categoria de răspundere[16]; există o corelaţie a tuturor formelor de responsabilitate (morală, politică, juridică); dobândind dimensiunea responsabilităţii, individul nu se mai află în situaţia de subordonare „oarbă" şi de supunere neînţeleasă faţă de norma de drept, ci în situaţia de factor care se raportează la normele şi valorile unei societăţi în mod activ şi conştient; răspunderea este întotdeauna legală, nimeni nu-şi poate face singur dreptate, nimeni nu poate fi judecător în propria cauză, ea este de ordin normativ; agentul percepe şi resimte normele, ca reguli impuse, expresia unor cerinţe pe care societatea le impune subiectului; scopul răspunderii este conservarea sistemului de relaţii, iar sistemul sancţiunilor se bazează pe un ansamblu armonizat de valori şi criterii de apreciere.

Cu privire la termenul de responsabilitate, semnalăm preocupări de ordin sociologic, spre formarea unei teorii a responsabilităţii sociale, dar acestea sunt legate de fundamentarea unei teorii generale a acţiunii sociale, deci vizează un alt scop. În acest sens arătăm că teoria dreptului vizează responsabilitatea juridică mai mult ca aspect al fenomenului „răspundere", ca premiză psihologică a acestuia şi mai puţin ca atitudine a individului în raport cu sistemul normativ-juridic.[17]

Problema responsabilităţii este analizată de francezul Paul Faucounet în tratatul său intitulat „La responsabilité", din perspectiva individului care comite o infracţiune, responsabilitatea având caracter juridic, fiind, de fapt, o răspundere juridică (penală), cu dimensiuni morale.

În concepţia sa, responsabilitatea este un fapt social: „toate fiinţele sunt în mod virtual apte de a deveni responsabile. Responsabilitatea unui subiect nu decurge din proprietăţi care i-ar fi lui inerente, ci din situaţia în care se găseşte angajat".[18] Astfel, autorul francez fixează anumite limite ale răspunderii, cum ar fi, regulile de responsabilitate şi

[15]*Niculae Neagu, Adrian Rapotan, Lucian Gheorghe,* Studii de etică şi deontologie. Deontologia funcționarilor publici din administrația publică şi structurile de poliție, Editura Europolis, Constanța, 2009
[16]*Nicolae Popa*, Teoria generală a dreptului, Editura ALL Beck, Bucureşti, 2002, p. 280.
[17]*Lidia Barac*, Răspunderea şi sancţiunea juridică, Editura Lumina Lex, Bucureşti, 1997, p. 5.
[18]*Paul Faucounet*, La responsabilité, Editura II, F. Alcou, Paris, 1928, p. 396.

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sentimentul personal pe care îl are individul despre propria sa responsabilitate, care formează o structură intimă a responsabilităţii morale.

El tratează şi funcţia responsabilităţii, depistând ca scop al responsabilităţii, conservarea şi întărirea autorităţii sistemului de credinţe care asigură solidaritatea membrilor săi, responsabilitatea fiind instituţie socială, iar sancţiunea, condiţia vitală a existenţei sociale.[19] S-a afirmat că sentimentul responsabilităţii s-a creat în jurul valorii pe care azi o numim „dreptate", dar care la origini poate fi apropiată de instinctul de conservare a omului, în forma sa de „apărare", pe când dreptatea şi nedreptatea erau noţiuni extrem de apropiate, percepţia lor nefiind sesizabilă fiinţei umane, căci scopul conservării vieţii omului (al bunurilor lui) scuza mijloacele folosite.

Diferenţierea dintre dreptate şi nedreptate parcurgând acelaşi drum cu formarea conştiinţei responsabilităţii, ţine tocmai de trecerea de la reprezentare la valoare, iar, mai apoi, la normă.

Căci, reprezentările, devenind colective, transformate fiind într-un sistem de valori coerent, se cristalizează sub formă de norme, ce sunt impuse ca reguli de organizare şi comportament tuturor oamenilor din cadrul societăţii date, norma devenind un instrument de subordonare a individului faţă de societatea în care trăieşte. Evident, totalitatea normelor, prin care se organizează şi este asigurată funcţionalitatea sa, alcătuiesc cadrul normativ al sistemului social, normele constituindu-se într-un sistem, după toate regulile sistemului. Responsabilitatea socială ar putea fi definită ca fiind, acea instituţie socială care cuprinde complexul de atitudini ale omului în raport cu sistemul de valori, instituţionalizat de societatea în care trăieşte, în vederea conservării şi promovării acestor valori, în scopul perfecţionării fiinţei umane şi conservării vieţii în comun, pe calea menţinerii şi promovării ordinii sociale şi binelui public.[20] În ceea ce priveşte noţiunea de responsabilitate juridică, aceasta înseamnă legătura stabilită printr-o promisiune solemnă sau prin lege, să facă sau să nu facă ceva, ori să suporte ceva într-o afacere, chestiune, lucrare, realitate etc., ca urmare a încălcării unor obligaţii anterioare.[21]Evoluţia noţiunii de răspundere este oarecum specifică, deoarece ea nu poate fi plasată exclusiv în zonele

[19]*Nicolae Popa*, Prelegeri de sociologie juridică, T.U.Bucureşti, 1983, p. 203.
[20]*Lidia Barac*, op.cit., p. 14 şi urm.
[21]*Valerică Dabu*, op.cit., p. 34.

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adânci ale vieţii spirituale a omului, ca un dar natural, valorizat apoi, ci mai degrabă, ea poate fi situată în compartimentul de viaţă materială a omului, căci ideea de răspundere este specifică vieţii normate.[22]Devenind subiectivă, răspunderea nu şi-a schimbat natura. Ea şi-a schimbat doar caracterul, însuşindu-şi caracterele noi, sociale care sunt ale civilizaţiei moderne întregi. Societatea, printr-o „răspundere dictată", impune indivizilor statutul ei normativ. Societatea în care trăieşte cel care făptuieşte o infracţiune, o contravenţie, un delict civil etc., socoteşte - prin normele sale juridice - o atare acţiune drept reprobabilă. Prin efectul săvârşirii unei asemenea fapte, o altă persoană a fost vătămată în fiinţa ei fizică sau morală ori în bunurile sale, ordinea de drept a fost afectată, interesele generale au fost nesocotite; aceasta este problema răspunderii [23]. Răspunderea este un fapt social şi se rezumă la reacţia organizată, instituţionalizată pe care o declanşează orice faptă socotită condamnabilă; instituţionalizarea acestei reacţii, încadrarea sa în limitele determinate legal sunt necesare, întrucât, răspunderea şi sancţionarea nu sunt (şi nu pot fi) în nici un caz forme de răzbunare oarbă, ci modalităţi de legală răsplată („după faptă şi răsplată" – spune poporul), de reparare a ordinii încălcate, de reintegrare a unui patrimoniu lezat şi de apărare socială.[24]Răspunderea, ca o componentă esenţială a oricărei forme de organizare socială, a existat încă din societatea primitivă. În această societate, individul, absorbit de socialul, încă nediferenţiat, suportă din exterior responsabilitatea morală, iar aceasta este eminamente colectivă. Societatea politico-statală inovează noi forme de răspundere. Socialul, diferenţiat în grupări şi categorii sociale, face ca răspunderea să se individualizeze.

Răspunderea a jucat rolul principal pe treptele iniţiale în istoria societăţii, în ceea ce priveşte integrarea indivizilor în ansamblul sistematic al societăţii. Acest lucru este valabil şi în perioadele în care societatea nu dispunea încă de sisteme normative, deoarece obiceiurile şi regulile morale constituiau o bază destul de consistentă a răspunderii, deşi nu suficient de diferenţiată.

[22]*Lidia Barac*, op.cit., p. 16
[23]*M. Eliescu*, Răspunderea civilă delictuală, Editura Academiei, Bucureşti, 1972, p. 5.
[24]*Nicolae Popa*, op.cit., p. 282.

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Responsabilitatea, care desigur nu a fost nici ea absentă în acele îndepărtate timpuri, ocupa un loc modest.[25]În dicţionarul enciclopedic român, termenul de "răspundere" este semnalat numai într-una din formele sale particulare "răspunderea materială a angajaţilor", iar termenul de "responsabilitate" este definit ca o "consecinţă a nerespectării unei obligaţii care consta în îndatorirea de a repara prejudiciul cauzat şi când este cazul de a suporta o sancţiune"[26].

Această definiţie situează în mod eronat "responsabilitatea" că fiind ulterioară faptului, respectiv ca o consecinţă a nerespectării unei obligaţii. Noi credem că o asemenea definiţie este mai aproape de conceptul de "răspundere" decât de cel de "responsabilitate"[27].

Totodată, Dicţionarul limbii romane moderne şi Dicţionarul explicativ al limbii romane, după cum am mai subliniat, pun semnul egalităţii între "responsabilitate" şi "răspundere", definind "responsabilitatea" ca pe o obligaţie de a efectua un lucru, de a răspunde, de a da socoteală de ceva[28], definiţie destul de imprecisă după cum s-a apreciat în doctrină.[29]

Răspunderea nu este specifică exclusiv dreptului. Ea poate fi întâlnită în orice domeniu al vieţii sociale, acolo unde este încălcată o regulă de conduită. Observăm că, răspunderea, în esenţă presupune un sistem cristalizat (instituţionalizat) de valori şi norme, ea declanşându-se în toate cazurile în care se produce o încălcare a unei reguli de conduită, ce face parte sau aderă la sistemul social respectiv. Deci, răspunderea ţine de „tot ceea ce este organizat".

Ca instituţie socială, răspunderea vizează sistemul normativ al societăţii, la un moment dat, în virtutea căreia se realizează raporturi sociale complexe între autorităţile societăţii respective şi membrii ei, în sensul că, prin intermediul ei se urmăreşte promovarea şi conservarea valorilor sociale cristalizate şi recunoscute în interiorul societăţii date,

[25]*Vasile Pătulea, Stelu Şerban, Gabriel Ioan Marconescu*, Răspundere şi responsabilitate socială şi juridică, Editura Ştiinţifică şi Enciclopedică, Bucureşti, 1988, p. 46.
[26]*Dicţionarul Enciclopedic Român*, vol. IV, Editura Politică, Bucureşti, 1966, p. 48 şi urm.
[27]*Alexandru Negoiţă*, Drept adminstrativ şi elemente de ştiinţa administraţiei T.U.B., 1981, p. 276.
[28]*Dicţionarul enciclopedic român*, op.cit., p. 48 şi urm.
[29]*Valentin I. Prisăcaru*, Tratat de drept administrativ şi elemente de ştiinţa administraţiei, Editura Lumina Lex, Bucureşti, 1993, p. 383 şi urm.

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împotriva tuturor celor care încalcă sau ignoră ordinea socială, în scopul asigurării şi promovării acestei ordini şi a binelui public.[30]

S-a afirmat că responsabilitatea are o sferă mult mai largă decât răspunderea, căci răspunderea presupune îndeplinirea unei obligaţii sau observarea unor restricţii, adică ea vizează comportamente definite prin norme sociale, în timp ce responsabilitatea se raportează la activitatea desfăşurată din propria iniţiativă, pe baza alegerii libere a obiectivelor din mai multe posibile.[31]

Deşi distincte prin natură şi conţinut, răspunderea şi responsabilitatea sunt legate între ele. Ambele vizează raportul dintre individ şi colectivitate, fiind forme de integrare a individului în societate. Dar, şi sub aspectul gradului de integrare semnalăm diferenţe – responsabilitatea implicând o formă superioară de integrare în raport cu răspunderea, care reprezintă o formă primară, elementară de integrare – ceea ce nu înseamnă că, punctul lor comun nu poate fi găsit tocmai în această integrare, care, în fond, în final produce progresul individualităţii umane, cu consecinţa firească a antrenării progresului social. În acest context, răspunderea şi responsabilitatea dobândesc caracterul de valori sociale. Evident că, la nivelul evoluţiei istorice, cât şi la nivelul evoluţiei individuale a omului, răspunderea se conturează, ca realitate obiectivă, înaintea responsabilităţii. Hlavek arată că „în evoluţia filogenetică şi ontogenetică sentimentul de vinovăţie, de greşeală şi pedepsele sunt fenomene care apar mai devreme decât gustul responsabilităţii, care presupune deja o personalitate mai evoluată, căci sentimentul de culpă, vinovăţia şi pedeapsa nu apar decât după săvârşirea faptei, pe când responsabilitatea apare deja înainte de faptă”[32].

Între noţiunile de „răspundere” şi „responsabilitate” (care includ şi noţiunile de „răspundere juridică” şi „responsabilitate juridică”), există diferenţieri nu numai de ordin terminologic, ci şi de substanţă, motiv pentru care apare necesară o definire a conţinutului noţiunii de „responsabilitate socială” şi implicit a celei de „responsabilitate juridică”.[33]Arătăm că conţinutul noţiunii de „responsabilitate” are o sferă mai largă decât al celei de „răspundere” pe care îl include. În timp ce noţiunea de „răspundere”

[30]*Lidia Barac*, op.cit., p. 16 şi urm.
[31]*A. Hlavek*, Problema responsabilităţii, Revista de filozofie nr. 2/ 1975, p. 161.
[32]*A. Hlavek*, loc.cit., Revista de filozofie nr. 2/ 1975, p. 164.
[33]*Vasile Pătulea, Stelu Şerban, Gabriel Ioan Marconescu*, op.cit., p. 37.

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presupune îndeplinirea unor obligaţii sau observarea unor restricţii, adică se au în vedere comportamente definite mai ales pe calea normelor sociale, neimputându-se indivizilor decât respectarea strictă a acestora[34], noţiunea de „responsabilitate" are un conţinut mult mai larg şi mai elevat, ea raportându-se la activitatea desfăşurată de individ din proprie iniţiativă, pe baza alegerii libere a obiectivelor dintre mai multe posibile. [35] În cazul responsabilităţii – care constituie o dimensiune interiorizată, conştientizată a individului (dimensiune care, într-un anumit sens, nu lipseşte nici în cazul răspunderii) – respectarea normelor sociale (care totuşi este avută în vedere, însă nu ca o extrapolare a acestora) nu mai constituie un obiectiv în sine sau singurul obiectiv, individul trecând peste această limită, el simţindu-se răspunzător şi pentru consecinţele faptelor sale care nu sunt reglementate prin norme ca obligaţii sau interdicţii. Norma devine din scop un mijloc de realizare eficientă, optimă, a obiectivelor stabilite în cadrul sistemului de acţiune dat.[36]Responsabilitatea nu exclude răspunderea, ba, într-un fel, o presupune, dar nici nu se reduce la ea. Terenul de desfăşurare a responsabilităţii depăşeşte cu mult sfera răspunderii, indiferent de natura acesteia (politică, morală, juridică, etc.); ea trece dincolo de normele care stabilesc pentru individ un anumit comportament, manifestându-se – în forma sa supremă – mai ales ca o creaţie liberă, ca o asumare conştientă, înţeleasă pe deplin, a unui scop, deci şi a acţiunii îndreptate spre atingerea acestuia. Ea priveşte îndeosebi preocuparea şi interesul pentru viaţa şi soarta colectivităţii din care individul face parte. Individul depune în acest sens toate diligenţele, îşi mobilizează toate capacităţile fizice şi spirituale de creaţie de care dispune, în vederea realizării optime a obiectivelor propuse[37]. O diferenţiere între noţiunea de răspundere şi cea de responsabilitate se impune, însă, nu trebuie opusă una alteia, deoarece între ele există şi puncte de coincidenţă în afara deosebirilor de ordin calitativ. Cu alte cuvinte, răspunderea şi responsabilitatea nu sunt două fenomene a căror sferă este complementară, adică acolo unde încetează forţa răspunderii, începe terenul de exercitare a responsabilităţii. Ele sunt fenomene conjuncte, care apar şi se dezvoltă în condiţii precis determinate de factori complecsi, dintre care, pe prim plan, se situează factorii economico-sociali şi cei cultural-

[34]*A. Hlávek*, op.cit., , p. 161.
[35]*Vasile Pătulea, Stelu Şerban, Gabriel Ioan Marconescu*, op.cit., p. 37.
[36] M. Florea, op.cit., p. 33.
[37]*H. Hlávek*, loc.cit., în Revista de filozofie nr. 2/ 1975, p. 161.

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educativi.[38] Elementul fundamental de coincidenţă al răspunderii şi responsabilităţii rezidă în necesitatea traiului comun în cadrul societăţii. În activitatea practică, însă, se pot ivi două situaţii: indivizii sunt (cel puţin unii dintre ei) în opoziţie cu normele sociale formal instituite, opoziţie care poate fi de grade diferite (fapt ce caracterizează societăţile bazate pe exploatare), sau indivizii sunt de acord cu aceste norme sociale, în acest din urmă caz sistemul valoric, criteriile de valorizare, coincizând cu cele ale colectivităţii în ansamblul său. Indiferent însă de motive este clar că sfera indivizilor responsabili este mai restrânsă decât cea a indivizilor răspunzători şi, de aceea, sunt explicabile eforturile ce se depun pe toate planurile (politice şi social – culturale) în vederea lărgirii continue a sferei indivizilor responsabili, idealul fiind acela al realizării coincidenţei acestei sfere cu întregul ansamblu social.[39]Responsabilitatea are o influenţă pozitivă asupra răspunderii - şi într-o anumită măsură – este chiar o condiţie şi un suport al acesteia, în sensul că un individ responsabil are într-o mai mare măsură capacitatea de a judeca, de a aprecia şi de a se supune obligaţiilor ce i se impun, putându-le corela într-un mod mai echilibrat cu propriile sale aspiraţii, interese şi idealuri. În cazul persoanei responsabile, răspunderea se manifestă doar ca o posibilitate, ca o alternativă accesorie virtuală şi de rezervă a responsabilităţii; ea reprezintă pentru colectivitate o garanţie de rezervă, un ansamblu de măsuri suplimentare, la care nu se recurge decât în cazurile în care responsabilitatea este absentă, insuficientă sau ineficientă.[40]

Responsabilitatea, şi în mod special responsabilitatea juridică, reprezintă o formă superioară de integrare a individului în societate, acesta auto-angajându-se în mod conştient în acţiunea socială sub forma unei duble asumări a consecinţelor întreprinse; faţă de colectivitate şi faţă de el însuşi; în raport cu sistemul de norme sociale, în mod deosebit cele juridice şi, deci, cu sistemul de valori colective, pe de o parte, şi în raport cu valorile proprii, individuale, cu propria-i conştiinţă, pe de altă parte.[41]Diferenţierea între răspunderea şi responsabilitatea juridică, ca trepte diferite de integrare a indivizilor în societate, nu reprezintă însă numai atât, adică o evoluţie de ordin cantitativ şi calitativ ce se constată la nivelul ansamblului social, ci, ea marchează şi o altă evoluţie, aceea a

[38]*Vasile Pătulea, Stelu Şerban, Gabriel Ioan Marconescu*, op.cit., p. 40.
[39]*Idem*, p. 40 şi urm.
[40]*M. Florea*, op.cit., p. 82.
[41]*Vasile Pătulea, Stelu Şerban, Gabriel Ioan Marconescu,* op.cit., p. 45.

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dezvoltării individualităţii umane. Procesul de formare, la nivelul individului, întâi a atitudinii de răspundere şi apoi a aceleia de responsabilitate, trecerea de la o etapă la alta, corespunde, în general, procesului de formare şi dezvoltare a conştiinţei de sine şi a conştiinţei colective – fenomen prin care omul reflectă propria sa existenţă în raport cu ceilalţi şi cu societatea.

Răspunderea şi responsabilitatea juridică sunt noţiuni ce vizează, în principal, comportamentul, conduita individului în raport cu sistemul de norme pe care-l alege sau căruia i se supune.

S-a afirmat că, dacă funcţia răspunderii acţionează, în special, în sensul menţinerii şi promovării siguranţei, stabilităţii juridice, funcţia responsabilităţii acţionează într-un sens mai global, ea promovând deopotrivă, siguranţa, justiţia şi progresul social, ca valori aprofundate şi promovate de drept.[42]Într-un anumit fel, responsabilitatea reprezintă dimensiunea interioară a răspunderii juridice, de natură a inspira şi fundamenta înseşi principiile răspunderii juridice, căci calificarea acestor principii implică neapărat responsabilitate.[43] Spre deosebire de responsabilitate (care este o răspundere în abstract, o capacitate, o vocaţie la răspundere), răspunderea juridică este răspunderea concretă stabilită după o anumită procedură de autoritatea competentă (instanţa sau autoritatea administrativă) finalizată printr-o sancţiune, însoţită sau nu de anularea actului ilegal, restabilirea situaţiei anterioare, fixarea despăgubirii pentru actul sau faptul ce a cauzat daunele constatate, luarea măsurilor de siguranţă aplicate sau acordate conform procedurilor prevăzute de lege.[44]

Deşi nu urmărim să realizăm o comparaţie sub toate aspectele între responsabilitatea şi răspunderea juridică[45], am mai adăuga la cele de mai sus ideea că responsabilitatea juridică izvorăşte din lege şi se fundamentează numai pe aceasta[46], pe când răspunderea

[42]*Lidia Barac*, Teoria generală a dreptului, Universitatea Eftimie Murgu, Reşiţa, 1993, p. 155.
[43]*Lidia Barac*, op.cit., 1997, p. 34.
[44]*Valerică Dabu*, op.cit., p. 39.
[45] Răspunderea penală se deosebeşte clar de responsabilitatea penală, imputabilitate, culpabilitate şi raportul juridic represiv, reprezentând numai consecinţa juridică a săvârşirii faptei penale de către infractor, se arată în lucrarea lui *Narcis Giurgiu*, Răspunderea şi sancţiunea de drept penal, Editura Neuron, Focşani, 1995, p. 17.
[46] În literatura de specialitate se vorbeşte şi de răspundere şi responsabilizare. Pentru ca activitatea justiţiei în ansamblul său să fie de o mai bună calitate, să corespundă rolului său social, nu este suficient să fie sancţionaţi – penal, disciplinar sau patrimonial, prin obligarea la despăgubiri – un anume număr de

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juridică îşi are sursa în hotărârea instanţei judecătoreşti sau în actul autorităţii administrative de stabilire a acesteia.

Responsabilitatea juridică se declară de către lege, spre deosebire de răspunderea juridică, care se stabileşte de instanţa sau autoritatea administrativa competentă.[47] A declara responsabilitatea prin lege fără a reglementa concomitent modul de transformare a acesteia în răspundere şi de înfăptuire concretă a răspunderii înseamnă a o lipsi de conţinutul ei juridic, iar pe partea vătămată de posibilitatea realizării dreptului ei. Responsabilitatea juridică are caracter general ipotetic, pe când de răspunderea juridică putem vorbi numai în cazul concret după ce această a fost stabilită de autoritatea competentă. Responsabilitatea juridică este anterioară faptei săvârşite, spre deosebire de răspundere, care apare numai după producerea faptei sau actului juridic generator.[48]

Răspunderea se stabileşte de autoritatea competentă, ulterior responsabilităţii, respectiv după săvârşirea faptei, iar constrângerea administrativă intervine numai atunci când răspunderea nu se realizează de voie. După unii autori, responsabilitatea este legată de dimensiunea "internă" a agentului, pe când răspunderea de dimensiunea "externă" a acestuia.[49]

Răspunderea este un efect al responsabilităţii agentului (persoana publică, funcţionar public[50], persoana privată), pentru fapta generatoare de răspundere. Constrângerea administrativă este o înfăptuire cu forţa a răspunderii juridice. Şi din punct de vedere al efectelor juridice, sociale şi chiar economice există deosebire între responsabilitatea şi răspunderea juridică. Simpla declarare a responsabilităţii juridice nu este suficientă pentru reglementarea relaţiilor sociale. Aceasta, până nu se materializează în răspundere concretă, nu produce efecte juridice, economice, sociale, având doar un caracter

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magistraţi, ci este nevoie ca toţi magistraţii să se simtă în permanenţă responsabili, să aibă sentimentul răspunderii lor eventuale. Aceasta presupune responsabilizarea lor prin instituirea responsabilităţii pentru anumite fapte şi acte de comportament negative. În acest sens a se vedea: *Ana Boar*, Judecătorul – putere şi răspundere, în Revista Dreptul nr. 1/1998, p. 37 şi *D. Ludet*, Quelle responsabilite pour les magistrats?, în Pouvoirs nr. 74/ 1995, p. 133.

[47]*Mircea Preda*, Tratat elementar de drept administrativ român, Editura Lumina Lex, Bucureşti, 1996, p. 209 arată că „răspunderea disciplinară a funcţionarului public se naşte după ce acesta a săvârşit abaterea disciplinară (prin acţiune sau inacţiune), aceasta constituind deci, temeiul juridic al declanşării răspunderii sale disciplinare şi al aplicării, dacă este cazul, a unei sancţiuni disciplinare".

[48]*Narcis Giurgiu*, op.cit., p. 7.

[49]*Marin Florea*, op.cit., p. 27.

[50]Niculae Neagu, Adrian Rapotan, Lucian Gheorghe – Studii de etică şi deontologie. Deontologia funcționarilor publici din administrația publică și structurile de poliție, Editura Europolis, Constanța, 2009

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preventiv, pe când răspunderea juridică concretizată presupune în mod obligatoriu efecte juridice, economice, sociale, cu caracter preventiv, reparatoriu, educativ şi constrângător.

Drepturile şi obligaţiile sunt virtuale în cadrul responsabilităţii juridice, pe când în cazul răspunderii juridice sunt cuantificate, delimitate pentru ca apoi să fie materializate; or, evident numai în cadrul activităţii de materializare[51] poate interveni constrângerea administrativă.

Faţă de diferenţierile semnalate credem că se impune folosirea cu mai multă precizie a conceptelor de responsabilitate şi răspundere, atât în dreptul pozitiv, în practica judiciară, cât şi în doctrina juridică.

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[51] „Dar o hotărâre judecătorească nu are nicio valoare dacă nu este aplicată, dacă nu poate fi executată, hotărârea fără o executare este o simplă părere a judecătorilor. Valoarea hotărârilor o dă posibilitatea ei de a fi realizată: sabia justiţiei înseamnă executarea", afirmă *Paul Negulescu* în Tratat de drept public, Vol. II, Casa Şcoalelor, Bucureşti, 1943, p. 8.

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COMPARATIVE ASPECTS OF ENTREPRENEURSHIP PROMOTION AND DEVELOPMENT IN THE EUROPEAN RURAL TOURISM

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Abstract. The paper makes an analysis of entrepreneurship promotion and development in the European rural tourism. The methodology used is based on the synthesis of information on the economic and social co-ordinates of rural tourism in Europe, with the presentation of several main players on this market. For this purpose, we used articles and studies published in specialty journals, in Government documents as well as in other development strategies on entrepreneurship, tourism and rural area. The results of this scientific research study reconfirm that rural tourism promotion and development are based on the existing tourism potential, which by its attractiveness is meant to ensure the integration of a certain area or region with tourism vocation into the internal and international tourism circuits.

Key-words:*entrepreneurship, rural area, tourism, economic development.*

Introduction

Within the Strategy Europe 2020, the promotion and development of the rural entrepreneurship represents a solution to the recent slowdown of the economic growth in many Member States of the European Union (EU). The rural tourism, agro-tourism and eco-tourism are among the activities developed by the European rural entrepreneurship.

Rural tourism and agro-tourism are economic activities that significantly developed in the last years, which denotes that they have not been affected by the economic crisis to the same extent as other sectors, like the production sector. Eco-tourism development supplies the necessary incomes for the protection of natural areas, which cannot be obtained from other sources. This ascending trend is due to the growing awareness of the tourism potential generated by a diverse natural and cultural potential, as well as to the

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utilization of the opportunities provided by the European Funds for investing in tourism infrastructure with accommodation facilities, foodservice, leisure, information and promotion.

Together with the amplification of the desire to escape from the busy and polluted cities and to spend the holidays in the rural areas with numerous natural and anthropic resources, rural tourism also became a good alternative to the getaways or holidays spent on the seacoast areas or in the cultural cities, as well as a real opportunity to better know the cultural heritage and the way of life in the countryside. On the other side, the rural population's migration to towns, the agricultural sector modernization, the changes brought about by competition increase in the rural world through the Community free market enlargement have determined the development of the rural tourism activities, which could relaunch, economically, the villages, could contribute to the infrastructure modernization and could attract different investors, if the inhabitants of the rural areas are adopting a favourable attitude, which should be correctly received by the tourists who prefer this type of tourism and if the local authorities get sufficiently enough involved in the development of this profitable economic activity.[3]

Material and method

In the context in which the European states have shown an increasing interest in the positive role that rural tourism could play in their economies through the diversification of the economic activities, job creation, improvement of infrastructure and services for a better life quality in the rural areas, the paper attempts to make an analysis concerning entrepreneurship promotion and development in the European rural tourism.

The methodology used is based on the synthesis of information on the economic and social coordinates of rural tourism in Europe, presenting some of the main players who carry out their activity on this market. For this purpose, articles and studies published in books and specialty journal, in governmental documents have been used, as well as other strategies for entrepreneurship, rural tourism and rural area development. This information is presented under synthetic form.

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Results and discussions

In Europe, **tourism** plays an important role due to its economic and labour employment potential, as well as to its social and environmental implications. The tourism statistics is used in order to monitor not only the tourism policies in the European States, but also in the regional and sustainable development policy.

According to a publication of the World Tourism Organization (UNWTO) entitled "Tourism highlights", 2014, Europe is a main tourism destination, and five EU Member States (France, Italy, Germany, Great Britain, Spain) were among the top ten holiday destinations in the world in 2013.[5]

As regards the supply, it is estimated that almost 562,000 tourism accommodation units were active in EU-28 in 2013, providing for over 30 million accommodation places. Almost one-third (32.3 %) of the accommodation places in EU-28 were concentrated in only two Member States, namely in France (5 million accommodation places) and in Italy (4.7 million accommodation places), followed by Germany, the United Kingdom and Spain.[9]

The European tourism has the potential to contribute to labour employment and to economic growth, as well as to the development of peripheral or less developed rural areas. The sustainable tourism presupposes the protection and development of the cultural and natural heritage, from art to local gastronomy and biodiversity conservation, playing a significant role in the development of the European regions. The infrastructure created for tourism purposes contributes to local development, and the created or maintained jobs can contribute to the compensation of the rural or industrial decline.

The **rural tourism**grew in Europe, mainly in the second half of the 20th century. Throughout Europe, week-end getaways or holidays spent in the countryside became a common practice for the lovers of fresh air, nature or green areas.

At ***European Union level***, *an important role in the rural tourism development was played by the Common European Programs* in support of this field.[4,8]

The program "European Rural Tourism Network", initiated by EuroGites and Euroter, in association with about 12 rural torism organizers in 9 European countries, has raised the rural tourism to higher quality standards; this program included three components: i)

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Providing technical assistance for the design of tourist dwellings networks in the rural areas in Germany, Spain, Hungary, Portugal, Czech Republic and Romania; ii) Knowledge of the European market in this field; iii) Development of certain information and promotion actions concerning the rural dwellings in each country.

The Program "The Village I love", organized by Euroter (Tourisme en Europe rurale), which included 51 specific actions from 14 European countries, produced a report in the year 1990, declared "The European Year of Tourism"; the report was published in 2000 copies and was distributed to the administrations and public services, to some European and international institutions, to some tourist organizations and associations and in mass-media; the program elaborated a trilingual publication (English, French, German) presenting the tourism activities that can be developed in the rural areas.

The Program "Rural Lodging" was initiated by "Federation de Eurogites de Wallonic" and had as a scope to persuade the rural owners to renovate and modernize their dwellings and to put them into the service of rural tourism. For this purpose, they created a 9-minute video-clip ("Genese d'un gite"), presenting the positive evolution of a family in the Ardenne area, who, from a modest start, by transforming their old house and practicing tourism activities, evolved into a very modern rural household, providing quality services.

The Program "Interregional Celtic Cooperation" was based on an analysis made in 8 agricultural regions from Spain, France, Iceland and Great Britain, focusing on common history and culture elements; developed in the period 1990-1991, the group who realized this program put into action 49 activities (projects), targeting the promotion of rural and cultural tourism; it had an important role in the initiation of tourism activities in these regions in the period of "dead season" for agriculture and in supporting environment protection.

The program "Data Base on Rural Tourism Services" had as purpose the creation of a computer data bank (Macintosh) to collect data on the quantitative aspects of the tourism services in the rural area, whose organizer was the German Company "Publitechnica SA"; this program included several actions that targeted the harmonization of the available information with the necessary services for the rural tourism, in order to

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facilitate the relationship between the agricultural land owners and farmers and the tourism agencies (the first pilot region was in Italy, Friuli-Venezia Giulia).

The program "Training Seminar for Rural Tourism Operator" was developed from the initiative of the EU Commision for Agriculture and Rural Tourism, which organized 5 training seminars for the rural operators in the period 1992-1994, where a special focus was laid on women; the seminars presented specific management, marketing, investment planning techniques, for farm equipment and modernization, cost calculation; representatives from Denmark, Ireland, Great Britain, Portugal, Hungary participated in these activities with theoretical and practical role, each developing its own project.

All these programs represented a transition from the design phase to practical implementation of many private initiatives. Under these programs, the designed torurism products were correlated to the expectations of potential customers in concordance with the supplier's economic power. As resultat, *the present rural tourism network has the best organization inFrance, Austria, Germany and Italy.*[3]

France ranks 1st in the EU by the number of farm owners with tourism function due to maximum diversification, organization and promotion of this activity. Since 1970, following the concerns to provide tourism services in the rural area, "Tourisme en espace rural" (TER) emerged, which comprised 4000 tourism villages. The largest part of the French units can be called *country-houses* and are controlled, certified and reserved through the National Federation "Gîtes de France"; in the French area there are also other association forms, such as: "Logis et Auberges de France", "Stations Vertes de vacances", "Relais et Chateau", "Relais de Silence" etc.

Among the areas where the French rural tourism holds an important position, the following stand out: Haute-Savoie, Herault, Saone, Loire, Cotes d'Armor, Bas-Rhin, Bourgogne, Bretagne, Alsace, etc., where tourists are attracted by the French cuisine (with the butter tartines dipped in the cup of coffee with milk at breakfast, original snail or cheese-based food), by the French wines (white, red, rose or champagne) and mainly by the careful hosts' hospitability, always ready to do everything to satisfy their visitors. [7]

Furthermore, one should not overlook the price-quality ratio, which is a main concern for each French rural tourism developer. To this, we must also add a "strong attachment to

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the native region and a certain reluctance to change one region for another", as well as the authorities' care to support all these enterprises through loans (agricultural, hotels, village planning) on long term (up to 15years) and small interest (3.5%). All these and some other things (which you can discover only at the respective place) have contributed to the new look of the French tourism in the rural area and to ranking first in tourists' preferences.

In **Austria**, rural tourism has a long history (almost a quarter of the Austrian farms have been receiving guests for about a century); it represents an activity that has contributed to the development of new occupations (which became professions afterwards), leading to the economic growth of villages.

The most important position in the rural Austrian tourism is held by the Tyrol Region. Since the 18th century Tyrol get out the Switzerland shadow and became area of tourism interest. While passing through the test of the two world wars, Tyrol area was rebuilt in speed every time. In the `50s years were reached pre-war conditions and the following development was not only fast but also very strong. Growth realised in tourism field has made based on: economic growth of all region, population growth, increased leisure transport and infrastructure development, development of new communication systems, winter sports and not least of uebanization. For practicing rural tourism in Austria there are "resorts" (Erholungsdorfer) for the family holidays. These types of tourism are attractve also by prices, which are generally small, with differences from one household to another, but observed throughout the year, being reported and entered into "annual supply indicator".[2]

Nowadays, the statistical data place Austria on the second place, after France, by the number of farm owners with tourism function (19000 existing farms in operation); for a better operation of rural tourism, the following organizations were set up: the Village Tourisn Organizations (VTO) and the Administration Centers of Village Tourism Organizations (ACVTO).[1]

The Austrian rural tourism units are *the peasant boarding house and the tourism inns*.

The results obtained by the rural tourism in Tyrol area are due to its geographic position, being situated at the crossroad of the North-South and East-West routes, where the traffic is intense, as well as to the Program initiated by the Ministry of Agriculture and Trade,

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suggestively named "The Green Plan", by which the Tyrol households were granted loans with a long repayment period (15years) and low interest (3-5%).

In **Germany**, the holidays on the peasant farms are very popular; as a result, in 1980, the project "*From the North Sea to the Alps"* was launched, which had in view building up and equipment of 2000 holiday homes with about 10000 rooms. The most developed regions in the rural tourism activity are Schwartzwald and Messen.

The anti-trust laws, the permanent encouragement of small and medium-sized businesses with family capital and supporting the concept "kinder, kuche und kirche" (child, kitchen, church) led to special results and increasing promotion of rural tourism.

At present, the rurall tourism is practiced on more than two-thirds of the German rural area, and the tourism endowments are found from North Rhenania, Westfalia, Hessen, Bavaria, Baden, etc. The tourist stays offered in the German rural area bear the smell of beer fests and the colour of the Danube and Grimm Brothers' stories. These add to cycling, swimming, riding, creative courses, concerts, museums, open air events.[7]

In **Italy**, rural tourism has been developed under association forms. The local, regional tourism associations are strong and operate on the basis of task books that all the members are respecting. In these books one can find the minimal and maximal rates established with the purpose of no price difference for the same service type. Thus, tourists are no longer obsessed with prices, and they are concerned only with what the region is offering to them, for their physical and spiritual satisfaction, discovering:

- the diversity of the cultural traditions and landscapes,
- the food traditions of the Italian cuisine;
- the famous Italian wines;
- the folk dances and songs or the cultivated music;
- the architecture of the different historical monuments;
- the poetry and legends of each place.[10]

The following Italian regions are famous for rural tourism activities: Piemonte, Lombardia, Trentino, Veneto, Emilia Romagna, Liguria, Toscana, Lazio, Ambruzzo, Umbria, Campania, Puglia, Calabria, Sicilia and last but not least Alto Adige. It is worth mentioning that Italy is a great receiver of tourist inflows, and at the same time great tourist outflows leave Italy for the rural tourism destinations in Europe.

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In the recent years, *through the opportunities provided by the European Funds for investments in tourism infrastructure with accommodation, leisure, information and promotion facilities,* ***the rural tourism has developed on the whole territory of the European Union***, in areas such as:

- Spain (Granada, Almeria, Malaga, Cadiz, Huelva, Sevilla, Cordoba);
- Portugal (Costa de Lisboa, Costa Verde, Costa de Prata, Montanhas, Planicies, Algarve, Azorele and Madeira);
- Great Britain (Kent, Norfolk, Suffolk, Warwickshine, Wales);
- Ireland (Ballyhourra Country near Shannon, Joyce Coountry, Irishawen, Unabhan and Carlow Country);
- Luxembourg (Porte des Ardennes, Mullerthal, Moselle).

Merry people and always ready for a party, pragmatic and efficient in showing their good host reputation, well-known for their hospitability can be also found in the rural localities from Greece, Belgium, Denmark, Finland, Sweden and Iceland.

Rural tourism also started to grow in the countries from Eastern Europe, in Poland, Hungary, Romania, Bulgaria, Slovakia, ex-Yugoslavia; the experience of Western Europe has been used in promoting non-agricultural activities in the rural area and the diversification of activities through the assimilation of new entrepreneurial skills, in acquiring new skills and in the delivery of new services for the rural population, which proved to be the main factors contributing to the economic growth and implicitly to the change of mentality and increase of the living standard in the rural areas, as well as to the stability of the territorial, social and economic equilibrium.[6]

Conclusions

The present research identified some of the European Programs that provided support to the promotion of the entrepreneurial initiatives in the rural tourism of the European Union Member States, as well as the modality in which the present natural and anthropic potential was put into value by the Member States with the highest number of farms with tourism function – France, Austria, Germany and Italy.

The European rural tourism has reached its present standard through the involvement of the following entities:

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- governmental and non-governmental institutions,
- cultural institutions,
- airlines offices,
- official offices in the countries with tourist outflows,
- newspapers, journals, radio shows, tv programs,
- posters in public places, prospects and fliers,
- firms participating in fairs and exhibitions.

The rural tourism development was based on:

- economic growth of regions,
- spare time increase,
- development of transports and infrastructure necessary for tourism activities,
- development of communication systems,
- development of winter sports and last but not least – increase of living standard in the rural zones.

The support for the entrepreneurial initiatives in the European rural tourism means:

- investments for a continuous improvement of the quality of accommodation and leisure equipment,
- prevalence of association forms, in which the small-sized family units get economic power,
- tourism packages, which should respect the natural, economic and social integrity of the rural space and ensure the rational exploitation of the natural and cultural resources necessary for the next generations.

Rural tourism has the potential to contribute to labour employment and to rural development, to the development of the less-favoured and remote rural areas; at the same time, it plays an essential role in the rural economy, where it represents a significant source of additional incomes and promotion of entrepreneurial, innovation skills and job creation.

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RURAL TOURISM POTENTIAL AS PART OF SUSTAINABLE DEVELOPMENT IN ROMANIA

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Abstract. One of the social-economic phenomena of our century is represented by the remarkably fast development of tourism, through the diversification of tourism products and the "refining" of hospitability industry. More and more tourists want to spend their leisure time and holidays in the countryside, being largely influenced by environmental ideas, by the desire to escape from conventional tourism structures, by the search for the best quality/price ratio.

In this context, rural tourism and agro-tourism are a real opportunity to revive the local economy and traditional Romanian rural communities. Tourism practiced under various forms in rural Romania offers people who want to relax, who love nature, culture and folk art, a treasure chest of ancient rural civilization values and the possibility to save time and money by spending their vacation on peasant family farms, private farms, boarding houses and guesthouses.

The objective of this paper is to provide a summary on tourism sustainable development in Romania's rural areas. This research paper is based on a complex processing and analysis of statistical data, of information from official sources, from central and local institutions, as well as numerous data and information obtained in the field.

Starting from the data presented above we can affirm that tourism is one of the most important sectors of national economy. Its development can be influenced by the development of other fields of activity like business, culture, religion, environment protection etc. In the last years, investments were made aiming at attracting new tourists, yet serious investments in infrastructure are still necessary in order to be able to compete with the tourism destinations from abroad.

Keywords: rural tourism, sustainable development, natural and anthropic potential.

Introduction

Tourism can create jobs in the less-favoured areas through the improvement of infrastructure and tourism services, protection of the environment and heritage, rehabilitation of traditional resorts of special importance, diversification of tourism offers, eco-tourism, spas, winter sports, cultural and historical tourism development. Family businesses and micro-enterprises are worth mentioning, as they can increase the occupational opportunities at local level.

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The successful and sustainable tourism development depends not only on the attractive scenery and facilities but also on competitive quality services. Hospitability and tourism represent a people industry: people providing services to people. As one of the most competitive economic activities in the world, tourism requires understanding, professionalism, commitment, organization and an effective human resource development strategy.

The investments in tourism infrastructure, in agricultural and rural tourism are identified as a modality to contribute to supporting the balanced development of all regions of Romania, raising living standards in rural areas and reducing the development disparities across the country's regions.

The "Master Plan for National Tourism Development in Romania 2007-2026" was initiated by Romania's Government in order to lay the basis of implementing a permanent approach to the development of tourism and rural tourism in Romania. This covers a wide range of interests, from the eco-tourist specifically interested in environment protection and conservation, the agri-tourist interested in experiencing the farmer's lifestyle; the activity tourist enjoying the great outdoors; to the more generalised interests of the geo-tourist appreciating the scenery beauties, the culture and traditions of the countryside. One can include here the national parks and natural reserves, open rural regions, villages and farmland areas.

Rural tourism development is identified as one of the five sub-priorities in the strategy to bring about a balanced development between the country's regions. The development of the natural and cultural heritage and activities focusing on the natural and cultural landscape are seen, in the plan, as means of developing and promoting tourism.

Furthermore, a number of other elements contributed to defining the concept of rural tourism, namely: psychological dimension, social dimension, geographical size, urban dimension. Rural tourism is one of the most efficient solutions for the harmonization of tourism demands and environment preservation rules. (Bran et al., 2010)

Material and method

The economic impact of tourism can be measured in several ways utilizing a range of key indicators, which demonstrate the contribution of the sector to the wider economy. These indicators include the foreign exchange earnings and their contribution to the travel account on the Balance of Payments, tourism expenditures and incomes, tourism sector contribution to GDP (both in terms of the foreign exchange earnings and the wider tourism sector earnings), contribution to Government earnings (mainly taxation), the multiplier effect and employment creation. A comprehensive

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identification of such impacts is a complex undertaking and it fully depends on the availability of comprehensive, reliable and accurate data.

Unfortunately the rural tourism statistics database in Romania is inadequate for a comprehensive economic analysis. Therefore, the methodology used is based on the inventory of the main modalities to promote and stimulate the Romanian rural tourism usinginformation from articles and studies published in specialty journals, as well as from reports and governmental and non-governmental documents.

The information and findings of this article were obtained through selective research-specific methods. The research followed the following process and stages: identification of the researched issue, research framework delimitation, information collection, data processing, analysis and interpretation, drawing up the conclusions.

Results and discussions

Based on the existing topographic, weather and historical conditions, there is the possibility to extend tourism to the level of an important economic sector in Romania. In this respect, considerable effects regarding incomes and labour market are foreseen. Looking ahead, Romania is in a prime position to develop a sustainable and successful tourism model (WTTC, 2006).

Rural tourism has been considered a means of achieving such economic and social development due to its capacity to generate local jobs and stimulate external investments in the communities. Sustainable tourism systems are related to raising the more general interest in sustainable development and the pioneering work of the Brundtland Commission in 1987. The growth of rural tourism activities can be traced back to the late 1960s and the early 1970s and is the product of economic and technical changes, which threatened the status quo of society, life styles and long-existing economies. Agricultural change threatened traditional farming patterns and techniques in a large part of the developed world. In 1968, Sicco Mansholt, European Commissioner for Agriculture, suggested that small farms had no agricultural future. The Mansholt Plan envisaged five million farmers giving up farming (European Commission, 1968). Mansholt also noted that the heavy industries – coal, iron and steel, textiles, and shipbuilding - were shedding enterprises and labour rapidly. These development trends helped create both industrial heritage tourism and rural tourism. Farms diversified to maintain their income: tourism was a way out of dependence on agriculture. (Lane et al., 2013)

For Romania, rural tourism is a priority area in the revival of the economic life, especially considering that rural tourism has continuously developed in our country, mainly after 2004, with

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the development of associative support forms and building the legal framework that regulates the activities of the sector.

Currently, rural tourism is an important part of the Romanian tourism sector. Yet we must draw particular attention on the fact that the tourism potential of rural areas in Romania is far from effective realization, showing poor use of natural, historical and cultural tourism resources, as well as a low utilization of the existing material base. As regards the tourism potential, we note that our country has diverse attractions, distributed in a balanced way, from the Carpathians to the Black Sea, or areas with old cultural traditions.

Paradoxically, however, is that many areas that are economically undeveloped, practically focus the most important tourist attractions, and rural tourism here can have a revitalizing role by capitalizing their natural and anthropogenic tourism potential.

To ensure a good recovery of the tourism potential it is necessary to develop products/programs in addition to tourist accommodation, including a wider range of attractions and activities, accompanied by appropriate integration and promotion of events and traditional customs. The products need to be tailored to the type of practiced rural tourism (cultural, curative, religious, adventure, rest and recreation, for winter sports, hunting and fishing, transit, etc.) and influenced by a number of factors such as season, religious holidays, holidays/vacations, and last not least by infrastructure and weather conditions.

In recent years, rural tourism and agro-tourism are economic activities that have significantly developed with the tourists' growing desire to get away from the crowded and polluted cities and to spend their holidays in the rural areas with numerous natural and anthropic resources. For these tourists, rural tourism represents a good alternative to holidays spent on the seashore or in cultural cities and a great opportunity to better know the culture of rural areas and to get closer to the traditional way of life.

The main destinations of the rural tourism and agro-tourism in Romania are the following:

- Maramureş (Săliştea de Sus, Bogdan Vodă, Săpânţa, etc.),
- Transylvania (Arieşeni, Gârda de Sus, Bistriţa Bârgăului, Băişoara, etc.),
- central part of Romania (counties Braşov – Bran, Moeciu, Râşnov; Covasna; Harghita – Tuşnad, Praid, Sub-Cetate; Sibiu – Sadu, Tălmăcel, etc.),
- the Carpathians and the Curvature Sub-Carpathians (counties Prahova – Poiana Ţapului, Cheia; Argeş - Brăduleţ, Rucăr; Buzău; Dâmboviţa; Vrancea),
- Moldova (county Neamţ - Agapia, Văratec; Suceava – Vatra Moldoviţei),
- Oltenia (counties Dolj; Gorj – Tismana; Vâlcea – Vaideeni;
- Mehedinţi – Ponoarele;

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- Hunedoara – Haţeg, Bucium, etc.

Probably the most tangible indicator of the growing interest in rural tourism is the expansion of guesthouse accommodation in recent years stimulated by the availability of SAPARD funds and National Rural Development Program 2007-2013. Entrepreneurship stimulation in the Romanian rural tourism sector has continued under the National Rural Development Program 2014-2020. Thus, since July 15, 2015, the Funding Agency for Agricultural Investments has provided funding opportunities through:

- Sub-measure 6.2. Support for the creation of non-agricultural activities in the rural areas; the total available funds in the year 2015 were 44 164 707 euros;
- Sub-measure 6.4 Investments in the creation and development of non-agricultural activities; the total available funds in the year 2015 were 57 214 935 euro.

These aim at:

stimulating the business environment in the rural areas through the increase of the number of micro- and small enterprises in the non-agricultural sector and in the sector of services;

increasing the number of non-agricultural activities in the rural areas by encouraging the maintenance and development of traditional crafts;

developing the present non-agricultural activities;

creating jobs in the rural area;

reducing the differences between the rural and urban areas by non-agricultural practices in order to increase the incomes and occupational alternatives.

As regards the *sustainable development of the Romanian agro-tourism*, the following main aspects must be taken into consideration: environment degradation diminution, conservation of the natural and anthropic resources, ensuring additional incomes for the people from the rural communities with tourism potential, creation of global alliances between several rural localities for the development of a single development policy, the improvement of the general infrastructure, equipment of certain model/pilot farms, boarding houses, tourism households, development of the national reservations system, establishment of local public administrations as promoters of profitable management of the tourism patrimony through the initiation of programs providing support to rural tourism.

Conclusions

The rural tourism activities can contribute to the economic recovery of villages, to infrastructure modernization, can attract different investors, if the inhabitants of the rural areas adopt a favorable attitude, which should be received correctly by the tourists who prefer this type of tourism, and if

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the local authorities are sufficiently involved in the development of this profitable economic activity.

In order to obtain good results in the Romanian rural tourism activity, the following are necessary:

Improvement of infrastructure to support the agro-tourism business;

Continuing to reduce bureaucracy with regard to the establishment and operation of agro-tourist boarding houses;

A better information of the population with regard to the governmental programs for private initiative stimulation;

Popularization of the successful business examples of the Romanian entrepreneurs.

In the future, in order to improve the living standards in the rural areas, it is of utmost importance to create and maintain sustainable jobs, to initiate and consolidate businesses, to develop products, services and activities on the basis of the existing potential.

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ETHICAL ISSUES ON THE POSITION OF THE YOUNG GENERATION OF INTELLECTUALS IN EASTERN EUROPE AGAINST DISCRIMINATION AND CORRUPTION

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Abstract:Nowadays, a large part of European academic staff, but also American, believes that ETHICS fell from its high position, exclusive, of the educational programs, entering a certain obscurity. And it is true that today only a small part of specializations in higher education have as an object of study "Ethics" or "Business Ethics". There are few students who have clear notions about ***morals and morality, deontology, discrimination or corruption***.

For these reasons, we believe that an evaluation of the position of students and graduates of higher education institutions to certain ethical issues related to the present and future of their careers is welcome.

We interviewed therefore a number of 1.073 students, master students and recent graduates (up to 5 years after graduation) in Eastern Europe, to answer questions related to issues of discrimination and corruption, both while conducting studies and thereafter. Based on the interpretation of these responses, we developed a study which we will summary present as an article.

Key words: ethics, morals, corruption, discrimination, young generation

1. Introduction

In the last time the main discussion is more about a qualitative reform of contemporary society based primarily on massive promotion of youth and its involvement in the most important activities of political, economic and social management. But these goals can't be satisfied just by training more efficiently youth generation in all activities, but also by a better preparing of them.

Unfortunately, in schools (first we talk about the higher education), preparing the young generation in accordance with the principles of ethics and moral is disappointing. As would find out the specialists in the United States and the European Union, in the last time "Ethics" or "Business Ethics" as study subject, fell from their high position, an exclusive one, being somehow neglected in the education programs. The famous French philosopher Jean Jeaques Rousseau said, during a debate in 1773, that: "People learned but without any morality are of course the most dangerous

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agents for corrupting a society and for decadence of a state. This means that the younger generation must be prepared to take action against issues of corruption, discrimination and gender equality.

A study in 2015 made by Transparency International on corruption, ranks countries in Eastern Europe on 58-70 seats out of a total of 168 countries from around the world discussed (see www.Transparency International: Perception Index corruptive 2015 - Report and Info graphics). It follows that in these countries, over 50% of administrative and business activities are suspected of being affected by corruption, and overall, more than 6 billion people live in countries where corruption is perceived as going beyond a level of 60%.

Of course, corruption is almost always accompanied by the discrimination. Students are introduced to this phenomenon much earlier, since the initial phase of their training. Period university should find them ready to defeat any attempt to discriminate, but unfortunately it is not. This is because universities fail to create environments tolerant and non-discriminatory attitudes. Although many of them have complex internal provisions on gender equality, anti-discrimination, respect and tolerance or free expression, they are very little known in academic environment. ”From the study on student perceptions of discrimination was revealed that although many are considered to be tolerant (76.52%) discriminatory attitudes are quite present among them. Among vulnerable groups to which the students have less tolerance we find persons infected with HIV / AIDS (46.73%), people of different sexual orientation (39.53%), persons of other ethnicity (37.32%)”. (Poll: Care este nivelul discriminării şi al discursului instigător la ură? Mălina Barbu www.romaniacurata.ro). Marked by the consequences of corruption and discrimination, but also by the prospects for mediocre income, much of the graduates of higher education in Eastern European countries are tempted to find jobs abroad.

Annual Report of the World Economic Forrum, ranks Romania on the 109 place of 144 countries of the world to the ability to retain values in the country. An unsatisfactory place due to precarious offers on labor market for young graduates. This drain of "gray matter" goes hand in hand with the government's inability to create facilities for young specialists and attracts to the local business area. Therefore, we aimed to investigate the position of students, MA students, and also of young graduate regarding the phenomena of corruption and discrimination, both during and after completing their studies. We chose four countries (Romania, Turkey, Macedonia and Moldova) because their education systems are quite similar and with the exception of Romania, they are involved in an advanced process of accession to the European Union. Our work was facilitated by the fact that we had more MA students of the mentioned countries, who were happy to help us in carrying out the proposed actions.

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2. The social dimension and the way to modernization of higher education

Reformation of higher education is an issue which is for a very long time on the agenda for cooperation on the old continent. In 2006, the European Commission emphasizes that: "Universities are key players in Europe's future for the successful transition to a knowledge-based economy. However, this crucial area of the economy and society requires a strong restructuring and modernization in detail, if Europe wants to not lose the global competition in education, research and innovation" (European Commission 2006 Report, p.11).

This type of approach links modernization of higher education to the fulfillment of social and economic goals. Thus, the political debate on the social dimension of education and its educational process optimization has become an extremely topical issue. In such circumstances, it requires a reconsideration of policies related to education development through the achievement of major goals, such as:

Supporting access to more people (and especially under-represented groups) at a higher education level;

Finding ways of sustainable financing, of support schemes for students such as grants, bank loans and other facilities of non-pecuniary in order to facilitate equitable access and ensure, as pledged in Bologna, a equal representation of the social distribution company;

Achieving a fair and inclusive education system that places emphasis on equality terms, but also on equality treatment;

Achieving a graduation rate as good, this is based on a higher graduation index among the students.

The ultimate aim of achieving these objectives is to realize a "European area" of higher education, attractive and modern. European states policy is to adopt measures leading to a higher education flexible and efficient. By adopting new "technology" of without frequency learning, e-learning and the launch so-called "open universities" demonstrates that modernization is a continuous process that must adapt to contemporary realities more efficiently.

Of course in the end, all attempts to modernization and improvement of education in Europe should be subject to competitiveness criterion as namely, to train specialists to become more performing at work in the shortest time. In this direction, however, graduates from certain countries face difficulties when they want to hire in other countries. These weights are based both on nationality and the prestige of graduated school. Higher education in Eastern European countries is generally low ranked and because of this, graduated students are often disadvantaged when they want to secure a position in relation to those in Western Europe.

3. Position of the young generation against corruption and discrimination issues

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The phenomena of corruption and discrimination leave deep scars in the consciousness of the young generation. They are general phenomena, offensive, which affects the consciousness of young people, representing in fact, a violation of human rights. The academic environment is perhaps the area most favorable for the manifestation of ethical principles and the fight against disturbing phenomena. Values and principles that are trying to be promoted in this environment are: respect and tolerance, benevolence and care, professionalism, personal autonomy, honesty and fairness, academic freedom, responsibility. Often, however, the universities fail to create environments that promote tolerance and non-discriminatory attitudes and do not transmit to students these values and principles, despite the fact that education is the main catalyst which should contribute to the activation of tolerance and solidarity among citizens.

Therefore, universities in Eastern Europe are not very transparent or actively involved in terms of providing information about the representation of vulnerable groups in higher education or about concrete actions taken by responsible factors. For example, over 60% of students surveyed during this study would treat with indifference both forbid relationship between teachers and students, and cheating on exams.

4. Equality opportunities and access to employment

"All human beings are born free and equal in dignity and rights" proclaims the first article of the Universal Declaration of Human Rights since 1948. This means that the rights and freedoms are recognized to all individuals without distinction. The same is true for graduates with higher education.

A significant player that influences international policies in Europe is the Council of Europe made up of 47 states. In the document "Recommendations for a quality education for all" is stipulated that quality education should be ensured without discrimination to all, and to students in particular must create equal access and equitable in programs of study and also their entry into the labor market. It also emphasizes that the public authorities have a capital responsibility to create optimum environment training but also in the placement on the labor market.

But in reality, is not the case. In the modern world as a remedy of free competition, increasingly manifest desire of rank, to devise rankings, from the sport also to the academic. The emergence of international organizations dealing with the composition of classifications of higher education institutions (on grounds sometimes subjective) is also manifested by promoting an attitude of restraint towards academic environment in Eastern Europe. Based on such rankings more or less eloquent, is already creating a handicap for the eastern graduates taking up jobs in Western countries and also often in their own countries. This follows from our case study.

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Rankings compiled by various national or international organizations we must recognize creates a handicap, but also have a positive side, namely that of stimulating competition 'inter' and 'intra' university. In Romania, for example, based on criteria proposed by the Ministry of National Education and Scientific Research universities were classified into categories (A, B, C, D or I, II, III, IV). For the first two categories, there are a number of facilities such as more subsidized places at license and doctoral studies, generous research funding, better visibility. Normal up to a point, but what do we do when we see that in the last category are all private universities and state universities, but newly established or those in small towns? How do we encourage the development of private education, how do we help the smaller universities to increase, since according to the directives of the Council of Europe, the number of students in eastern countries would have to double in coming years?

5. The position of the younger generation of students and graduates from Eastern Europe towards corruption, discrimination and equal opportunities. Case Study

5.1 Research results

The sample covered by our study was composed of 1073 subjects from four countries of Eastern Europe, as follows: Romania (421 subjects), Turkey (233 subjects), Macedonia (214 subjects) and Moldova (205 subjects). Our choice was made based on the existence of similarities related both to structure of education systems and also the transition stage education systems specific to each country toward a model efficient and modern, European type.

Study was conducted by a team of students and MA students from the University "1 December 1918" Alba Iulia (Romanian, Turkish, Macedonian and Moldovan) from February to June 2015, and was based on a questionnaire composed of 16 questions with three, four or five responses.

Questionnaires were grouped into two broad categories, namely: the first referring especially issues relating to the corruption and the second to issues of discrimination and equal opportunities. Both categories comprise aspects of the proposed themes at general level (at the state level or international) and private (at school, or workplace).

5.2 The corruption, as it is perceived by the younger generation of East Europeanintellectuals

Respondents' attitudes towards corruption are not oneresignation. They recognize the existence and dimensions of this scourge and a 73% are agree that all governments (left or right) are corrupt or accept the (see fig. 1). Over 62% of them consider that to remove this scourge it takes a harsh reaction of governments manifested by legislation and effective control. A percentage, but quite

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significant, 37.84% consider that there are other ways (long term, we say) based on increasing levels of culture and applying the principles of business ethics (see fig. 2). Neither public officials are not spared by our subjects, who believe that they receive undue benefits due to the desire for the enrichment of low wages in the administration, but also because habituation. Behold 26% of respondents consider that it is customary in their countries (see Fig. 3). To the question: "In which of the areas of activity often gives the bribe?" Opinions are divided: over 34% believe that the state sector, and 42% believe that in all sectors, while only 3.82% believe that their country does not happen this (see fig. 4). Therefore, the group of optimists is very limited.

Referring to the economic development of indigenous companies, the view of most respondents (over 82%) is that they are obliged under certain circumstances to bribe (fig. 5).It is also interesting their opinion about multinationals (fig. 6) who is believed that more mimics the compliance with ethical principles (although promotes a whole policy based on ethical behavior) and in the alternative, they violate these principles in order to obtain economic advantages (over 80% of subjects). 61% of them say if they would ask for money to be employed in a multinational were willing to give him (fig. 7).

About work (or school or company), young people would be willing to a lesser extent, to bribe to take an exam or pass an interview (fig. 8 and 9), but would be very lenient with those who copy in exams (fig. 10), 60%.

5.3 The discrimination and equal opportunities problem from west to east?

Discrimination and equal opportunities remain some challenges of contemporary society. Besides the classical aspects, begin to appear and new trends of manifestation of these phenomena, namely, those of differences in approach between Eastern and Western Europe. Young people in eastern feel disadvantaged in competition with those in the West, both in finding jobs and alsolevel remuneration. Sometimes these disadvantages are emerging even when they are in their own country. Therefore 71% of respondents believe that you can more easily find a job in their own country, if you graduated abroad (fig. 11), while 72% believe they have less chance of getting a job in the West, than a job autochthonous (fig. 12). Respondents perceived reasons are that schools have an older western tradition and education programs are more practical and realistic. Desire of young graduates to hire in West is based on getting a good salary (60%), but also for better working conditions 34% (fig. 13).

Respondents also believe that there are problems of discrimination both in universities and also at the workplace. Discrimination based on sex is the most frequent, so that 76% believe this (figure. 14), while 62% are not bothered whether there unlawful sexual relationships between students and

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teachers (fig. 15). A good thing is that 88% believe that discrimination can not be removed by harsh legislative measures but rather through education and raising the cultural level of society (fig. 16).

6. Conclusions

Corruption and discrimination, here are two notions of concern to the younger generation of students and graduates from the east. Their position on these issues is not passive one but rather active. But there are some reservations that are generated by imperfect systems that operate in their countries. All are aware thatgovernments are not still able to stop corruption, and that beyond the political orientation, they do not differ in any way from each other in relation to corruption. Civil servants are greedy and claim undue benefits, and firms in such a climate, during their evolution are obliged to bribe. For these reasons, young people consider that to eradicate or at least minimize these phenomena need tough legislation and repeated checks. Neither multinational companies are not seen with sympathy in this regard. Young people do not believe in the effective implementation of ethical codes or in "moralistic" propaganda. Rather they believe that these multinational mimics thecompliance with ethical principles. Instead, their attitude to the occupation of position in a multinational firm is more nuanced. Only 14% would agree to pay a sum of money, while 40% said categorically NO. The remaining 46% are undecided.

About cheating in exams, there is an unjustified tolerance for cheaters, perhaps in a spirit of "band", tolerated as a nonconformist behavior tolerated, protester.

Passing from corruption to discrimination, we can say that young people have a conscious position towards this phenomenon. I mean, if corruption, they say, can be combated by tough laws and controls, can’t say the same thing about discrimination. To combat discrimination it takes some time, understanding and patience, increase cultural and educational level of a whole society. The most common type of discrimination in higher education are that ofgender practiced in a way somewhat hidden but perceived by students. Teachers practice such discrimination thus favoring certain individuals. Surprising is the fact that if a student disallowed relations with a teacher in general, it would not matter to anyone. There are, however, manifestations of discrimination and otherwise. Universities should be "key players" in the transition to a uniform European school. But in the countries covered in this study it does not happen because they are not yet established specific conditions to ensure this transition. Here are some reasons:

Financing is not done in a manner beneficial to all universities

Indicators used for access to finance from the start are discouraging private institutions and the smallest size institutions

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Financing from European funds are complicated and the criteria for grants awarded are not the best. Only filling out an application of funding research for example, is a very big effort, an "adventure" in fact.

Business is less stimulated to collaborate with higher education institutions. Universities do not have clear and consistent policy of attracting companies for cooperation

Education programs are overloaded and poorly targeted to the practice. The practice is often formal and unimportant. Then does not exist teachers prepared for this (specialist) to oversee and guide students in practical activities. These lessons are "loaded" in the task of some teachers too requested and they are not very well oriented in this direction

Very high effective number of students per teacher impedes good communication between the two sides. Often feedback only happens at the exam

Lack of quality criteria by which to grant funding from the budget, but bad implementation "of the Quality System" in some universities

Here are just some of the reasons why educational institutions in mentioned countries are classified as non-performing. In these circumstances, of course those graduates of these institutions will not have equal opportunities to fill positions with those in Western Europe. Even in countries of origin, local graduates think they are disadvantaged in competition with those who have graduated from a school abroad, and when they have to compete for a job "outside", they are doubly disadvantaged: the first time they graduated in the East and the second time because they are citizens of some countries in Eastern Europe. Here it outlines a kind of discrimination (or at least unequal opportunities) namely, that between West and East. A "longitude discrimination" we would say.

Of course there are measures to eliminate these shortcomings as soon as possible, is important, however, that responsible factors not to mimic REFORM but TO REFORM.

7. Figures list

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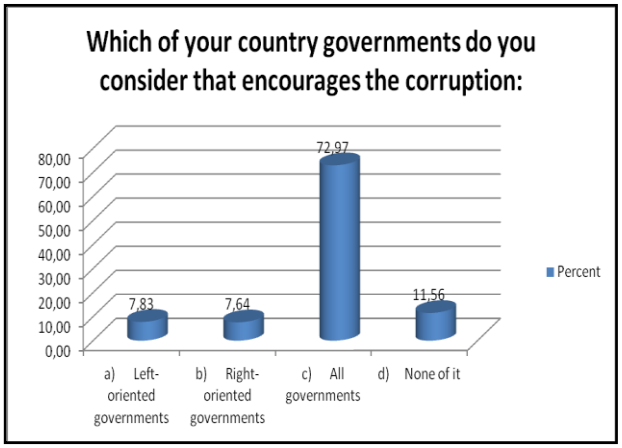

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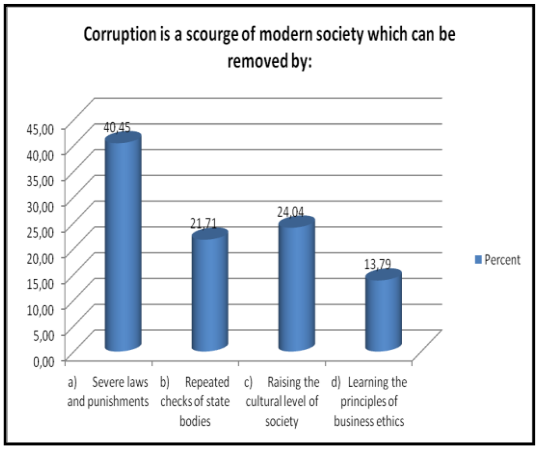

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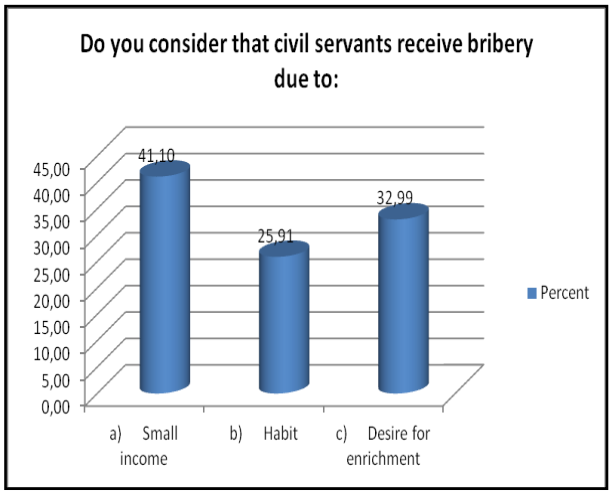

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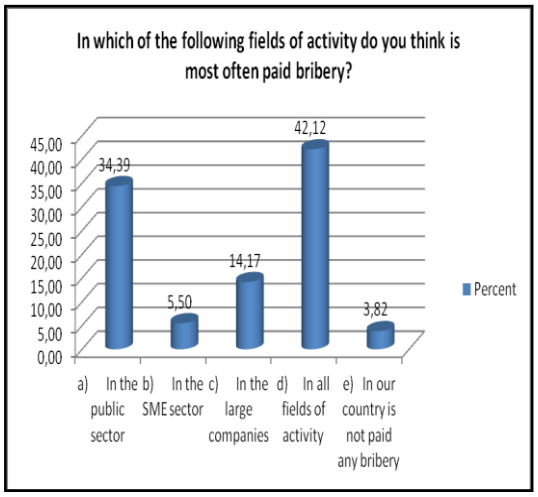

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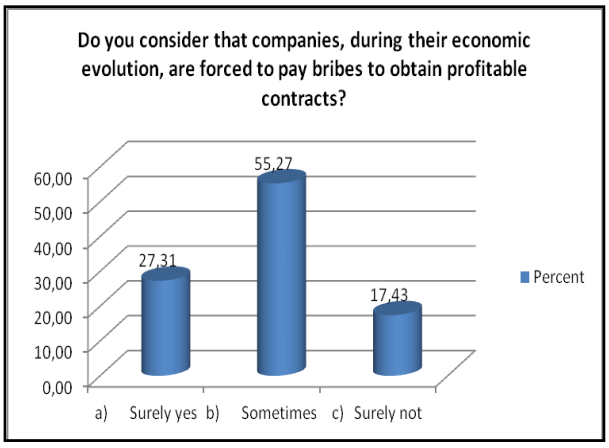

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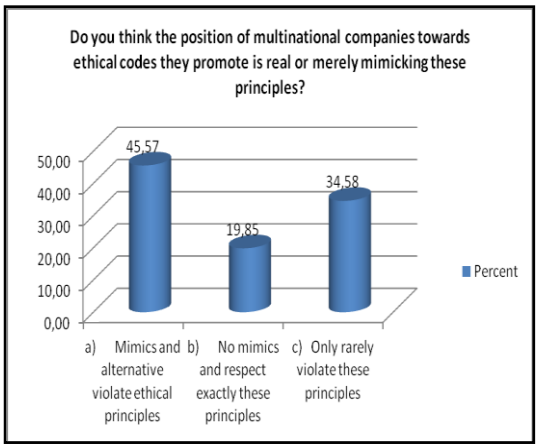

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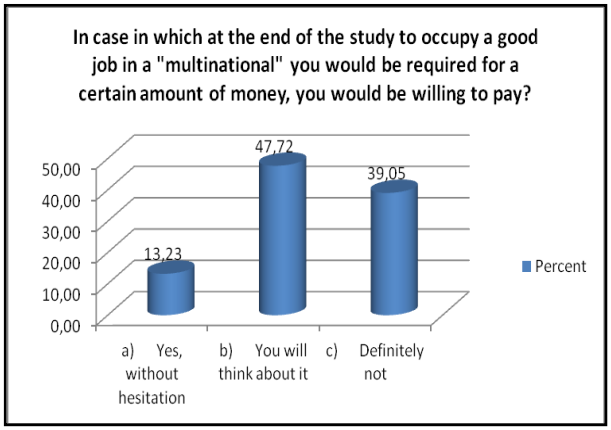

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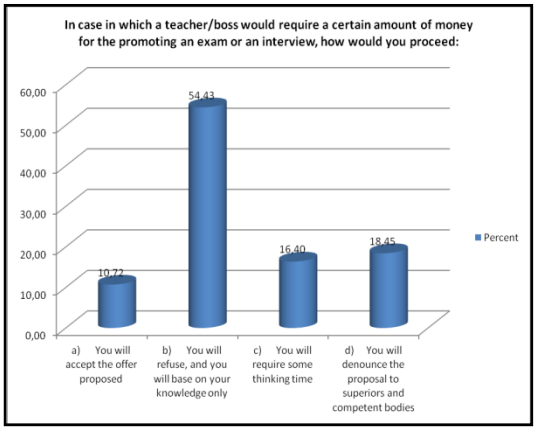

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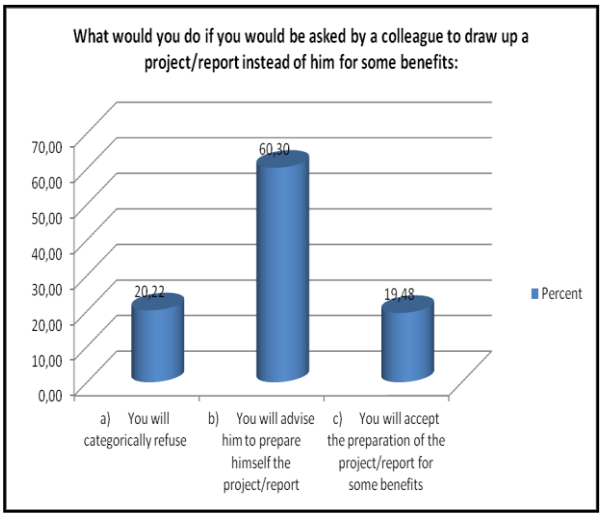

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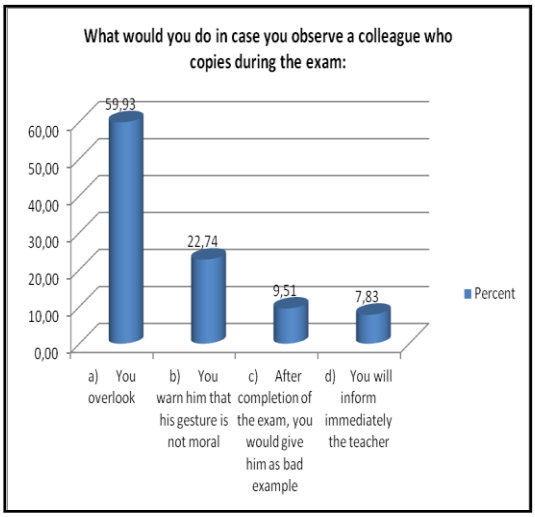

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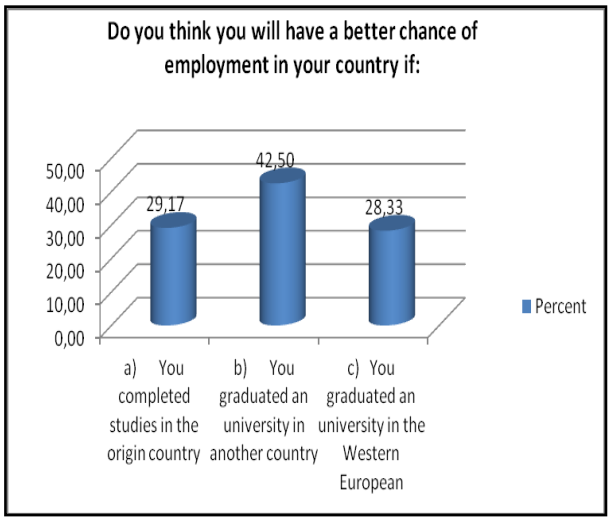

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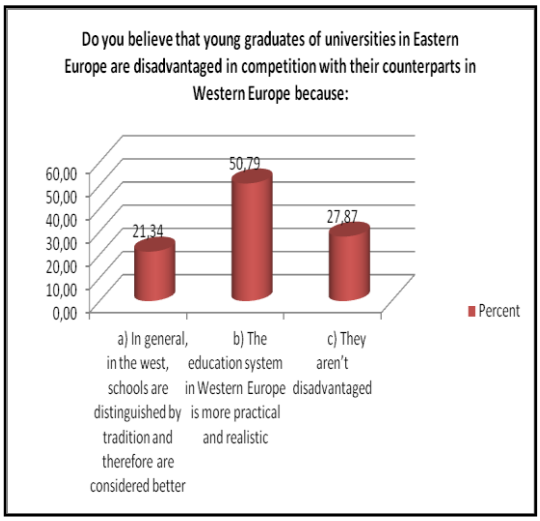

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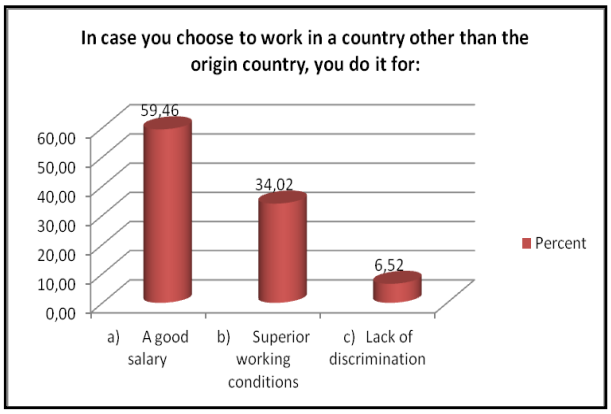

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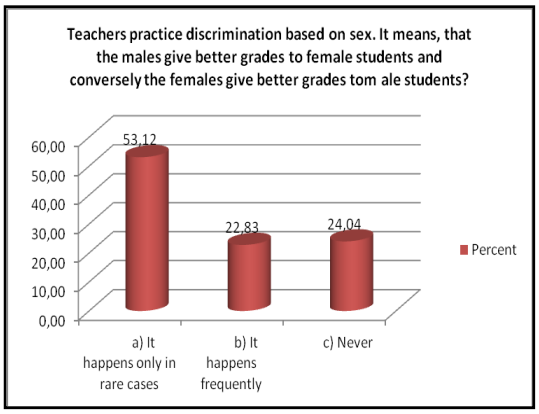

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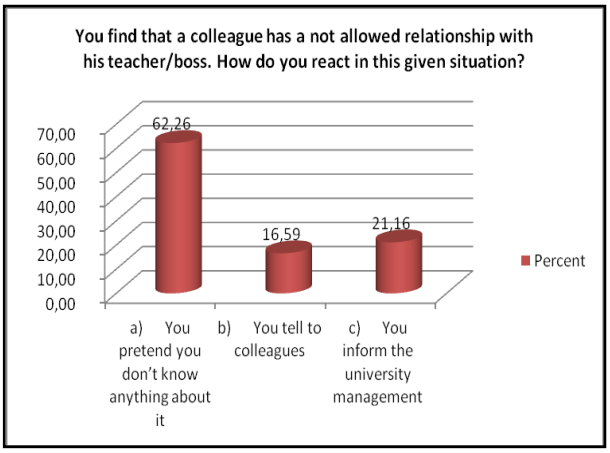

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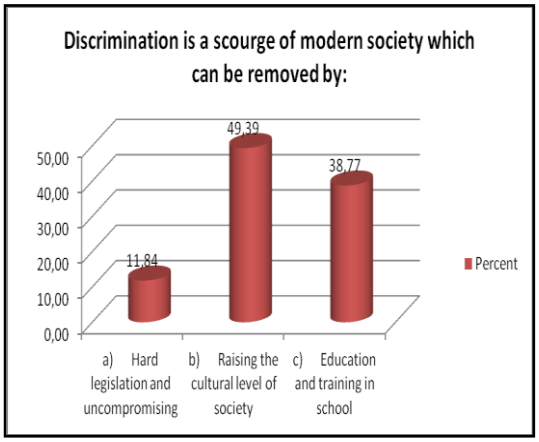

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THE EXTENSION OF SPOUSE PREROGATIVES ACCORDING TO THE MATRIMONIAL REGIME IN SITUATIONS OF CONJUGAL CRISIS IN THE VISION OF THE CIVIL CODE

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The provisions of the primary regime refers also to marital crisis period. Pursuant to art. 315 paragraph 1 of NCC, one spouse can be empowered to conclude legal acts on behalf of the other spouse when this one is unable to manifest his will. The impossibility to manifest the will regards both physical and social situations. The court decision will represent the authentic form of the mandate contract, setting in concrete the terms, the conditions and duration of the effects of the agreement. Judicial mandate can be general, covering only the administrative acts, or special, granted for the conclusion of a specific act, of disposal. Judicial mandate will terminate upon the execution of the mandate or expiration of the term indicated by the court decision.
Marriage; matrimonial regime; marital crisis; judicial mandate; consent substitution.

I. PRELIMINARII

Dintre regimurile matrimoniale reglementate de legiuitor se desprinde un set de norme juridice imperative şi esenţiale aplicabile prioritar raporturilor patrimoniale dintre soţi, precum şi raporturilor dintre aceştia şi terţi, independent de regimul matrimonial concret pentru care soţii au optat la momentul încheierii căsătoriei. Putem spune, aşadar, că regimul primar constituie „scheletul de bază" al tuturor regimurilor matrimoniale, „constituţia" regimurilor matrimoniale, fără de care niciun regim matrimonial concret nu ar putea exista, şi în privinţa căruia soţii sau terţii nu pot deroga. Noţiunea de regim *primar* desemnează, astfel, acel regim care se aplică cu prioritate şi care este comun tuturor regimurilor matrimoniale secundare. Sub un alt aspect, prin noţiunea de regim *imperativ* se înţelege acel regim de la care părţile nu pot deroga prin convenţie matrimonială.

Instituţia juridică a regimului primar este însă compatibilă numai cu acele sisteme de drept care cunosc o pluralitate de regimuri matrimoniale, nu şi cu acelea care consacră un regim matrimonial unic, legal şi imperativ cum a fost cel reglementat de Codul familiei din 1954. Dat fiind faptul că prin Codul civil s-a revenit la tradiţia convenţiilor matrimoniale, instituţia regimului primar – acest corp de norme juridice fundamentale şi imperative – dobândeşte relevanţă şi în sistemul nostru de

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drept, legislaţia română în materie valorificând astfel reglementările moderne şi flexibile din dreptul comparat.

Dispoziţiile regimului primar prezintă o mare importanţă practică, fiind de aplicaţie cotidiană şi generală. Acestea se referă, aşadar, fie la perioadele normale ale convieţuirii soţilor, fie la perioade de criză conjugală de orice natură (ex. actele juridice ce pun în pericol grav interesele familiei).

Studiul de față se concentrează în examinarea, desigur, neexhaustivă, a normelor edictate de legiuitorul Codului civil în materia extinderii prerogativelor soților, ca efect al unor situații particulare.

II. MANDATUL JUDICIAR

(1) NOȚIUNE ȘI NATURĂ JURIDICĂ

Articolul 315 alin. 1 NCC consacră extinderea judiciară a puterilor pe care un soț le deține conform regimului matrimonial secundar, în detrimentul celuilalt. Rațiunea extinderii prerogativelor legale deținute de unul dintre soți rezidă în anumite situații particulare ce pot fi privite drept adevărate crize conjugale, fie interne, inerente vieții de cuplu, fie exterioare, obiective, datorate imprevizibilității existenței umane.

Natura juridică a extinderii puterilor unuia dintre soți, consacrată de art. 315 alin. 1 NCC, este cea a unui mandat judiciar. Deși denumirile marginale ale textelor Codului civil nu au caracter normativ, în cazul articolului analizat această denumire concordă întocmai cu natura juridică a acestei instituții. Hotărârea judecătorească va constitui, aşadar, forma autentică a contractului de mandat, urmând ca acest act jurisdicțional să conțină în concret condițiile, întinderea și durata efectelor convenției.

(2) CAUZELE MANDATULUI JUDICIAR

După cum am antamat mai sus, cauzele mandatului judiciar se subsumează unor situații de criză conjugală în care unul dintre soți se află în imposibilitate de a-și manifesta voința în sensul încheierii actului pentru care se solicită a fi acordat mandatul judiciar.

Imposibilitatea de a-și manifesta voința vizează atât situațiile de natură fizică, precum și situațiile de natură socială. Se va considera că un soț se află în imposibilitate de a-și manifesta voința când suferă de o afecțiune ce poate fi caracterizată drept alienație sau debilitate mintală[1], atunci când se află în stare de comă sau în stare de paralizie totală. Nu se va considera că un soț se

[1] Desigur, în această ipoteză, va trebui să considerăm că afecțiunea respectivă a survenit ulterior încheierii căsătoriei din moment ce alienația și debilitatea mintală reprezintă impedimente absolute și dirimante la încheierea căsătoriei, conform art. 276 NCC, sancțiunea fiind nulitatea absolută a căsătoriei, prevăzută de art. 293 alin. 1 NCC. Sunt aplicabile și prevederile art. 211 din legea de punere în aplicare a noului Cod civil nr. 71/2011 ce definesc noțiunile de alienație și debilitate mintală ca fiind o boală psihică ori un handicap psihic ce determină incompetența psihică a persoanei de a acționa critic și predictiv privind consecințele social-juridice care pot decurge din exercitarea drepturilor și obligațiilor civile.

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află în imposibilitate de a-și manifesta voința dacă starea de paralizie în care se află este doar parțială (fiind afectate numai unele membre, spre exemplu) și nici dacă soțul în cauză are un handicap[2].

Din punct de vedere social, se va considera că soțul se află în imposibilitate de a-și manifesta voința atunci când este dispărut de la domiciliu[3] sau are o absență îndelungată, neputând fi contactat deși se cunoaște locul unde se află. În cazul în care soțul se află în stare de detenție sau prizonierat, apreciez că se impune o distincție. Astfel, dacă soțul se află într-o stare privativă de libertate provizorie sau definitivă, însă instituită legal, și poate fi contactat, astfel încât este posibil ca acesta să își exprime voința, art. 315 NCC nu va fi aplicabil. Însă dacă soțul este privat de libertate în mod nelegal, răpit, prevederile examinate vor fi aplicabile, considerându-se că se află în imposibilitate de a-și exprima voința. O situație aparte este cea în care soțul este privat de libertate în temeiul unor dispoziții legale însă acesta nu poate fi contactat și nu se cunoaște nici locul deținerii sale[4]. Apreciez că într-un astfel de caz articolul examinat va fi aplicabil, rațiunea recurgerii la instituția mandatului judiciar putnd fi și aceea de a obține fonduri bănești folosite ulterior în vederea identificării locului de deținere al soțului și organizării apărării judiciare.

În acord cu opiniile exprimate în doctrină[5], cauze ce pot justifica mandatul judiciar pot fi și acelea pe care legiuitorul român le-a prevăzut pentru instituirea tutelei (aplicabilă în cazul ocrotirii interzisului judecătoresc) și curatelei sau pentru luarea măsurii judiciare a punerii sub interdicție, conform articolul art. 178 NCC.

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[2] Și în ipoteza în care soțul este mut, surd sau chiar surdo-mut, acesta își poate exprima voința cu ajutorului unui interpret.

[3] Se poate imagina un exemplu în care, concomitent cu sesizarea instanței de judecată în temeiul art. 315 NCC pentru pronunțarea unei hotărâri care să țină loc de mandat, există pe rolul unei alte instanțe de judecată un demers judiciar de declarare judecătorească a morții soțului dispărut. Apreciez că instanța de tutelă sesizată în temeiul art. 315 NCC nu va putea recurge la prevederile art. 413 alin. 1 pct. 1 Cod procedură civilă, nefiind întrumite condițiile acestui text. Evident că, în măsura în care s-ar suspenda judecata primului litigiu până la soluționarea dosarului având ca obiect declararea judecătorească a morții, acțiunea civilă întemeiată pe dispozițiile art. 315 NCC ar rămâne fără obiect. Instanța de tutelă sesizată în temeiul art. 315 NCC ar urma să procedeze la soluționarea cauzei pe fond. Se pune, însă, întrebarea ce se va întâmpla cu hotărârea astfel pronunțată în temeiul art. 315 NCC dacă prin hotărârea judecătorească definitivă pronunțată în litigiul având ca obiect declararea judecătorească a morții se stabilește o dată a morții anterioară sesizării instanței de tutelă cu acțiunea întemeiată pe art. 315 NCC. Nu va fi aplicabil cazul de revizuire indicat la art. 509 alin. 1 pct. 8 C.proc.civ. întrucât acesta are ca premisă încălcarea autorității de lucru judecat iar în exemplul dat acțiunile au un obiect diferit. Pe de altă parte, consider că nu s-ar putea admite ca hotărârea pronunțată în temeiul art. 315 NCC – deși constituind un contract – să poată fi anulată în afara exercitării căilor de atac împotriva acesteia, ipoteza examinată fiind diferită de tranzacția judiciară unde judecătorul doar ia act de manifestarea de voință a părților litigante, nefăcând nicio cercetare judiciară.

[4] Un exemplu de prevedere legală care limitează considerabil drepturile persoanelor reținute este *USA Patriot Act,* reglementare adoptată de Congresul american la doar 6 săptămâni după atentatele din 11.09.2001, intrată în vigoare la data de 26 Octombrie 2001. Conform acestui act normativ o persoană poate fi retinută pentru un numar nelimitat de ore/zile, fără a fi încunoștiințată despre învinuirile aduse, privata de orice drept la avocat și putand fi chiar torturata legal. De asemenea, actul în discuție prevedea posibilitatea pentru autoritățile guvernamentale americane de a asculta convorbiri telefonice fără mandat din partea unui judecător. La 7 Martie 2015, Curtea Supremă de Justitie a S.U.A. a decis că supravegherea exercitată de NSA (Agenția Națională de Securitate) conform Patriot Act este ilegală.

[5] A se vedea M. AVRAM; C. NICOLESCU, *Regimuri matrimoniale*, Hamangiu, Bucureşti, 2010, p. 163; M. AVRAM, *Dreptul civil. Familia*, Hamangiu, Bucureşti, 2013, pp. 223 – 224.

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Totodată, câtă vreme cât nu s-a instituit încă interdicţia judecătorească, însă un soţ îndeplineşte condiţiile stabilite prin textul legal redat, celălalt soţ poate sesiza instanţa de tutelă în vederea obţinerii unui mandat judiciar.

Oricare ar fi cauzele care legitimează instituirea mandatului judiciar nu este necesar ca acestea să fie absolute[6], ireversibile. Trebuie ca impedimentul să fie constatat de instanţa judecătorească la momentul suplinirii acordului soţului „mandant" şi să existe la momentul încheierii actului pentru care s-a acordat mandatul judiciar. În ipoteza în care la momentul pronunţării hotărârii judecătoreşti soţul vizat nu îşi putea exprima voinţa însă la data încheierii actului pentru care s-a acordat mandatul judiciar acesta îşi putea exprima voinţa în acest sens, mandatul judiciar va înceta înainte de întocmirea actului pentru care s-a acordat, conform art. 315 alin. 2 NCC, soţul reprezentat nemaiaflându-se în situaţia de la alin. 1 al aceluiaşi articol.

Astfel cum rezultă din prevederile art. 315 alin. 1 NCC se poate recurge la instituţia mandatului judiciar numai dacă unul dintre soţi se află în imposibilitate de a-şi manifesta voinţa. Legiuitorul codului civil, spre deosebire de cel francez[7], nu a consacrat o dispoziţie cu caracter general în sensul posibilităţii suplinirii de către instanţa de judecată a refuzului abuziv al unuia dintre soţi în ceea ce priveşte încheierea unor acte ce au ca obiect drepturi pe care acel soţ le are potrivit regimului matrimonial secundar. Aşadar, când unul dintre soţi refuză încheierea unui act juridic el nu se află în imposibilitate de a-şi exprima voinţa, ci chiar şi-o exprimă însă în sens negativ[8]. Refuzul său, chiar şi abuziv, nu poate fi cenzurat de către instanţa de judecată, neexistând temei în acest sens. De aceea, nu sunt de acord cu opinia exprimată în doctrină, în sens contrar[9].

Există, totuşi, două cazuri concrete în care refuzul abuziv al unuia dintre soţi pentru încheierea unui act ar putea fi cenzurat de instanţa de judecată, indiferent de regimul matrimonial secundar concret aplicabil. Astfel, în materia locuinţei familiei, unde este necesar consimţământul ambilor soţi pentru actele de dispoziţie asupra acestui bun imobil indiferent de apartenenţa dreptului de

[6] În aces sens a se vedea C. NICOLESCU în *Noul Cod Civil – Comentariu pe articole*, coordonatori BAIAS F. A., CONSTANTINOVICI R., CHELARU E., MACOVEI I., C.H. Beck, Bucureşti 2012, p. 324.
[7] Art. 217 C.civil francez
[8] A se vedea M. AVRAM, *Op. Cit.*, pp. 224.
[9] E. FLORIAN, *Regimuri matrimoniale*, C.H. Beck, Bucureşti, 2015, p. 54. Autoarea este de părere că, ori de câte ori în temeiul legii sau al unei hotărâri judecătoreşti, un act juridic se impune a fi încheiat sub sancţiunea nulităţii de ambii soţi, refuzul unuia dintre aceştia poate fi cenzurat de instanţa de judecată. Argumentarea soluţiei are ca punct de plecare prevederile art. 367 lit. c NCC, folosindu-se argumentul de interpretare **a majori ad minus *în sens contrar. Se impun anumite precizări. În regimul secundar al comunităţii legale fiecare soţ poate să facă singur acte de administrare cu privire la bunurile comune, atâta vreme cât nu schimbă destinaţia bunului, fiind în materia gestiunii paralele. Prin convenţie matrimonială, soţii pot, în cadrul comunităţii convenţionale, să instituie obligativitatea acordului ambilor pentru încheierea anumitor acte de administrare. În acest context, legiuitorul a stabilit, prin art. 367 lit. c teza a II-a NCC, că „***dacă unul dintre soţi se află în imposibilitate de a-şi exprima voinţa sau se opune în mod abuziv, celălalt soţ poate să încheie singur actul, însă numai cu încuviinţarea prealabilă a instanţei de tutelă". Prin urmare, nu ar putea fi generalizată o soluţie particulară din materia comunităţii convenţionale, derogatorie faţă de dreptul comun reprezentat de comunitatea legală, pentru toate regimurile matrimoniale secundare.

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proprietate, în art. 322 alin. 3 NCC legiuitorul a stabilit că "în cazul în care consimţământul este refuzat fără un motiv legitim, celălalt soţ poate să sesizeze instanţa de tutelă, pentru ca aceasta să autorizeze încheierea actului". De asemenea, în materia partajării bunurilor comune între soți în timpul căsătoriei[10] oricare dintre soți, chiar și în cazul în care celălalt se opune, poate sesiza instanța de judecată cu acțiunea de partaj, nimeni neputând fi obligat să rămână în indiviziune. Acestea sunt însă reglementări de sine stătătoare, nefiind în corelație cu art. 315 NCC ce vizează doar ipotezele în care soțul reprezentat nu își poate manifesta voința.

(3) CONDIȚIILE MANDATULUI JUDICIAR

Pentru o mai bună înțelegere a câmpului de aplicare a reprezentării judiciare – care nu este altceva decât *obiectul* mandatului judiciar – se impune o diferențiere între domeniul mecanismului gestiuni paralele de cel al gestiunii comune în cadrul regimurilor secundare de comunitate.

În regimul separației de bunuri unde nu există diviziunea patrimonială a masei de bunuri comune, proprietatea fiind fie exclusivă fie comună pe cote părți, obiectul mandatului judiciar va fi dat de actele de administrare și de dispoziție asupra bunurilor soțului reprezentat[11], indiferent dacă sunt mobile sau imobile.

În cadrul regimurilor secundare de comunitate recurgerea la instituția mandatului judiciar va prezenta relevanță numai dacă actul ce va constitui obiectul reprezentării judiciare intră în sfera de aplicare a gestiunii comune. Dacă acel act este inclus în domeniul gestiunii paralele (concurente) atunci va putea fi valabil încheiat numai de unul dintre soți fără a mai fi necesară o reprezentare judiciară.

Domeniul de aplicare al gestiunii comune (cogestiunea) se decelează prin interpretarea coroborată a art. 345, 346 NCC. Astfel, vor putea fi încheiate prin mecamismul cogestiunii acte juridice de înstrăinare sau de grevare cu drepturi reale având ca obiect bunuri imobile comune, actele de dispoziţie asupra unor bunuri mobile comune supuse anumitor formalităţi de publicitate, actele juridice cu titlu gratuit *inter vivos* având ca obiect bunuri comune cu excepţia darurilor obişnuite, actele ce presupun schimbarea destinaţiei bunului comun.

Din interpretarea aceleraşi prevederi legale reiese sfera de aplicare a gestiunii paralele constituită de: actele de conservare, de folosinţă, de administrare, de dobândire a bunurilor comune, indiferent că sunt mobile sau imobile, actele de dispoziţie cu titlu oneros asupra bunurilor mobile care, potrivit legii, nu sunt supuse unor forme de publicitate, darurile obişnuite. Intră în sfera de aplicare şi acţiunile în justiţie – petitorii sau posesorii, exercitate de sau îndreptate împotriva numai

[10] Fie că este vorba despre coproprietate devălmaşă caracteristică regimurilor de comunitate (legală și convențională) sau despre coproprietate obișnuită pe cote părți ce poate exista în cadrul regimului separației de bunuri.
[11] Sintagma "bunurile soțului reprezentat" acoperă atât bunurile proprietate exclusivă ale acestuia cât și cota parte ideală și abstractă din dreptul de propietate comună obișnuită care, la rându-i, este tot un bun proprietate exclusivă.

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unuia dintre soţi, inclusiv acţiunea în revendicare conform art. 643 NCC. Desigur, un corectiv se impune: imobilul constituind locuința familiei care nu poate fi afectat de acte de folosință decât dacă sunt încheiate de ambii soți și bunurile ce mobilează și decorează locuința familiei care, de asemenea nu pot fi înstrăinate decât prin consimțământul ambilor soți proprietari devălmași.

Sintetizând, reprezentarea judiciară va prezenta interes în cadrul regimului separației de bunuri precum și în cadrul regimurilor de comunitate, atunci când actul vizat intră în mecanismul gestiunii comune, are ca obiect locuința familiei sau bunurile ce o mobilează și decorează, sau are ca obiect bunuri proprii ale soțului reprezentat. Astfel, în temeiul art. 315 NCC un soț poate primi reprezentare judiciară chiar dacă nu are niciun drept asupra bunurilor ce vor face obiectul actului juridic pentru care se acordă mandatul.

Aliniatul 3 al articolului 315 NCC prevede că art. 346 și 347 NCC se aplică în mod corespunzător. Această trimitere trebuie interpretată în sensul că în sfera de aplicare a mandatului judiciar intră și actele de dispoziție gravă cu privire la imobile și că, evident, un asemenea act încheiat doar de unul dintre soți fără a acționa și în calitate de reprezentant al celuilalt este lovit de nulitate relativă[12].

Contrar unei opinii exprimate în doctrină[13] consider că nu este aplicabil în materia mandatului judiciar art. 345 alin. 4[14] NCC. Această reglementare, plasată în materia comunității legale, are în vedere ipoteza în care un act, încheiat în mod legal doar de către unul dintre soți (întrucât era în domeniul de aplicare al gestiunii paralele), a afectat totuși interesele legate de comunitate ale soțului neparticipant la încheierea actului[15]. Prin urmare, dacă actul în discuție era în sfera mecanismului gestiuni paralele nu mai se impunea recurgea la art. 315 NCC. De asemenea, trimiterea pe care art. 347 alin. 2 teza a II-a NCC o face la art. 345 alin. 4 NCC trebuie înțeleasă în sensul că se încheie un act ce intra în mecanismul gestiunii comune doar de către unul dintre soți care, deși erau întrunite condițiile legale, nu a solicitat instanței acordarea unui mandat judiciar, cu un terț de bună credință care, astfel, este apărat de efectele nulității. Soțul necontractant va fi îndreptățit doar la daune interese de la soțul contractant. Actul încheiat este nevalabil, însă, de vreme ce terțul a fost de bună credință, efectele nulității nu se mai produc.

[12] A se vedea în același sens M. AVRAM, *Op. Cit.*, pp. 224, E. FLORIAN, *Op. Cit.*, p. 52, nota 2.
[13] C.-M. CRĂCIUNESCU, *Dreptul de dispoziţie al soţilor asupra bunurilor ce le aparţin, în diferite regimuri matrimoniale*, Universul Juridic, Bucureşti, 2010, p. 297.
[14] Această prevedere stabilește că „în măsura în care interesele sale legate de comunitatea de bunuri au fost prejudiciate printr-un act juridic, soţul care nu a participat la încheierea actului nu poate pretinde decât daune-interese de la celălalt soţ, fără a fi afectate drepturile dobândite de terţii de bună-credinţă".
[15] Spre exemplu, în regimul comunității legale un soț cumpără un imobil cu o valoare de piață de 70.000 euro plătind un preț de 100.000 euro din sumele de bani bunuri comune. Contractul de vânzare – cumpărare este valabil încheiat însă, în egală măsură, prejudiciază interesele soțului neparticipant la încheierea actului legate de comunitatea de bunuri.

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În funcție de actul pentru care se solicită, mandatul judiciar poate fi general, acoperind numai actele de administrare, sau special, acordat în vederea încheierii unui act specific, de cele mai multe ori de dispoziție. În acest sens, apreciez că mandatul judiciar poate fi conceput ca un substitut al curatelei atunci când se solicită reprezentarea pentru exercitarea tuturor drepturilor soțului reprezentat, adică în cazul mandatului general, limitat la actele de administrare.

Hotărârea judecătorească ce consfințește mandatul judiciar va trebui să indice, prin chiar dispozitivul său, condițiile, limitele și perioada de valabilitate a mandatului. Prin *condițiile* mandatului judiciar trebuie înțelese reperele clare între care va opera mandatul general sau condițiile concrete în care va fi încheiat actul ce face obiectul mandatului special. Astfel, în cazul mandatului special acordat pentru încheierea unui contract de vânzare cumpărare a unui imobil bun comun, spre exemplu, hotărârea judecătorească va trebui să stabilească prețul vânzării[16]. Noțiunea de *limite* ale mandatului reflectă, în esență, felul reprezentării judiciare – generale sau speciale. Indiferent dacă mandatul vizează un act determinat sau toate afacerile soțului aflat în imposibilitate de a-și exprima voința hotărârea instanței va indica *perioada* de timp pentru care mandatul acordat își va produce efectele. Prin urmare, reprezentarea judiciară este esențialmente provizorie, indiferent de felul său.

Din perspectiva aspectelor de drept procesual, s-a apreciat că sunt aplicabile dispozițiile ce reglementează procedura necontencioasă[17]. Într-adevăr, un astfel de litigiu nu presupune stabilirea unui drept potrivnic față de o altă persoană, obiectul litigiului apropiindu-se mai mult de acordarea unei autorizații judecătorești. Calitate procesual activă va avea, potrivit art. 315 alin. 1 NCC, soțul celui aflat în imposibilitate de a-și exprima voința. Competența materială va aparține instanței de tutelă, respectiv judecătoriei. Din punct de vedere teritorial va fi competentă judecătoria de la domiciliul soțului petent.

Într-un astfel de litigiu, instanța nu va lua act de împrejurările ce sunt indicate în cererea de chemare în judecată, urmând ca, în temeiul art. 532 alin. 2[18] C.proc.civ., să facă propriile verificări cu privire la starea de imposibilitate de a-și exprima voința a soțului petentului. Litigiul poate dobândi caracter contencios prin formularea unor cereri de intervenție principală de către terțe persoane ce au pretenții proprii față de soțul petent.

Dacă în urma probelor administrate în cauză rezultă că soțul petent și soțul aflat în imposibilitate de a-și exprima voința se află într-un conflict de interese cu privire la bunurile ce

[16] În același sens C. NICOLESCU *Adaptarea regimului matrimonial în situații de criză familială*, Curierul Judiciar nr. 10/2008, p. 26.
[17] M. AVRAM, *Op. Cit.*, pp. 223.
[18] Potrivit acestui text „instanţa poate dispune, chiar din oficiu, orice măsuri utile cauzei. Ea are dreptul să asculte orice persoană care poate aduce lămuriri în cauză, precum şi pe acelea ale căror interese ar putea fi afectate de hotărâre".

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urmau a face obiectul actului pentru care s-a cerut mandatul judiciar, instanța de tutelă ar putea respinge cererea de chemare în judecată[19], protejând astfel interesele soțului aflat în imposibilitate de a-şi exprima voința. Acest fapt nu s-ar putea interpreta ca o limitare a dreptului de accees la o instanță al soțului petent, câtă vreme există posibilitatea instituirii curatelei pentru celălalt soț, urmând ca toate drepturile patrimoniale ale acestuia din urmă să fie exercitate de curator. Astfel, va aprecia curatorul dacă este în interesul celui ocrotit încheierea actului vizat.

(4) ÎNCETAREA MANDATULUI JUDICIAR

Din interpretarea art. 315 alin. 2 NCC reiese că mandatul judiciar va înceta prin una din următoarele cauze: îndeplinirea obiectului mandatului; expirarea perioadei indicată de hotărârea judecătorească executorie; ipoteza în care, anterior perfectării obiectului mandatului, soţul reprezentat nu se mai află în situaţia prevăzută la alin. (1) al art. 315 NCC; când este instituită curatela ca măsură de ocrotire a soțului reprezentat iar obiectul mandatului judiicar nu se realizase; când soțul reprezentat este pus sub interdicție judecătorească și obiectul mandatului judiciar nu se realizase.

Reprezentarea judiciară fiind o specie a contractului de mandat, sunt aplicabile în mod corespunzător şi prevederile art. 2030[20] NCC ce reglementează cazurile generale de încetare a contractului de mandat. Dintre acestea, pot fi aplicabile în cazul mandatului judiciar doar renunțarea mandatarului la mandat și decesul sau punerea sub interdicție judecătorească a mandatarului.

III. ÎN LOC DE CONCLUZII

Reglementarea extinderii pe cale judiciară a puterilor pe care soții le dețin în virtutea regimului matrimonial secundar ales reprezintă o noutate faţă de Codul familiei unde nu era prevăzută nicio normă relativă la acest aspect.

Din punct de vedere al domeniului temporal al aplicării articolelor examinate, legea de punere în aplicare a codului civil nr. 71/2011 stabileşte în art. 28 că dispoziţiile art. 315 alin. (1) din Codul civil sunt aplicabile şi în cazul căsătoriilor încheiate înainte de intrarea în vigoare a Codului civil, dacă imposibilitatea unuia dintre soţi de a-şi manifesta voinţa intervine sau se menţine şi după intrarea în vigoare a Codului civil.

[19] În acelaşi sens C.-M. CRĂCIUNESCU, *Op. Cit.*, p. 296.

[20] Conform acestui text „pe lângă cauzele generale de încetare a contractelor, mandatul încetează prin oricare dintre următoarele moduri:
a) revocarea sa de către mandant;
b) renunţarea mandatarului;
c) moartea, incapacitatea sau falimentul mandantului ori a mandatarului.
Cu toate acestea, atunci când are ca obiect încheierea unor acte succesive în cadrul unei activităţi cu caracter de continuitate, mandatul nu încetează dacă această activitate este în curs de desfăşurare, cu respectarea dreptului de revocare sau renunţare al părţilor ori al moştenitorilor acestora”.

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Mecanismul mandatului judiciar organizat de legiuitor are ca obiect drepturile pe care soțul reprezentat, aflat în imposibilitate de a-și exprima voința, le are conform regimului secundar ales. Reprezentarea judiciară poate fi generală, limitată ca și în dreptul comun la actele de adminsitrare, sau specială, fiind vizate actele de dispoziție.

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PROBLEMS REGARDING ART INSTITUTION MANAGEMENT

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Summary:The present paper represents a short analysis of the cultural phenomenon consisting in the managerial limitations existing in contemporary cultural institutions in Romania. The paper does not aim to give solutions of "cultural benefaction", it only indicates the vulnerable points, the role of managerial cohabitation and the role of the artistic liberties of the artist in general. Built around the field of the musical arts, the paper aims to enter the management mechanism, to analyze it and to look for its determining roles. The authors leave the readers the freedom to find their own possible solutions to current situations as well as alternatives to different financial and managerial difficulties.

About the artist and his reclusion in art institutions

Ever since God created the world, man has been drawn to beauty, the sublime, adoration. Amongst the spiritual gifts, man has found in art an opportunity to adore, a joy and satisfaction for beauty. The Genesis speaks about Jubal who plays a musical instrument. Later, artifacts become worship objects, the idols that God's law forbid, but which people love and adore.

Until today art has remained a field of organization and order, the chaos and the mess being representative of a fleeting modernism, but still orderly in matters of organization and finance. The artist's favourit place is the corner of individuality, of the creative artistic personality, who needs support in organizational matters, and which is offered by art institutions today.

Due to the specificity of the artist's personality – creative, who generally presents oneself freestanding, needing for his work only certain materials and inspiration (a practical example: writers, composers and artists, who generally start belonging to a group as a result of their work of art), the present paper will analyze all the organizational issues that appear in art instituions. The paper does not aim to offer solutions, but only to signal positive and negative

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aspects in managing contemporary Romanian institutions, where the administration is still based on an outdated, communist system.

The creative process, which has never been understoond completely, is a long process until it reaches its receivers. They are, undoubtedly, a special category of educated people in the sense that they have gained the capacity to understand a certain product: the work of art (according to the old communist desideratum, of the *new person*, capable of producing art and artistic events coordinated by an opressive system). It goes without saying that the main purpose of those who pass the artistic product and facilitate the relationship artist-receiver has to be to educate the masses in the sense that they should engage a numerous participation, and not promote "exclusiveness" of access from experts (the latter being considered enemies of society in communism, sadly a phenomenon that still continues today).

In this respect, art institutions, similar to Stalin's ideas, need a scientific basis for their artistic act, which is a field belonging to artistic management. Insuficiently studied, communist artistic management is the matter of study in this paper. Without the intention of exhausting the subject, out of reasons concerning insufficient space and delicate subject matters related to the freedom of the creative artist, who is still limited and incarcerated by the dry selection of AFCN-type projects, or other similar institutions. This survey and its rationale will try to tackle certain issues that artistic management, which is such a subjective area which is in urgent need of freelance managers who are capable of understanding art in its European acceptance, without confinements and administrative constraints, too often managed by communism shaped amateurs, is confronted with. Understanding and mostly accepting this need will contribute to putting art institutions on the right track, to enhancing their present results which should lead to the efficiency of the process of free, unchecked creation capable of creating Romanian cultural contemporary trend.

Irrespective of the specific activity of an institution, the process which sets the "central element" of the entire activity is the management process. Its quality and efficiency establish, to a great extent, the success and quality of the participation of the entire organization to the process of attaining its specific objectives, which characterizes art which if free of red tape constraints. In this context we will try to explain the two terms, of management and culture, in the context of the need to associate them.

Management and the art institution – conceptual boundaries

Management and culture

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The art and science of leadership, the management which is free of performance, is the process which envisages the attainment of pre-established aims, so that this challenge is met with free (not shallow) artistic managerial application which has maximum result. This process involves combining all the data and information that come from the present cultural environment and organization and converting them in a set of strategies, decision, policies that serve the organization's main purpose and last but not least cultural and financial profit. This challenge is specific to the economic field, but also to artistic performance.

The artistic field, a field of human life characterized by subjectivity, both from the point of view of the creator and the receiver, asks for management involvement in order to attain objectives which are totally different from those in the field of economy, endeavouring to promote value, that is non-profit. Peter F. Drucker asserted: *"Management, in its present form, appeared firstly in big economic organizations. We soon realized that management is necessary in all modern organization, whether they are economic or not. In fact, we realized that management is much more necessary in organizations with a different profile, such as those that do not pursue financial profit (the so-called social field), or in state institutions. They need management particularly because they are not subjected to the discipline imposed by benefit and loss."*[1]

The two fields that the concepts management and culture belong to are antagonistic it their essence, in a contemporary approach. The science of leadership, management is part of the economic field, characterized by objectivity and practicality, pursuing profit and productivity. The field of culture, which art belongs to as a sub-field, has the role to guide human society towards cultural and moral value, towards cultivating thoughtfulness and entertainment, as part of human spirituality. These fundamental differences between the two fields apply to the beginning of the development of managerial thinking. At present, once all the stages have been gone through, it is thought that management is based on making decisions not only based on scientific methods, but also intuitively, by motivating the staff and by practicing a method which relies on involving the human ressources in the process of aim attainement. At present we can notice that cultural institutions rely exclusively on economic tendencies. The meeting point between management and culture is represented by elements of cultural institution management. Taking into account the specificity of the "product" of these

[1] Zecheru, B. *Management in culture*, second edition revised and augmented, Publisher "International Letter", Bucharest, 2002, pg. 20 (Drucker, P. F. *Managing the Non-Profit Organization*, Butterworth – Heinemann, 1990)

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institutions, one cannot ignore the importance of setting the management of this type of institutions on scientific grounds even with extremely difficult consequences for their activity. Being defined as a leading process, management activity is present is all forms of human association. Apart from the relationship established between the management and the organization itself, one should take into account the relationship of the organization with the environment it leads its activity. Thus the substance of management suffers variations, its essence being the same. In the same train of ideas, the management of a cultural institution has certain peculiarities which are specific to its field, as well as to the environment it is part of. Taking into account the fact that nowadays the dynamics of change of the social environment is extremely active, there is need of a maximum attention approach, full of resilience and managerial thoughfulness so that culture can offer a cultural "product" which is adequate for the contemporary Romanian society.

The management of art institutions should be orientated towards the attainement of certain aims which are totally different from the economic ones, becoming an instrument for musical or artistic education in state cultural organizations, associations and NGOs. The influences of a scienfitic management approach in these organizations can be noticed in setting the creative process on the track of well organized activities, by making running and development decisions pursuing the attainment of specific aims: creating and promoting authentic value.

The science of management can be applied to any type of organization. However, we can easily notice that certain organizations, associations and NGOs have a managerial resilience, while there is a certain immobility in the case of state institutions which are not open towards diversified forms of the musical culture. Thus, different philharmonics, opera houses and variety theatres consider an elastic approach of a diversified repertoire in terms of music genres to be an impiety. There is a certain repertoire stubbornness and the so-called "classical" approach is considered to be a justification for maintaining a sometimes extremely severe traditional course. There are, however, mass-media type approaches, for the masses, when the music performance is placed in non-conventional spaces such as the airport, parks, public squares, etc. In this respect, the example of Banatul Philharmonics of Timisoara, which organized performances in the street or other spaces, even disused factories, had the expected effect, the audience inflow being related to the effort put into organizing these events.

About managerial concepts manageriale in art

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One can notice two characteristics of the development of the process of specialization of management namely the evolution from the firm management, which pursues profit maximization, towards social institution management (non-profit), and the scientification of the management process. According to Samuel Certo, the management is *"... the process of attaining the organization objectives working with and with the help of people and capitalizing the other organizational resources."*[2]

In Ovidiu Nicolescu's point of view, the process of management consist in " …*the set of stages, the processes that lead to establishing the aims (of the organization o.n) and other contained subsystems, the resources and work processes which are necessary to attain them, as well as their enforcers, by means of which the work of the personnel is integrated and controlled using a complex of methods and techniques pursuing the most effective realization of the reasons for which the respective organization was established."*[3]

Corneliu Russu defines the management process as being: *"the action performed by a subject (leader)on his object (system being lead: undertaking, activity, compartment, workplace, etc.) in order to keep its state of efficiency and stability within a certain structure, to adapt it to the changes in the its existence conditions and to make it evolve from a state of existence to a desired state according to a set of pre-established objectives ... The actions taken by the subject of the management according to the contents of stages in management represents its functions, while the sum of the respective functions forms the contents of the management process*."[4]

The management process can also be defined by the way in which, using the resources of a certain organization, one established the aims to be attained, organizes and plans the amount of work that is necessary in order to attain the objectives, trains, motivates the personnel and in the end checks the results, adjusting them in such a way as to attain the objectives with maximum efficiency and effectiveness. This challenge involves the four main functions of management: planning, organizing, leading (training and motivating) and control. According to some experts, these functions are: forecasting, organization, coordination, training and control. The vision that this paper adopts is that according to which there are four functions of management, as listed above.

[2] Zecheru, B. *Management in culture*, second edition revised and augmented, Publisher "International Letter", Bucharest, 2002, pg. 50 (**Certo, S.** *Modern Management*, Sixth Edition, Allyn & Bacon, Boston 1994)
[3]Nicolescu, O. & Verboncu, I., *Management*, Economic Publishing House, Bucharest, 1999
[4] Russu, C., *Management*, Technical Publishing House, Bucharest, 1996

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The planning is the function of management that involves establishing a set of objectives as well as the best ways to attain them, including taking into account what needs to be done in order to encourage change and improvement.

The organization is the function of management which assigns, arranges, adjusts human and non-human resources so that the plans are carried into effect in optimum and successful conditions. By means of this function managers establish the tasks to be carried out, which of the tasks cover a certain job – workplace – and the way these workplaces can be grouped into units, compartments or departments that make up the structure of the organization. this function also describes the authoritativeness and the way responsibilities are given.

The leading (training and motivating) is the management function which is based on influencing the other members of the company to get involved in work related behaviour and attitudes which are necessary to attaining the organization aims. This function involves communication of the management with other members of the organization in order to draft and design the general frame regarding the things that can be done, guiding and motivating the members of the organization to make the necessary effort to fulfill the tasks of their job as well as attaing the objectives of the organization.

The control is the management function that consists in adjusting the organization's activities so that real performance is in accordance with the desired standards. In order to attain the necessary adjustment, managers need to carefully monitor all the activities, to compare the results and performance with the expected outcomes, or the progress made in attaining the objectives, as well as to take all the necessary readjustment measures.

Management is a dynamic, flexible process – due to the permanent need of adjusment, especially in the case of an environment characterized by hiperturbulence. It is also a cyclic process, its stages are repeated with a certain rhythmicity, this process taking place in gradual succession of its stages. As far as the functions that managers have within a certain organization are concerned, the managerial activity takes place at certain level: the technical level, which corresponds to the acting or authoritative (the invigilators) management – the lowest level of management which involves a busy activity making sure that tasks are fulfilled responsibly and correctly; the managerial level, which corresponds to the middle management, consisting in coordinating and monitoring the work of the invigilators with the help of verbal interaction mainly; the institutional level, where the top management is and where decisions are made regarding the aims of the organization and the most appropriate strategies to attain those aims.

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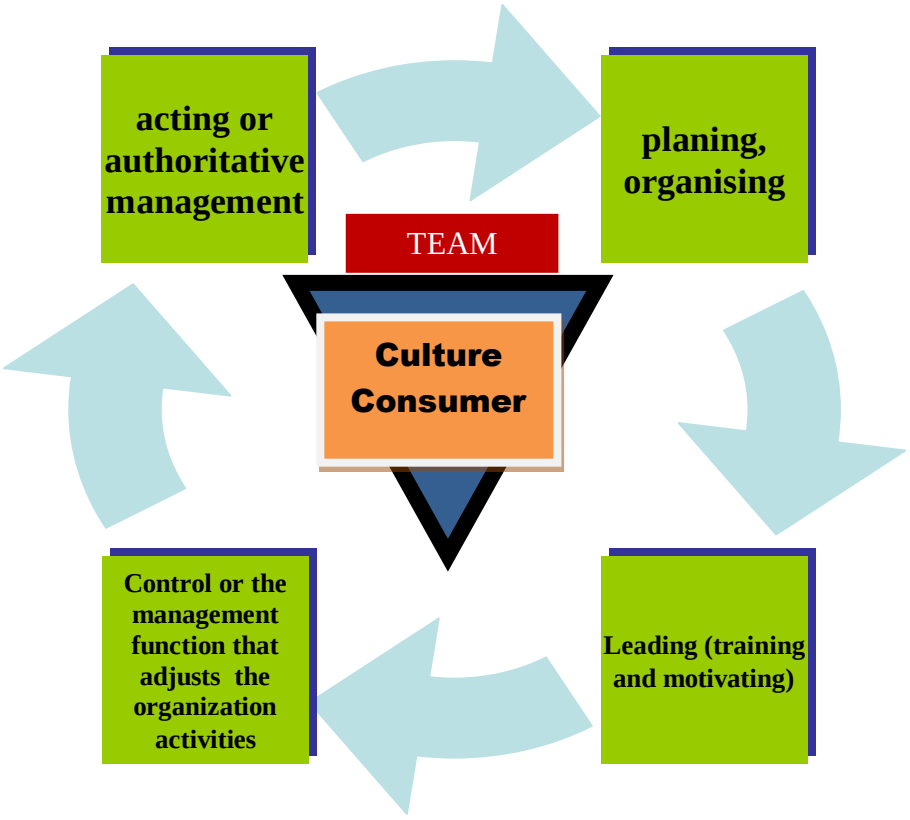
The present management is based on a "reversed pyramid" according to which the activity of the entire organization is dedicated to serving the consumer. A special emphasis is put on team work. Good managers offer their help and support to their employees, they do not only give orders.



The objective of artistic management is to discover and apply those organizational models that lead to the effectiveness of the artistic activity socially and on the market economy. This objective can be attained with the help of management experts whose scientific knowledge can "combine" with information which is specific to the music field. The characteristic of this field, namely the fact that the "product" of art institutions is less tangible, makes it more difficult to control the results, which most often than not are appreciated extremely subjectively. The manager has the task to monitor and coordinate the managerial process taking into account the fact that the staff of an artistic institution is rather difficult to deal with due to their professional formation and to the artist's specific sensitivity. For all these reasons a good manager in the artistic field need to have a number of qualities based on intrapersonal

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communication which help them establish good collaboration relationships with the staff, mediating conflicts and misunderstanding that appear more frequently within this community.

A new perspective in musical art institutions management

The present paper refers to the latter meeting point between management and culture, refering strictly to the field of music. The art institutions compete with a large number of associations and NGOs, which, in their turn, have sometimes an exceptional musical offer. Live concerts with famous personalities, and especially the large number of festivals ranging from the Renaissance and the Baroque to modern music, belonging to the most varied genres, represent a serious competitor for the state institution. Sometimes we notice an attachment and stagnation in old traditions, which leads to the appearance of phrases like *music museum* or, even more pejoratively *music fossils*. Such *music zoo museums* with mammoths and pre-historic performances, with sets that are typical for the 30s or 40s, with a repertoire which is restricted to the Romantic nostalgic world only serves a small audience who is equally nostalgic and out of date, so that the state institution does not honour its role which consists in producing and "selling" contemporary artistic values.

The aims of the art institution are, on the one hand, to promote value, and on the other hand to survive as a music institution, being impossible to ignore the financial factor. Thus, it can be noticed that it is necessary to ensure a bicephalous management, which strives for the attainment of the two fundamental objectives stated above: art and the culture consumer. In this way, if the economic management is involved in managing the financial part of the institution, this type of institution urgently needs a manager who specializes in the respective artistic field, who has the necessary artistic management knowledge, who is a contemporary of what goes on at a global scale as well as in his country. From this point of view, the majority of art institutions suffer from a "go with the flow" type of managerial approach, which is not based on scientific principles, this type of management leading, in the end, to the appearance of activity syncopes. This is the case of the majority of music state institutions within the country. The nomination of certain managers, who sometimes have no expertise in the field, the political award consisting in being offered the job of a manager is not only a managerial disaster but also an anachronistic and void mindset.

In another train of thought, music art institutions represent relatively simple organisations, which are usually financed by state grants and sponsorship, whose role is to promote artistic

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contemporary Romanian values. Such an organisation can be defined by: the group of employees, the techno-material and financial mechanism; the aim and artistic goal; legal status which establishes the existence frame. Like any type of organisation, the art institution can be described in different variants. It has to be considered as an open social – humanistic system where its relationship with different components of its environment is noticeable: banks, sponsors, contractors, clients, audience, mass-media, etc. Due to its mostly operational characteristic a music art institution needs to permanently adapt to the environment conditions it continuously interacts with. From the point of view of its structure, the activity of a music art institution depends to a great extent on the relationships between its departments, on its informative structure as well as on the quality of its management. The way the organization is structured represents one of the main management instruments which essentially contribute to supporting the effort of attaining its pre-established goals. The art institution can be considered an instrument in attaining one of its missions namely to give the artist the possibility to express himself and to circulate such values.

Like any other type of organization, the culture institution needs resources in order to be able to deploy its activity. These are made up of, like in the case of a economic structure, human, material, financial and informational resources which contribute to the making of the specific "product". Such an institution develops around the creative artist, who is free of political constraints, where art and only art is the essential component of the process of creation. Personality who is driven by a strong sense of individualism, motivated by the thirst for celebrity, the creator can freely deploy his activity only in an environment which offers the freedom of expression. Within the art institution, by means of his projects, the creator capitalizes the other organization resources with the help of the manager who understand the artistic process of the musician performer, his needs and his battles with his own performances, in other words, a manager who knows how to run not by means of internal manoeuvres and uninterrupted intrigues, but by applying the art of modern leadership and artistic management, adequate to crisis situations and capable of solving any type of institutional conflict.

In this context the financial support is indispensable to any artistic project. The problem of lack of funds for artistic projects is responsible for the precarious conditions the management activity takes place in an art institution. The state is the one which ensures the majority of funds, allowances and subventions. Some supranational institutions such as: UNESCO, The Council of Europe, The European Union, etc. also grant funds for art projects. Arts

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institutions also have a proper financial contribution by means of the income obtained from the activities they conduct, but this contribution is insignificant as compared to the financial resources that they need. Economically speaking there is no profit as a result of the allotment of these funds to the art institution. The effects of creation and artistic performances appear in time and are beneficial for society in the sense of enriching the spiritual heritage of mankind.

Sponsorship, as an act of modern financial support takes place through funds transfer with a precise destination: artistic events and projects. The sponsor benefits from fiscal amenities by reducing the tax basis and getting an advertisement advantage. In order to attract sponsors the manager of the art institution has a special role participating in establishing the legal frame so that the sponsorship is advantageous for economic agents, being aware and constantly evaluating the financial needs of the organization, identifying and approaching potential sponsors, developing partnership relationships with efficient and potential sponsors.

The material factors of an arts institution are represented by movables and real estate whish form its patrimony. The responsibility to administer and use the institution patrimony belongs to the manager who will establish certain rules for his employees. The process of artistic creation is different from the technical – scientific one and based on the type of information, it is an important factor that contributes to the artistic "production". The latter is distinguished by outage due to the enrichment of human knowledge it need high costs when accessed, the reuse of information being possible at any moment.

The previously mentioned factors are transformed into "products" by means of an internal process which combines two types of activities: activities which are specific to the process of management and activities which are specific to the production process.

Conclusions

The main decisional factor within an art institution, the manager should pay attention to two different categories of aims: artistic and economic. The regulation of the management process is a continuous process, by acknowledging the continuous feedback coming from the environment as well as from the operation department. The manager should also guide the organization by elaborating plans, strategies and should try to implement them in order to attain the expected results. The management is totally responsible for the internal process and for the performances of the organization. The manager should also improve his communication abilities, as the aims can be achieved with the help of the people.

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The process of music production in an arts institution, the artistic creation is meant to produce as well as to promote authentic values in the world. The creation and circulation of values are complementary and reciprocally conditioned. *"The creation travels so that, once it has been taken in, to become, in its turn, the condition of a new creation ..."*[5]

These two fundamental processes, the management process and the execution process are not exclusive. Their coexistence within an art institution offers the guarantee of performance by the organization. Within the art institution the focus is, like in any other type of organization, on efficient management, which aims to maximize the results and minimize the efforts. As a last resort, during a period of transition the music phenomena are continuously changing are adjusting. It depends on us how we perceive this aspect and how much we care until we find the means and mechanisms that lead us to success.

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FINANCIAL LEVERAGE AND BANKRUPTCY RISK ANALYSIS IN A COMPANY. CASE STUDY PERFORMED AT SC VLG RO SRL

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Abstract:Under the current conditions, an economic analysis of the economic and financial indicators is, first and foremost, more than welcome and, second, necessary. When a company wants to fund its activities with a bank loan, it needs to jump through all the hoops the bank requires, because it will analyze all the company's economic and financial indicators to determine, mainly, the liquidity and solvency of that company. In these last years, the companies are increasingly more often verified from the perspective of bankruptcy risk analysis because if the companies declare insolvency, and subsequently, bankruptcy, the banks have difficulties in recovering their loans and this only forces them to create provisions or to diminish their profits. A first warning on the company's creditworthiness is the value of the financial leverage, and the second warning, which is stricter, is the calculation of the bankruptcy risk by various models recognized in the field.

Key-words:financial leverage, bankruptcy risk, solvency, liquidity, company

Introduction

Currently, in the conditions of a fierce competition in the market, many companies turn to loans, either to carry on with their activities, or to make certain investments. When they go to the bank and request a loan, the bank calculates several economic-financial indicators to see of the company is able to repay the loan it's applying for. One of these calculated indicators is the financial leverage and the bank also performs an analysis of the bankruptcy risk.

The financial leverage

The financial leverage is the ratio between financial liabilities and equity, reflecting the financial managers' ability to attract external sources toboost equity efficiency.

The formula:

$$LF = \frac{\text{Datorii financiare}}{\text{Capitaluri proprii}} = \frac{\text{Credite bancare}}{\text{Capitaluri proprii}}$$

Financial lever = Financial liabilities/Equity = Bank loans/Equity

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The result must be below par, a value above par meaning a high degree of debt. A value exceeding 2.33, which is the equivalent of the fact that bank loans represent 70% of total assets, expresses a very high degree of debt, and that the company might be facing imminent bankruptcy if the result repeatedly exceeds the 2.33 threshold.

The financial leverage effect

The financial leverage effect expresses the influenceindebtedness – the attracted funding sources, meaning mainly bank loans – has on the profitability of the company's equity, own funding sources being: registered capital, reserves, amortization, net profit remained at the firm's disposal.

The financial leverage effect measures the company's ability to invest the borrowed capital to a rate higher to the interest rate.

At first glance, indebtedness adversely affects profitability, because the afferent interest increases costs and decreases profit. In reality, however, if the rate of return is higher than the interest rate, indebtedness has a positive influence on profitability and on increasing the wealth of the firm.

The financial leverage effect reflects the variation of the financial rate of return of equity depending on the correlation between the economic rate of return and the cost of the debt or the interest rate, as well as to indebtedness - the financial leverage.

Both for the invested capital (equity + financial liabilities) and for the equity and financial liabilities (bank loans), we can associate certain rates of return. Thus, for equity we have the financial rate of return (Rf), for financial liabilities we have the interest rate (Rd), and for the invested capital we have the economic rate of return (Rec).

The financial rate of return– Rf or ROE expresses the efficiency of the investment made by the company's shareholders and is calculated as the ratio between net profit and equity.

The economic rate of return – Rec or ROA expresses the efficiency of the use of invested capitals and is determined as the ratio between net profit and total assets. We can also use net assets, which are also called invested capital, representing a fraction of the total assets funded on account of equity and long-term liabilities.

The relation between Rf and Rec can be demonstrated given the following restrictions:

The financial and extraordinary incomes are neglected;

The financial income is limited to income with debts to pay;

The extraordinary income is also neglected.

Thus, Rf = [Rec + (Rec – Rd) * LF] * (1-corporate tax rate)

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From the analysis of the correlation between the economic rate of return and the interest rate, the financial leverage effect will be positive or negative, namely the bank loans will lead to the increase or decrease of financial return. Therefore, we can find the following situations:

If Rec > Rd, the decision to turn to borrowed capital will lead to the increase of financial return and the company's market value, because the financial leverage effect will be positive and will go to the shareholders (Rf > Rec). In this case, it will be in the company's best interest to use as many loans as possible to benefit from the financial leverage effect, but up to the limit of the insolvency risk.

If Rec = Rd, the decision to turn to loans will have no effect on financial return, as its level is equal to economic return (Rf = Re), and the financial leverage effect 0;

If Rec < Rd, contracting new loans will lead to the decrease of the financial rate of return (Rf < Re), the financial leverage effect being negative. In this case, the activity of the company is inefficient and will gradually lead to its decapitalization.

Therefore, the financial leverage effect is only positive to the extent where the economic rate of return is higher than the interest rate. The fundamental issue is knowing if the eventual unfavorable economic conditions can lead to a decrease in the economic rate of return in such manner as to produce a negative financial leverage effect.

The formula:

ELF = (Rec. of operating profit – actual interest rate) * LF

The formula uses the actual interest rate and not the market interest rate, because an average value is not representative for the company, and a contractual value is not stable, because banks modify the interest rate at certain intervals of time. [1]

Analysis of bankruptcy risk

At any time of its activity, a company is facing the risk of bankruptcy. It can have negative consequences, with complex implications on the company's entire activity, as well as on other entities which interact with that company.

As previously stated, the banks are the ones most interested in determining the bankruptcy risk for the companies to which they are granting loans. Determining the bankruptcy risk is necessary both for granting loans and during the operation of the loan agreement. In order to avoid potential losses, banks analyze a series of general elements related to the loan applicant, the objectives set out by requesting the loan (the loan application), the maturity period, the bank interests and fees, as well as the guarantees provided and credit recovery methods.

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Diagnosing the bankruptcy risk consists of the evaluation of the company's solvency. This is defined as being a company's ability to face due obligations resulting from previously contracted commitments, either from current operations whose achievement conditions the continuation of activities, either from mandatory withholdings. [2]

Case Study: VLG RO SRL

VLG RO SRL is a company that has as its main activity the sale of cables and electrical conductors. As it developed and because of the investments it made, the company was forced to resort to bank loans to meet their financial needs.

Even if the banks where the company opened its current accounts and from which they made loans for its needs already calculated this, I did my own calculations for finding financial leverage values and bankruptcy risk analysis using values found in the financial statements for the years 2013, 2014 and 2015.

Thus, we obtained the following values for the financial leverage:

Table 1. Financial leverage in the period 2013-2015 for VLG RO SRL

Indicator	**31.12.2013**	**31.12.2014**	**31.12.2015**
Total debts	46,552,401	48,820,747	61,137,305
Shareholders equity	4,341,526	9,056,885	9,844,505
Financial leverage	**10.72**	**5.39**	**6.21**

(*Source:* processing made by the author)

As you can see, the amount of financial leverage has followed a downward value from 2013 to 2014, with a small increase in 2015. The high value of 2013 is mainly due to low capital value and the increased value in 2015 is due to increasing debt. If in 2015 the amount of debt would remain at a value comparable to 2014, the value of financial leverage would bee below 5. But even in this situation the value will still remain over 2.33, which means that indebtedness is high and so the prerequisites for the emergence of bankruptcy are created.

Next, using the same financial information we calculated the risk of bankruptcy by several methods: the "Financial Standing" model, the Altman model, the Robertson model and the BRD and Banca Transilvania models, which are the most common models in Romania.

The obtained values are presented in Table 2:

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Table 2. Values obtained using the methods of bankruptcy risk analysis for the period 2013-2015 with VLG RO SRL

indicators	Accomplished 31.12.2013	Accomplished 31.12.2014	Accomplished 31.12.2015
"FINANCIAL STANDING" MODEL			
ACTIVITY			
Corrected score	5.40	6.75	5.40
Grade	0	0	0
FUNDING	9	7.5	7.5
Corrected score	13.20	15.60	13.20
Grade	Good	Weak	Good
ECONOMIC GROWTH			
Corrected score	1.35	3.60	1.80
Grade	Good	Good	Good
TOTAL SCORE			
Corrected score	**19.95**	**25.95**	**20.40**
Grade	***Very weak***	***Very weak***	***Very weak***
ALTMAN MODEL			
VALUE OF THE "Z" SCORE	**1.27**	**1.13**	**1.61**
Grade	***State of Bankruptcy***	***State of Bankruptcy***	***State of Bankruptcy***
ROBERTSON MODEL			
VALUE OF THE "Z" SCORE	**83.99**	**35.40**	**110.36**
Difference compared to the previous year	*x*	***-48.60***	***74.97***
Grade	*x*	***Difficulty***	***Instability***
"BANCA ROMANA DE DEZVOLTARE" MODEL			
TOTAL SCORE	**38.00**	**71.00**	**87.00**
Grade	***Weak***	***Medium***	***Medium***
"BANCA TRANSIVANIA" MODEL			
TOTAL SCORE	**13.00**	**50.00**	**53.00**

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Grade	***Weak***	***Very good***	***Very good***

(*Source:* Processing made by the author)

By applying this method for verifying the risk of bankruptcy we reach the same conclusion as in the case of the financial lever, namely that if VLG RO SRL does not seek to decrease debt and increase revenues and thus profits, it is possible that over a certain period of time the company will experience bankruptcy.

The only analysis model that considers the results as good is the one developed by Banca Transilvania. However one should not overlook the fact that these results are considered good in order for the company to qualify for a loan from which the bank collects interest.

Conclusions

Within my research of VLG RO SRL I sought to show by using two methods that this company needs to improve its financial results and it must take several factors into account and not just the one of recording profits. Thus, they should seek to have a smaller rotation period of collecting the receivables, which would increase available funds; with the increasing of availabilities they should seek to decrease debt either by the advance payment of loans, or by decreasing the duration of payment to suppliers; by paying of loans quicker the amount of interest you were paying before would also decrease. Corroborating all these factors would lead to a "recovery" of the values of economic and financial indicators.

Of course, some experts would argue that the results obtained are the result of theoretical calculations, but it is good to keep them in mind because, as I stated above, a "healthy" company is not only characterized by the profit it records.

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CONSIDERATIONS ON THE CONCEPT OF AGENT AND ON THE INDEPENDENCE OF THE PROFESSIONAL INTERMEDIARY ACTIVITY

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Abstract{ Within the Romanian justice system, the first definition of an agent originates from the year 1946 : „A trade agent is a person exclussively assigned by one or several merchants to trade or conclude commercial operations within a locality or a region in exchange for a remuneration which bears the name of commission". The agent is a trader, either natural or legal person, who carries out intermediation activities independently, permanently and professionally in favour of other traders. In the national legislation, the definition of the agent as a professional representative must be corroborated with the provisions which delimitate the people who cannot be agents: exchange, commodity, finance, insurance, reinsurance brokers, or those who work for no remuneration. The main characteristic of an agent's activity as a permanent profession is independence. This independence enables the agent to manage their own activity as they see fit, to work with many or few other people, to use an important or a limited number of pieces of equipment or to hire other subagents. This independence in managing their own activity makes an agent be more than a mere mandatory, acting strictly under the authority and upon the indications of the commissionaire.

Keywords:agent; principal; agency contract; business risk; independent intermediary.

1.The concept of agent

Within the Romanian justice system, the first definition of an agent originates from the year 1946 : „A trade agent is a person exclussively assigned by one or several merchants to trade or conclude commercial operations within a locality or a region in exchange for a remuneration which bears the name of commission"[1].

1 I.L. Georgescu, *Drept comercial român*, vol. I, Socec Publishing House, Bucharest, 1946, pp. 652-653.

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The agent is a trader, either natural or legal person, who carries out intermediation activities independently, permanently and professionally in favour of other traders[2].

The term ”permanent agents”, as defined by the Council Directive no. 86/653/EEC[3], has the same meaning as in the agency agreements within the British legal system. The term was used to distinguish between European agency contracts and other forms of occasional intermediation.

The agent is a mandatory appointed to negociate and, as the case may be, conclude contracts on behalf and account of other manufacturers, industrialists or service providers.

As for the agent being a trader, many authors have emphasized the fact that there are different shades to this meaning, by pointing out that there are cases in which the intermediary can be seen as a trader, and cases in which the trade agent should not be given this attribute.

Thus, according to the extent of his power, an agent can be:

a) a mandatory with no representation, who collects orders and passes them on to the trader, who accepts and delivers them (in the specialized literature there are some opposing opinions regarding this aspect as well, arguing in favour of the fact that the agent, who is merely the person who negociates the conclude of various contracts on behalf of the commissionaire – without participating to the closing thereof – is still appointed representation, based on the fact that the mandate implies legal documents, whether *nomine proprio* or not, whereas negocitations cannot be seen as proper acts, but merely as operations conducted on behalf of the commissionaire)[4].

b) a representative appointed to act as a trader on behalf of the person who has appointed him.

In France, the dominant jurisprudence simply mentions the fact that an agency agreement is a civil mandate, given the fact that it does not involve the commissionner in any trade perfected on his behalf and account[5].

Regarding the multitude of contradictory debates in favour of or against the agent being seen as a trader, in France, the general opinion (supported by the jurisprudence) is that many agents have been constituted as „civil societies”, with non-commercial activities[6].

2S. Cărpenaru, *Tratat de Drept Comercial Român*, Universul Juridic Publishing House, Bucharest, 2009, p. 55.

[3] The Council Directive no. 86/653/EEC of 18 december 1986 on the coordination of the laws of the member states relating to self-employed commercial agents published in the Official Journal L 382, 31.12. 1986, P.0017-0021.

4 T. Prescure, R. Crişan, *Contractul de agenţie-un nou contract numit în dreptul comercial român*, in Dreptul, issue no. 7/2003, p. 44.

5 The French Court of Cassation (the Chamber of Commerce), Decision issued on the 29th of October 1979, in Gazette du Palais no. 1/1980, p. 14, adnotated by J. Dupichot.

6Journal Officiel of the 24th of May 1991, p. 2240.

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Nevertheless, should the agency be a commercial society, the agent would become a trader, ”deeply involved in the business world”[7].

Article 4 of the French law passed on the 25th of June 1991 providing for agency agreements stipulates the fact that ”Contracts between commercial agents and their mandatories are closed to the common interest of the parties”. At first sight, the idea that agents are ”commercial” and that their activities pertain to the civil legislation is difficult to accept, and there has been significant criticism regarding the solutions passed by the French Court of Cassation in this area.

„The common interest” of the parties would be based, on the one hand, on the continuity and duration of the relation between the parties, and, on the other hand, on the purpose of „gathering a common clientele”[8].

„The relation between the commercial agent and the commissionaire is governed by an obligation of being loyal and of informing the other party”- according to art. 4 para. 2 of the French Law issued on the 25th of June 1991.

In the national legislation, the definition of the agent as a professional representative must be corroborated with the provisions which delimitate the people who cannot be agents: intermediaries in the stock exchanges and regulated markets of commodities and derivatives, agents or brokers of insurance and reinsurance or those who work for no remuneration.

2. An agent's independence. Contract risks.

The main characteristic of an agent's activity as a permanent profession is independence.

This independence enables the agents to manage their own activity as they see fit, to work with many or few other people, to use an important or a limited number of pieces of equipment or to hire other subagents. This independence in managing their own activity makes an agent be more than a mere mandatory, acting strictly under the authority and upon the indications of the commissionaire.

The agent is a genuine head of company, who makes their own professional decisions[9].

Within the Italian doctrine and jurisprudence, an agent is a professional entrepreneur who takes on the economic risks which are typical to his activity[10].

7 M. Pedamon, *Droit Commercial*, Dalloz Publishing House, 2000, p. 594, note 1.
8 J.M. Leloup, *Les agents commerciaux*, Delmas Publishing House, 1998, p. 116.
9 Ghe. Stancu, *Privire comparativă a contractului de agenţie în cadrul legislaţiei europene*, p. 9, in the Business Law Magazine, no. 11/2007.
10 The Italian Court of Cassation, Decision no. 1916 of the 16th of February 1993, published in Giustizia civile, 1993, p. 2013.

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The economic risk assumend by the agent is in full accordance with the autonomous nature of his activities, which distinguishes between the agent and other people subjected to the principal[11].

When referring to the agent taking on financial or commercial risks, one must consider the national legislation, namely art. 5 para. 1 of the Competition Law no. 21/1996, which describes anticompetitive practices.

The decisive elements regarding the applicability of this article in the case of the contracts concluded with professional intermediaries is whether the agent, as part of the production – distribution chain, takes unimportant risks regarding the contracts which they have negociated and/or concluded on behalf of the commissionaire – in this case the deal is not regulated by art. 5 para. 1 of the Competition Law. It is an instance of the sales contract as a trade act being part of the commissionaire's activity, even if the agent represents a distinctive company.

The commissionaire shall take on the risks of the respective business, as owner of the assets, while the agent conducts an economic activity with a low degree of autonomy.

Things are significantly different in the case of the agent taking on the financial risks mentioned above, on account of his actions and operations as an independent intermediary who designs his own market strategy to retrieve various investments incurred by the contract or by the market, and to make the business profitable. This may be the case of an agreement between two independent economic agents, which could be governed by the provisions of art. 5 para. 1 of the Competition Law.

In a risk analysis it is worth mentioning the fact that – in order to determine the incidence of art. 5 para. 1 of the Competition Law – it is not essential to consider the risks related to the provision of services by the agent in general terms (income, supplimentary labour force, and so on). Risk assessment should be different from case to case, and should take into consideration the economic, as well as the legal aspects of the business.

In general terms, the Competition Council considers that the provisions of art. 5 para. 1 of the Law do not refer to the obligations related to the contracts which the agent has negociated and/or concluded on behalf of the commissionaire, if ownership of the assets which constitute the object of the contract is not transferred to the agent.

11M. Montanari, *Imprenditorecontratti commerciali in diritto commerciale*, Giuffre Publishing House, Milano, 2001, p. 233.

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One of the most important criteria when appreciating the level of independence and autonomy of the agents in relation to their commisisionaires refers to the way and extent to which these professional intermediaries take on business risks.

On the other hand, taking on risks is not only an instrument to measure an agent's (in)dependence in conducting its intermediation activities, but also a decisive element as to the applicability of the provisions of the Competition Law.

In another train of thoughts, within an agent's activity, the degree and extent to which they take on various risks are closely connected to their right to receive a commission. Both aspects help distinguish between an agent and other employees or co-workers.

The fact that the right to receive a commission is only based on the conclusion of the commercial operation for which the agent had been appointed is relevant for distinguishing between the agent and other employees of the commissionaire[12].

In another train of thoughts, the New Civil Code, which is the Romanian adaptation of the Council Directive 86/653/EEC makes no provision of whether or not the agent, as an ”independent intermediary” takes on the risk of the operations which they have concluded, as is the case in the Spanish equivalent. In this law, art. 1 provided that the commercial agent, unless stated otherwise, do not assume the risk of operations. It is therefore necessary – de lege ferenda – to regulate these issues, including the Romanian law providing for agency contracts, in order to comply with the specific European legislation, namely with the Council Directive 86/653/EEC.

It is therefore only natural to consider that it is necessary for the Romanian legislation to regulate these issues (including agency agreements) in order to comply with the European legislation, namely the Council Directive 86/653/EEC.

Apart from these aspects, given the contract risk, a normal question arises: can or cannot the agent claim that the commissionaire return the expenses incurred by taking on risks, if we take into consideration the fact that the agent is an independent intermediary who takes on economic risks for the activities which he conduct?

There is no simple answer to this question, given the rights and obligations which the parties take on when concluding the contract, and these aspects pertain to the effects and to the termination of the agency agreement.

12D. Velicu, *Impactul dreptului comunitar în definirea reprezentării comerciale-contractul de agenţie*, p. 72 in the Romanian Magazine of Community Law, no. 4/2006, Wolters Kluwer Publishing House.

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In another train of thoughts, the agency agreement is a legal relation initiated between two independent professionals – the principal and the agent.

The activity of an independent professional is not controlled from an economic or decisional point of view by any other legal entity.

Given all of these realities, the following question arises: can subsidiaries or branches founded by a parent company act as agents thereof? The answer to this question must be a negative one. The agent's independence excludes such relations as the one between the parent company and their subsidiaries or branches, based on subordination. This independence must be a reality in the contractual relation between the parties, and it should even exclude the principal- servant relationship[13]. The agent must not be a mere extension of the principal who has appointed him.

3. Types of commercial agents

The continental legislative system, as well as the Anglo-Saxon one, acknowledge the existence of several types of commercial agents who conduct intermediation activities to the interest of those who have empowered them.

These categories are:

a)Del credere agents. Thesecommercial agents take risks while conducting their agency commercial business, provided that they act on behalf and on account of the principal and not on their own. For taking business-related risks, these agents are entitled to receive an extra remuneration[14]. These aspects are regulated in the Romanian legislation as well, but they are not mentioned in the regulations related to the agency contract, but in those regarding the commission contract, in the "star del credere" or "ducroire" clause. According to this clause, the commissioner shall account to the principal for failing to comply with their contractual obligations of the contracting third party (the client). The commissioner shall take personal responsibility towards the principal for complying with the obligations resulting from the contract signed between the commissioner and other third parties. In exchange for the execution of the respective obligations, the commissioner is entitled to a special remuneration, either "guarantee" or "credit". This type of remuneration is different from the agent's commission and it is called a "provision". The del credere agents are not mentioned as a stand-alone category in the Romanian legislation. Nevertheless, given the fact that the

13 D. A. P. Florescu, L. N. Pîrvu, *Contractele de Comerț Internațional*, 2nd edition, revised and abridged, Universul Juridic Publishing House, Bucharest, 2009, pp. 205 – 206.
14 F. Randolph, J. Davey, *Guide to Commercial Agents Regulations*, second edition, Hart Publishing, Oxford-Portland, Oregon, 2003, p. 73.

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provisions of the New Civil Code approach the agency contract and the commission contract, as long as they are compatible, there should be no express interdiction for the subjects of this intermediation convention to include the ducroire clause in the contract. At a national level, there are authors[15] who consider that there are two types of commissions within the ducroire clause: the simple commission, which expresses the work salary (le salaire du travail), merces laboris, whereas the del credere commission is the price for taking on risks, pretium periculi. This idea is taken from the old French doctrine[16] which is no longer fully compatible with the current internal and European regulations regarding the agency contract. Thus, the remuneration which the agent is entitled to receive for the execution of the contract is not compatible with conducting paid work. In another train of thoughts, within the ducroire clause, the idea of two different types of commission can seem excessive, erroneous: the provision cannot be a commission, as it represents a type of remuneration of its own[17].

b)Non-commission agents. This category of agents is mostly regulated by the French legislation. Non-commission agents are paid a fixed monthly salary or a service provision fee at the end of their activity. These aspects do not turn the agent into an employee. The agent may be paid both a fixed monthly fee, and a commission, and at the end of the contract he may also benefit from an indemnity.

c)One-off agents. There can be instances of an agent being employed for one or a few several transactions. At first sight, according to the provisions of the New Civil Code, the intermediary in this position could not be seen as an agent, precisely due to their lack of persistency in conducting contractual business intermediations. At the same time, on the 16th of March 2006, in case C-3/04, Poseidon Chartering BV versus Marianne Zeeschip VOF *et al*[18], in the interpretation of art. 1 para. 2 of the Council Directive no. 86/653/EEC, the European Court of Justice ruled on the following: should an independent intermediary be commissioned to conclude one transaction, one contract, later extended for several years, the permanent condition imposes that this intermediary be commissioned by the principal to negotiate the successive prorogations of the respective contract. The existence of one contract is not determining if the intermediary conducts permanent activity, therefore, given the

15 B. Ionescu, *"Considerații asupra clauzei "star del credere" în cadrul contractului de comision",* Commercial Law Magazine, issue no. 4/2009, Lumina Lex Publishing House, Bucharest, 2009, p. 42.
16 M. Delamarre, M. Le Poitvin, *Traité du contrat de commission,* Charles Hingray Publishing House, Paris, 1861, p. 551- 561.
17 S. Cărpenaru, L. Stănciunescu, V. Nemeș, *Contracte civile și comerciale*, Hamangiu Publishing House, 2009, p. 394.
18 In the Netherlands, Directive no. 86/653/EEC was appplied in art. 428 – 445 of the Civil Code –Burgerlijk Wetboek – which are for the most part identical to the provisions of the Directive.

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prorogation of the contract over several years, there can be no doubt as for the permanent activity conducted by the agent. The amount of operations intermediated for and on account of the principal is not the only determining factor for appreciating the permanent nature of the tasks commissioned to the intermediary.

As for the agency contract, The New Civil Code provides that it is only applicable for the intermediaries who conduct activities which are specific to an agency contract on a permanent basis, without mentioning the number of transactions that the intermediary must conclude in order to become a commercial agent.

d) Purchasing agents. This category is mostly present in the Anglo-Saxon space, especially in Great Britain, and it refers to those agents who only handle purchases, namely those who are authorized to negotiate and conclude these purchases on behalf and on account of the principal[19].

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USING SCENARIOS IN MANAGEMENT STRATEGY DESIGN IN THE CONTEXT OF THE GLOBAL RISKS

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Abstract: The process of organization's future anticipation is part of the strategic management. It is a management practice to use in advance the knowledge about the external environment in order to avoid disasters and the strategies disorders. One of the techniques used in the future anticipation is the scenario. On the other hand, the actual global environment is characterized by an increasing complexity and risks. They may produce different pressures and dysfunctions in any organization's strategies. In this briefly presented context, the paper is aiming to analyze the importance of using scenarios in the management strategy design, having in view the global risks. After a briefing about the concept of the global risk, a matrix of relevance-uncertainty is proposed. Then, the scenario as a management tool is presented and a model of strategy design management by scenarios is proposed. The methods used in the research are the literature searching and conceptualization.

Keywords: organization's environment, global risks, scenarios, management, strategy design

1. Introduction

It is well known that any organization operates in a tri-dimensional environment: internal environment, near external environment and far external environment. Whether the internal environment may be controlled by the organization's management and the near external environment even if it could not be controlled but may be influenced, the far external environment could not be nor controlled, nor influenced, but it may be understood and anticipated. Nevertheless, the far external environment is composed by five groups of factors, i.e. political, economical, social, environmental and technological factors and in this respect the majority of the companies are assessing them.

Adapting to these factors the organizations are changing their strategies or changing themselves to face the external pressures. This is the key of the organization's strategy.

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In order to gain success the organizations have to anticipate the possible changes and to be ready anytime to face the opportunities and the challenges in a pro-active and not re-active manner (Morgan, 1988).

The external environment changes may be opportunities or threats for all organizations. Hence, the strategies imply the opportunities capitalization for countries and for organizations, as well.

The management strategy approach have to be dynamic, flexible and innovative and thus, the importance of intuition, knowledge and the learning process by actions in completion of the scientific analysis must be recognized (Grant, 1998).

The organizations future anticipation or forecasting, as part of the strategic management, is coming as a response to the environment complexity and increasing the degree of risks and uncertainties in which the organizations operate. The future anticipation does not offer certainties, but solutions and options about the future.

In the management practice there are several techniques for socio-economic phenomena forecasting, some of them qualitative, others quantitative ones.

In this paper, the scenarios method is approached, having in view the global risks, as factors of the far organizations environment that are making pressures on the organizations strategies.

2. Global risk

The risk exists when a set of unfavourable consequences are associated to possible decisions and the chance of these consequences may be known or determined. When this chance cannot be estimated by using the probabilities, the analyses is done in the uncertainty domain.

The global risk is defined as being the external (environmental) risk outside the influence of a country's government (Business dictionary). It is also defined as the possibility that something bad may happen which will affect all countries (Cambridge Business English Dictionary).

The prerequisite of risk appearance is the uncertainty, because not all risky situations are uncertain, but the condition to consider situations like being risky is unfavourable consequences. Nevertheless, generally speaking, when discussing about risks, the concept of uncertainty is tacitly accepted as being part of the risk.

The global risk is appraised annually by the World Economic Forum ahead of the Forum's Annual Meeting in Switzerland, which is publishing a report. This report describes changes occurring in the global risks landscape from year to year and identifies the global risks that could play a critical role in the upcoming year. The report also explores the

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interconnectedness of risks, and considers how the strategies for the mitigation of global risks might be structured (Wikipedia).

The 2016 Report is emphasizing that the global risk has 29 forms and it could be found in all five external factors of a country: geopolitical, economical, environmental, societal and technological factors (Global Risks Report 2016, p.11). Reading this report, the main risks that enter into the global risk composition may be considered as being:

Geopolitical: the huge migration from the East to the West and the regional military conflicts in the Middle East and Africa;

Economical: the fiscal crises, the unemployment and energy price chock;

Environmental: the climate change, water crises and natural catastrophes;

Societal: the social instability;

Technological: the cyber threats.

Considering the actual main geopolitical context may be underlined that "more than 59 million people globally are classified by the United Nations as "forcibly displaced," the highest number since the Second World War.The conflict in Syria alone has displaced at least 11 million people, around 4 million of whom have taken refuge outside the country (McKinsey, 2016).

These facts contribute to the increased uncertainty regarding the geopolitical, economical and social stability in the world. On the other hand, the cyber criminality is provoking worries in all the activities, increasing the risks regarding the technological factors.

It is no doubt that the global risks are influencing the complexity of the management strategies around the world and all these factors need to be under the countries and organizations observation and scanning.

All the far environmental risk factors need to be understood, evaluated and their course of action anticipated. The matrix proposed in the figure 1 may be a useful tool for this process.

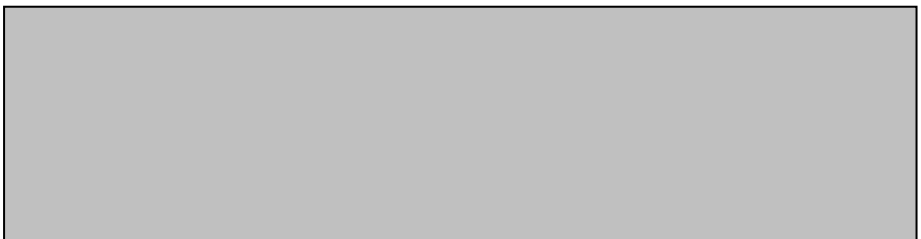
The matrix is based on assessment of all relevant far (global) environment factors that could be identified and then grouped and ranked into four categories:

Certain factors, which in this case have low relevance degree and low/none uncertainty degree;

Risks factors, which have high relevance, but low degree of uncertainty;

Uncertainty 1 factors, having high degree of relevance and uncertainty;

Uncertainty 2 factors with low degree of relevance and high degree of uncertainty.



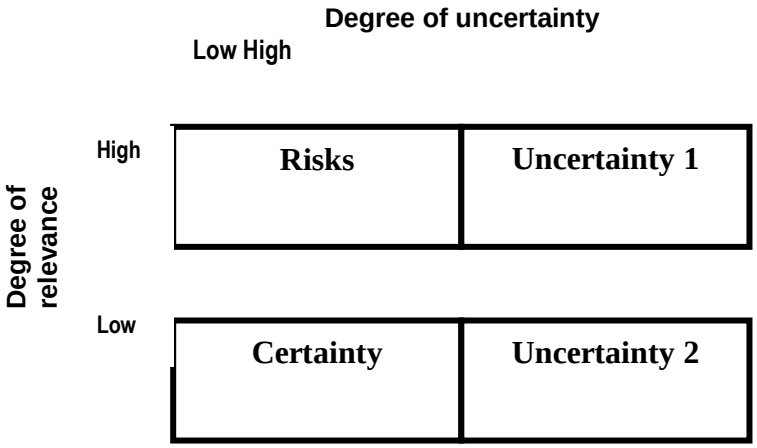


Fig.1 The relevance-uncertainty matrix

Depending on the technique applied to evaluate these factors, they are separately analyzed.

3. The scenario as a management tool

Usually the scenarios are used to anticipate hypothesis regarding the population increase, resources availability, technical innovation, and economic growth. The method consists in the observation of the present course of actions and establishing several alternatives in which the economic processes or phenomena may evolve in the future. These alternatives or options are called scenarios.

In essence, the possible futures, expressed in the pessimistic and optimistic options, are identified, considering the risk and uncertainty factors that may disturb the processes and phenomena. "**Sc**enarios are a powerful tool in the strategist's armoury. They are particularly useful in developing strategies to navigate the kinds of extreme events we have recently seen in the world economy. Scenarios enable the strategist to steer a course between the false certainty of a single forecast and the confused paralysis that often strike in troubled times" (Roxburgh, 2009).

The scenarios are mostly considering the uncertainty, rather then risks. "Scenarios have three features that make them a particularly powerful tool for understanding uncertainty and developing strategy accordingly, i.e. expand thinking, uncover inevitable or near-inevitable futures and allow people to challenge conventional wisdom" (Roxburgh, 2009).

Whether the risks may be assessed, even mostly subjective, by using the likelihood methods, the uncertainty is based on stories. "Scenarios are not predictions about the future but rather similar to simulations of some possible futures. They are used both as an exploratory method

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or a tool for decision-making, mainly to highlight the discontinuities from the present and to reveal the choices available and their potential consequences" (JRC, 2016). The use of stories contributes to the organizations' learning from past experiences and thus the progress in the future is facilitated. "Corporations, like human beings, act on the basis of an agreed-upon reality—which is, in essence, a story. Stories of the past and the present can be based on facts, but a story of the future is *just* a story. The problem is that the stories we most commonly tell about the future simply extrapolate from the present. Perhaps the greatest power of scenarios, as distinct from forecasts, is that they consciously break this habit. They introduce discontinuities so that conversations about strategy—which lie at the heart of any organization's capacity to adapt—can encompass something different from the present." (Wilkinson & Kupers, 2013).

The scenarios are useful for managers in different fields, such as: task analysis in human–computer interaction (Diaper, 2002), training and education (Ramirez et. al., 2015; Abeles, 2016) and more useful in the planning (Manktelow, 2016).

The scenarios' functions identified by (Bood & Postma, 1997, p7) are:

Evaluation and selection of strategies;

Integration of various kinds of future-oriented data;

Exploration of the future and identification of future possibilities;

Making managers aware of environmental uncertainties;

Stretching of managers' mental models;

Triggering and accelerating processes of organizational learning.

The use of scenario in the planning implies five steps, according to the Mind Tools Editorial Team (Manktelow et al., 2016):

Define the problem: what to be achieved and the time horizon to look at.

Gather data: identify the key factors, trends based on secure foundations, and uncertainties that may affect the story and identify the key assumptions on which it depends. A PEST (political, economical, social and technological factors) analysis is useful. In identifying trends, the assessment has to be based on evidence rather than supposition.

Separate certainties from uncertainties: list uncertainties in priority order, with the largest, most significant uncertainties at the top of the list, because some assumptions may be confident and some trends may be considered certain; also some factors may or may not change.

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Develop scenarios: starting with the top uncertainty, take a moderately good outcome and a moderately bad outcome, and develop a story of the future around each that fuses the certainties with the chosen outcome. Then, the same has to be done for the second most serious uncertainty.

Use the Scenarios in the planning.

Another approach of scenarios process is stressed by Bood and Postma (1997, p.5) who identified six steps: problem identification, current situation analysis and relevant factors identification, evaluation and selection of the scenarios' elements, scenarios construction, scenarios' selection and interpretation and decision-making with scenarios.

A 'walk through the process' divided in six steps (JRC, 2005) develops also six steps in scenario building: identify the focal issue (the "setting" for the scenarios), identification and analysis of the drivers, rank by importance and uncertainties, selecting scenario logics, fleshing out the scenarios and implications of scenarios.

Other literature references about the scenarios might be found in the Von der Gracht's book (2008) which reveals 37 publications related to scenarios.

Strategy design management

Using the ideas selected from the literature and the matrix of relevance-uncertainty presented below, a model of strategy design management by scenarios in the context of the global risks and uncertainty may be conceptualized as in the figure 2.

The model is built on the basis of four steps of strategy design in the context of the global risks, as the followings: the global environment scanning and analyses, the scenarios assumptions setting and analyzes, the scenarios design and selection and the strategy design.

The organization's management has to lead the entire process of the strategy design having in view the organization's vision and the stakeholders' strategic objectives in the context of the global risks and uncertainty.

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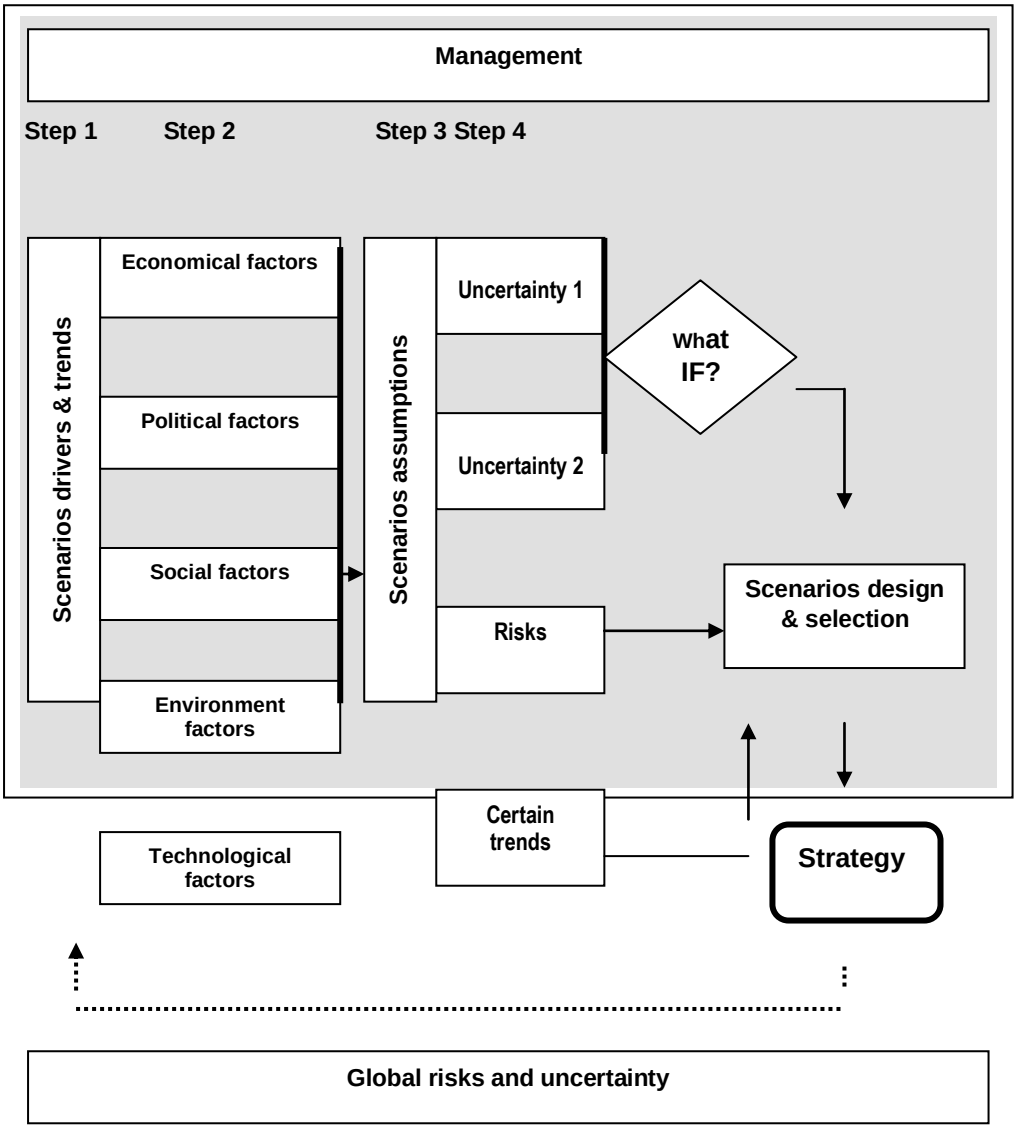

Fig.1 The model of strategy design management by scenarios

Step 1: the global environment scanning and analyses

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Firstly, the critical drivers that are relevant within the external global environment have to be selected and analyzed. In this respect the factors with the significant impact on the organization's strategy have to be observed and their trends anticipated. Then, the significant factors of the five groups of the far external environmental factors (geopolitical, economical, environmental, social and technological factors) have to be ranked.

Step 2: the scenarios assumptions setting and analyzes

The setting of the scenarios assumptions are based on the use of the Matrix of relevant-uncertainty presented below. The certain factors are forming the basics of the scenarios. They are followed by the risky factors that might be evaluated by using the math techniques. Finally the most two relevant uncertain factors are selected and used in at least two scenarios: a pessimistic one based on the uncertainty 1 assumptions and an optimistic one, based on the uncertainty 2 assumptions. The number of the scenarios are not limited and may be facilitated by the "what if" analyses, usually used in the projects sensitivity analyses. The What-if scenario analysis (WISA) is a proper tool to be used in balancing the inputs according to the desired outputs of the strategy, because the strategy might be affected by switching from the uncertainty 1 to the uncertainty 2 scenarios.

Step 3: the scenarios design

In what is concerned the scenario process elaboration any of the guides referred on in chapter 3 or others that may be found in the literature may be used, depending on the scenario subject.

Step 4: the strategy design

The strategy has to be design accordingly with the organization aims and the activities, such as: entering or developing the market shares, R&D, investment, acquisition, environment protection actions, and others.

Moreover, as the global risks increase the uncertainty embrace new forms so that the organizations have to continually update their strategies.

Conclusions

This paper is considering the far external environmental factors of any organization that is running activities internationally in the context of increasing risks and uncertainty.

Explaining the concept of the global risk there are given examples of several important risks associated to these factors. The grouping and ranking of the factors that are infusing risks and uncertainty in many strategies may be analyzed by using the relevance-uncertainty matrix proposed.

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It is underlined that scenarios could be considered a useful tool for the organizations' management to anticipate the effects of the global risks on their strategies.

The literature is offering ideas about the concept of scenario and also guides regarding the process of scenarios construction.

Using the ideas collected from the literature and the judgment, a model of strategy design management by scenarios in conditions of global risks is proposed to be another useful tool for the organizations and their management.

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THE FINANCIAL COMMUNICATION AND FINANCIAL COMMUNICATION STRATEGY

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Abstract: In this article it is aimed the definition of the financial communication under all its aspects. It is targetted the strategy as a communication tool.

Assuming that „communication" defines the relations of the economic operator with the external environment. It is used the meta-analytical method focused on summarising and synthesising the opinions and concepts contented in the specific literature. It is started from the general analysis of the finacial communication strategy, the series of the activity areas and the final aiming, towards the implementation of this strategy in the structural tools area.

Keywords: financial communication, financial communication strategy, target group, investors, journalists

1. Objectives

In order to motivate the topic discussed we bring the main objective of the study, the demonstration of the fact the strategy is the basic goal with what the financial communication operates, without a strategy the communication being chaotically. A second objective would be the fact that by analysing the specialty literature, the financial communication strategy could be found in any activity domain of the market, including the newest of them, the oprational programmes area. A third objective reveals the particularities of the financial communication strategy in relation with the structural tools area.

2. Introduction

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Communication represents an important component of the contemporary people's life and activity. It can be seen everywhere, in all the social areas: within the daily life, organisations, management, but also in the bussiness world. "Everything communicates" is the slogan that shows the best the impact of the communication phenomenon over the human existence period lived by us, the postmodern period (Avram, 1997). In addition to the commercial, internal and corporate communication an important type of communication is represented by the financial communication, defined as "the sum of the relations with the providers, clients, employees, thirds, with the bodies competent in the economical field, but also with the press. This involves the information collecting and dissemination for drawing up and spreading of some complete and proper financial statements".

The word „strategy" comes from the military field, being used for describing the own resources which can be used by each contestant in the fight with „the competition". Like the military pattern, the economists put „the strategy" into the financial field, as a financial communication strategy. Thus, the financial communication strategy could be defined the sum of the resources and the means used by a company in relation with the internal and external environment (competition, financial analysts, specialized credit bodies, clients, providers, press or employees). The economic globalisation, the most important phenomenon generated by the contemporary reality, represents the main impetus creator of communication, regardless of its type. It is necessary that interpersonally to be established an efficient and balanced communication in order to make the human relations working.

Any economic operator, producer or consumer, is above its capacity in the economy, a person who, through the relationships developed can lead to his business prosperity and success (Avram & Avram, V., 2012, p. 95).

In financial communication, financial reports are considered to be the official statements of the organisation, in its links with the external environment (Domnisoru, 2011). Drawing up of these financial statements involves the compliance of the accounting principles and the appropriate accounting methods, but also correct estimations and assumptions for an accurate preparation of products and services to be offered to the general public (Domnişoru, Vînătoru, 2009, pp. 9-10).

3. Theoretical issues regarding the financial communication

The financial communication is defined as: any activity for financial information and for promoting the financial image of the entity. As it has been considerated by Jean-Yves

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Léger in his paper, the financial communication would be, at a certain moment inseparable from any financial and stock marketing approach (Léger, 2010, pp. 3-5).

Financial communication provides both accountant and also financial information, which have, different sources and goals. Referring to the information supply source, this is the financial statements for accounting information and economic-financial indicators, for financial information (Bran & Costică, 2003). Analyzing the purpose of the information provided by financial communication, this is reflected in the external environment of the entity in discussion (owners, employees of other factories on one hand, and on the other hand the financial institutions that provide the necessary capital for the entity working) (Avram, 2005, p. 10).

Thus, as the final destination, accounting information serves owners, employees, managers, state, enterprise itself, and the financial information is useful to financial institutions that provide capital needed for operation.

From the beginning of the banking, economic, and market crisis, companies have had to cope with a growing demand, financial communication, coming from the actors participating in the economic life (Léger, 2010, p. 20).

It is also necessary that this type of communication to integrate with other types of enterprise communication: commercial, internal, corporate, but it has to be emphasized, finally, as the most important form of communication of an entity, representing the basis of the institutional communication (Avram & Avram, 2014, pp. 172-177) .

It must be pointed the fact that this way of communication is one newly created, more sppecifically, between 1980-1990 (in the same time with the globalization of markets and the economies privatisations), when the shareholding was growing rapidly (Cammack & Cammack, J., 2012, pp. 47-55). Before the financial communication we could have talked about the financial information, stock regulated, represented by the dissemination of key figures and financial aggregates, most often unconsolidated, which show a past statement of the entity, without leaving the possibility of forecasting in the future (Deegan, 2013).

The financial communication is related, especially, with the listed companies, representing the spreading between it and the public of the public information.

Thus, we cope with two categories of financial communication: financial communication in GSM (General Shareholders' Meeting) and the financial communication on market segments (Adorisio, 2015, p. 77-82).

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Analyzing financial communication problem on two great continents, America and Europe, we can reveal the following imperfections: in America, the accounting rules provide many possibilities for the companies, for compilating their numbers (social accounts, consolidated, proforma, comprising data and complex financial mechanisms); taking into account the audit in America, it is very poorly developed, containing only a verification check-list like (Albu & Guță, 2013, p.21-25); in Europe, it is pointed out the foccusing of the accounting rules on what it is presented as an accurate picture, and the accounting information becomes like an accounting and legal maze; in order to discern financial problems, Europe has a wealth of criteria and indicators, which rather complicates the economic reality: 180 financial criteria and 60 different ways to express the company's net result (Avram, Avram, Bragaru, Ghiu & Iliescu, 2008, pp. 409-422).

4. Financial communication strategy

It is said in all areas of financial communication strategies. In this sense, America is focused on the personal responsibility growing of the company leadership, which, in some contexts is proved to be ineffective (Feleagă & Feleagă, 2008, p. 5).

Each and every entity has its own communication strategy. This strategy is of utmost importance, because it is used to maintain investor interest, in supporting actions at optimal price, the development of new business relationships, public or private, or a certain level of the capital cost (Léger, 2008, p. 30).

Among the vectors of the financial comunication strategy creating process, the Internet must be underlined as the most important, which, in accordance with studies about this, annualy attracts more than 80% of individual investors (Guillamón-Saorín & Martínez-López, 2013, pp.518-537). Of the one part, Internet has entirelly changed the financial communication rules, on the other hand, the internet has produced a considerable improvement in the method of transmission of financial information: information available at low cost (Sandu, 2009, p. 66); data presented in editable format; quality of full availability of information distributed through this channel (accordingly to the study realised by Jean-Yves Léger, Jorn Geerlings, in 2008).

4.1. The objectives of financial communication strategy

Any financial communication strategy is done in relation with one or more of the following main objectives:

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- the increasing of the institutional reputation belonging to the entity in discussion, which is closely linked with informing the public regarding the products or the services provided, the outstanding contribution to improving the global image by associating good service with an active policy in favor of shareholders (Heldenbergh, Scoubeau, Arnone & Croquet, 2006, pp. 174-188);
- the appeal to the market for financing the economic growing of the company;
- the increasing of the firm titles value;
- the information of the shareholders and the whole financial coomunity regarding the results of the company (Nyce, 2005);
- drawing up of a tool for realising and keeping a privileged relation with the shareholders of the firm;
- correct assessment of the financial and operational performances and a fair issuance predicitons as clear as possible regarding the future trends of the firm evolution (Marioara, B. B., Dorina, P., Oana, C. C. A., & Camelia, A. B., 2014, pp. 563-572);
- establishing a strong relationship, based on trust,between the company and its investors;
- a better understanding of the financial information and the correct identification of the annual financial statements essential (Wang, 2013, pp. 119-138);
- establishing a lasting link with the public, which would become then trusted source for consumers wishing to use the products / services firm (Wang, 2013, pp. 43-62);
- creating transparency in the company, limiting the activities of competitors (Salvioni, 2012);
- opening the company for the market, for creating a favorable image and for establishing relationships with the external environment (Argenti, 2012).

4.2. The reasons for creating the financial communication strategy

There are numerous justifications underlying the achieving of their financial communication strategy. These, however, are different depending on the size of the company. Among the most significant are:

- Trying to cope with competition, to absorb a bigger share of the market and to show to the public an innovative concept, which could attract a large number of individuals (Laskin, 2014, pp. 127-129);

Creating and maintaining a positive image of the company, very important requirement when it comes to attracting investors;

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Profitability, the company's financial performances, as well as the financial profitability are esential factors for orientation: the investors for chosing the companies to invest in, the public for consuming produces and services, because it proves trust, but also the potential shareholders, who will choose according to these criteria the company they want to participate financially (Doyen, 1990, p. 12);

The desire of the company to keep and sustain its public by any means, in order to maintain the obtained financial performances;

The developing of the relations with its own employees. In this case it is not important the financial communication realised with these ones in relation with the profitability, but regarding the company's weaknesses, for a common test of its recovery (Rensburg & Botha, 2014, pp. 144-152).

4.3.The economic actors concerned by the financial communication strategy of the firm

Nowadays, the concerned public for creating a financial communication strategy is large and unusual. The targets of this strategy are different. It is said about a public made from: analysts, institutional investors and financial journalists in the economic sphere, customers, suppliers, public authorities, elected officials, students, direct prescribers, "small carriers" (minority, small shareholders). The most importantcategories will be analysed in the following:

Institutional investors: those that generate a large part of stock exchange transactions and which are actively operating in the stock market;

- Journalists, because they have a huge handling power. The analysts generated by this environment have a direct impact over the public (Wang, 2013);

„The small carriers" (small shareholders) are the ones which generate small stocks portfolios and are sensitive to the financial notices issued by the bankers, analysts or journalists (Wang, 2013, pp. 139-162);

Direct prescriptors (banks, exchange agents, analysts). They intervene directly in the market by their customers or advice given by managing their portfolios.

Every category follows different information related with the firm, however, out of these, can be formed two groups, namely:

The first group, made of by the so called profesionals: initiators (institutional investors), direct prescriptors and indirect prescriptors (journalists);

The second group made of public: represented by the portfolios of the small shareholders.

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The first group is based on the economic image of the company (management, production, market), and the second group is interested in the global image of the company (Iacob & Drăcea, 1998).

4.4. Drawing up of the financial communication strategic programme

There are four elements that participate to drawing up the financial communication strategic programme, by each and every company. These will be described as it follows, like this:

Creation: when delivering clear, complete, accurate, global information, as well as its perspectives, company should do this with the financial communciation strategy aimed to be built and no as a simple obligation (Schoonraad, 2004).

Its guidance towards the user needs: profesionals from the financial area and the public, they don't have the same needs, in the same range they don't have the same level of competence either. The first category will always be focused on the technical data, while the public will want easier messages in order to be able to undestand and process them (Smith, 2004, pp. 201-203).

Personalisation: the company leader must be firstly concerned in making the financial and institutional image of the company. Thus, this one should be accesible, every day on mass media, he has to express a positive attitude, because all of these will be associated with the firm he leads.

Growing, range: A company shoul be able to and to know how to enlarge its perspective. Such an example could be the opening in front of the foreign press, by translating the own statements, or the balance sheets of activity in different foreign languages with commercial application (that are used in its geographical neighbourhood) (Taylor, Tower & Neilson, 2010).

5. The financial communication strategy in the frame of european funded projects

5.1. *Financial communication strategy*

In case of the structural instruments, the financial communication strategy represents the basic document, which provides the basis of all the information and publicity programmes. This ensures coordination of integrated aspects of communication programs undertaken in the field of European funds (Bratu & Drăcea, 2002).

Beside, it contains general messages which will be used for the communication plans of the institutions with duties in the management of the cohesion and structural funds.

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The strategy of communication sets responsibilities in the communication area. It contains more communication plans (tools for detailing and, then, implementing the strategy).

The purpose of the financial communication strategy is to induce a larger rate of CSF absorbtion. Any potential applicant needs a minimum of information in order to be able to implicate in drawing up and implementation of the projects. However, sociological studies previously conducted revealed a low level of information on post-accession funds. It is revealed public skepticism about accessing grants, causes being the following: bureaucracy that makes harder the proper development of the projects; the lack of the cofunding possibilities; suspicions of corruption hanging over state institutions in this field.

5.2. Financial communication plans

The financial communication plans are the documents drawn up by each AM/ ACIS, in accordance with the european rules in the field and in the strategic frame at the national level of the communication strategy (National Communication Strategy, designed for each and every operational programme). Regarding the content, a communication plan is made of information and advertising activities strongly linked with the following elements:

Consistency with targeted strategy;

The objective aimed by the strategy implementation;

The actions used for fulfilling the objective;

The responsibles for every action, but also the responsibilities of each of them;

The deadlines for implementing the actions;

The costs for involving the whole process;

The forecasted results.

Also, the communication plan should refer to the means of communication and evaluation of the communication. These plans would be achieved and discussed at the national level, by AM-s in relation with ACIS and then will be sent to the European Commission (Rocci, Palmieri & Gautier, 2015).

5.3. Financial communication structure

Within the using of european funds, communication is done as „funnel" shape, in 3 segments, that aim the involving of the public. It is very important that all the three levels function properly, whereas an error in one of them induces harm in the other two and disrupt the normal functioning of the communication structure. This communication structure can be seen below:

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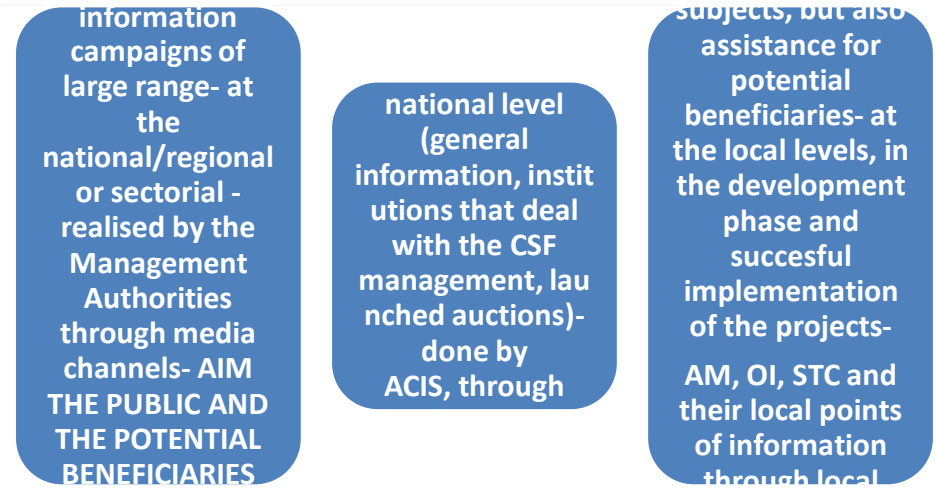
Scheme 1. The levels of the financial communication structure within the Structural Instruments



Source: Own interpretation, according to data provided by www.funds-eu.ro

The first level (information campaigns of large range)- requires the proper evaluation of the involved public. This information starts from the sociological studies realised and from the results of the activites already undertaken. The most important element of this first link is to popularize the campaign web page and unique phone number of the information centre. The internet page is the structural tools site, www.funds-eu.ro (that is directly linked with the sites of European Commission, Ministry of Public Finance, or the institutions that manage CSF). Regarding to this site, it can be noticed the permanent updating of the grants from the România-EU relatioship, presence of the news, feature articles, projects successfully implemented, as well as the ideas for projects. Institution that coordinates this site is ACIS.

The second link of the communication system and the main level is considered to be the information center. It is directed to all persons who, after information campaigns have become interested in developing and implementing a project and want assistance and guidance for cooperation with specialized bodies. The tools used at this level are the website, information call center, which have national coverage. On the basis of the information received from the

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potential beneficiaries, we could determine the potential territorial malfunctions, that stop the good functioning of these projects funded with grants.

The third segment of the financial communication scheme gives a main place to AM, OI şi STC (through their public information offices). Information offered by AM, OI şi STC are related with the following issues: priority axes, areas of intervention, the types of projects for funding, how to apply, orientation, promotion requirements for each fund. The basic tools for this link of the financial communication are: local meetings, fairs, cooperation with the specialized press, and the press locally, updating the website, database and information center (Info center).

5.4. The target group of the financial communication

There are 5 categories of actors concerned about the financial communication, in working with the projects funded with grants. The most comprehensive category is the general public, which includes the entire population and opinion makers, which are crucial for promoting adhesion of a group action for development of european projects. A narrower category tan the previous one (and contented in the frame of the first category of target group) is represented by the potential beneficiaries: public administration, business environment, NGO-S, research environment. The third part of the target group is the one of the internal public (contented in the CSF institutions) and made of from the followings: EU institutions, employees of the line ministries or employees from AM, OI.

It be noticed the internal actors, too (stakeholders)- that are directly involved in managing the funds, or who are affected by the allocation of funds, but do not fall under the classification of potential beneficiaries. These are: representatives of business and academia, and civil society, project promoters, public institutions and local groups affected by the results of implementation of these European projects, representatives of the country into European institutions with decision-making or advisory politicians.

The last category of the target group is reffering to the media, either it is discussed about the written one (at different levels- national, regional, sectorial, local), or the audio-visual one.

Defined under the importance they have in the grants area, it could be pointed out 4 categories of beneficiaries: public administration, NGO-S, business environment and research environment. In a survey conducted by the Ministry of Finance, revealed that the least transparent use of funds, and most likely called corruption is the recipient public administration.

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Also referring to the 4 categories of beneficiaries mentioned above, it is considered that public administration and NGOs are the most informed regarding funding opportunities, priority areas and instruments that can meet a european project.

5. Conclusion

The final conclusion is the main tool for realising the financial communication is strategy. This represents, actually, the specific way for communication between a firm and its partners and the large public. For resisting on a market it is necessary to be established long term relations between different economic actors, relations that can be created just through financial communication.

So, the company's public statements are the tools for communication on the financial plan between the organisation and the users of the financial statements.

Ultimately resulting financial strategy differs depending on the scope, priorities institutions and the objectives which it sets each participant in economic life. This is important for a proper and efficient financial communication, financial communication and lack of strategy can lead often to a lack of transparency and fairness from the company for its actual or potential partners.

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DEALING WITH WRITTEN COMMUNICATION IN BUSINESS ENGLISH CLASSES

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Abstract: It is widely known that in business communication, accuracy is no longer a priority as compared to fluency. Communication must be effective and the message must reach its recipient in terms of content and meaning. Its form and therefore, grammatical accuracy comes second. The area which, however, requires good knowledge of grammatical and linguistic rules in order to enable the successful transmission of a message is written communication. This is particularly due to the fact that written communication lacks the support that body language and visual aids could provide. Moreover, in most cases, written communication is performed in the absence of social context. For all these reasons, the importance of the ability to transmit a coherent message and to therefore meet the recipient's needs for information increases dramatically. From memos, notices on boards, reports, minutes, to e-mails, cover letters or CVs, written communication covers a wide range of skills that business students need to acquire in order to successfully face the challenges of business communication nowadays.

Keywords: business communication, writing skills, accuracy, fluency

Introduction

The main skills that foreign language trainers deal with are *accuracy*, *fluency* and *effectiveness*. While *accuracy* is primarily focused on lexis, grammar, pronunciation, *fluency* is concerned with speed and effort of speaking; finally, *effectiveness* deals mostly with the impact of discourse on the audience. One of the major differences between General English and Business English stems from the different treatment of the three above-mentioned issues: while General English is mainly concerned with developing accuracy and fluency, Business English is rather focused on fluency and effectiveness (Brieger, 1997: 41-2). This does not necessarily apply in the case of written communication: it is this particular area which requires accuracy in order to ensure that a coherent message is transmitted. We have already shown that it is the lack of social context, visual aids and body language that determines our

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students' need to acquire the structures and linguistic patterns necessary to help them communicate successfully in writing.

As a Business English trainer, I often ask my students whether they are aware of the difference between *argot* and *jargon*. Most of them are incapable to tell the difference between argot – "words and expressions which are used by small groups of people and which are not easily understood by other people" and jargon – "special words and phrases which are used by particular groups of people, especially in their work" (cf. *Cambridge Advanced Learner's Dictionary* 2006). Undoubtedly, the excessive use of jargon leads to the possibility that the message might be misinterpreted. Consequently, a good starting point in teaching written business communication is to clarify the difference between formal and informal language. Moreover, students must become aware that the language they need to employ in written business communication should be formal; by using formal language, the danger of using argot and excessive jargon is eliminated, which should eventually spare learners the trouble of dealing with a message which can be easily misunderstood. After all, communication is effective only if the message has been received and understood by the receiver. Nowadays, managers still like everything to be done in writing; therefore, letters, memos, reports, minutes and, for a while now, e-mails are currently heavily used in professional communication. While eliminating the support that body language and social context may provide, written communication brings a series of advantages: the message is recorded, well structured, easy to distribute (particularly in the case of e-mails), cannot be varied and can be referred to again (Stimpson and Farquharson, 211: 228-30).

Writing Business Letters and E-mails

Although there are several areas of business communication where traditional forms of correspondence (letters, messages of condolence, congratulations, confidential contracts, etc.) are still preferred, e-mails have clearly become the key communication medium. The best means to familiarize students with the current requirements of business written communication is to introduce them to the key aspects of letter writing, on the one hand, and of e-mail writing on the other.

While there are various types of letters, we have identified a standard structure which, once assimilated, could be used in a wide range of written messages. The essential elements in a standard business letter are illustrated below:

Sender's address:

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Title, full name

Street address

Post code and town

Country

Telephone

Reliable/business-like email address

Date

Inside/ Recipient's address

Title, first and last name

Position of recipient

Department (optional)

Company/ organization name

Postal address

Post code

Country

Attention Line

Salutation

Dear Mr/Mrs/Ms/Dr/Professor + last name (no punctuation)

Dear Sir or Madam (if you do not know the name)

Subject Title

Body of Letter

Complimentary close

Dear Mr/Mrs/Ms/Dr/Professor + last name - Yours sincerely (no punctuation)

Dear Sir or Madam – Yours faithfully (no punctuation)

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Your handwritten signature

Your full name (typed)

Indicate enclosure

Special attention should be paid to the differences occurring in British and American styles in terms of date format, for example, i.e. dd/mm/yy in British English and mm/dd/yy in American English, or the use of punctuation in salutation (a comma is optional in British English while a colon is usually used in American English) and complimentary close. It is the writer who decides on the variety of English used in the letter; he/ she should, however, follow the path of consistency, irrespective of the style he decides upon. Among the tips that any learner of Business English should know when dealing with written communication, we mention the following:

-the blocked style is preferred; a line space is left between paragraphs;

-most courtesy titles are used in salutations: Mr, Mrs, Ms, Dr, Prof., Capt., etc; however, they **cannot** be combined as in: *Dear Mr Prof. Coolbridge;

-if a letter begins with *Dear Sir*, *Dear Madam*, *Dear Sir or Madam*, it will be ended with *Faithfully yours;*

-if, on the contrary, the name of the recipient is known, the letter will be ended with *Sincerely yours;*

-if the letter is rather informal, it may be ended with *Best wishes;*

-Americans tend to end their letters with *Yours truly* or *Truly yours;*

-the abbreviation *pp* may occur in signature blocks, standing for *PER PRO*, meaning *on behalf of* and being most often used by administrators or personal assistants;

-the mention of *enclosure* is used to point to the fact that other documents are sent with the letter, e.g. bill of exchange, bill of lading, etc.;

-if copies are sent to people other than the mentioned recipient, c.c. (carbon copy) is added at the end of the letter before the name of the recipient(s) of the copy; moreover, if the name(s) of the copy receiver(s) must remain confidential, b.c.c. (blind carbon copy) should be used instead of c.c. (Ashley, 2015 : 8-14).

While the high degree of formality is the main characteristic of business letter writing, business e-mails are most often written in a rather neutral, sometimes informal, style. It is this feature that makes it necessary for learners to become acquainted with a wide range of

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abbreviations, beside the typical structure that every e-mail should display. Writing e-mails does bring a series of advantages: it is very fast, easy to use in and between companies, being particularly useful for short messages and everyday correspondence. The fact that we can have access to e-mail 24 hours a day is clearly an advantage. Moreover, whatever we send or receive can be easily filed. However, there is also a number of inconveniences, among which the most serious one resides in the technical problems that may occur and which may easily blow one's work up within seconds. Also, e-mails are seldom used when confidential information is transmitted due to the high risk of having e-mail accounts attacked by hackers.
A. Ashely provides the general rules that apply to business e-mail writing:
-e-mails usually follow the style and conventions used in letter writing, i.e. the salutation and close fit the degree of familiarity between sender and recipient: e.g. if you begin with *Dear Mr Jamison*, you end with *Sincerely yours*/ *Best regards*/ *Kind regards*, depending on the degree of formality required; if you begin with *Dear Sir*, you end with *Yours faithfully*; if you begin with *Dear/ Hello Jane*, you end with *Best wishes/ Regards*; finally, if you begin with (*Hi) Rob*, you should end with *Best/ Cheers/ Take care/ Thanks*, depending on the context;
-another important element in e-mails is the *opening sentence* which should always be included in formal e-mails, in order to clarify context by explaining why the writer is writing, what the e-mail refers to, or to simply express a positive attitude:
e.g. *Dear Sir or Madam,*

*I am writing regarding the job ad I found on your website… (*Ana Hochsieder in *Business Spotlight* 3/2014: 50*)*;

It is only in the case of informal e-mail writing that *opening sentences* could be left out. Quite expectedly, there is also a series of *closing sentences* that we should use in e-mails.
Formal e-mails may end with: *I look forward to hearing from you.*

Thank you in advance for the support.

Less formal e-mails may end with: *Hoping to hear from you soon.*

Thanks in advance.

Let me know what you think.

You can also close by offering to help:
F (i.e., formal): *Please let me know if I can be of further assistance.*
I (i.e., informal): *Let me know if you need any help.*
F: *Should you have any questions, please do not hesitate to contact me.*

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I: *I'll be happy to answer any questions* (Anna Hochsieder in *Business Spotlight* 4/2014: 50).

We may also add that business messages should be written by taking into account aspects such as: audience, purpose, clarity, consistency, tone, etc.; grammar, spelling and capitalization are as important as in letter writing; e-mail messages should be short and to the point.

One aspect which is generally common to e-mail writing is the use of abbreviations. Students are therefore introduced to the most frequently used abbreviations so as to ensure that once faced with an e-mail using abbreviations they will be able to understand the message; moreover, they need to acquire the ability to use abbreviations in writing e-mails as often as possible for this practice saves valuable time: AFAIK – as far as I know, BTW – by the way, BFN – bye for now, COB – close of business, FYI – for your information, IOW – in other words, NRN – no reply necessary, OTOH – on the other hand, etc.

The standard structure of an e-mail comprises 3 key elements:

Header Information (To, C.C., B.C.C., Subject)

Message Text (comprising Salutation, Body of e-mail, Close, which usually follow the pattern of business letter writing)

Signature Block (name, title, address, telephone, fax, e-mail address) (Ashley, 2015 : 20-2)

Conclusions

Writing skills are essential in information management and therefore indispensable in any type of business. However, the main risks that occur in business writing are related to meaning (documents are read in situations which are by no means related to the context in which they were written, e.g. the reader may simply be in a bad mood when reading your e-mail; this is what makes written communication exposed to misunderstanding – the fact that it is to a certain extent de-contextualized); permanence (with both its positive and negative consequences); technology (huge amounts of work can be lost within seconds). Nevertheless, there are a few guidelines that business students may consider in order to improve their writing skills: any written message, either a letter or an e-mail, should not be longer than required, i.e. it should be short and to the point; the language should be as simple as possible although the use of jargon and abbreviations is necessary; the importance of structure remains paramount: while providing coherence to the text, it serves as a guide to understanding the message. For these reasons, the use of standard phrases should be encouraged. While using standard phrases to pattern the message, attention must be paid to accuracy – the typical mistakes that occur in business writing are related to verb forms, 'if' clauses, use of adverbs

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and adjectives, prepositions and false friends. The choice of register remains of paramount importance. Therefore, the acquisition of writing skills can prove a long and difficult experience for most business English learners. However, once familiarized with the key structures that occur in written communication, business writing can easily turn into a tool for successful self-marketing.

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THE IMPACT OF IT ON THE GLOBAL ECONOMY OF 21ST CENTURY

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Abstract: It has been noticed that the competition between business entities has registered a very fast upward trend in the current global economy. The increased competition occurs primarily due to the intense use of information technology, thus influencing all the economic activities. This paper focuses on the influence of information technology in the knowledge society and its effects upon any modern business organizations. The characteristics of the new economy created by Internet are also being dealt with.

Keywords: IT, holonic business network, Internet economy, knowledge society, global economy.

Introduction

Information technology is the technology required by processing (i.e. supply, processing, storage, conversion and transmission) of information, especially by the use of electronic computers[1]. The term of information technology was used first in 1958 by H. J. Leavitt and T. L. Whisler who stated: "The new technology does not have a well-established name; we shall name it *information technology*"[2].Communication technology includes electronic systems for different forms of communication between people or groups of people.

The boundary between information technology and communication technology has become very fine and even imperceptible. As technology has evolved rapidly, the services provided by the Internet, telecommunication and media services are convergent both for consumers and the industry[3]. So, we can ascertain that information and communication technology is a combination / an interplay between information technology and communication technology and relies on computers, connectivity, content and human capacity.

1.IT and economic growth

[1]Dennis Longley, Michael Shain - *Dictionary of Information Technology* (ed. 2), Macmillan Press, 1985.
[2]Harold J. Leavitt şi Thomas L. Whisler – *Management in the 1980's*, Harvard Business Review, 36(6), 1958, pp.41-48.
[3]Ivan Huang, Roc Guo, Harry Xie, ZhengxiangWu - *The Convergence of Information andCommunication Technologies GainsMomentum*, 2012 World Economic Forum, în SoumitraDutta, BeñatBilbao-Osorio - The Global Information Technology Report 2012 Living in a Hyperconnected World, SRO-Kundig, Geneva, 2012, http://www3.weforum.org/docs/GITR/2012/GITR_Chapter1.2_2012.pdf

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In the present day modern society, due to TIC, business firms have got access to a huge data and information amount, but mention must be made that what matters is not the information quantity but its quality. Therefore, business firms need only the best information since their decision making and operational process is based on information that must be, at the same time, clear, complete, concise, accurate and relevant[4]. So, it has become obvious that computer use and that of modern technologies do not provide the business companies with development only, but they have become absolutely necessary elements for the daily organization and management of companies.

It is obvious that in the new context of economic environment, IT in all its forms, together with a well-done planning, completed by common knowledge and interests, determines almost inevitably the occurrence of a holonic business network (HBN)

This type of business as HBN results in the occurrence of new business opportunities, and allows process optimization and a better satisfaction of customers, offering faster response to customers' needs / desires, all these leading to the survival of companies involved in the network on the global market.

Therefore, we believe that especially IT (i.e. PC and computer networks) has become a "*vector*" of economic growth and of competition between countries / corporations.

In other words, nowadays the computer determines the daily life of any business organization, irrespective of the company size and / or its sector of activity. Moreover, the use of computer, internet and other "*tools*" provided by IT has become inevitable for any strategy aimed at by a company (growth, stability, threat avoidance, etc). Furthermore, this appeal is expected to be extremely beneficial for the future of companies and other type of organizations and individuals as well. Exploitation of the benefits offered by IT requires, however, well-qualified employees who are willing to **learn continuously**.

It is clearly understood that IT benefits are closely correlated with those provided by telecommunication networks. It is also understood that IT provides the management of any company with major opportunities even if this is or not addressed as a Holon and / or part of a holonic business network (HBN).

The economic and financial crisis has greatly influenced the business environment, both globally and regionally / locally, but it affected strongly enough consumers' behavior.

As a result, many companies have redesigned their main business processes by investing in key technologies - mobility, cloud computing, IT systems for economic analysis, decisional

[4]Gheorghe Militaru – *Sisteme informatice pentru management*, Bucureşti, Editura ALL, 2004, p.12.

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support and social networks[5]. The effect of the new way of business conception is the appearance of new products and services fundamentally based on the Internet and nowadays online platforms which represent an intermediary between sellers and buyers have become very fashionable. All these changes and transformations have led to the occurrence / creation of new markets, emergence of new types of industries, companies and working ways that are specific to the new and the current type of XXI century economy, namely the digital economy.

2. IT and knowledge society

The information technology, to which communications are added, is considered the foundation on which the new knowledge-based society was built/created, this being shown in Figure no. 1. As discussed above, ICT contributes to inform each person / organization and having in view that better information means education, it leads to knowledge, to much broader knowledge which influences positively the development, all of these being the ingredients of the knowledge-based society.

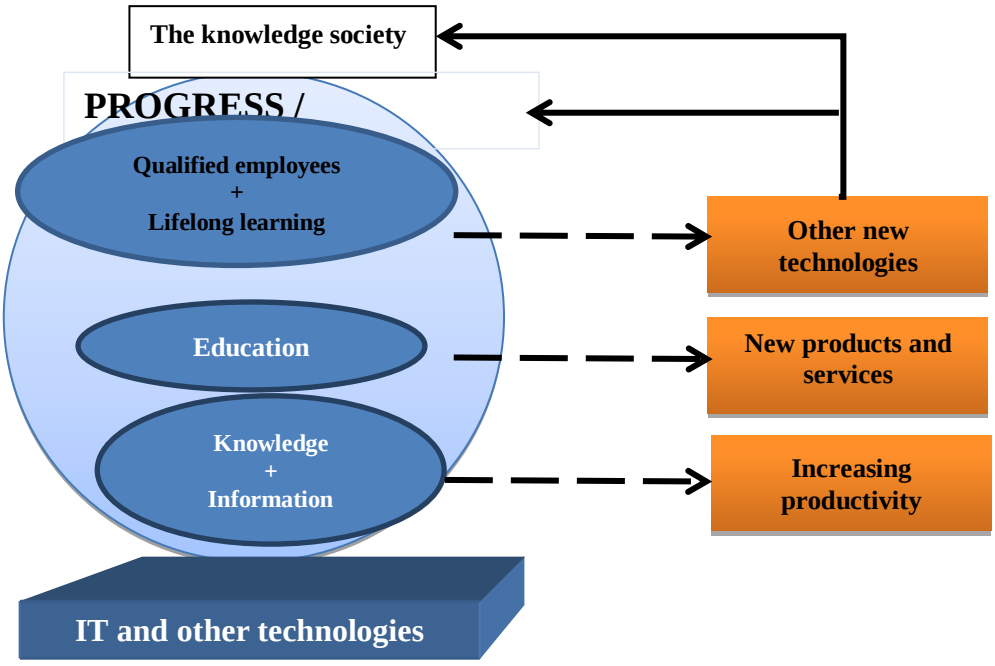

Figure 1. Impact of IT on the knowledge society (Source: own elaboration)

[5] Gheorghe Oprescu, Daniela Eleodor – *Impactul dezvoltării economiei digitale*, International Conference of the Institute for Business Administration, Bucureşti, 2014, pp.21-44.

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The knowledge society and the widespread use of information and communications technology generate the need for new skills and digital competences for employment, education and training, self-development. Being the basis of knowledge society, IT must exist in any business entity, namely it must be purchased, then customized and adapted to the specific of the organization in question. The efficient use and exploitation of information and communication technology lead to the improvement of company activities, aspect involving the rapid development of own organization.

To be permanently supported, this growth needs continuously the most performing technologies and, therefore, information and communication technologies must be updated and improved permanently, which means that the the adaptable modern company is forced to acquire the latest-oriented new technologies to satisfy the global single market.

The permanent updating necessity of IT by business companies in the knowledge society is shown schematically in Figure 2.

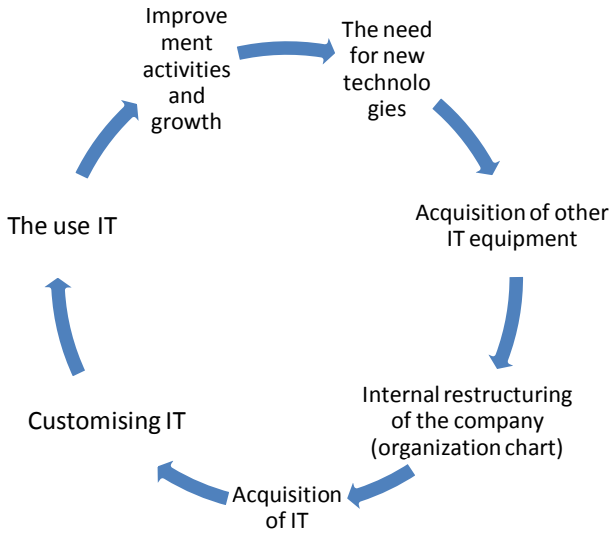

Figure 2.The "Spiral" effect of IT application by companies (Source: own elaboration)

Many companies have understood that the profit is conditionned by effective and correct IT use, and not by the technology itself, and as a result, the adoption of ICTmust be seconded by its efficient management use. Therefore, it should not be overlooked that the activity of acquiring information technology involves several steps to be carefully taken: acquisition, customization / adaptation, use and development of IT. (Figure 2).

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It is useless for the most modern technologies to be purchased and implemented unless they are used properly, the expected results will not be achieved either and that investment is ineffective.

Therefore, managers must focus their resources on the proper implementation of information technology and its effective use[6].

According to some opinions, information and communication technology generates seven structural effects: reduction of the number of hierarchical levels, disappearance of routine places of employment, integration of departments, formation of working groups, change of information flow throughout the organization, possible implantation of remote communication, relationship between ICT architecture and organizational structure.

ICT has a significant influence on the development and application of globalization capabilities. The globalization capabilities are: ability to internationalization, global network capability and worldwide development capacity.[7]

We are aware that no company / business organization will ignore in the future this evolution of IT and it will have always to adapt to the development of new technologies. This new concept of *adaptive enterprise* being closely related to the development of information and communication technologies together with the ensurance of a high automation level that would satisfy market requirements.[8]

The first business system based on the latest information technologies is the holonic network which exploits knowledge as a new type of resource and information becomes an "asset" of the new company, available to everybody. The business holonic network is the best method by which a business entity may get shaped/ cope very quickly with the customers' new demands. ICT can dramatically compress time and distance, facilitates the coordination and movement of goods and services worldwide, allows sharing of human expertise and other resources, and provides the necessary infrastructure for the operation of new services making a real and competitive benefit. [9] According to many opinions, the globalization increase together with the growth and spread of information technology will continue to dominate the

[6] Marian Stoica - *Posibilități de trecere spre societatea informațională***,** Revista *Informatica Economică*, nr. 1(17), 2001, pp. 38-42.
[7] Thomas Borghoff - *Evolutionary theory of the globalisation of firms*. Wiesbaden, Gabler Verlag, 2005.
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world economic scene for many years to come and their importance will increase as globalization and ICT are reciprocally influenced and managed.[10]

3. The role of ICT in the development of companies

ICT has helped reduce transaction costs by promoting increased access to information, aspect that has helped very much everyone in the business world. Also, easy access to information has increased efficiency, competitiveness and entrance on the global market of the companies from less developed countries / areas. Figure no. 3 presents the influence of information and communication technology on the development of business people and companies, so of the society. In other words, we synthesize graphically that ICT facilitates information access, information turning into knowledge and knowledge creates new opportunities / favorable opportunities, leading to increased development.

Figure 3. The role of ICT in the development process
(Source: own elaboration)

ICT should be seen as a tool / a mediator who always facilitates the emergence of new opportunities and types / business models, but also ensures / guarantees transparency, responsibility as well as increased efficiency and competitiveness. Increased sales and marketing on the internet together with the maturing of information and communication technology make the business environments of organizations be more and more international and, as a consequence, their business and communication processes are getting internationalized as well. [11]

[10] Massood Samii, Gerald Karush – *International business and IT*, in M.Samii, G. Karush (Eds.) *International business and information technology*, New York, Routledge, 2004, pp.3-11.
[11] Kemal Bicak - *International knowledge transfer management: Concepts and solutions for facilitating knowledge transfer processes in multilingual and multicultural business environment*. Herzogenrath: Shaker, 2005, p.5.

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ICT is a globalization catalyst and a solution to approach the main international challenges, being the strongest link in the business chain formed by partners, products and suppliers, and being the basis for doing business worldwide.[12]

Facilitating instantaneous communication, ICT makes it possible for modern business organizations to coordinate and control the actions from any place, no matter how far it may be. The value given by ICT to a user is determined by the following interrelated characteristics:[13]

-*sensibilization*: people must know what ICT can be used at and be open to use ICT;

-*availability*: ICT must be provided with the corresponding hardware and software;

-*accessability*: it refers to the ability / ability of using ICT;

-*permissibility*: all ways of using ICT all together, should ideally cost only a few percentages of a person's income (below 10% maximum on average).

Also, following various surveys done in recent years, it can be mentioned that:

-ICT reduces transaction and coordination costs in all forms of organization, increases productivity and accelerates innovation dynamics;[14]

-ICT affects the cost and efficiency of the external market;[15]

-ICT has the potential to reduce dramatically market imperfections and reduces transaction and coordination costs;[16]

-Increased use of ICT and the evolution of cross-border networks determine the blurring of boundaries between various industries; ;[17]

-ICT increases action boundaries;[18]

-ICT, due to its large and rapid progress leads to a totally different type of structure with mutually beneficial industrial cooperation and networking;[19]

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[12] P. Candace Deans, Michael J.Kane – *Information systems and technology*, Boston, PWS – Kent Publishing Company, 1992, p.1.

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[19] E.M. Roche – *Information technology and the multinational enterprise*, in E.M. Roche, M.J.Blaine (Eds.), *Information technology in multinational enterprises* (pp. 3-18). Cheltenham, UK: Edward Elgar, 2000, p. 82.

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-ICT will not eliminate the importance of distance and location, and in some cases makes proximity and clustering even more important;[20]

-ICT improves the efficiency of business processes; ;[21]

-ICT has promoted transnational interactions and precipitated the growth of globally networked organizations;[22]

-almost 50% of productivity growth is the result of investments in ICT.[23]

4. The economy created by the Internet

Considering that the Internet is part of our daily lives and it has become a fundamental element of contemporary society, it has created a type of economy, called networked economy or net-economy.[24]

In the literature this economy is known as the new economy, knowledge-based economy ("*Knowledge-based Economy*"), virtual economy or "weightless" economy ("*Weightless Economy*").[25] Also, this economy may be called i-economy, the Internet economy, the economy of cyberspace, online economy or e-economy.

This i-economy can be considered a new dimension of physical / real / conventional economy and it is centred on information and ways of transmitting it. So, online economy has as main support, the extensive use of the Internet and that of information and communication technology.

The Internet gives people the opportunity to form new social areas / groups / communities. Irrespective of the names given by the literature, electronic communities, cybernetic communities, cyber-communities, virtual communities, e-communities, virtual groups, all these are the basic elements of the new knowledge-based economy. We can define these new social sectors as e-groups, web-groups, cyber-groups, virtual collective and community-net groups, virtual meetings.

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[20] Jose De la Torre, Richard W. Moxon – *Introduction to the symposium e-commerce and global business: The impact of the information and communication technology revolution on the conduct of international business*, Journal of International Business Studies, 32(4), 2001, pp. 617-639.

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Considering that one of the characteristics / important features of this virtual community is interaction, the feedback obtained by companies from customers is instantaneous.

Nowadays, a business organization does not exist as a business entity unless it is on the Internet, and, according to Michael Porter, the Internet use tends to expand the geographic market, by putting many more companies in competition with each another.[26]

An organization can use the Internet as a cheap advertising tool, by making orders, promoting its own philosophy, and communicating with their customers all over the world. [27]

The Internet has dramatically reduced the cost of "point to multi-point" coomunication, making it much easier the provision of their clients with information.[28]

According to a study conducted by McKinsey Global Institute data from G8 group of countries plus Brazil, China, India, South Korea and Sweden, it was found that the Internet is about 3.4% of GDP and determined the increased of the GDP by 10% during 1995 -2009 and by 21% in the next five years in the economies of the previously mentioned countries. .[29]

So, it can be stated that online sales have become in the modern economy, important channels of distribution of goods and services and determined quite significant competitive pressure on the traditional distribution channels and types of traditional business.

Any business organization must change its organizational culture and rethink of a fast and efficient integration into i-economy because the internet network has formed its own culture, which some call cyber-culture or the info- culture.[30]Also, we believe that this culture of the net is a new culture, the electronic culture, the virtual culture, net-culture, web-culture or i-culture and modern companies are forced to adopt new technologies and to become a part of the single global market, represented by the internet in order to benefit from the opportunities of the new economy of cyberspace.

Information and communication technology, along with the globalization, contribute to the creation of a new economic framework and change dramatically the operation of the companies, which result in the modification of the functioning of economies as a whole.

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[26] Michael Porter – *The strategic potential of the Internet*, in R.D. Galliers, D.E. Leidner, B. Baker (Eds.) – *Strategic information management*, (3erd ed), Oxford, Elsevier Science, 2003, p.381.

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[29]McKinsey Global Institute - *Internet Matters: The Net'sSweeping Impact on Growth, Jobs, andProsperity*, mai 2011, online at http://www.mckinsey.com/insights/high_tech_telecoms_internet/internet_matters, accessed February 2015.

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Every economy is a part of the current global economy, but it is also a whole at the same time. In other words, information and communication technology, causing globalization has influenced the development / creation of a global economy which we can call holonic economy / global holonic economy / holono-economy / h-economy.

We have already agreed that the information technology plays a fundamental role in a holonic firm and any business holonic system is mainly based on a computer network such as the internet by means of which data and knowledge are distributed / shipped instantaneously.
If we consider each economy as a holon, then the global holonic economy has a holonic structure of network type.

If we look at the global holonic economy and regard it as a holonic network made up of *n* economies, we can find that the four fundamental characteristics of a Holon suggested by Piero Mella[31] and holons'properties of a complex set mentioned by Andrew Wallace in "*Holons and holonic society*" are kept for each economy in turn (each economy from the network being considered a holon):

-auto-preservation: any economy of the holonic network can maintain its basic structure, even if, in time, its components (ie firms in that economy) change. By preservation, the holonic economy maintains its own identity;

-auto-adaptation: being part of a network, that economy must be able to adapt and create links with other economies in the network and react to requests / proposals / requests of these ones; ie the economies within a holonic network must work in communion / cooperation;

-auto-transcendence: the holonic network is dynamic and creative, thus allowing the inclusion of new economies in the network;

-auto-dissolution: auto-dissolution of the entire holonic network may take place if all the n economies in the network cease their collaboration in the network or if ICT - the binder of global holonic economy disappears. And all these are very unlikely to happen, if not impossible.

-s***calability***: global holonic economy is autonomous and, therefore, other economies can be added to this holonic network, without affecting the previously existing network economies. But an optimal organization will lead to a positive influence of the new economies on the global holonic economy.

[31]Piero Mella – *The Holonic Revolution*, Editoria Scientifica, Pavia University Press, 2009, p.7.

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***-robustness*:** means autonomy resulting from a network. Namely, holonic global economy, regarded as a network of *n* holonic economies can operate smoothly and *n-1* savings (provided that n> 3).

Considering every economy in part as an opened socio-economic system, we can find that some of the attributes / characteristics established by Koestler regarding the Holon go together with the economies as well:

-the economy has an *autonomous nature and a stable form* that allows it to survive environmental disruptions.

-the economy has the capacity of *self-reliance* and has the ability of dealing with the unexpected;

-the economy operates *dependently* because it is subjected to various forms of control by customers, these ones representing the superior entity that the survival of an economy depends on;

-the economy has an *interactive* nature and this economic interactivity reflects the connection between economies and demonstrates the connection between economies and demonstrates the integrative trend of economies.

Conclusions

As we previously stated the development of information and communication technology has led to the birth and development of the global economy, but the continuous evolution of ICT will generate the "liquefaction" of the global economy, aspect that leads to a global "internal" economy, which is marked by a redefinition of corporative boundaries and the development of some flexible network structures.[32]. In the current global economic context, we come across a higher and higher occurrence of " global born" and self-regulated global markets. [33]

It can be seen that nowadays there are no areas where the information technology has got in yet, and the labour market asks for new skills / qualifications of staff required by new technologies.

As a result, these modern technologies have led to the emergence of new professions and created new jobs (computer expert, cyberneticist, electronics technician / administrator / network engineer, web designer, programmer / analyst programmer, IT manager).

[32] Thomas Borghoff - *Evolutionarytheory of theglobalisation of firms*, Wiesbaden, Gabler, 2005.
[33] T.C. Melewar,C. Stead – *The impact of information technology on global marketing strategies*, Journal of Global Management, 2(4), 2002, pp.29-40.

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We are confident that this trend will continue in the future and new professions will emerge and new jobs will be created due to IT.

Information and communication technology determined, is determining and will determine the globalization of business organizations because it is an inexhaustible source of competitive advantage, it increases efficiency and effectiveness of the company and it is a vital element of business expansion.

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INTERRELATION DISTORTION IN THE LABOR MARKET SUPPLY WITH DEMAND FOR EDUCATION

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Abstract:Analysis insertion of graduates into the labor market is very important in the current economic climate fluctuations in unemployment who knows both overall and among young people. In this context intensify efforts to find solutions by developing human capital through education, research and innovation.

This paper presents an analysis of the process of insertion of university graduates in the labor market based on a survey of regional conducted on a sample of promotions in 2013, 2014 and 2015 in order to identify solutions for improving the insertion of young people into the labor market.

Keywords: youth insertion in the labor market, education, economic university graduates, desire for affirmation students, future professionals.

JEL Codes: A, A2, A23.

REL Codes: 4B, 12B, 4D, 16E, 8G, 12I.

Introduction

Assuming that the Romanian higher education should be the foundation for preparing the young generation in various fields to find a suitable job according to the specialization in the labor market, will be presented some general aspects as much as possible balanced, which to present some of the economic realities in this part. Thus, it tries to be found at least one explanation for the blockage occurred immediately after graduation when an institute of higher education by young people. Presumably, since the outset, as the initial expectations of young people not in line with the real situation on the labor market.

Research methodology

At the moment, young people constitute a group in flux, characterized by a late access to employment and to found a family rather late. They are seeking concrete financial stability

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and long-term and commute between work, education and the need for retraining contributing to loss of interest in academic studies and outlining realization of individual routes. This creates a permanent state of uncertainty and mistrust in a system that appears most often exceeded. In concrete terms, the situation of young people translates into a sense of fragility to their own condition, loss of confidence in decision-making systems and / or detachment from traditional forms of participation in public life.

Research methods and techniques

Regarding youth employment, it is considered that there is a correlation between labor market needs with education programs and thus should be considered, adapting training standards and academic training to employers' needs. Involving employers and social partners is limited in terms of planning university education. Links between universities and industry is extremely weak, so in terms of relevance of higher education to labor market requirements are the following difficulties:

The educational system is not related to the needs of a dynamic labor market;

Lack of systematic study and analysis of the requirements of the labor market and the changes so that educational programs are always adapted to new needs;

The active involvement of young people in voluntary programs to gain real work experience.

It is obvious that an academic is an extremely important element in the portfolio of any young person wishing to enter the labor market and experience gained by it, in time, would come to complete his capacity for adaptability in the workplace and personal development. Interest for the present research was to understand the development stage of the Romanian higher education and grounding in modern functioning economy and setting emphasizing the relationship between society and the individual.

Directions from which we started the present study were generated by confrontations with new decisions that young students and master had to take them upon graduation. Often, faced for the first time with new requirements coming from future employers, alumni, new situation be challenging. Bottlenecks encountered in their quest to find a job were varied, ranging from lack of experience and to offer a very low income, argued in the early stages of employment in a private company or an institution.

In this paper we present some of the methods and tools of research that formed the basis of the analysis performed. Thus, based on a survey conducted on a sample of regional promotions last year tried to identify solutions for improving the insertion of young people in

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the labor market. It is known that, often, graduates had to accept positions inconsistent with their field of study or theoretical expertise. Where not find a job for an extended period of time graduates chose or continue academic studies in the hope of obtaining a job much better or retraining in a whole new field, but that was requested labor market at a time. Choosing the latest version proves the high level of graduates to (re) adapt to new conditions, but also involves a waste of time regarding their first area of expertise which, if not applied will be lost in time, becoming useless. The survey consisted of a set of open questions that respondents answered honestly, concise, even with clear arguments and relevant to the subject under discussion. For example, responses to the question on measures that could lead to the elimination of bottlenecks insertion of graduates in the labor market were varied, from the mentality change regarding young workforce, providing better wages in the state facility insertion of students, placing young people in various places in which to gain practical experience and unlock positions in the public system. After conducting focus groups among youth sites that were part of the group of subjects analyzed qualitative data confirmed the results that emerged from the interpretation piloting questionnaires.

When asked "How useful you believe you are theoretical knowledge acquired during academic studies for insertion in the labor market?" The responses were diverse, depending on the age of the subjects and the situation they were in when participating in the focus group sites. Thus, for most respondents, knowledge gained are extremely useful when there is a correlation between the work they perform and their expertise. There are cases, however when the young people working has no direct connection with their field of study (eg most of the subjects are employees of a private phone companies in various functions, from the operator and to the team - manager). Although some respondents working in this company since the beginning of the faculty, their expertise, namely finance and banking, trade, tourism and services, cyber, statistics and computer science or business administration has no immediate relevance to the tasks they have met at work. Respondents hoped that once the university graduation can be placed on better paid positions, even if they do not work in their field. For many, the phrase "I wanted to have a diploma" is quite frequently used, although the areas selected for study are not of the easiest and these diplomas at the end of a cycle university could offer them opportunities much greater success.

The next debate was focused on the importance of self-supporting, which for the majority (89%) is very important. If for some self-support is designed to help supplement the income from their parents or relatives for others is the only way to survive. Employment, even

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for a fixed period, makes them feel valued and gives them instant gratification, to obtain best results School, which, although extremely important, they also offer immediate income.

So, for subjects, self-support is one of the wishes of the majority, hoping that after college or master can remain in the same position / position or to be promoted and received salary will be substantially improved. Regarding the retraining of respondents in 43%, they agreed to retrain, but with the condition mentioned by almost all respondents to be assured a job "while you waste time to learn something, even know why, "answered one subject. The conditions hoped subjects to benefit from employment are: "propyl office, a good salary, up to eight hours of work, bonus, break for lunch or meal vouchers, phone and car, the possibility of promotion, assessment work, as before nepotism, paid leave ". Regarding the necessary qualities you need to have an employee can exemplify: "punctuality, professionalism, easy communication with team members, optimism, adaptability, enthusiasm, motivation, attitude, personality, attention to detail, self-motivation, achievement in May several tasks at the same time, respect for deadlines, confidence, positive attitude, open to gaining experience, appearance and attitude, determination, manners, domain knowledge, creativity, new spirit. "

Finally were detailed and bottlenecks encountered in attempts to get a job, as follows: limited offer, jobs unsuitable for that, or were unqualified or were over-qualified, low salary offered frivolity from employers conclude a contract legal work, hard working conditions (overtime incurred and unpaid), unrealistic requirements on professional experience ("Theoretically how can a student have experience? Even a graduate?" "Why do not appreciate the good results at school or can not be allocated according to the results?" "Why can not we take part in internship programs after to be employed? ", etc.).

Research results and discussion

After analyzing the reactions and responses given by subjects can notice the anxiety about the uncertainty of their future. Lack of self-confidence and on the labor market system is becoming more pronounced. Many of the subjects had high expectations from their future jobs and the reality shows them that the image created by them is not exactly true. Also, the reverse situation occurs in that, not taking into account years of study, but turns to any kind of job with the hope of being "well paid".

It was also found, however, that a small number of respondents (12%) felt that the labor market is normal to receive them with reluctance, having practical training.

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After interpretation of responses expressed in the focus group sites, he followed in ternary research, interviewing scholars with specific economic faculties. Interviews were well received by the interviewed subjects, meaning that they could be debated subjects are analyzed only from the perspective of subjective and usually without a clear purpose, which could lead to positive changes. The interviews contained five questions for each interviewee. Regarding the criteria which they choose young people in choosing a domain, the vast majority of subjects (87% of respondents) believe that students do not have a clear vision and hard about choosing a field of study. The general opinion is that only a handful of students are really passionate about the subjects taught and tries constantly to improve their knowledge, the rest being guided either family or entourage.

"You know it was in the years 98-2000 fashion for law school or in the period before the Revolution specializations in engineering, chemistry, petro-chemistry ...; Well, now fashion is headed by Finance and Banking, students believing that bankers will come directly from university, "said one of the interviewees.

Related to the consistency with which students / master willing and motivated to improve their skills, subjects answered:

"I think we should make a clear distinction between the aspirations of graduate studies and a masters license. The graduate-level faculty is, most often, at the beginning. Looking for a job and if it is not satisfied with what he found or want more motivated to continue their education with a master in the field. "

Other opinions were different in the sense that some graduates will make a master, because, *"with the Bologna system - complete cycle of studies includes the master and some graduates choose to continue their studies that are required or because they can not advance without ... Whatever the motivation, I always encouraged young people to continue their studies. "*

On preparing graduates for academic studies to obtain a job according to their qualifications, respondents felt that *"theoretically, should be prepared and the answer to this question lies in their results after an examination session, why not? But it is also true that young people have expectations about future job have no relation to what actually would expect. Some of them engage in law school at the expense of participation in courses, which is not good at all ... try to skip some steps in their evolution, which I do not think it will come to the rescue ... or maybe others will be better, in that they will always gain experience required by employers. "*

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Other interviewees wished to stress the importance of training a theoretical foundation and further deepening under a master:

"It is difficult to understand how a person wants a well-paid job in conditions that has no academic training or even a solid base of knowledge in a field. Is not all just get experience without a theoretical basis. In this way we can all just skilled craftsmen who stole some items from each other ... And then, the idea that "anything goes" do not need to continue in our consciousness in general, regardless of age or status. "

Another view pointed out that "if a student knew how to organize professional training activity during college, obtaining satisfactory, good or very good, then I believe will be able to adapt and employers' demands for respect deadlines, deepening various problems or degree of adaptability. "

Finally, the question "who do you think should be the next steps a graduate academic studies ought to do to get the job you want after a qualification?" Generated the following reactions:

"When choosing a university was made in choosing a trade perspective, the graduate should be motivated enough to know very well that that is the aim. But if the choice was haphazard, the situation in which the young person is unbalanced, and unfortunately many students see quite confused ... " or, "Whether or not graduate wanted to become an engineer, financier, accountant, etc., in the current labor market, I think it needs counseling. It is imperative that young people are very well informed and be prepared for presentation at an interview, designing a resume to highlight skills, ... all aspects that can be vital in getting a job. Many graduates are disappointed by the lack of well-paid jobs, or to provide stability and did not understand why a college hoping to become engineers when the only jobs for carpenters and welders are ... " and, "I think it would be pregătescă to" outline "a track on choosing a job before completing academic courses ... It is true that last year of his studies" deplete "some of them because they supported and final exams and preparing the dissertation or dissertation and it is hard for her ... However, we assume that matured long enough to know which path to follow and what to watch for to see his goal reached".

Conclusions

Interviewing teachers came to help form a picture of the various visions of undergraduate, postgraduate and those guiding their steps in obtaining the skills necessary to get a suitable job. The group of subjects undergoing investigation included 120 teachers and 2,000 students

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and master. Teachers participating in this investigation were given time to respond to requests from the analytical instrument proposed.

Their monitoring was achieved through regular meetings, assuring them of the confidentiality of their responses.

Author's contributions

As we have seen, the research objectives focused on a literature review, data collection, as well as some concrete information. The research was both qualitative and quantitative. By using existing data from the analysis of documents (the preferred primary method of collecting data for the present study), used in conjunction with other methods (survey, poll students / graduates, interview teachers, focus groups, and even observation), both with order completion information and the purpose of examining the validity of the data was performed a quantitative analysis of them.

Proposals and recommendations

Among the measures that higher education institutions should apply in order to meet the needs of employers, we notice the conditions for admission to the faculties, which would create in the minds of youth, an analysis more clearly their needs to be assigned to college to study a particular field, consciously chosen and long term.

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POLICIES OF FINANCING OF SMES TO ECONOMIC RECOVERY

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Abstract: In this paper we propose to analyze issues accessing finance by SMEs. Due to the economic crisis, many SMEs are still facing difficulties in accessing finance. Given that there are various types of SMEs that have different financial needs, the finding of differences in credit costs for SMEs and access to funding for them. Thus, the development of tailored programs covering both equity, quasi equity (mezzanine finance) and debt instruments and partnerships between banks and other operators involved in financing SMEs to support their start-up stages, increasing transfer. Access to financing, but also managerial skills and knowledge in finance and accounting is crucial for SMEs to access funds, to innovate, to compete and develop. The lack of knowledge of entrepreneurs on basic financing limited quality the business plans and success of an application for credit. In these circumstances, it is that SMEs receive consulting services specifically tailored lending opportunities in the area.

Key words: microeconomics, SMEs, financial resources, access to capital,entrepreneur

Introduction

Financial markets offer various types of financing from which the best fitting one must be selected in relation to the objective of the business, the potential of the firm and its development directions. The financing principles of SMEs mainly follow the fulfilment of the following objectives: the creation of a favourable business environment with a minimum of bureaucracy, and a tax structure that would offer impetus to SMEs sector, access to capital, information, and technology, as well as the improvement of managerial, marketing and financial abilities.

The improvement of financing access for SMEs plays a crucial role in promoting the entrepreneurial spirit and intensification of competition. The access to sufficient and proper capital in order to grow and develop is one of the main obstacles for the SMEs. This situation is worsened by the difficulties SMEs' face in the relationship with the financial agents who consider their financing as being a high risk activity with low profitability.

The development of a various range of programs, instruments and adapted initiatives is needed, one that will include both equity capital, own quasi-founds, debentures, bank partnerships and other

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operators involved in SMEs' financing, in order to support all stages of undertakings considering the dimension, the turnover, and their financial necessities. SMEs are very homogenous and, therefore, the approaches for their support must be diverse as well.

The fundamental principles in SMEs' financing and their impact on the management- marketing decision making process are the following: the unfolding of a direct marketing activity that would bring into the financial availability, and the eligibility criteria that must be accomplished; the cooperation and report between all economic, administrative, and political links directly or indirectly involved in the development of financing programs; the generation of information by every link involved appropriate with its position in the financing process and assuring their transmission to all potentially interested parties; the analysis of received information, the elaboration and feedback transmission by each link to the other ones; acknowledging the participation costs to the financing relation according to the existing regulatory and negotiated obligations; the beneficial participation obtained from the financing relation of participants with the involved risk, and according to the existing regulatory; good faith insurance of institutional guarantees in the financing relation and their refund or procurement to those entitled; sanctioning infringements of the failure to comply to the time limit for communication and payment, with the proper cost bearing, the compensation of those negatively affected, and loss of unduly goods the culprit obtained.

The financing institutions regard the activity environment of SMEs as being competitive and unsure (compared to large enterprises), situation that involves a great variability of results for the similar SMEs operating in the same sector, and finally, high failure rate. The limited power on the market, the high proportion of intangible assets, the lack of clear accounts and relevant background of financial and commercial results, insufficient fixed or mobile assets etc. tend to create a higher risk profile of SMEs for potential investors. Insufficient guarantees on creditors' demanding for risk refund associated to moral hazard are probably the most claimed cause in explaining the difficulty of loan access. The insufficient guarantees may as well be the expression of an incipient stage of the business, yet unconsolidated, or even of an exaggerated dimension of credit demand – far from the real capacity of the firm to sustain the financing proposed project.

Due to financial and economic crisis effect, various SMEs face difficulties in accessing financing, and they have to respect new and stricter regulation criteria. The new regulation, relevant for the SMEs, must be subject of a global and inclusive evaluation of the impact, as well as a complete testing, taking into consideration the specific necessities and challenges. SMEs play a key role in

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the development of national economy, but their financing is often poorly provided out of informational asymmetry, high risks, insufficient guarantees, and unfavourable regulation.

Some banks are reserved in giving loans to SMEs, due to a series of motifs, among which: informational asymmetry - resulting from the lack of standardized financial situations and information provided by SMEs, to which we add a limited knowledge the bank has on the company requesting the loan; high risks associated with the lending activities of SMEs, as a result of limited actives that can be used as guarantee, high failure rates, reduced capitalization, and the vulnerability to market's risks; alongside the fact that SMEs cannot offer proper guarantees, the backs are not able to establish if the debtor has the abilities, the technical, managerial, and marketing competence as to generate proper cash flow and a proper debt servicing obligations.

Conceptual aspects of SME financing

In choosing the financing source, the SMEs take into account various aspects: what type of financing source is best fitting for the business objectives, what financing dimension could satisfy the necessities of the business and the own evaluation of the enterprise – that must be achieved with the purpose of appreciating the business capacity of the enterprise as to access the financings and reimburse it. The main source of financing for the SMEs is the banking sector. Due to a fragmentation of the banking sector, of different values of credit interests, and of credit offers between countries, a differentiated approach is needed in order to improve SMEs' access to financing, bearing in mind the specific circumstances of each country. The credit interests for SMEs widely vary between states and there are imbalances regarding the liquidities access, with high rejection levels of loans granter for business projects in some countries.

There are differences between states in terms of loan costs granted to SMEs and of the access to financing, this is due to the negative macroeconomic context that can have negative influences on competitively in frontier areas. Even though the problems of SMEs in accessing loans continues to vary between states, a worsening of SME credit norms at a general level can be observed.

Many governments and financial institutions tried to tackle the problems concerning the barriers of SMEs financing by developing sustaining programs for small enterprises. So, they supported the creation of financial instruments packaging in order to facilitate the SMEs' access to loans, in line with the best practices. Initiatives in this filed tried to strengthen the capacity of financial agents (micro-crediting institutions, banks, venture capital funds etc.) to support, at a national and regional level, the private investments. At the same time, the states should also approach the problem of possible discrimination for loans grating in the case of SMEs led by disadvantaged persons or social groups.

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It can be observed that no only the access to financing, but also the access to skills – including managerial skills for financial and accounting fields- is a key factor in SMEs' loans grating. The delivering of financial instruments should be accompanied by proper counselling/ assistance schema insurances, as well as delivering services for knowledge based SMEs.

It is noticed that the lack of knowledge of entrepreneurs concerning basic financing limits the quality of the business plans and the success of loan demand. The authorities should ensure the support for professional training of potential entrepreneurs, and to sustain bank partnerships, Chambers of Commerce, enterprise associates and qualified accountants. A well made business plan is the first step to a better financing access and viability.

Generally, the creditors have better knowledge of loan instruments than the entrepreneurs, and the latter should better communicate to creditors about their business plan and longer term strategy. This lack of information creates difficulties when a loan demand is being discussed. SMEs need advisory service specially adapted to loan opportunities domain. The support for best existing practices dissemination is needed as specific solutions for dialogues, cooperation and information exchange between creditors and entrepreneurs and in this way a dialog consolidation will take place.

A special strategy for newly established enterprises and financial instruments is necessary in order to implement innovative projects and develop young entrepreneur's creativity. At the same time, a simplification and shortening of bankrupt procedures is required in order to give a second chance to involved entrepreneurs, given that financed enterprises set up by entrepreneurs that faced bankrupt could be more efficient in the future.

A problem in SMEs financing is the lack of information entrepreneurs' face when it comes to available financing sources for their enterprises. This informational deficiency named information asymmetry act as a compulsion factor to SMEs. Those enterprise owners that do not know all possible financing solutions have at their disposal a more limited set of financing alternatives than those better informed, and so it is very likely that they choose higher cost sources of financing, increasing this way the risk of bankruptcy by reducing the value of the enterprise. Moreover, the investors may consider the enterprise as being poorly managed, and to be reluctant to finance it.

Managerial preferences, risk tolerance and enterprise's characteristics (that may include technologic problems) are important factors that affect financing strategies of enterprises. The decision on financing activity of SMEs is a development strategy component of the enterprise, with future impact on its development. The decisions regarding the financing sources are determined by a combination of factors, closely linked to the enterprise's characteristics, and also on its institutional

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environment. The smaller the enterprise, the bigger the capital needed used for satisfying a growth of demand, but it decreases its capacity of obtaining internal or loan financing.

It is important for the local banking system to be consolidated, following the growth of responsibility and banks' functions, from those of regional importance to local ones, of prudent investments in economy, and, especially, in SMEs.

With the current situation, when insufficient access to adequate sources of venture capital - mostly in the beginning phases- continue to be one of the most significant constraints for the birth and rise of economic growth oriented firms, a special attention must be paid to venture capital as a possible way of financing the economic growth. Though, this type of financing is suitable only for a small number of SMEs, and bank loans remain the main financing source. Qualitative ratings can be used as a tool for completing the standard quantitative evaluation of SMEs creditworthiness. It is well known the fact that these ones face stricter demands, including personal guarantees, in the interest of obtaining financing form loan institutions. High interest rates determine a bigger degree of severity of terms and conditions which do not concern the price, including personal guarantees.

The financing cost is directly linked to the level of risk, as it is perceived by intermediaries in implementing SMEs' financing. The loans requiring guarantees will appear linked to SMEs with the higher financial risk, as long as the interest must be paid right in the investment deployment period, when the enterprise is not active, nor profitable. Sometimes the enterprises with a higher financial indebtedness risk must go into payment default. If the enterprise has its own guarantees as to cover the required guarantee necessary, the financing services costs are smaller, compared to the case in which it has to ask for the aid of a specialized guarantee institution. The entrepreneur must analyze the financing offer by the firm's capacity for repaying the loan, according to the payment schedule, the aptness of financing with the evolution of the business and its capacity of reimburse the loan, the management of financial predicament – representing the managerial policy referring to collecting the money from the clients and paying the suppliers – are factors that determine the firm's capacity of reimbursing the financing or accessing new ones, after paying the first.

Dimensions of the relationship of SMEs with financial institutions and credit

Obtaining a loan by SMEs represents a selling operation for the financer, a thing that most of the borrowers (and lenders) tend to ignore. The entrepreneurs that would like to initiate a business, or are at the beginning of one, must sell the viability and the potential of their businesses to the banks. The better the marketing plans, the informational materials that the entrepreneurs could deliver in order to demonstrate de credibility of the business, the easier and quicker they would obtain a positive loan decision. In addition, a well prepared business plan alongside a solid equity

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capitalbase can draw the attention of a financer, even for a newly started business. The potential loaner would like to know the way in which the money will be used, and if the usage fits the needs mentioned when the loan was contracted. He would also like to have knowledge of the capacity to generate sufficient money as to pay the loan, even though the market's conditions are not as favourable as those shown by the management-market predictions. Moreover, an immediate necessary loan can induce scepticism. All these aspects will determine the type of credit, and the terms would be suitable for specific SMEs needs and their ability to use it correctly.

The high administrative costs associated with small loan granting make the SMEs financing a non-profitable deal. SMEs are considered by creditors and investors as being high risk debtors due to insufficient actives, to vulnerability to market fluctuation, and to high rates of activity ceasing. The lack of experience of SMEs to deliver to loaners the financial situations or adequate business plans, burden the evaluation activity of investment proposition.

The SMEs' access to financing is indissolubly linked to financial modality costs and to the financial structure of the applicant. Various times, though, the intermediaries question the SMEs' capacity to preset valid investment projects. The financing sources of enterprises vary between countries due to enterprises' specific characteristics, the development level of the financial system, and the governing institutional environment. From a country level the differences concerning the financing manner of SMEs are more striking due to specific enterprise factors such as: profitability, actives tangibility, sales volume, development operations, bankruptcy costs etc. The understanding of SMEs financing models, and of the way in which they change once with the institutional development, has important political involvement. In various countries the deciding factors consider that SMEs have inadequate access to financing sources as a result of market's imperfection. As a result, significant resources are being changed towards promotion programs and their financing.

Generally, SMEs' financing depends on the demand and supply of financial resources existing on the market at a certain moment. If the supply is enterprise exogenous, the demand is completely linked to its growth objectives, the level of anticipated profitability and the risks one is willing to take at some point. In this context, the analysis of the factors influencing the financial structure of enterprises offers clues regarding the followed financing matrix allowing the identification of elements that facilitate SMEs access to the loan capital. We mention the importance of bank lending products for the companies (debts financing, overdrafts, working capital line or other bank loans) compared to other external financing sources (shares issuance, capital investors, bonds etc.). SMEs majority use internal founds, and, as the number of employees grows, the firm reaches out to external financing sources (attracted) and less to the internal ones.

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There are two types of lending, one based on transaction analysis (transactional), and one concerning the relationship analysis (relational). Also, one can observe the compared advantages of various types of financial institutions in using - be it the transactional or the relational loans. Transactional bank loan operations are those mainly based on "hard" data, quantitative data that can be observed and verified the moment the credit is demanded. Relational loan is mainly based on "soft" data: qualitative information delivered by certain persons, usually specialized, as a result of a continuous, long term contract, often in variable circumstances, intuitive with the company owner, the manager, or the employees.

A high concentration of banking market can lead to a loan access diminishing for SMEs, no matter the chosen loan technology. This situation is not influenced by the size of the loan institution, nor the nature or origin of the owner (the county of origin of parent bank), but simply by the fact that the main actors on the concentrated financial markets can exercises their power on the market. These institutions will choose to maintain or even to enlarge their profit not by streamlining their activity or a flexible approach of SMEs' demands, but rather by increasing the interest rates or the SMEs' loan fees. These institutions could be less interested in innovation or quality services offered to clients because they perceive their position on the market in terms of power and safety. The respective banks can reduce the risk and even improve their portfolio not only by a better monitoring, but simply, by hardening the loans standards for SMEs.

Foreign capital institutions that function in developing economies could benefit of additional advantages in loan operations or certain SMEs categories, because these banks have better access to cheap sources, have a larger and longer expertise, and often organize training and upgrading courses for loan officers and risk managers, helping a better information spreading, and improving the experience within the organization.

Also, large banks have comparative advantages in loaning based on transaction analysis, and small banking institutions in relational loans utilization, based on "soft" information. This aspect can offer advantages compared to those between SMEs and small loan intuitions that have lower administrative costs, a less obvious separation between property and management, and reduced management intermediary levels. Large banking institutions are relatively disadvantaged in relational loaning for SMEs, in such a way that a large bank chooses loaning operations with large clients.

The presence on the market of various types of banking institutions and the competition between them have important effects on SMEs loan availability, because different types of institutions can have comparative advantages in the loaning technology domain. A good loaning infrastructure

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(informational environment, legal, fiscal, bankruptcy regulation) determine the growth of direct loan availability for SMEs, by facilitating the usage of different loaning technologies.

Improving the loaning activity for SMEs by the banks can be accomplished by: assuring the transparency and competition in the banking system, eliminating all additional declaratory bonds, the bank limiting up to the essential of all required documents and information – that directly represent the object of evaluation in granting or denying the loan; assuring an increased transparency of enterprises' business evaluation and of their consequences; developing within the banks of a superior capacity of understanding the businesses underlying the loans; carrying out informational campaign for SMEs concerning the advantages and the way to access guarantees by the means of various guarantee founds of SMEs credits.

Conclusions

The support granted to SMEs, by facilitating financing access, represents an important instrument in insuring economic growth, innovation and aggregate productivity of a country. SMEs' financing also fights poverty and ensures the necessary premises for economic growth.

The lack of suitable financing as well as the reticence of financial institutions or private capital investors towards SMEs demands contributes, in a significant measure, to the slowdown of their development with a negative impact on remodelling the efficient sector, employment, and innovation. The required legislation for regulating the financial industry must protect and stimulate the actual supply of loans to real economy, especially to SMEs.

We believe that a well balanced structure of the banking sector, with the state banks involved in strategic national projects, with the small private banks – dynamic and flexible, attentive to relational loans, and with an important presence of the foreign banks, can make full use of the economic opportunities, and can create an appropriate environment for the financing demands of SMEs.

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CONSUMER BEHAVIOUR ASPECTS RELATED TO VEGETABLE OIL CONSUMPTION

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ABSTRACT:Changes in consumer behaviour related to vegetable oil in the last several years, show that consumers diversify their cooking oil usage, introducing in their diet different kind of vegetable oils. Consumers use several kinds of vegetable oils for a healthy and nutritious diet, for a variety of gastronomy and other purposes. Vegetable oil producers and merchants from the Romanian market should realize that in order to face their competition they have to understand what are the needs and wants of their customers related to vegetable oils. Their research results should reveal what kind of vegetable oils are preferred and used by consumers, what are the purposes of the vegetable oil usage, how important is for the consumers the quality of the used oils, how consumers appreciate to use different kind of oils for different purposes, what are the wants of consumers related to vegetable oils, what are the place and frequency of purchases, etc. Based on marketing research related to vegetable oil consumption, organizations can become able to create and offer value for their customers using socially responsible marketing, and can become able to adapt their offers to the consumption styles of their customers. The author presents the results of a primary; exploratory research related to different aspects of vegetable oil consumer behaviour. For this purpose it was elaborated a questionnaire, which was administered on-line for a non-representative sample of consumers from Oradea.

Key-words: vegetable oil consumption, consumer behaviour, consumer awareness, marketing, responsible marketing

1. INTRODUCTION

In order to become and remain competitive, companies which produce and/or commercialize vegetable oils should obtain information about their potential and actual consumers' preferences and consumer behaviour. They can obtain this kind of information through a variety of marketing research methods and tools, both qualitative (focus group interviews, deep interviews, projective techniques) and quantitative methods (questioning, observation, experiments), which they consider proper for their consumers and their own company (Prutianu – Anastasiei – Jijie, 2002).

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Organizations from the vegetable oil and natural fat producing industry use raw materials of animal origin or vegetal origin. Vegetable oils are obtained from oleaginous plants, which have the capacity of accumulating oil in their diverse parts. (Muntean et al, 2008).

Oleaginous plants contain fat of which 96-99% represents glycerides, and 1-4% complementary substances of glycerides. Glycerides are esters of glycerol with higher aliphatic monocarboxylic acids. Glycerol is a syrupy liquid, which has sweet taste, and which is hygroscopic. (Domuţa - Domuţa, 2010)

Changes in consumer behaviour related to vegetable oil in the last several years, show that consumers diversify their cooking oil usage, introducing in their diet different kind of vegetable oils. Consumers use several kinds of vegetable oils for a healthy and nutritious diet, for a variety of gastronomy and other purposes. We can observe differences in preferred types of vegetable oils in different geographical regions, countries, cultures. At global level consumers use vegetable oils obtained from different plants, but the most used ones are palm oil, soybean oil, canola oil and sunflowerseed oil. Global vegetable oil consumption reflects a continuously increasing trend, especially due to increasing palm oil consumption. While in 2010 global vegetable oil consumption was 145.34 million tons, in 2015 global vegetable oil consumption was 176.88 million tons. In 2010 vegetable oil consumption by oil type was: palm oil 47.63 million tons, soybean oil 40.74 million tons, canola oil 23.27 million tons, sunflowerseed oil 11.75 million tons, other types of vegetable oils 21.95 million tons. In 2015 vegetable oil consumption by oil type was: palm oil 61.5 million tons, soybean oil 51.2 million tons, canola oil 27.09 million tons, sunflowerseed oil 14.14 million tons, other types of vegetable oils 22.95 million tons. (Statista, 2016 a)

In 2010 sunflowerseed oil production represented 13% of global oil production, and sunflowerseed oil was the most used type of oil by consumers in Romania, being appreciated for its taste, colour, consistency, and being high in A,D,E,K vitamins (Domuţa - Domuţa, 2010).

Sunflowerseed was introduced in Romania in the middle of the XIX. century in Moldavia, and became the most important source for obtaining vegetable oil for consuming in households. The costs related to producing sunflowerseed as raw material for vegetable oil production are not very high. The sunflowerseed oil can be easily extracted by pressing; the normal extracting efficiency is situated roughly at 45%. 1 hectare tillage of sunflowerseed can offer at actual producing capacities raw material for roughly 900-950 kg of sunflowerseed oil. (Bîlteanu, 2001)

Vegetable oil producers and merchants from the Romanian market should realize that in order to face their competition they have to understand what are the needs and expectations of their customers related to vegetable oils. Their research results should reveal what kind of vegetable oils

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are preferred and used by consumers, what are the purposes of the vegetable oil usage, how important is for the consumers the quality of the used oils, how consumers appreciate to use different kind of oils for different purposes, what are the wants of consumers related to vegetable oils, what are the place and frequency of purchases, etc. (Datculescu, 2006)

Based on marketing research related to vegetable oil consumption, Romanian organizations can become able to create and offer value for their customers using socially responsible marketing, and can become able to adapt their offers to the consumption styles of their customers.

2. SECONDARY RESEARCH REFERRING TO VEGETABLE OIL CONSUMPTION IN ROMANIA

Based on secondary information sources we can find out several aspects and characteristics of vegetable oil consumption in Romania, and we can make comparisons with vegetable oil consumption characteristics of inhabitants of other countries.

A complex legal frame related to vegetable oils and fats regulate in Romania the nature; content; production, packaging, labelling, storing and selling conditions; quality and quality control; hygiene and sanitary rules; food additives and flavours; etc. in case of vegetable oils (Penciu, 2012).

In 2005-2006 the vegetable oil consumption in Romania was characterised by the following aspects: the annual consumption per capita was about 11 litre (in comparison this indicator in Hungary was 7 litre per capita, in Austria 5 litre per capita), and 95% of the consumption was represented by sunflowerseed oil. A report of BCR-Erste Bank suggests that in 2005-2006 the price of oil decreased in Romania, and as a result consumers reoriented themselves in the direction of consuming higher quality vegetable oils. (Cristea, 2008)

Before 2007 Romania succeeded to export annually 10-20% of own vegetable oil production (especially in Israel, Egypt, Turkey, Italy), but in 2006-2007, due to bad weather and drought conditions, oil production in Romania decreased (Cristea, 2008). A Nielsen study underlined that as a result, in comparison with year 2006, in 2007 in Romania oil prices increased roughly with 80%, sales also increased with 96.6% to 516.2 million RON (152.3 million Euro), but this was caused by increased prices, the volume of sales remained at roughly the same level, oil consumption was 260,000 tons (Cristea, 2008). In 2007 the average price of 1 litre sunflowerseed oil raised from about 3.8 RON to roughly 6 RON (Ardelean, 2009). Because the differences decreased between the price of sunflowerseed oil and olive oil, Romanian consumers started to consider olive oil a very good substitute to sunflowerseed oil, as a result the sales of olive oil in 2007 increased with 200% in comparison with year 2006 (Ardelean, 2009).

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In 2008 Romanian inhabitants' sunflowerseed oil consumption was 2.2 times higher than Hungarian inhabitants' sunflowerseed oil consumption (Cristea, 2008).

It seems that Romanians remain traditional in vegetable oil consumption behaviour, in 2008 sales of vegetable oil raised to about 200 million Euro, from which 90% was sunflowerseed oil (Ardelean, 2009).

The market volume of different types of vegetable oils in Romania depends on the consumers' cultural background, consumer behaviour, consumer awareness, etc. (Ardelean, 2009). Taking in view the cultural background of vegetable oil consumption in Romania, we can affirm that most of Romanians prefer sunflowerseed oil, but we can observe changes in consumer behaviour, as more and more consumers use a variety of vegetable oils (Ardelean, 2009). In Romania the main type of vegetable oil consumed in the households is sunflowerseed oil, but on the Romanian market there are offered also other types of vegetable oils, like simple olive oil, virgin olive oil or extra virgin olive oil (Bîlteanu, 2001).

In 2009 Romanians vegetable oil consumption per capita was about 11 litre, and from this quantity about 2-3 litre represented other types of oils than sunflowerseed oil (Ardelean, 2009). We can also mention that in the European Union besides sunflowerseed oil, consumers use especially olive oil, soybean oil, canola oil, and of course we can find regional differences in oil consumption (Ardelean, 2009).

Due to other sources in 2009 vegetable oil and fat consumption in Romania was 10 kilograms, while in other European countries were the followings: in Italy 28 kilograms, in Portugal 21 kilograms, in The Netherlands 18 kilograms, in Hungary 15 kilograms, in France 15 kilograms, in Spain 15 kilograms, in Malta 13 kilograms, in Lithuania 5 kilograms, in Poland 5 kilograms, in Luxemburg 5 kilograms) (Statista, 2016 b).

Romanian consumers consider canola oil and soybean oil as being cheap and of lower quality, with unpleasant taste and smell. They are also afraid that for soybean oil production companies use genetically modified raw materials. Regarding olive oil, Romanian consumers can't really make the difference between the different types, like virgin and extra virgin olive oil, and don't appreciate the taste and smell of extra virgin olive oil. Specialists consider that there is a need of educating consumers about different types of vegetable oils. (Ardelean, 2009)

Socially responsible marketing (Kotler – Keller, 2008) should have an important role in educating consumers to become aware and conscious about the advantages of consuming different types of vegetable oils, for different purposes (for example: healthy diet, maintaining fitness or health, preventing diseases, etc.).

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Some researches revealed that for Romanian consumers the main criteria in buying decisions is represented by the price of the vegetable oil, and quality. Quality is appreciated through a variety of characteristics of the vegetable oil, for example: colour, consistency, clarity, smell, taste, resistance at reutilisation, content. Brand is considered a guarantee for quality of vegetable oil, especially in case of loyal consumers. Generally females are the buyers in case of vegetable oil, who cook for their families. Consumers prefer PET bottles, especially of 1 litre. (Ardelean, 2009)

The market of olive oil in Romania in 2001 was dominated by 3 important foreign companies: Minerva (Greece), Cost d'Oro (Italy) and Borges (Spain) (Bîlteanu, 2001).

Two American companies: Bunge and Cargill dominated the Romanian vegetable oil market in 2007, with sales of 200 million Euros, which correspond to a production of about 250,000 tons of vegetable oil per year, covering roughly half of vegetable oil consumption. The main Romanian producers on the vegetable oil market in Romania are: Argus Constanța, Ultex Ţăndărei and Ulerom Vaslui. Due to the estimation of Business Standard the market leader is Bunge, which has about 45% market share, followed by Cargill and Argus Constanţa, with a market share of 11%. Companies try to diversify their offers of vegetable oils, introducing new types of vegetable oils, generally under local, regional or national brands, in order to serve different consumer segments. (Piulice, 2007)

3. PRIMARY RESEARCH REFERRING TO VEGETABLE OIL CONSUMPTION IN ROMANIA

The main objective of the primary research is to reveal aspects of vegetable oil consumption among consumers from Romania.

The following information regarding consumer behaviour regarding vegetable oils should be gathered through marketing research (Datculescu, 2006):

types of vegetable oils consumed;

purpose of use of different types of vegetable oils;

profiles of consumes who prefer different types of vegetable oils;

place and approach of vegetable oils acquisitions;

frequency of purchasing vegetable oils;

preferences regarding different types and dimensions of packages in case of vegetable oils;

impact of marketing communication on consumers' behaviour;

consumers' concerns regarding environment protection;

protection and education of consumers;

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experiences regarding vegetable oil consumption, etc.

In order to analyse most of above mentioned aspects of vegetable oil consumers' behaviour the author used an exploratory primary research, based on the method of survey. For this purpose the author developed a questionnaire, which was applied online in October 2015. The questionnaire contains questions related to vegetable oil consumption in general, and sunflowerseed oil consumption (because in Romania consumers traditionally use mostly this type of vegetable oil).

The small sample of respondents from Oradea is a non-representative one, in consequence the results are interpreted at the level of the sample, which was formed by women (66.7%) and men (33.3%), of different ages (50% have 18-25 years, 31% have 26-35 years, 9.5% have 36-45 years, 9.5% have 46-55 years, 0% have over 55 years). Respondents have different occupations (47.6% are employees, 38.1% are students at master level, 11.9% are students at bachelor level), different level of studies (97.6% have studies at higher education level, 2.4% have studies at medium education level). 52.4% of the respondents have incomes between 1050-2000 RON, 28.6% under 1050 RON (minimal salary in Romania at the time of the research), 16.7% between 2001-3000 RON, and only 2.3% over 4000 RON.

88.1% of the respondents cook at home, in their households, and only 11.9% answered that they don't cook at home (both category of respondents can offer valuable information regarding vegetable oil consumption).

The results reveal that respondents use several types of vegetable oils: sunflowerseed oil is the most used type of vegetable oil (95.2% of respondents), followed by olive oil (66.7% of respondents), coconut oil (16.7%). Use of soybean oil is the lowest (2.4% of respondents). The most preferred vegetable oil is sunflowerseed oil for 78.6% of respondents, olive oil for only 16.7% of respondents, coconut oil for 2.4% of respondents, and other types of vegetable oils for 2.3% of respondents.

For soup cooking respondents use mostly sunflowerseed oil (90.5%), but they also use olive oil (19%), canola oil (4.8%), and coconut oil (2.4%).

For roasting/baking purposes respondents use mostly sunflowerseed oil (85.7%), but they also use olive oil (23.8%), coconut oil (9.5%), canola oil (4.8%), soybean oil (2.4%), and other types of vegetable oils (2.4%).

For salads respondents use mostly olive oil (88.1%), but they also use sunflowerseed oil (21.4%), pumpkin seed oil (7.1%), canola oil (4.8%), soybean oil (4.8%), grape seed oil (4.8%), and coconut oil (2.4%).

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For mayonnaise preparation most of respondents use sunflowerseed oil (97.6%). Some respondents use olive oil (7.1%), and few respondents use soybean oil (2.4%).

In order to prepare cakes most of respondents use sunflowerseed oil (95.2%). Other types of vegetable oils used for preparing cakes are: coconut oil (16.7%), olive oil (7.1%), pumpkin seed oil (2.4%), and grape seed oil (2.4%).

As more and more consumers in Romania started to consume freshly prepared fruit and vegetable juices, in the questionnaire was introduced a question in order to reveal what kind of oils are used for preparing them. 38.1% use sunflowerseed oil, 21.4% use olive oil, 9.5% use coconut oil, 4.8% use grape seed oil, and 2.4% use soybean oil.

The results show that respondents use a variety of vegetable oils in their households, but they prefer mostly sunflowerseed oil for cooking soups, roasting/baking, preparing mayonnaise and cakes. In order to prepare salads respondents use mostly olive oil. For preparing fresh vegetable and fruit juices respondents use mostly sunflowerseed oil and olive oil.

In order to reveal consumer awareness regarding the use of a variety of vegetable oil the questionnaire has a question regarding the importance of using alternatively a variety of vegetable oils. Only 9.5% of the respondents consider this is very important, other 9.5% of the respondents consider this is important, 50% of the respondents have neutral attitude toward using a variety of vegetable oils, 16.7% consider this is not important, and 14.3% consider this totally unimportant.

Regarding the expectations of consumers regarding vegetable oils, the research results revealed that the most important for respondents is that producers should use healthy raw materials (69%). It is also important for them that vegetable oils should have good taste (64.3%), to be produced from quality raw materials (47.6%), to have pleasant colour (38.1%), to have transparent texture (23.8%), to contain vitamins (23.8%), to reduce cholesterol (11.9%), and to contain natural antioxidants (9.5%).

The majority of the respondents prefer as packages PET bottles, and they prefer to buy 1 litre packages (88.1%).

Regarding the place where consumers buy vegetable oils, research results reveal that respondents prefer to buy especially in hypermarkets (45.2%) and supermarkets (40.5%). 11.9% affirmed that they prefer to buy vegetable oils in a grocery, and only 2.4% of the respondents prefer to buy in a mall. Regarding the frequency of purchases, most of the respondents buy vegetable oils at least once a month (42.9%). 23.8% of the respondents buy vegetable oils at least once a week, 21.4% of the respondents buy vegetable oils at least once at two weeks, and only 11.9% of the respondents buy vegetable oils rarely than monthly.

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59.5% of the respondents don't follow promotions in case of their preferred sunflowerseed oil brand, 40.5% of respondents follow the promotions regarding their preferred sunflowerseed oil brand. This can indicate that more than half of the respondents buy their preferred brands, even if they cannot find it at promotional prices.

The majority of the respondents affirmed that if they can't find their preferred sunflowerseed oil brand in the store they buy another brand, only 16.7% of respondents answered that they will search their preferred brand in other stores, until they find it. This indicates that vegetable oil producers should cooperate with merchants in order to pay attention to inventory management and to prevent exhaustion of products through sales.

52.4% of respondents prefer to buy sunflowerseed oil at weekend, and 47.6% of respondent prefer to buy sunflowerseed oil during weekdays.

57.1% of respondents look at product labels in order to obtain information about sunflowerseed oil products, 47.6% obtain information from family members, 26.2% of respondents from friends, 26.2% from TV commercials, 23.8% from printed promotional materials, 21.4% from websites, 14.3% from cooking magazines, 4.8% from TV programmes, and only 2.4% from social networks and also only 2.4% from radio commercials. It seems that the most important information source for the respondents is represented by the label of the product; in consequence vegetable oil producers and sellers should offer proper information in necessary amount through product labels.

The main criteria in buying decision for 35.7% of respondents is the quality of the vegetable oil, for 33.3% represents health related criteria, for 26.2% is price, and only 4.8% affirmed that for them the brand is the main criteria.

4. IN CONCLUSION

Analysing aspects of consumers' psychology and consumer behaviour (Datculescu, 2006) related to vegetable oil consumption should be a priority for those Romanian companies which produce and/or sell different types of vegetable oils, for a variety of market segments of their target market. These organizations should identify different market segments, which have specific needs, expectations and consumer behaviour related to vegetable oils, and should develop proper marketing strategies and activities in order to serve them better than their competitors (Kotler – Keller, 2008).

Vegetable oil producers and/or sellers can use different demographic, geographic, economic criteria for segmentation, but it would be useful for them to use especially psychographic and lifestyle criteria (Datculescu, 2006).

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Differentiation is very important (Kotler – Keller, 2008), but very difficult to do in case of a product like vegetable oil, but producers and/or merchants could differentiate their products especially through brands, product and corporate image, attached services (for example recipes attached to the products), and experiential marketing (for example cooking at different special events/exhibitions/competitions etc).

Using experiential marketing (Kotler – Keller, 2008) in case of vegetable oils, producers and/or merchants can be creative in offering pleasant experiences for their consumers, which can increase their loyalty. For example they can offer for their consumers the possibility of becoming creative in the kitchen during cooking and share their cooking knowledge with others, to obtain admiration of family members and friends, to become able and successful in preparing delicious foods using attached recipes, etc.

Although Romanian consumers mostly use sunflowerseed oil, there is a trend of increasing the variety of vegetable oils used for different purposes, and they use local, regional and national brands, too.

The present paper, through an exploratory research, revealed some aspects of vegetable oil consumers' behaviour, by gathering information on a small, non-representative sample of consumers from Oradea, Romania. Further research should be done on representative samples at local, regional, and national level, which would be useful for vegetable oil producers and/or merchants to take proper marketing decisions in order to create and offer value for their consumers and other stakeholders, and to remain competitive (Kotler – Keller, 2008).

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THE APPLIANCE OF PENAL LAW

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Treaty as the main source of international law, determined by the importance that it holds a significant coding of this material, thus creating a true branch of international law.

With the expansion and diversification of international society and enhancing economic and political relations established among states, the role of treaties has increased considerably and is becoming more important because they cover all areas on the cooperation between states, whatever the differences of their political, ideological or their social structure are. More often, the treaty has an important role in the fundamental relations and very important contribution both as a source of international law as a means of peaceful cooperation between states, regardless of their regimes constitutional or social, and because the entities that are forming international society are obliged to respect the provisions of the relations established between them and the Treaties to which they are parties.

"The general rules on the conclusion of the work of international treaties" contains a brief introduction to international law specifying the main concepts of the discipline, some aspects related to the concept of international treaty and its structure as well as the most important rules in the process of concluding a treaty.

By concluding treaties "have put an end to devastating wars were settled peaceful solutions more or less fair, it opened the way to cooperation, and finally, it has established institutional mechanisms for stronger cooperation".

International treaties, disputes, the parties will, legal effects, negotiation

EVOLUŢIA TRATATELOR INTERNAŢIONALE

În prezent, diversitatea relaţiilor internaţionale şi cooperarea dintre state au determinat ca soluţionarea celor mai importante aspecte să se realizeze pe baza normelor şi principiilor de drept internaţional şi cu participarea tuturor statelor. Schimbările ce au intervenit pe plan economic, social şi tehnico-ştiintific au impus în cadrul activităţii de cooperare necesitatea constituirii relaţiilor dintre state. Astfel, reiese rolul fundamental al tratatelor internaţionale ca mijloace juridice unice prin intermediul cărora se încheie raporturile interstatale.

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Profesorul Pierre-Marie Dupuy, în cea de-a şaptea ediţie a manualului său de "Drept internaţional public", afirmă: "Am fi tentaţi să spunem că tratatele au existat dintotdeauna!..."Apariţia lor este, în orice caz, legată de aceea a comunităţilor politice organizate, chemate prin forţa lucrurilor să intre în relaţii unele cu celelalte".

De-a lungul timpului tipurile de tratate au îmbrăcat diverse forme, întrucât "de la tratate solemne, garantate prin invocarea divinităţii, formule sacramentale, garanţii materiale sau teritoriale, s-a ajuns la acorduri în forma simplificată", prin intermediul cărora statele au posibilitatea să îşi exprime consimţământul în cele mai eficace condiţii. Astfel, dreptul tratatelor are un rol fundamental în cadrul relaţiilor internaţionale, acestea fiind dependente de acest drept.

În ceea ce priveşte tehnica tratatelor internaţionale aceasta s-a îmbunătăţit, întrucât rolul juriştilor şi al specialiştilor în dreptul internaţional a devenit din ce în ce mai important. Aceştia se asigurau că tratatele reprezintă cel mai potrivit cadru prin intermediul cărora sunt garantate interesele statelor.

În aplicarea dreptului internaţional public se urmăreşte eliminarea războiului ca mijloc de rezolvare a diferendelor dintre state şi orientarea oamenilor spre o atitudine bazată pe fraternitate, respect, colaborare şi toleranţă. De aceea, tratatele "sunt garantate, mai ales de forţa politică şi militară a statelor, dar şi de respectul faţă de dreptul internaţional, de convingerea popoarelor lumii ca normele şi principiile de convieţuire internaţională se cer a fi recunoscute şi respectate"[1].

În textele constituţionale, prevederile şi dispoziţiile dreptului internaţional public au prioritate faţă de cele cuprinse în dreptul intern, astfel încât[2]:

"Acordurile internaţionale (…) au întâietate faţă de normele legislaţiei interne care sunt în contradicţie cu ele."- Constituţia Bulgariei, art.5, alin.(4).

"Tratatele internaţionale, care au fost ratificate şi promulgate, privind drepturile omului şi libertăţile fundamentale şi care obligă Republica Cehă au efect imediat şi întâietate asupra legilor."- Constituţia Cehiei, art.10.

"Tratatele sau acordurile ratificate sau aprobate regulat au, după publicare, o autoritate superioară faţă de cea a legilor, sub rezerva că fiecare acord sau tratat va fi aplicat de către cealaltă parte."- Constituţia Franţei, art.55.

"Regulile generale ale dreptului internaţional public fac parte din dreptul federal. Ele sunt superioare legilor şi creează direct drepturi şi obligaţii pentru locuitorii teritoriului federal."- Constituţia Germaniei, art.10.

"Dacă alte reglementări decât cele prevăzute de lege sunt stabilite de un tratat internaţional al Federaţiei Ruse, regulile tratatului internaţional prevalează."- Constituţia Federaţiei Ruse, art.15.

[1] Viorel Velişcu, Pîrvu Loredana, *Drept Internaţional Public*, Editura SITECH, Craiova, 2012, p.278.
[2] Stelian Scaunaş, *Drept Internaţional Public*, Editura CH Beck, Bucureşti, 2007, p.30.

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"Ordinea juridică a Republicii Ungaria acceptă regulile universal recunoscute ale dreptului internaţional şi garantează concordanţa între angajamentele contractate în domeniul dreptului internaţional şi dreptul intern."- Constituţia Ungariei, art.7.

Întrucât relaţiile internaţionale se află într-o dinamică continuă, tratatul reprezintă instrumentul politic şi juridic cel mai important, prin intermediul căruia statele îşi reglementează relaţiile reciproce şi îşi stabilesc norme de drept cu caracter general. Ca urmare a acestei dinamici, Organizaţia Naţiunilor Unite a desfăşurat acţiunea de codificare, care s-a finalizat prin adoptarea Convenţiei de la Viena din 1969 privind dreptul tratatelor.

ASPECTE GENERALE PRIVIND TRATATELE INTERNAŢIONALE

Tratatul reprezintă "actul juridic care exprimă acordul de voinţă între două sau mai multe state sau alte subiecte de drept internaţional, în scopul de a crea, modifica sau stinge drepturi şi obligaţii în raporturile dintre ele"[3].

Tratatul conţine înţelegerea finală la care părţile convin în scopul reglementării problemelor sau a unor domenii din cadrul relaţiilor stabilite între aceastea. Ca urmare, tratatul elaborează norme de conduită pe care statele sau alte subiecte de drept să le urmeze în raporturile dintre ele.

Tratatul reprezintă cel mai important izvor de drept internaţional şi în acelaşi timp un important instrument în cadrul raporturilor dintre state, întrucât acesta cuprinde drepturile şi obligaţiile deţinute de state în cadrul acelor raporturi.

Tratatul deţine calitatea de izvor de drept internaţional în momentul în care îndeplineşte anumite condiţii şi anume, intrarea în vigoare, îndeplinirea cerinţelor de validitate prevăzute de normele de drept internaţional şi să nu-şi fi încetat existenţa. În conformitate cu aceste condiţii îndeplinite de tratat se pot stabili elementele esenţiale ce îl compun pe acesta, şi anume:

"a) părţile la tratat să fie subiecte de drept internaţional;

b) voinţa părţilor să fie liber exprimată;

c) obiectul tratatului să fie licit;

d) tratatul să producă efecte juridice;

e) tratatul să fie garantat de normele dreptului internaţional".

Subiectele de drept internaţional sunt reprezentate de către state. Această calitate oferă statelor capacitatea de a încheia tratate de orice tip şi în cadrul oricărui domeniu.

[3] Viorel Velişcu, *Drept Internaţional Public*, Editura SITECH, Craiova, 2011, p.138

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Încheierea unui tratat este valabilă în momentul în care părţile îşi manifestă voinţa în mod liber şi aceasta emană din acordul încheiat de către acestea. Voinţa statelor poate fi afectată de vicii de consimţământ cum ar fi: eroarea, dolul, coruperea reprezentantului de stat, constrângerea exercitată împotriva reprezentantului unui stat sau împotriva statului.

Eroarea reprezintă părerea greşită pe care o deţine o anumită parte cu privire la o anumită situaţie. Pentru a putea fi considerată motiv de anulare a tratatului, eroarea trebuie să aibă un caracter esenţial în cadrul tratatului respectiv sau să fie fundamental pentru consimţământul unei părţi la dat în scopul încheierii tratatului. Eroarea nu poate fi admisă în situaţia în care cel care o invoca a contribuit într-un fel sau altul la producerea ei sau a avut posibilitatea de a se informa pentru a nu se afla în eroare.

Dolul este întâlnit rar în cadrul convenţiilor internaţionale. El reprezintă ”prezentarea de către o parte, celeilalte părţi, a unei situaţii de o aşa manieră încât aceasta acceptă condiţiile convenţiei, dar dacă ar cunoaşte realitatea faptelor nu ar face acest lucru”[4]. În momentul în care se dovedeşte că cealaltă parte a acţionat cu rea-credinţă, cu intenţia de a înşela cealaltă parte, se produce anularea tratatului respectiv.

Coruperea reprezentantului unui stat se dovedeşte cu dificultate în cadrul practicii, însă din punct de vedere teoretic nu poate fi exclusă. În situaţia în care exprimarea consimţământului unui stat de a fi legat prin tratat ”a fost obţinută ca urmare a coruperii reprezentantului său prin acţiunea directă sau indirectă a unui stat care a participat la negociere, statul păgubit poate invoca această corupere ca viciind consimţământul său, pentru anularea tratatului”.

Constrângerea împotriva reprezentantului unui stat este întâlnită frecvent în practica internaţională. În cazul în care consimţământul unui stat este obţinut prin intermediul constrângerii reprezentantului său, sau prin ameninţări împotriva acestuia, acel consimţământ trebuie să fie lipsit de efecte juridice.

Constrângerea exercitată împotriva statului a fost şi este destul de frecventă, anumite state impunându-şi condiţiile prin ameninţări sau prin presiuni ori prin războaie urmate de tratate în care îşi impun punctul de vedere în anterior formulat şi pe care nu au putut să-l realizeze prin mijloace licite, conforme cu dreptul internaţional.

În ceea ce priveşte obiectul tratatului, este considerat ilicit şi nul de drept tratatul care are la baza încheierii lui nerespectarea şi încălcarea normelor de drept internaţional.

[4] Vasile Creţu, *Drept Internaţional Public*, Editura Fundaţiei “ROMÂNIA DE MÂINE”, Bucureşti, 1999, p.154.

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Un tratat trebuie să conţină norme obligatorii pe care statele se angajează să le respecte. Aceste norme au caracter general şi permanent şi prin stabilirea acestora, tratatul poate produce efecte juridice.

Regulile, normele ce trebuie urmate şi respectate în încheierea unui tratat sunt cele prevăzute de dreptul internaţional. Actele încheiate între state ce nu intră sub incidenţa dreptului internaţional şi sunt guvernate de dreptul lor intern nu pot fi considerate tratate.

Tratatul poate fi întâlnit sub forma mai multor denumiri. Practica internaţională a cunoscut şi cunoaşte o gamă largă de documente incluse sub apelativul de ”tratat internaţional”. Astfel[5]:

a) *tratatul* este un termen generic folosit pentru înţelegeri solemne precum tratatele de pace, de alianţă, de neutralitate, de arbitraj;

b) *acordul* este un termen la care se recurge în mod frecvent având o semnificaţie generală şi adesea un pronunţat caracter etnic;

c) *convenţia,* denumire folosită pentru înţelegeri în care sunt reglementate relaţii internaţionale în domenii speciale sau determinate (Convenţiile de la Haga din 1899 şi 1907, Convenţia de la Barcelona din 1921 cu privire la regimul apelor internaţionale, Convenţia Ligii Naţiunilor din 1926 cu privire la sclavie, Convenţiile adoptate de Organizaţia Internaţională a muncii, Convenţia din 1982 privind dreptul mării ş.a.).

d) *declaraţia* este un termen ce confirmă, de regulă, existenţa unui drept preexistent fără a aduce modificări sau a crea noi reguli de drept (de pildă, Declaraţia de la Paris din 1856 sau cea de la Londra din 1909). Termenul de *declaraţie* mai poate fi folosit pentru a desemna importante acte de politică externă, în special declaraţiile conducătorilor Puterilor Aliate de la Teheran, Yalta şi Postdam);

e) *protocolul* este un termen care priveşte actele cele mai variate de natură să reitereze reguli preexistente, să stabilească actele noi, să interpreteze, să completeze, să modifice sau să prelungească un tratat sau un acord al cărui accesoriu este; termenul de protocol poate desemna şi o înţelegere de sine stătătoare între state;

f) *actul* este un tratat multilateral prin care se stabilesc reguli de drept sau în regim internaţional;

g) *actul final* este definit ca o hotărâre sau un rezumat al lucrărilor unui congres sau conferinţă, enumerând tratatele, convenţiile, deciziile ori rezoluţiile care au fost adoptate ca rezultat al deliberărilor sale;

h) *actul general* este un termen folosit în cazurile în care documentul nu le limitează la enumerarea rezultatelor conferinţei, dar conţine ca anexă textul acestora;

[5] Viorel Velişcu, *Drept Internaţional Public*, Editura SITECH, Craiova, 2011, p.139.

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i) *pactul* este denumirea utilizată pentru anumite înţelegeri solemne, precum Pactul Ligii Naţiunilor ori Pactul Briand-Kellog;

j) *carta* este un termen folosit pentru a identifica un tratat cuprinzând domenii fundamentale ale colaborării statelor. În cazul ONU are semnificaţia unui statut;

k) *concordatul* este o înţelegere încheiată între Sfântul Scaun şi de diferite state, reglementând situaţia bisericii catolice, drepturile şi interesele sale în statul respective;

l) *pactul de contrahendo*, denumire folosită pentru acele înţelegeri încheiate între state, care au un caracter preliminar unor înţelegeri ce urmează să fie perfectate ulterior.

Conţinutul tratatului este format în principiu din patru elemente, şi anume:

"a) preambulul;

b) dispozitivul;

c) clauzele finale;

d) anexele".

"În literatura de specialitate se menţionează şi o serie de clauze care pot fi înscrise într-un tratat: clauza de adeziune, clauza "opting in", prin care acceptarea unei obligaţii este subordonată emiterii unui act unilateral, clauza "si omnes", renunţarea unui stat-parte atrage automat eliberarea celorlalte părţi din tratat, clauza de salvgardare, clauza naţiunii celei mai favorizate, clauza federală, clauza compromisorie pentru arbitraj, clauza "opting out" prin care o modificare este considerată acceptată de partea care nu a emis o poziţie formală, clauza "in all circumstances" garantează respectul normelor stabilite în orice împrejurare"[6].

În ceea ce priveşte clasificarea tratatelor acestea se împart în:

"a) tratate contracte şi tratate legi;

b) tratate bilaterale şi tratate colective sau multilaterale;

c) tratate propriu-zise şi acorduri în formă simplificată".

Prima categorie de tratate presupune "tratatele contracte" care au la bază executarea unor operaţiuni juridice la care se obligă părţile şi care îşi încetează efectele odată ce respectivele operaţiuni au fost îndeplinite, iar în cazul "tratatelor legi", conţinutul acestora emană norme de drept acestea depinzând de funcţiile pe care tratatele le pot avea.

A doua categorie de tratate depinde de numărul părţilor participante, număr care poate fi mai mare sau mai mic în funcţie de statele ce iau parte la acel tratat. În cazul tratatelor bilaterale, prezintă interes doar aspectele care sunt importante pentru părţile contractante, alte subiecte participante nefiind necesare. Referitor la tratatele colective, acestea presupun o asemănare în ceea ce priveşte

[6] Nicolae Purdă, Nicoleta Diaconu, *Drept Internaţional Public*, Editura SITECH, Craiova, 2011, p.177.

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voinţa statelor, iar în cazul tratatelor multilaterale, se urmăreşte echilibrul diferitelor opinii pe care statele le au asupra unor probleme internaţionale.

Cea de-a treia categorie de tratate îşi are utilitatea în momentul în care se impun anumite situaţii de urgenţă şi încheierea tratatelor trebuie realizată cu rapiditate. În cazul tratatelor propriu-zise se respectă fiecare etapă ce trebuie îndeplinită în proces, în timp ce în cazul celor în formă simplificată nu se urmează toate fazele procesului, aplicându-se doar anumitor categorii.

După durata valabilităţii, tratatele se împart în[7]:

a) tratate cu termen;

b) tratate fără termen (tratatele de pace) .

După criteriul posibilităţii de aderare pot fi împărţite în:

a) tratate deschise, la care pot adera în mod liber orice state;

b) tratate închise, la care alte state nu pot adera decât cu consimţământul statelor participante.

După calitatea părţilor contractante, se împart în:

a) tratate încheiate de către state;

b) tratate încheiate între state şi organizaţii internaţionale guvernamentale;

c) tratate încheiate între organizaţii internaţionale.

"Ca sferă de reglementare, tratatele internaţionale îmbrăţişează o variată gamă de probleme, de la principiile colaborării în problemele cardinale ale păcii şi securităţii internaţionale până la problemele de strict interes bilateral în raporturile dintre state"[8].

Prin intermediul tratatelor, statele au posibilitatea de a-şi rezolva divergenţele. Tratatul le oferă, totodată, un mijloc, o modalitate prin care pot interveni asupra conţinutului acestuia şi astfel pot completa sau modifica anumite dispoziţii stipulate în tratat.

Întrucât dreptul internaţional public este o disciplină dinamică, tratatul permite adaptarea acestuia la noile cerinţe impuse în cadrul relaţiilor internaţionale. De asemenea, tratatul poate duce la apariţia şi promovarea anumitor instituţii internaţionale.

Tratatul deţine un rol esenţial în cadrul societăţii internaţionale, întrucât statele şi organizaţiile internaţionale ce o compun sunt obligate să respecte în cadrul relaţiilor apărute între ele, normele impuse de tratatele la care sunt parte, norme impuse de dreptul internaţional ce nu pot să încalce sau să contravină principiilor fundamentale de drept internaţional.

"Aşadar, tratatele au oferit cadrul instituţional pentru transformarea dintr-o societate internaţională neorganizată într-una, cel puţin parţial, organizată"[9].

[7] Viorel Velişcu, Pîrvu Loredana, *Drept Internaţional Public*, Editura SITECH, Craiova, 2012, p.289.
[8] Vasile Creţu, *Drept Internaţional Public*, Editura Fundaţiei "ROMÂNIA DE MÂINE", Bucureşti, 1999, p.146.
[9] Viorel Velişcu, Pîrvu Loredana, *Drept Internaţional Public*, Editura SITECH, Craiova, 2012, p.290.

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Particularitatea tratatelor constă în faptul că acestea reprezintă fundamentul instituţiilor de drept internaţional, întrucât atât aceste instituţii, cât şi organizaţiile internaţionale au la baza înfiinţării lor un tratat.

De-a lungul evoluţiei vieţii internaţionale se observă că tratatul continuă să ocupe o poziţie centrală în cadrul atenţiei statelor sau al organizaţiilor internaţionale, întrucât diverse preocupări sau probleme sunt soluţionate pe baza încheierii tratatelor. Tratatele deţin un loc din ce în ce mai important în practica statelor şi datorită diversificării şi dezvoltării colaborării internaţionale, a creşterii numărului de state participante la aceasta şi a numărului de organizaţii internaţionale.

Totalitatea normelor, principiilor, regulilor fundamentale ce guvernează respectarea, încheierea, aplicarea, interpretarea, modificarea, încetarea tratatelor prin intermediul cărora statele îşi pot exercita în mod liber voinţa, constituie dreptul tratatelor.

REGULI CE SE APLICĂ ÎNCHEIERII TRATATELOR INTERNAŢIONALE

Încheierea unui tratat internaţional presupune o operaţiune complexă, ce conţine toate etapele şi momentele de desfăşurare şi finalizare a negocierilor, materializate într-un text stabilit de statele participante la tratat.

Încheierea unui tratat internaţional presupune parcurgerea a trei etape:

a) Negocierea textului;

b) Semnarea tratatului;

c) Exprimarea consimţământului părţilor de a se obliga prin tratat.

Odată realizate aceste etape are loc intrarea în vigoare a tratatului.

Particularităţile etapelor de încheiere a tratatului şi ordinea acestora sunt determinate de conţinutul textului acestora, dar şi de calitatea părţilor participante la tratat.

Întrucât prin intermediul ei ia naştere, se formează un tratat, procedura de încheiere a tratatului deţine un rol fundamental. Însă, parcurgerea acestor etape de încheiere nu sunt suficiente pentru formarea tratatului, ci trebuie îndeplinite condiţiile de validitate prevăzute de dreptul internaţional.

Având în vedere faptul că dreptul internaţional nu stabileşte o formă obligatorie, tratatele pot fi încheiate atât în formă scrisă cât şi verbală, ca de exemplu “gentlemen’s agreement”, aceasta neinfluenţând valoarea juridică a tratatului. Totuşi, pentru garantarea preciziei conţinutului referitor la voinţa statelor sau obligaţiile uneia dintre părţi, în cazul nerespectării lor de către aceasta, statele recurg în general, la încheierea tratatelor în formă scrisă, acordurile în formă verbală dispărând aproape în totalitate.

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Tratatelor încheiate de către state li se aplică dispoziţiile prevăzute în Convenţia de la Viena din 1969 conform articolului 1.

Conform Convenţiei de la Viena din 1969, statele sunt "convinse că codificarea şi dezvoltarea progresivă a dreptului tratatelor realizate prin prezenta Convenţie vor servi scopurile Naţiunilor Unite enunţate în Cartă, care sunt menţinerea păcii şi a securităţii internaţionale, dezvoltarea relaţiilor amicale între naţiuni şi realizarea cooperării internaţionale".

În cazul tratatelor încheiate între state şi organizaţii internaţionale sau între organizaţii internaţionale se aplică prevederile cuprinse în "Convenţia privind dreptul tratatelor între state şi organizaţii internaţionale sau între organizaţii internaţionale" din anul 1986 conform articolului 1.

De asemenea, se aplică şi prevederile Convenţiei de la Viena din 1969 tratatelor ce reprezintă acte constitutive ale unei organizaţii internaţionale şi tratatelor încheiate în cadrul unei organizaţii conform articolului 5.

Organele competente să încheie tratate realizează confirmarea unui tratat de către organizaţiile internaţionale prin intermediul unui "act special". Aceasta procedură este echivalentă cu ratificarea unui tratat internaţional. "În cazul când o organizaţie internaţională vrea să adere la un tratat internaţional, ea o face prin "declaraţia de acceptare".

Constituţia, legislaţia fiecărui stat, respectiv actele constitutive în cazul organizaţiilor internaţionale, conţin dispoziţii cu privire la autorităţile competente cu încheirea unui tratat.

"În general, puterea executivă (preşedintele, guvernul) au competenţă pentru negociere şi semnare, iar parlamentele pentru exprimarea consimţământului de a deveni parte la tratat prin ratificare sau aderare"[10].

În ceea ce priveşte competenţa de a încheia un tratat, încălcarea unei norme de drept intern poate fi considerată viciu de consimţământ dacă nerespectarea este evidentă şi se referă la o normă de drept intern fundamentală.

CAPACITATEA DE A ÎNCHEIA TRATATE INTERNAŢIONALE

Specificul capacităţii de a încheia tratate îl reprezintă autonomia de voinţă a statelor, deoarece majoritatea normelor cu privire la procedura de încheiere au caracter supletiv, astfel încât, în cadrul negocierilor se oferă statelor oportunitatea de a lua propriile decizii.

"De aceea, încheierea tratatelor a fost considerată ca fiind dominată de principiul "libertăţii formelor" sau de "autonomia procedurală a statelor negociatoare", ceea ce exprimă şi o tendinţă generală a practicii internaţionale actuale, aceea a "declinului formei".

[10] Adrian Năstase, Bogdan Aurescu, Cristian Jura, *Drept Internaţional Public*, Editura ALL BECK, Bucureşti, 2000, p.177.

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Capacitatea de a încheia tratate trebuie privită şi analizată din prisma a două perspective.

”Pe de o parte, posibilitatea unei entităţi de drept internaţional de a încheia tratate în nume propriu şi, pe de altă parte, împuternicirea legală a unui demnitar care reprezintă statul pentru a-l angaja într-un tratat internaţional”[11].

Principalele subiecte care au capacitatea de a încheia tratate sunt:

“a) statele unitare, pe deplin suverane, care beneficiază de un drept nelimitat de a încheia tratate internaţionale în virtutea lui “jus tractum”;

b) statele federale, cu menţiunea că, pentru aceste state, tratatele trebuie încheiate de guvernul federal devin obligatorii pe tot cuprinsul federaţiei, pentru toate statele membre;

c) statele federate, dar numai în condiţiile şi cu limitele pe care le prevăd constituţiile naţionale ale statelor”.

Deşi statele unitare sunt subiecte principale având un drept nelimitat de a încheia tratate, actele încheiate de acestea cu persoane fizice sau persoane juridice nu sunt apreciate drept tratate.

În cazul statelor federale, în cadrul unei federaţii, acestea au dreptul de a încheia tratate, însa acţiunea statelor federate este strict limitată.

Capacitatea statelor federate de a încheia tratate este condiţionată de normele constituţionale ale statului federal, aceasta putând fi mai extinsă sau mai restrânsă.

Confederaţiile pot fi, de asemenea, subiecte ale tratatelor. În cadrul confederaţiei, fiecare stat membru îşi are propria personalitate juridică. Ca urmare, capacitatea confederaţiilor de a încheia tratate nu este afectată atât timp cât se respectă prevederile stabilite de confederaţie şi nu intră în contradicţie cu interesul general al acesteia. Încălcarea normelor şi încheierea unor tratate al căror conţinut cuprinde dispoziţii ce contravin interesului confederaţiei atrag excluderea statului din cadrul acesteia.

Capacitate de a încheia tratate pot avea şi statele neutre permanent. Prin intermediul declaraţiei lor şi a recunoaşterii lor pe plan internaţional statele obţin statutul de stat neutru permanent. Aceste state au o capacitate limitată de a încheia tratate, întrucât nu pot încheia tratate care ar putea afecta în mod negativ statutul lor. Deşi dreptul acestor state de a încheia tratate nu poate fi în principiu restrâns, nu este permisă încheierea unor acorduri ce conţin dispoziţii care încalcă statutul de neutralitate.

“Organizaţiile internaţionale, care reprezintă cadre permanente ale colaborării statelor în anumite domenii, desfăşoară o importantă activitate în domeniul tratatelor internaţionale, care este totuşi subordonata principiului “specializării”, prevăzut de statutul organizaţiei respective”[12].

[11] Viorel Velişcu, Pîrvu Loredana, *Drept Internaţional Public*, Editura SITECH, Craiova, 2012, p.292.

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În consecinţă, organizaţiile internaţionale au capacitatea de a încheia tratate, însă doar în domeniul ce formează sfera lor de reglementare. În cadrul fiecarui stat membru, organizaţia internaţională deţine capacitatea juridică ce îi permite încheierea de tratate cu acestea. Această capacitate se extinde în cazul în care organizaţiile deţin vocaţie universală.

Dispoziţiile din cadrul tratatelor, elaborate de către organizaţii, au putere obligatorie asupra acestora numai în momentul în care organizaţiile internaţionale şi le-au însuşit în mod expres.

"În practica internaţională şi în literatura de specialitate se fac referiri în ceea ce priveşte capacitatea de a încheia tratate la poziţia Vaticanului, dar şi în ceea ce priveşte încheierea tratatelor, la unele forme mai vechi de organizare statală, cum ar fi uniunea personală, uniunea reală, statele dependente, statele vasale, acordurile încheiate de şefii unor triburi sau popoare indigene etc.".

Procedurile prin intermediul cărora statele devin părţi participante la tratat şi mijloacele concrete pe baza cărora acestea îşi duc la îndeplinire obligaţiile sunt convenite prin constituţie sau legislaţia internă.

Dreptul intern a fost predominant în cadrul desfaşurării acestui proces determinând astfel o mulţime de practici în ceea ce priveşte încheierea tratatelor internaţionale.

Datorită acestei diversităţi au fost adoptate anumite convenţii, astfel încheierea unui tratat este guvernată de reglementările cuprinse în cele trei convenţii: "Convenţia de la Viena din 23 mai 1969 privind dreptul tratatelor", "Convenţia de la Viena din 1986 privind dreptul tratatelor între state şi organizaţii internaţionale sau între organizaţii internaţionale" şi "Convenţia de la Viena din 1978 referitoare la succesiunea statelor la tratate".

Aceste convenţii oferă statelor posibilitatea de a alege liber metodele clare de încheiere, aplicare sau modificare a tratatelor, întrucât acestea "au realizat mai degrabă o armonizare decât o uniformizare a regulilor referitoare la tratate"[13].

În concluzie, tratatul reprezintă o modalitate prin care se poate limita puterea statală. Chiar dacă tratatul presupune doar o expresie formală a puterii statului, acesta deţine capacitatea de a o limita.

"Caracterul de act presupune existenţa unei tranzacţii între părţile contractante, ceea ce are ca rezultat o limitare reciprocă a puterilor, limitare care este unanim recunoscută de jurisprudenţă"[14].

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[14] Viorel Velişcu, Pîrvu Loredana, *Drept Internaţional Public*, Editura SITECH, Craiova, 2012, p.290.

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THE ADMINISTRATION RIGHT AND THE RIGHT TO USE FREE OF CHARGE

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Abstract : Starting from the inalienable public property provided by the Romanian Constitution in article 136, current Civil Code reflected the three real rights under the rules of public property system, namely the management right , the concession rights and the right to use free of charge, the distinguish is started from each right holder, in the case that the prerogatives of these rights are similar, with some minor exceptions. We intend to approach in a comparative analysis, the two real rights over public property, given the current regulation of the Civil Code and the practical situations of exercise. Also, our scientific approach aims to highlight the fact that if regarding the public property, the Romanian legal system regulate the administration of the assets of another person through the exercise of the right of administration, into the system of private property the goods administration of another person is for the first time introduced by the current Civil Code, by transposing the provisions of the Civil Code of Quebec, so between the two types of administration there are differences of legal regime on rights held by the holder of the administration, meaning the private administrator. Also, the differences appear in terms of the legal document under which it is organising and exercising the right of administration, namely the right of free use, in both cases being in the presence of an administrative act.

Keywords:administration right, right to use free of charge, real right, public property, administrative act.

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THE IMPORTANCE AND DIVISIONS OF ROMAN LAW

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Rezumat: Abordând într-o manieră pragmatică şi prospectivă complexitatea vieţii materiale aflată într-o vădită şi permanentă interferenţă şi cu planul moral-etic şi spiritual al societăţii antice din cadrul statului roman, devenit imperiu universal, civilizaţia romană s-a impus după cum plastic remarca un exeget al doctrinei dreptului roman „fie cu sabia, fie cu crucea, fie cu dreptul"[1]. Romanii au fost primul popor antic care datorită spiritului lor inventiv dar şi practic-aplicativ au reuşit să delimiteze normele juridice „Jus" de normele religioase „Fas" şi pe cale de consecinţă au reuşit să construiască un sistem de norme, principii şi instituţii juridice care, aşa cum a dovedit realitatea istorică, au devenit axiome şi constante juridice intrând ca atare în tezaurul gândirii juridice universale. Prin construcţiile juridice elaborate, cât şi prin tehnica legislativă desăvârşită, romanii au fost cei dintâi care au delimitat dreptul public de dreptul privat, diviziuni care, cu toate amendamentele de rigoare, se menţin şi în zilele noastre. În acest sens, juristul Ulpian menţiona: „publicum ius east quod ad statum rei Romanae spectators, privatum quod ad singularum utilities: sum enim Qa'ida publicae utilio Qa'ida deprivation"[2] (dreptul public este cel care priveşte statul puterii romane, dreptul privat priveşte interesele particularilor, căci unele lucruri sunt utile în interes public, altele sunt utile în interes privat). În condiţiile societăţii contemporane tot mai globalizată, acum când practic se redefinesc principiile pe care se clădeşte edificiul Uniunii Europene, gândirea juridică romană este revalorificată de către jurişti, politicieni şi nu numai, deci, de toţi factorii responsabili în ceea ce priveşte construcţia în planul „realităţii juridice" a unui cadru optim pentru armonizarea intereselor cetăţeanului privit ca subiect de drept cu cele ale entităţilor statale şi suprastatale, fapt ce vine să probeze perenitatea şi actualitatea dreptului roman..

Cuvinte cheie: drept roman, drept public, drept privat, perenitate, actualitate.

[1] I. C. Cătuneanu, Curs elementar de drept roman, Editura Cartea Românească, Cluj, 1922, p. V
[2] Ulpian, lib. Inst; Dig., 1.1.1.2; Inst. 1.1.4.

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Dreptul privit ca o dimensiune a realităţii sociale şi implicit ca şi componentă inalienabilă a existenţei umane, a însoţit istoria societăţii omeneşti încă de la geneza acesteia, obiectivându-se în forme de exprimare dintre cele mai diverse în funcţie de factorii obiectivi, privind configurarea dreptului pozitiv.

Romanii, spre deosebire de alte popoare antice, au reuşit să facă din drept o ştiinţă dar deopotrivă şi o artă, prin care s-a definit realitatea socială ca una deosebit de complexă guvernată de norme ce consfinţesc drepturi şi obligaţii deopotrivă.

Juriştii romani dând dovadă de un spirit practic de excepţie, au conturat dimensiunea juridică a societăţii arătând că dreptul este chemat să cerceteze implicit geneza cât şi evoluţia acesteia.

Sintetizând cele mai sus arătate romanii consideraţi a fi „părinţii dreptului”[3] în accepţiunea semantică a termenului, afirmau că acolo unde este societate, există şi drept[4] - „ubi societas ibi ius”.

Spiritul inventiv al romanilor dar şi dorinţa acestora de a ajunge la perfecţiune au determinat ca aceştia să elaboreze din perspectiva unor tehnici legislative desăvârşite, principii, instituţii şi norme juridice care într-un interval de treisprezece secole au germinat în planul realităţii juridice – dreptul privat – privit atât ca ştiinţă, cât şi ca instrument de ordonare a conduitei umane.

Subsumând sistemul normativ unui set de principii exprimate printr-o serie de adagii care s-au constituit în bunuri ale civilizaţiei universale – juridice şi extrajuridice - romanii au construit o realitate juridică ce a avut menirea să disciplineze şi coordoneze relaţiile sociale, în vederea promovării unor valori larg receptate de societatea romană, cum ar fi şi proprietatea, familia, statutul persoanelor, inclusiv libertăţile publice, regimul bunurilor aflate sau nu în circuitul civil, succesiunile cât şi formele de exprimare a relaţiilor comerciale reflectate la nivel juridic prin materia obligaţiilor civile, etc.

Toate aceste realităţi sociale complexe au fost decelate prin mecanismele specifice de manifestare ale normelor sociale între care normele juridice „IUS” se deosebesc calitativ de cele religioase „FAS” sau cele de „politeţe” sau de natură „politică” sau „morală” prin existenţa sancţiunii normei, care este sistematizată, fiind aplicată de un organ specializat şi fiind totodată predeterminată de o voinţă supremă care în viziunea romanilor aparţinea zeilor, lucru exprimat în mod neechivoc prin adagiile „dura lex sed lex” sau „fiat justitia sed pereat mundi”. Prin aceasta se afirma eternitatea dreptului şi perenitatea actului de justiţie săvârşit în

[3] N. Popa, *Teoria generală a dreptului*, Editura Actami, Bucureşti, 1996, p.47.
[4] C. Murzea, *Drept roman*, Editura All Beck, Bucureşti, 2003, p.9.

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numele divinităţilor supreme, căci o simplă încălcare a unei norme de drept însemna o încălcare a voinţei zeilor, atrăgând pedepse dintre cele mai severe.

Romanii nu puteau concepe faptul că dreptul nu ar fi etern, veşnicia dreptului fiind dată de însăşi veşnicia societăţii romane – ubi jus ibi societas – afirmând că dreptul este un dar al zeilor, fapt pentru care normele juridice din epoca veche cât şi procedura şi zilele faste în care se administra actul de justiţie erau cunoscute doar de către pontifi.

Dacă la origini normele juridice se suprapuneau, ca de fapt la toate popoarele antice, peste normele religioase[5] constatăm că romanii cu timpul au reuşit să le definească atât natura cât şi domeniul de aplicare celor două categorii de norme sociale, lucru evident şi din încărcătura semantică a celor doi termeni în limba latină; astfel că „IUS" va rămâne ancorat în sfera relaţiilor juridice în timp ce „FAS" va acoperi o realitate de natură magico-religioasă, fapt ce ne face să afirmăm fără rezerve faptul că începând din secolul al III-lea î.e.n. disocierea este evidentă şi devine o certitudine la nivelul mentalităţii colective. Astfel se năştea dreptul cu propriile sale principii, axiome în jurul cărora se dezvoltau concepte de natură moral juridică. În acest sens Celsus afirmă că „ius est ars aequi et boni". Într-o înşiruire pur aleatorie cu scop exemplificativ amintim respectarea unor percepte cu o vădită încărcare morală pe lângă substratul lor juridic, cele precum – „aliendi abstinentia" (respectarea a tot ce este al altuia); „promissorum implendorum obligatio (respectarea angajamentelor); „damni culpa dati reparatio" (repararea pagubelor pricinuite); „poene interhominis meritum" (pedeapsa echitabilă). Aceste comandamente aveau să-l influenţeze mai târziu pe Hugo Grotius (1583-1645) un ilustru reprezentant al Şcolii Dreptului Natural, să le califice drept bazele conceptuale pe care avea să se clădească dreptul natural, acesta fiind etern şi imuabil apărând ca un suum de principii pe care raţiunea le dictează pentru satisfacerea înclinării naturale a omului pentru viaţa socială[6].

Preceptele de natură morală sunt asumate şi în plan juridic, lucru ce se exprimă în forma consacrată folosită de Justinian pentru a defini ştiinţa dreptului arătând că – „juris prudentia est divinorum atque humanorum rerum notitia justi atque injusti scientia (stiinţa dreptului sau jurisprudenţa este cunoaşterea lucrurilor divine şi umane, ştiinţa a ceea ce este drept şi nedrept).

În acelaşi sens Ulpianus definind principiile ce guvernează dreptul roman adăuga unui principiu de morală – „honestum vivere" – două principii de drept afirmând – „juris praecepta

[5] Ibidem, p.2.
[6] Cf. N. Popa, op.cit., p.48.

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sunt haec, honeste vivere, alterum non laedere suum cuique tribuere"[7] – (principiile dreptului sunt acestea – a trăi în mod onorabil, a nu vătăma pe altul, a da fiecăruia ce este al său). Această realitate avea însă un vădit grad de relativitate căci încă din perioada epocii vechi se poate constata faptul că normele, instituţiile şi principiile juridice dobândesc o identitate proprie în raport cu cele de natură morală sau religioasă, ele dobândind treptat o importanţă deosebită, căci aşa după cum remarcă majoritatea doctrinarilor dreptului roman, concepţiile juridice tind să devină principala ideologie în cadrul statului roman ele devenind o adevărată placă turnantă a întregii gândiri şi practici sociale.

Aşadar, dreptul ca realitate socială în cadrul statului roman nu include celelalte norme sociale , ci le completează sau coexistă cu acestea într-o manieră originală. Apariţia societăţii politice, apariţia claselor sociale cu interese opuse, cât şi dinamica vieţii economice fac ca treptat dreptul cu normele sale să se desprindă treptat de morală şi obiceiuri, ca urmare a dinamicii de ansamblu a societăţii. Ilustrul filosof dialectician Hegel, arăta referindu-se la acest proces complex faptul că „Numai după ce oamenii şi-au născocit trebuinţe multiple şi când dobândirea acestora se împleteşte cu satisfacerea lor, numai atunci se pot alcătui legi"[8]

Romanii dând dovadă de un simţ practic deosebit aveau să fie primii care au conturat locul şi rolul normelor juridice în cadrul sistemului normativ general al societăţii arătând că acestea impun indivizilor în primul rând o conduită prescrisă, deci o obligaţie corelativă comportamentală determinată de natura dreptului reglementat de autoritatea legislativă. Se încerca pe această cale să se confere normelor juridice o autoritate distinctă ce ţinea de existenţa şi funcţionarea statului roman.

Din acest moment fizionomia normelor şi instituţiilor juridice, perfecţionarea continuă a principiilor de drept formulate dar şi nivelul elevat al tehnicii legislative folosite, au făcut din sistemul dreptului roman un important instrument cognitiv educativ pentru poporul roman, dar mai ales unul practic-aplicativ menit să dea concreteţe noilor figuri şi expresii juridice, având în vedere în esenţă gradul înalt de abstractizare la care avea să ajungă jurisprudenţa romană[9].

Universalitatea limbajului juridic este o realitate care îşi găseşte una dintre explicaţiile sale în faptul că multe popoare aveau să împrumute din arsenalul gândirii juridice romane construcţii juridice, figuri juridice, principii de drept, care au stat la baza propriului lor sistem de drept. Romanii au reuşit astfel să construiască un limbaj tehnic extrem de specializat menit să

[7] E. Molcuţ, D. Oancea, *Drept roman*, Casa de editură şi presă „Şansa" SRL, Bucureşti, 1993, p.6.
[8] Hegel, *Principiile filosofiei dreptului*, Editura Academiei, Bucureşti, 1969, p.238.
[9] C. Murzea, op.cit, p.3.

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acopere un câmp de raporturi juridice ce reflectau o diversitate de relaţii sociale aflate într-o permanentă interferenţă cu evoluţia tehnicii legislative ce evoluează de multe ori pe cale procedurală, cunoscându-se faptul că datorită mentalităţii conservatoare a acestui popor, acesta considera că normele lui „ius civilae" sunt perene şi imuabile fapt pentru care pretorul, principalul actor judiciar, venea să introducă pe cale mediată noi figuri juridice menite să acopere noile interese şi să le transforme în drepturi subiective. Era astfel cunoscut raportul dintre dreptul civil şi dreptul pretorian pe care îl menţiona în lucrarea sa intitulată „Digestele", în care se arată că „ius praetorium est quod praetores introduxerunt adiuvandi, vel supplendi vel corrigendi iuris civilis gratia propter utilitatem publicum" (dreptul pretorian este acela care a fost stabilit de pretor pentru a veni în ajutorul dreptului civil, pentru a-l completa şi îmbunătăţii conform binelui public)[10].

Romanii au fost aceia care au creat alfabetul juridic, reuşind ca prin normele edictate sau sancţionate prin instituţii juridice create cât şi prin ramurile de drept pe care le-au generat să ofere posterităţii un instrument adecvat, care preluat şi valorificat funcţie de particularităţile specifice fiecărei zone sau etape de evoluţie a societăţii să ofere un îndreptar juridic şi un suport teoretic necesar viitoarelor construcţii juridice reflectate la nivelul izvoarelor formale de drept.

După cum elocvent se exprima distinsul profesor E.Molcuţ „multe din conceptele şi categoriile juridice actuale îşi au originea în dreptul roman care a reuşit să le dea o asemenea elaborare încât să poată fi utilizată pe scară universală"[11].

Influenţa dreptului roman este deosebit de pregnantă în epoca modernă atunci când are loc o adevărată revoluţie în ceea ce priveşte codificarea, sistematizarea dreptului prin apariţia codurilor, adevărate monumente legislative ce veneau să reglementeze diversele paliere ale vieţii sociale reflectate la nivel juridic. Acum mai mult ca oricând elemente ale tehnicii legislative dar şi instituţii create mai ales în epoca clasică a dreptului roman, epoca cea mai fecundă din creaţia juridică romană, sunt preluate şi adaptate la noile realităţi sociale.

În acest sens, pentru orice sistem de drept fie el continental sau anglo-saxon, divizarea realizată în plan conceptual teoretic realizată de eminentul jurist Ulpian în partea introductivă a operei sale „Institutiones", conform căruia sistemul dreptului are o structură bipartită care sete valabilă şi în zilele noastre. Astfel se distinge dreptul public – ius publicum – de dreptul privat – ius privatum. În acest context Ulpian argumentează – „publicum ius este quod statum

[10] Justinian, D.1.1.7.1
[11] E. Molcuţ, op.cit., p.12.

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rei Romanae spectat, privatum quod ad singularum utilitatem" (Dreptul public este acela care ţine de organizarea statului roman, dreptul privat fiind acela care se aplică numai raporturilor dintre particulari)[12].

Ceea ce stă la baza delimitării celor două ramuri de drept în concepţia lui Ulpian este noţiunea de „utilitas" adică interesul. Astfel normele dreptului public sunt emise în interesul poporului roman văzut în unitatea sa şi cuprind norme referitoare la cult (in sacris), la atribuţiile preoţilor (in vacerdotribus) şi ale magistraţilor (in magistratibus consistit)[13]. Majoritatea izvoarelor relevă însă faptul că dreptul public este cel care cuprinde aşa numitele „leges publicae" în timp ce „ius privatum" cuprindea acele norme sancţionate de cetăţenii romani şi inserate în manifestările lor exprese de voinţă reflectate prin actele juridice pe care le încheiau. În opinia lui Papinian – „ius publicum privatorum pactis derogari non potest" (dreptul public nu poate fi modificat prin acordul particularilor[14]. Aşadar se făcea o delimitare între „ius cogens" de „ius dispositivum" adică normele imperative de cele de natură dispozitivă.

La rândul său, după sfera de aplicabilitate, dreptul privat cunoştea în viziunea juriştilor romani trei diviziuni şi anume – „ius civilae", aplicabil exclusiv în raporturile ce se iveau între cetăţenii romani; „ius gentium" ce se aplica în raporturile cu străinii sau peregrinii şi „ius naturae" ce desemna acel sistem de drept ce se aplica deopotrivă tuturor vieţuitoarelor, fiind deci un sistem de drept cu vocaţie universală. Gaius afirma în acest fel că - „privatum ius tripartitum est: collectam etinem est ex naturalibus praeceptis aut gentium aut civilibus" (dreptul privat cuprinde trei părţi căci e alcătuit din principii ale dreptului natural, sau din principiile dreptului ginţilor, sau din principii ale dreptului civil)[15].

Dacă dreptul civil se aplică numai qurililor – „quom ius proprium civitatis", per a contrario „ius gentium" se aplica tuturor popoarelor „ius naturalis natio"[16]. În opinia lui Gaius, între „ius naturae" şi „ius gentium" era practic o identitate de conţinut, primul făcând corp comun cu dreptul ginţilor el reglementând ceea ce romanii defineau prin „status personalis".

În opinia istoricului Titus Livius, „ius gentium" avea semnificaţia pe care astăzi o dăm dreptului internaţional public, el fiind chemat să reglementeze raporturile dintre state precum şi modul în care urmau să fie soluţionate diferendele dintre acestea.

[12] C. Murzea, op.cit., p.4.
[13] T. Sîmbrian, *Instituţii de drept civil*, Editura Sitech, Craiova, 2009, p.28.
[14] Ibidem
[15] C. Murzea, *op.cit.*, p.5.
[16] Ibidem

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Toate aceste subdiviziuni prezintă astăzi mai puţină importanţă, căci ele şi-au pierdut semnificaţia atât în planul construcţiilor juridice cât şi din perspectiva tehnicilor legislative, date fiind condiţiile de exprimare a noilor realităţi juridice ce s-au derulat, ele având doar o semnificaţie din perspectiva istoriei dreptului roman de la întemeierea statului cetate Roma (754 î.e.n.) şi până la domnia împăratului Justinian (527-565 e.n.).

Analizând prin metodele oferite de ştiinţa dreptului realităţile juridice din Roma antică, nu putem să nu concluzionăm că astăzi mai mult ca oricând în contextul globalizării şi a experienţelor pe care le oferă noul cadrul de organizare a structurilor statale reglementate de Tratatele constitutive ale Uniunii Europene, dreptul roman reprezintă un element important în formarea mentalităţii juridice a celor chemaţi să realizeze şi să aplice dreptul european, adică a juriştilor şi a tuturor factorilor responsabili care depăşind formele naţionale găsesc un „numitor comun" în ceea ce priveşte dialogul cât şi construcţia unui sistem juridic ce are la bază elementele de unitate şi continuitate, configurând astfel o nouă realitate politico-juridică europeană, care arată că Roma antică ca stat universal rămâne în continuare un exemplu în ceea ce priveşte aplicarea principiului ce exprimă „unitatea în formele diversităţii ei"..

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CONTESTATION – SPECIFIC REMEDY IN CRIMINAL MATTERS

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Abstract:The current criminal procedural legislation bring substantial changes in the matter of appeals, the aim of speeding up criminal proceedings and shortening the settlement of criminal cases. Thus, the Criminal Procedure Code entered into force on 1 February 2014 established a single ordinary remedy in criminal matters - the appeal, giving efficiency to the principle of double degree of jurisdiction enshrined in the European Convention on Human Rights and Fundamental Freedoms.

Shortly after the entry into force of the current Code of Criminal Procedure, by O.U.G. no.3 / 2014 were added (in Chapter III [1] - art.425[1] of Title III - "Judgment" of the Special Part of the code) framework provisions on contestation. The interpretation of these provisions, and other provisions of the Code referred to contestation and the interpretation of how they were placed those framework provisions (between chapter for the call appeal and the extraordinary appeals), it appears that the legislature intended to confer legal nature of an contestation ordinary appeal.

Therefore, without posing a new instance, distinct from the appeal, the contestation was conceived as a remedy against some decisions are not definitive (so has the nature of an ordinary appeal), that do not attacking final judgement and that can be exercised only where expressly required by law (in cases not provided for the appeal call).

Keywords: criminal trial; contestation; an ordinary appeal; legislative changes; the current Code of Criminal Procedure.

1. Noţiunea şi necesitatea căilor de atac

Pentru asigurarea realizării în cât mai bune condiţii a justiţiei penale, prin pronunţarea unor soluţii corecte, atât sub aspectul temeiniciei, cât şi al legalităţii, judecata, în sistemul nostru procesual penal, poate parcurge două grade de jurisdicţie, ceea ce conferă posibilitatea controlului jurisdicţional asupra hotărârilor penale.

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În urma exercitării controlului jurisdicţional pot fi înlăturate eventualele erori intervenite în activitatea de judecată, fie în privinţa stabilirii faptelor, fie în ceea ce priveşte aplicarea legii; instituţia prin intermediul căreia se poate realiza acest control este cea a căilor de atac.

Căile de atac din faza de judecată sunt mijloacele legale prin care, la cererea procurorului sau a altor persoane îndrituite de lege, se pune în mişcare un control judecătoresc în scopul desfiinţării hotărârilor penale nelegale sau netemeinice[1].

Raţiunea existenţei căilor de atac se întemeiază pe considerentul că judecata, ca orice activitate umană, este supusă erorii; de aceea, căile de atac sunt considerate adevărate remedii procesuale prin intermediul cărora pot fi înlăturate eventualele greşeli ivite pe parcursul judecăţii. Aşa cum s-a afirmat în doctrină[2], căile de atac implică o „prezumţie de greşeală pentru judecata atacată" şi „o prezumţie de îndreptare pentru judecata ce va urma".

Controlul judecătoresc constă, de regulă, în dreptul şi obligaţia pe care le au instanţele judecătoreşti superioare de a verifica, în condiţiile şi cu procedura stabilită de lege, legalitatea şi temeinicia hotărârilor pronunţate de instanţele judecătoreşti inferioare lor şi de a desfiinţa, total sau parţial, acele hotărâri care sunt greşite sau de a le confirma pe cele ce sunt legale şi temeinice.

Prin excepţie de la această regulă, sunt situaţii când instanţa care a judecat cauza este autorizată să-şi verifice ea însăşi hotărârea şi, dacă este cazul, să revină asupra ei şi să dea o nouă soluţie, efectuând, astfel, un autocontrol. De aceea, unii autori[3] au făcut o distincţie între căile de atac propriu-zise (cum este apelul), care implică un control din partea instanţelor superioare şi aşa-numitele căi de reînnoire(cum este contestaţia în anulare), care, determinând un autocontrol, atrag o nouă judecată chiar din partea instanţei care a pronunţat hotărârea atacată.

Prin folosirea căilor de atac nu se trece într-o nouă fază procesuală, ci se continuă cursul judecăţii; cu alte cuvinte, introducerea unei căi de atac nu duce la naşterea unui nou raport juridic procesual penal, ci determină parcurgerea unei noi etape, în cadrul judecăţii, la sfârşitul căreia instanţa de control va da o hotărâre prin care va infirma sau va confirma hotărârea atacată.

Importanţa căilor de atac pentru înfăptuirea justiţiei a determinat şi înscrierea în Constituţia României (art.129) a principiului potrivit căruia „împotriva hotărârilor judecătoreşti, părţile interesate şi Ministerul Public pot exercita căile de atac în condiţiile legii".

[1] Gr. Theodoru, *Drept procesual penal*, Editura „Cugetarea", Iaşi, 1998, p.297.
[2] V. Dongoroz, *Curs de procedură penală*, ediţia a II-a, Bucureşti, 1942, p.316.
[3] Tr. Pop,*Drept procesual penal. Partea specială*, vol. IV, Tipografia Naţională, Cluj, 1948, p.341.

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2. Clasificarea căilor de atac

În literatura juridică[4] s-au făcut mai multe clasificări ale căilor de atac, în funcţie de anumite criterii:

a) după caracterul nedefinitiv sau definitiv al hotărârii atacate, căile de atac se împart în ordinare şi extraordinare;

● *Căile de atac ordinare* sunt acelea prin care se atacă hotărâri judecătoreşti nedefinitive, care nu au dobândit putere de lucru judecat. În sistemul nostru procesual penal actual calea de atac ordinară este apelul, iar pentru situaţiile în care legea o prevede expres, contestaţia.

Căile de atac ordinare fac parte din sistemul gradelor de jurisdicţie.

În legislaţia noastră procesual-penală, gradele de jurisdicţie şi, implicit, sistemul căilor de atac ordinare au cunoscut o anumită evoluţie în timp. Astfel, în 1861 a fost înfiinţată Curtea de Casaţie care avea trei secţiuni, secţiunea a doua ocupându-se cu apelurile penale[5].

Ulterior, Codicele de procedură criminală din 1864 (puternic inspirat de prevederile Codului de instrucţie penală francez) a făcut primele precizări în materie de grade de jurisdicţie, reglementând posibilitatea atacării deciziilor şi sentinţelor.

Codul de procedură penală Carol al II-lea, din 1936, reconfirmă existenţa gradelor de jurisdicţie, prevăzând drept căi de atac ordinare, opoziţia[6], apelul şi recursul.

Prin Legea nr.345/1947[7], prin care a fost realizată aşa-numita reformă a justiţiei, au fost desfiinţate opoziţia şi apelul, singura cale de atac ordinară rămânând recursul; în urma acestei modificări s-a impus şi o reconsiderare a instituţiei recursului, care a trebuit să suplinească lipsa apelului, fiind astfel transformată într-o cale de atac atât de fapt, cât şi de drept.

Codul de procedură penală adoptat în 1968 (intrat în vigoare în 1969)[8] a menţinut sistemul celor două grade de jurisdicţie: judecata în primă instanţă şi recursul.

[4] Gh. Mateuţ,*Procedură penală, Partea specială,* vol.II, Editura Lumina Lex, Bucureşti, 1998, p.184-188;V. Papadopol, C. Turianu,*Apelul penal,* Casa de editură şi presă „Şansa" S.R.L., Bucureşti, 1994, p.19-23.
[5] D. V. Mihăescu, *Recursul penal*, Editura Ştiinţifică, Bucureşti, 1962, p.24.
[6] Opoziţia era o cale de atac adresată aceleiaşi instanţe de judecată, pentru a retracta hotărârea anterioară dată în lipsă, a repune în discuţie cauza şi a da o nouă hotărâre (Tr. Pop, *op. cit.*, p.381.).
[7] Legea nr.345/1947 de modificare a Codului de procedură penală, publicată în M.Of. nr.299 bis din 29 decembrie 1947.
[8] Codul de procedură penală adoptat în 1968, republicat în M.Of. nr.78 din 30 aprilie 1997, cu modificările şi completările ulterioare

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Prin Legea nr.92/1992 pentru organizarea judecătorească[9] a fost reintrodus apelul în sistemul nostru judiciar, judecata în apel reprezentând cel de-al doilea grad de jurisdicţie, după judecata în primă instanţă şi înaintea judecăţii în recurs. Reglementarea în materie procesuală penală a apelului s-a realizat prin Legea nr.45/1993 pentru modificarea şi completarea Codului de procedură penală[10].

Şi la momentul adoptării actualei legi privind organizarea judiciară (Legea nr.304/2004[11]) s-a menţinut reglementarea a trei grade de jurisdicţie (judecata în primă instanţă, judecata în apel şi judecata în recurs).

Modificările aduse Codului de procedură penală de la 1968 (prin Legea nr.202/2010 privind accelerarea soluţionării proceselor[12]) au limitat reglementarea celor trei grade de jurisdicţie numai la cauzele care se judecau în primă instanţă la tribunal; pentru a se obţine scurtarea duratei proceselor penale, cauzele care reveneau în competenţa de judecată în primă instanţă a judecătoriilor, a curţilor de apel şi a Înaltei Curţi de Casaţie şi Justiţie puteau parcurge doar două grade de jurisdicţie (judecata în primă instanţă şi judecata în recurs).

Actualul Cod de procedură penală[13](Legea nr.135/2010) consacră doar două grade de jurisdicţie (judecata în primă instanţă şi judecata în apel), recursul devenind cale extraordinară de atac (sub denumirea de recurs în casaţie).

De altfel, şi în jurisprudenţa europeană este consacrat principiul dreptului la două grade de jurisdicţie în materie penală[14]; astfel, art.2 paragr.1 al Protocolului 7 la Convenţia europeană consacră dreptul persoanei declarate vinovată de o infracţiune de către un tribunal să ceară examinarea „declaraţiei de vinovăţie" sau a condamnării de către o instanţă superioară.

În literatura juridică[15] au fost evidenţiate caracteristicile căilor de atac ordinare, astfel:

- se exercită înainte ca hotărârea atacată să fi rămas definitivă;
- fac parte din ciclul normal al procesului penal;
- au prioritate faţă de căile extraordinare de atac, în sensul că nu se poate folosi o cale extraordinară înainte de a se fi exercitat cea ordinară;

[9] Legea nr.92/1992, republicată în M.Of. nr.259 din 30 septembrie 1997
[10] Legea nr.45/1993, publicată în M.Of. nr.147 din 1 iulie 1993.
[11] Legea nr.304/2004, republicată în M.Of. nr.827 din 13 septembrie 2005, cu modificările şi completările ulterioare
[12] Legea nr.202/2010, publicată în M.Of. nr.714 din 26 octombrie 2010.
[13] Legea nr.135/2010, publicată în M.Of. nr.486 din 15 iulie 2010, cu modificările şi completările ulterioare, intrată în vigoare la 1 februarie 2014
[14] M. Udroiu, O. Predescu, *Protecţia europeană a drepturilor omului şi procesul penal român*, Editura C.H.Beck, Bucureşti, 2008, p.906
[15] D. V. Mihăescu, V. Rămureanu, *Căile extraordinare de atac în procesul penal*, Editura Ştiinţifică, Bucureşti, 1970, p.8-9.

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- sunt deschise întotdeauna părţilor interesate;
- pot fi exercitate, în principiu, pentru orice motiv;
- se exercită într-un termen scurt fixat de lege;
- au, de regulă, efect suspensiv, în sensul că folosirea lor atrage, în mod automat, suspendarea executării hotărârii atacate.

● *Căile extraordinare de atac* sunt acelea prin care se atacă hotărâri definitive care au intrat în autoritatea lucrului judecat. În actualul Cod de procedură penală român sunt reglementate următoarele căi extraordinare de atac: contestaţia în anulare, recursul în casaţie, revizuirea şi redeschiderea procesului penal în cazul judecăţii în lipsa persoanei condamnate.

În virtutea principiului *ne bis in idem* (principiul autorităţii de lucru judecat), hotărârile judecătoreşti rămase definitive sunt prezumate că exprimă adevărul şi o nouă judecată cu privire la aceeaşi faptă şi aceeaşi persoană nu mai este posibilă.

Nu se poate face abstracţie, însă, de faptul că şi în activitatea jurisdicţională pot să apară erori care să ducă la pronunţarea unor hotărâri nelegale sau netemeinice şi chiar la rămânerea definitivă a acestora. Cu alte cuvinte, principiul autorităţii de lucru judecat nu trebuie să afecteze principiile legalităţii şi aflării adevărului în procesul penal; eventuala contradicţie între principiul autorităţii de lucru judecat, pe de o parte, şi principiile legalităţii şi aflării adevărului în procesul penal, pe de altă parte, a fost rezolvată prin reglementarea instituţiei căilor extraordinare de atac.

Căile extraordinare de atac reprezintă excepţii de la principiul autorităţii de lucru judecat a hotărârilor judecătoreşti definitive, chiar dacă astfel se aduce atingere stabilităţii acestor hotărâri[16].

În concluzie, căile extraordinare de atac sunt acele mijloace legale prin intermediul cărora pot fi atacate, în condiţii expres prevăzute de lege, hotărârile judecătoreşti rămase definitive; ele se înfăţişează ca remedii procesuale menite a repara erorile pe care le conţin hotărârile judecătoreşti definitive[17].

Comparând căile extraordinare de atac cu cele ordinare, se observă că, deşi fac parte din categoria căilor de atac, între cele două instituţii predomină deosebirile. Astfel, în literatura juridică[18] au fost evidenţiate următoarele *deosebiri*:

- prin căile extraordinare de atac se urmăreşte verificarea hotărârilor definitive, în timp ce căile de atac ordinare se îndreaptă împotriva unor hotărâri nedefinitive;

[16] S. Kahane, *Drept procesual penal*, Editura didactică şi pedagogică, Bucureşti, 1963, p. 299.
[17] I. Neagu, *Tratat de procedură penală,* Editura PRO, Bucureşti, 1997, p. 607
[18] D. V. Mihăiescu, V. Rămureanu, *op.cit.*, p.9; I. Neagu,*op. cit.*, p.608

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- introducerea unei căi extraordinare de atac declanşează o judecată care nu se înscrie în sistemul gradelor de jurisdicţie, pe când căile de atac ordinare fac parte din sistemul gradelor de jurisdicţie;

- sfera titularilor care pot exercita căile extraordinare de atac este mai restrânsă decât sfera titularilor care pot folosi căile de atac ordinare;

- termenele de declarare a căilor extraordinare de atac sunt, de regulă, mai mari decât termenele de declarare a căilor ordinare de atac;

- cazurile pentru care se pot exercita căile extraordinare de atac sunt mai reduse şi expres prevăzute de lege;

- în timp ce căile de atac ordinare, odată declarate, au de drept un efect suspensiv (suspendă punerea în executare a hotărârii atacate), căile extraordinare de atac pot avea efect suspensiv numai la iniţiativa instanţei.

b) După consecinţele pe care le pot produce în caz de admitere, căile de atac pot fi: de reformare, de anulareşide retractare;

● *Calea de atac* este *de reformare* atunci când o instanţă superioară, în urma controlului efectuat, dacă apreciază că hotărârea instanţei inferioare este viciată de erori de fapt sau de drept, o desfiinţează şi pronunţă ea însăşi o nouă hotărâre[19].

● *Calea de atac* este *de anulare* în cazul în care instanţa superioară, dacă apreciază că există unele erori de fapt sau de drept în hotărârea atacată, declară fără efect acea hotărâre (o desfiinţează) şi,fie nu mai are loc o rejudecare[20], fie rejudecarea cauzei se face de instanţa inferioară, a cărei hotărâre a fost desfiinţată[21];

● *Calea de atac de retractare*este aceea care nu se adresează instanţei superioare, ci chiar instanţei care a pronunţat hotărârea atacată, pentru ca, în caz de admitere (în urma invocării şi dovedirii unor situaţii noi, care dacă ar fi fost cunoscute în momentul soluţionării cauzei ar fi dus la o altă soluţie), să pronunţe o nouă hotărâre[22].

c) După natura chestiunilor asupra cărora poartă controlul judecătoresc declanşat prin folosirea căilor de atac,acestea pot fi căi de atac de fapt şi căi de atac de drept.

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[19] Apelul este, preponderent, o cale de atac de reformare.

[20] Este cazul contestaţiei în anulare când împotriva unei persoane s-au pronunţat două hotărâri definitive pentru aceeaşi faptă (s-a încălcat principiul autorităţii de lucru judecat), precum şi al recursului în casaţie când Înalta Curte de Casaţie şi Justiţie anulează (casează) hotărârea atacată şi pronunţă achitarea sau încetarea procesului penal ori înlătură greşita aplicare a legii.

[21] În unele situaţii, apelul este cale de atac de anulare (atunci când instanţa de trimitere pronunţă, în urma rejudecării, o nouă hotărâre); de asemenea, recursul în casaţie este cale de atac de anulare când Înalta Curte de Casaţie şi Justiţie casează cu trimitere spre rejudecare de către instanţa de apel ori de către instanţa competentă material sau după calitatea persoanei.

[22] În sistemul nostru procesual penal, calea tipică de retractare este revizuirea.

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- *Căile de atac de fapt* determină repunerea în discuţie a aspectelor de fapt la care se referă soluţia adoptată prin hotărârea atacată[23].

- *Căile de atac de drept*provoacă reexaminarea doar a chestiunilor de drept[24].

3. Contestaţia

Prin O.U.G. nr.3/2014[25] s-au adăugat în actualul Cod de procedură penală (în cadrul Titlului III – „Judecata" al Părţii Speciale) **dispoziţii generale** privind contestaţia (Capitolul III[1] – „Contestaţia"), după Capitolul III consacrat apelului.

Astfel, potrivit art.425[1] alin.1 C.pr.pen., calea de atac a contestaţiei se poate exercita *numai atunci când legea o prevede expres*, prevederile prezentului articol fiind aplicabile când legea nu prevede altfel; există, aşadar, şi dispoziţii prin care se face excepţie de la acest regim comun al contestaţiei (de pildă, în materia expertizei medico-legale psihiatrice – art.184 alin.14-19 C.pr.pen., în materia măsurilor preventive – art.204-206 C.pr.pen., în materia aplicării provizorii a măsurilor de siguranţă cu caracter medical – art.246 alin.7 şi art.248 alin.8 C.pr.pen., în materia suspendării judecăţii – art.367 alin.4 şi 5 C.pr.pen. etc.).

Titularii contestaţiei sunt: procurorul şi subiecţii procesuali la care hotărârea atacată se referă, precum şi persoanele ale căror interese legitime au fost vătămate prin aceasta.

Termenul general de introducere a contestaţiei este, potrivit art.425[1] alin.2 C.pr.pen., de ***3 zile***, care curge de la pronunţare pentru procuror şi de la comunicare pentru celelalte persoane, dispoziţiile art.411 alin.1 C.pr.pen. (privind repunerea în termen) aplicându-se în mod corespunzător; aceasta înseamnă că o contestaţie declarată după expirarea termenului prevăzut de lege este considerată ca fiind făcută în termen dacă instanţa constată că întârzierea a fost determinată de o cauză temeinică de împiedicare, iar contestaţia a fost făcută în cel mult 3 zile de la încetarea acesteia.

Aşa cum arătam anterior, când legea prevede altfel, se aplică *dispoziţiile speciale*; de pildă, în legătură cu termenul de exercitare a căii de atac a contestaţiei, în art.367 alin.4 C.pr.pen., se prevede că încheierea dată în primă instanţă prin care s-a dispus suspendarea cauzei poate fi atacată separat cu contestaţie la instanţa ierarhic superioară în termen de ***24 ore*** de la pronunţare, pentru procuror, părţile şi persoana vătămată prezente, şi de la comunicare, pentru părţile sau persoana vătămată care lipsesc.

[23] Revizuirea este o cale de atac de fapt.
[24] Recursul în casaţie şi contestaţia în anulare sunt căi de atac exclusiv de drept.
[25] O.U.G. nr.3/2014 pentru modificarea şi completarea Codului de procedură penală şi a altor acte normative, publicată în M.Of. nr.98 din 7 februarie 2014.

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De asemenea, tot un termen special de introducere a contestaţiei este prevăzut şi în art.206 alin.1 C.pr.pen.: împotriva încheierilor prin care instanţa dispune, în primă instanţă, asupra măsurilor preventive, inculpatul şi procurorul pot formula contestaţie, în termen de ***48 ore*** de la pronunţare sau, după caz, de la comunicare.

Termene speciale de introducere a contestaţiei sunt prevăzute şi în art.246 alin.7 C.pr.pen. (încheierea prin care se pronunţă judecătorul asupra propunerii de luare a măsurii de siguranţă a obligării provizorii la tratament medical poate fi contestată în termen de ***5 zile*** de la pronunţare), precum şi în art.252^2 alin.4 C.pr.pen. (împotriva încheierii prin care judecătorul de drepturi şi libertăţi soluţionează propunerea procurorului de valorificare a bunurilor mobile sechestrate în cursul urmăririi penale se poate face contestaţie în termen de ***10 zile***).

Contestaţia **se depune** la judecătorul de drepturi şi libertăţi, judecătorul de cameră preliminară sau, după caz, la instanţa care a pronunţat hotărârea care se atacă şi **se motivează** până la termenul stabilit pentru soluţionare, legea prevăzând şi posibilitatea **retragerii** contestaţiei, potrivit dispoziţiilor art.415 C.pr.pen., care se aplică în mod corespunzător.

De regulă, aşa cum rezultă din conţinutul alin.4 al art.425^1 C.pr.pen., contestaţia are **efect suspensiv** şi **al neagravării situaţiei în propria cale de atac**, „în cadrul acestor limite, la soluţionarea contestaţiei împotriva încheierii privind o măsură preventivă, putându-se dispune o măsură mai puţin gravă decât cea solicitată sau decât cea dispusă prin încheierea contestată, sau putându-se modifica obligaţiile din conţinutul măsurii contestate”.

Prin *excepţie de la efectul suspensiv*, când legea prevede expres, contestaţia nu este suspensivă de executare; de pildă:

- contestaţia formulată împotriva încheierii prin care s-a dispus luarea sau menţinerea unei măsuri preventive nu este suspensivă de executare (art.306 alin.4 C.pr.pen.);
- contestaţia formulată împotriva încheierii dată în primă instanţă prin care s-a dispus suspendarea judecăţii nu suspendă executarea (art.367 alin.5 C.pr.pen.);
- hotărârea prin care se dispune amânarea executării pedepsei închisorii este executorie da la data pronunţării, deşi poate fi atacată cu contestaţie (art.589 alin.5 şi 7 C.pr.pen.), ceea ce înseamnă că şi în această situaţie contestaţia nu este suspensivă de executare.

Contestaţia **se soluţionează** de către judecătorul de drepturi şi libertăţi, de către judecătorul de cameră preliminară de la instanţa superioară celei sesizate sau, după caz, de către instanţa superioară celei sesizate, respectiv de completul competent al Înaltei Curţi de Casaţie şi Justiţie, în şedinţă publică, cu participarea procurorului.

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Compunerea completului de judecată pentru soluţionarea contestaţiei[26] este următoarea:

- contestaţia împotriva hotărârilor pronunţate în materie penală de judecătorii de drepturi şi libertăţi şi judecătorii de cameră preliminară de la judecătorii şi tribunale se soluţionează în complet format dintr-un judecător;
- contestaţia împotriva hotărârilor pronunţate în cursul judecăţii în materie penală în primă instanţă de judecătorii şi tribunale se soluţionează în complet format dintr-un judecător;
- contestaţia împotriva hotărârilor pronunţate de judecătorii de drepturi şi libertăţi şi judecătorii de cameră preliminară de la curţile de apel şi Curtea Militară de Apel se soluţionează, la Înalta Curte de Casaţie şi Justiţie, în complet format dintr-un judecător;
- contestaţia împotriva hotărârilor pronunţate de judecătorii de drepturi şi libertăţi şi judecătorii de cameră preliminară de la Înalta Curte de Casaţie şi Justiţie se soluţionează, la Înalta Curte de Casaţie şi Justiţie, în complet format din 2 judecători (de drepturi şi libertăţi, respectiv de cameră preliminară);
- contestaţia împotriva încheierilor pronunţate în cursul judecăţii în primă instanţă de curţile de apel şi Curtea Militară de Apel se soluţionează, la Înalta Curte de Casaţie şi Justiţei, în complet format din 3 judecători (din Secţia penală);
- contestaţia împotriva încheierilor pronunţate în cursul judecăţii în primă instanţă de Secţia penală a Înaltei Curţi de Casaţie şi Justiţie se soluţionează, la Înalta Curte de Casaţie şi Justiţei, în completele de 5 judecători.

La soluţionarea contestaţiei se citează persoana care a făcut contestaţia, precum şi subiecţii procesuali la care se referă hotărârea atacată, dispoziţiile privind asistenţa juridică obligatorie aplicându-se în mod corespunzător.

Potrivit alin.7 al art.425[1] C.pr.pen., contestaţia se soluţionează prin ***decizie, care nu este supusă niciunei căi de atac***, putându-se pronunţa una dintre următoarele **soluţii**:

1. *respingerea contestaţiei*, cu menţinerea hotărârii atacate:

a) când contestaţia este tardivă sau inadmisibilă;

b) când contestaţia este nefondată.

2. *admiterea contestaţiei* şi:

a) desfiinţarea hotărârii atacate şi soluţionarea cauzei;

[26] Potrivit Legii nr.304/2004 privind organizarea judiciară, aşa cum a fost modificată prin Legea nr.255/2013 şi O.U.G. nr.3/2014.

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b) desfiinţarea hotărârii atacate şi dispunerea rejudecării cauzei de către judecătorul sau completul care a pronunţat-o, atunci când se constată că nu au fost respectate dispoziţiile privind citarea.

4. Concluzii

În concluzie, actuala legislaţie procesual-penală aduce modificări substanţiale şi în materia căilor de atac, în scopul asigurării celerităţii procesului penal şi al reducerii duratei de soluţionare a cauzelor penale. Astfel, Codul de procedură penală intrat în vigoare la 1 februarie 2014 a instituit o singură cale ordinară de atac – apelul, dându-se eficienţă principiului dublului grad de jurisdicţie consacrat de Convenţia europeană pentru apărarea drepturilor omului şi a libertăţilor fundamentale.

La scurt timp după intrarea în vigoare a actualului Cod de procedură penală, prin O.U.G. nr.3/2014 au fost adăugate (în Capitolul III[1] - art.425[1] din Titlul III al Părţii speciale a codului) dispoziţii-cadru privind calea de atac a contestaţiei. Din interpretarea acestor dispoziţii, dar şi a altor dispoziţii din cod în care se face referire la această instituţie (spre exemplu, art.204, 205, 206 sau art.589 alin.7 C.pr.pen.), precum şi din interpretarea modului în care au fost amplasate aceste dispoziţii-cadru (între capitolul destinat apelului şi cel consacrat căilor extraordinare de atac), reiese că legiuitorul a intenţionat să-i confere contestaţiei natura juridică a unei căi de atac ordinare.

Prin urmare, fără a reprezenta un nou grad de jurisdicţie (distinct de cel al apelului), contestaţia a fost concepută ca o cale de atac îndreptată împotriva unor hotărâri nedefinitive (deci, are natura juridică a unei căi de atac ordinare), prin care nu se atacă fondul cauzei şi care se poate exercita numai atunci când legea o prevede expres (în situaţiile în care nu este prevăzută calea de atac a apelului).

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FROM ANCIENT RATIONALITY TO CONTEMPORARY GLOBALIZATION

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Abstract :The importance of finding a solution for the ideal society is not new. It was hypothesized in the Ancient rationality, in rights and liberties for modern people and under the form of a suprastatal organization for contemporary Europeans. The solution was unable to find a way towards the interethnic harmonization by pointing out the values which unify them and not by deepening the distinctions between cultures. From the Ancient barbarism it has evolved to modern barbarism, translated in different forms of terrorism. In every emigrant's mythos is hidden the trauma of abandoning his origin country.

Key words: migration, globalization, mythos, logos, identity crisis.

DE LA RAȚIONALITATEA ANTICĂ LA GLOCALIZAREA CONTEMPORANĂ

Rezumat :

Importanța găsirii unei soluții pentru o societate ideală nu este nouă. Ea a fost ipostaziată în raționalitatea antică, în drepturi și libertăți pentru moderni și în forme de organizare suprastatală pentru europenii contemporani. Soluția a fost departe de găsirea unei căi de armonizare interetnică prin evidențierea valorilor care-i unesc și nu prin asprimea distincțiilor dintre culturi. De la barbaria antică s-a ajuns la barbaria modernă, tradusă în forme variate de terorism. În mithos-ul fiecărui emigrant se ascunde trauma plecării din țara de origine.

Cuvinte cheie : migrație, glocalizare, mithos, logos, criză de identitate.

O perspectivă asupra temei

Astăzi asistăm la procese neimaginat de sângeroase. Persoane kamikaze care transpun cultura japoneză pe coordonate europene prin calea islamică. Valuri de migranți care aduc persoane arabe într-o Europă ce-și caută drumul spre viitor. Personalități publice care nu-și respectă angajamentele în virtutea cărora au fost alese. Proiecte politice care își dovedesc valabilitatea doar pentru timpul alocat campaniei electorale. Religii care vor să epateze prin grandoare arhitecturală, fără a consola pe cei care le caută sprijinul. Peste toate aceste forme de dezechilibru se instaurează nesiguranța vieții pentru trăitorii care-și respectă conformist sarcinile de zi cu zi. Dacă ar fi să alegem o imagine reprezentativă pentru starea existențială a omului contemporan, aceasta ar fi Țipătul, lucrare realizată de simbolistul Edvard Munch, urletul plin de spaimă al unui trup convulsiv, chip îngălbenit de atâta necuprindere a faptelor

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ce se derulează sub ochii săi. Lucrarea a fost realizată în 1893 dar anticipează ”existența tragică” (D.D.Roșca) pe care o va parcurge omenirea.

Problema înțelegerii unei etapă istorice, apelând la concepte cu implicare majoră în descifrarea lumii moderne, ne trimite la coordonatele antice : logos, mithos și ethos. Întrebarea, cum descifrăm logica lucrurilor și evenimentelor contemporane ? ar presupune două aspecte, unul cognitiv și altul specific rostului lumii în care ne aflăm. Procesul înțelegerii presupune, la rându-i, atât un nivel cognitiv cât și un mod de viață care conturează fizionomia morală și specificul cultural al unei comunități. La aceste date asociem idealuri și așteptări pe care fiecăre persoană le cuprinde în fondul său motivațional. Fiecare eveniment este citit și descifrat în funcție de experiența trăită într-un context istorico-cultural. Nu vedem decât ceea ce cunoaștem și, drept consecință, interpretăm orice nouă experiență în ”grila” cu care am fost acomodați de experiențele anterioare. Logos-ul nu exclude ci se armonizează pe un Mithos care a influențat formarea și dezvoltarea personalității. Mithosul exprimă structurile arhetipale, modelele exemplare prin care sunt interpretate evenimentele la care participăm. Aceste structuri oferă modelul, acele începuturi sacre care dau conținut și direcție de orientare fiecărei culturi. Aceste rosturi de fundamentare culturală se regăsesc în mod felurit la nivel individual. Prezența lor este condiționată de raporturile cu valorile culturale și de gradul de adaptare la contexul social. Reținem ideea potrivit căreia, cultura ca fapt social se manifestă, trăiește și se transmite prin fiecare individ. O asemenea ”zestre” este nevoie să fie transmisă, chiar dacă succesiunea generațiilor scoate în evidență șocuri ivite între modurile de gândire și semnificare, între idealuri și aspirații.

Pentru Antichitate, respectul ordiniii sociale era de la sine înțeles. Porunca zeului se situa dincolo de orice istorie individuală iar orice abatere atrăgea consecințele asumate. Istoria faptelor conținute în mituri conferă puncte de spijin pentru afimarea identității. Odată îndepărtată veșmântul religios, mitul devine subiect de poveste, transpus la viața pământeană prin personaje care devin puncte de sprijin în faptele oamenilor. Personajele de basm sau poveste devin demne de urmat, oferind modelul de urmat, semnificația faptelor. Aceste două concepte fundamentale ne oferă un mod de înțelegere și interpretare a lumii în care trăim sau a lumii pe care o proiectăm. Le-am amintit pentru a oferi o cale de cunoaștere pentru culturi îndepărtate istoric și pentru a contura un posibil răspuns asupra evenimentelor care ne surprind prin iraționalitatea lor. Mai mult, libertatea conferită condiției umane odată cu Modernitatea înseamnă străduința de a elabora legi și norme prin care se reglementează viața pământenilor, în timp ce credința rămâne consolatoare pentru efemeritatea omului. Omul

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virtuos este activ şi îndrăzneţ în faţa naturii. Cercetând lucrurile ”vom observa că unele scopuri care ni se arată a fi virtuoase, ne-ar duce la pieire dacă le-am urmări, în timp ce altele, care ni se par a fi rele, ne fac să dobândim, prin atingerea lor, şi siguranţă şi bunăstare.”[1] Tot mai des viaţa politică tratează mitul salvatorului, întruchipându-l în varii ipostaze care atrag atenţia în perioade de criză. Urmează o dizolvare a soclului statuii, după care efortul continuă pentru ridicarea altui eşafodaj. Fiecare ”citeşte ” ceea ce se întâmplă în viaţa publică prin informaţia oferită şi intenţia cu care a fost distribuit mesajul. Aceste prezenţe publice sunt consolidate de ethos, de moravurile care păstrează ”culoarea”, ataşamentul de un spaţiu cultural.[2]Mithosul românesc este reintegrat în creaţii contemporane cu scopul de a reînvia atenţia unor noi generaţii către izvoarele identitare.

Armonia lumii la presocratici

Preocuparea pentru descifrarea originii lumii, întregită cu teorii asupra destinului acesteia, nu este un fapt contemporan. Teoriile cosmologice încep odată cu presocraticii şi se nuanţează, odată cu argumentele oferite de cunoaşterea ştiinţifică. La sfârşitul secolului VII Î.H. Heraclit se distanţa de gândirea mitologică şi apelează la un principiu material considerat însufleţit, concepţie care a primit denumirea de hylozoism. În concepţia acestuia, înţelegerea nu era decât înălţarea sufletului la cea mai înaltă treaptă, ipostaziată în Raţiunea cosmică, acel logos aflat în toate lucrurile şi care menţine armonia cosmosului. Înţelepciunea coordona raportul dintre om şi natură, adevărul cuprinzând nu numai puterea cunoaşterii ci şi respectul legilor naturii. Logos-ul heraclitian era expresia raţiunii şi armoniei lumii, originând tot ce există. Acest principiu întemeietor este numit de Heraclit foc iar ”măsura” transformărilor acestuia oferă posibilitatea explicării variatelor forme sub care se prezintă lumea.Focul şi logos-ul**,** ”divinitatea care le gospodăreşte pe toate”, exprimă ordinea lumii:

”Într-adevăr, focul, îngroşându-se, se lichefiază şi, căpătând consistenţă, se transformă în apă, iar apa, iarăşi întărindu-se se preface în pământ. (...) Pe urmă iarăşi pământul se lichefiază şi dă naştere în modul acesta apei şi din aceasta derivă toate celelalte.” [3]

[1]Machiavelli, N., *Principele,* Mondero Bucureşti, 2008, 57

[2] Trăim sub imperiul schimbărilor în fundamentul mithologic al folclorului românesc dacă ţimen cont de variantele care apar pe motivul Mioriţei, localizate în Moldova sau Transilvania. Varianta transilvană a fost propusă de Grigore Leşe Institutului cultural român pentru păstrarea interesului asupra repertoriului tradiţional românesc şi pentru a schimba percepţia asupra creaţiei folclorice. Tot în acest scop, versurile baladei au fost puse şi pe muzică deep folk acoustic.

[3]Laertios, D. Despre vieţile şi doctrinele filosofilor, vol.II, Minerva, Bucureşti, 1997, 207-208.

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Interesul pentru numirea principiului lumii este prezent la presocratici și generează noi termeni ai limbajul filosofic. Diversitățile explicative ale principiului întemeietor dovedesc bogăția interpretativă a gândirii și limbii grecești, capabile să integreze grija epistemologică a epocii. Rezultattul a fost apariția unor termeni noi: *apa* (Thales pentru care cel mai greu lucru este cunoașterea de sine), *apeiron* (ceva neutru în raport cu determinațiile/limitele (*peras*) – Anaximandros), *aerul* și *infinitul* (Anaximenes cel care considera aerul un principiu al lucrurilor calitatetiv determinat), *homoiomeriile* aduse în atenție de Anaxagoras, un nedeterminat scos din haos prin inteligență (*nous*, un principiu tradus prin ”minte”, ”rațiune”, ”inteligență” sau ”spirit”). Anaxagoras ”a publicat, pentru prima oară, o carte în proză” și tot el ”spunea că întreg firmamentul e făcut din pietre și că numai repeziciunea rotației le ține la un loc; și că dacă viteza ar slăbi, pietrele ar cădea.”[4] Limbajul filosofic capătă o altă treaptă de abstractizare odată cu *forța numerelor* (Pitagora) care poate transforma un univers neînsuflețit într-unul dotat cu rațiune, a cărui perfecțiune este dată de forma *sferică*. Raporturile numerice fac legătura între elementele fundamentale: apă, aer, foc, pământ.Tot ce se întâmlpă pe pământ are nevoie de ordine și armonie, excesele sunt cele care distrug rațiunea lumii. Este o idee pe care ar trebui să o actualizăm și contemporaneitate, cu toate modificările survenite asupra logos-ului.

Geometria este cea care realizează, prin metafora formei, legătura dintre inteligibil și sensibil. Stările prin care se obiectivează substanța au însușiri cărora le corespund anumite forme geometrice. În plus, proporția este măsura necesității și desăvârșirii fiecărui amănunt poartă forma sfericității. Corpul uman nu este altceva decât expresia unor forme divine, sferice: ”Zeii au copiat forma universului, care este sferică și conține în ea două mișcări circulare divine, cuprinzându-le pe acestea într-o întrupare sferică, pe care o numim cap – partea noastră cea mai divină și care domnește asupra a tot ce e în noi.” [5]

În ce privește gândirea noastră, ea se pronunță prin rațiune și opinie, una se naște din învățătură iar cealaltă prin persuasiune poate fi schimbată:

”Păsările sunt născute din bărbați inocenți, dar cam săraci cu duhul (...) Animalele sălbatice terestre provin din cei care nu s-au ocupat cu filosofia și cu cele cerești, pentru că nu-și puteau folosi revoluțiile din capul lor, fiind călăuziți de acele părți ale sufletului ce se află în piept.”[6]

[4]Laertios, D. *Despre viețile și doctrinele filosofilor*, vol.I, Editura Minerva, București, 1997, 97.

[5]Platon, Timaios, Opere vol VII, Editura științifică București, 1993,158
[6]Platon, op.cit., 214.

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Universul este prezentat drept o copie a inteligibilului, ”un zeu perceptibil, nesemuit de mare, de bun, de frumos, de desăvârșit: acest cer unic în felul său și unu.”[7]Am introdus în explicația condiției umane structura dual㠍 dintre cap și piept, pentru că diferențierile comportamentale se mențin și astăzi, dovedind cât de importantă este înțelepciunea pentru evenimentele care au loc.

Darul vorbirii la Platon și Aristotel

Dacă Logos-ul se extinde în caracterizarea armoniei Universului, același termen este aplicat de Platon și asupra logicii textelor și argumentației raționale. În dialog cu Phaidros Socrate îi explică că ”arta oratoriei în întregul ei e o psychagogie”, o artă a călăuzirii sufletelor cu ajutarul cuvintelor. Pentru a fi o călăuză bună, regulile artei oratorice trebuie respectate. ”Arta contrazicerii” este întâlnită în ”tribunale sau în cuvântările către popor”; așa se face că ”datorită acestei arte, în toate cazurile posibile, vei fi în stare să faci orice lucru să semene cu oricare altul.”[8] Acest fapt are la bază ”înșelătoria”care face ca lucrurile să fie mai mai puțin deosebite. Numai atunci poți trece de la ceva la altceva prin mijlocirea asemănătorului. Pentru a evita înșelătoria, cel ce se va ocupa cu retorica ”trebuie să deosebească metodic aceste cazuri și să rețină care este caracteristica fiecărei categorii în parte: a aceleia în care opinia mulțimii rătăcește în chip necesar, și cealaltă, în care nu se întâmplă astfel.”[9]

Discursul înseamnă o pregătire specială pentru vorbitor, cunoscând puterea pe care o au cuvintele asupra apărării sau respingerii ideilor prezentate:”Prin forța cuvântului, ei fac ca lucrurile neînsemnate să pară importante, și iarăși, cele importante lipsite de însemnătate.”[10]

Darul vorbirii va ”spori cu știința și cu truda, vei fi un orator prețuit de toți. Dacă în schimb, unul din lucrurile acestea îți va lipsi, vei fi un orator nedesăvârșit.”[11] Logos-ul unui discurs presupune cunoașterea adevărului despre fiecare lucru spus sau scris de el, preciziunea termenilor și anticiparea efectelor pe care le va produce. Arta vorbirii este privită ca influențând sufletele prin persuadare, atunci când informația transmisă corespunde idealurilor publicului. Conceptele transmise formează o configurație epistemologică care se conjugă cu o valoare înscrisă în sfera spațiului cultural în care se desfășoară procesul comunicațional. Întreg comportamentul prezentat în discurs implică o cultură trăită, un fapt socio-politic la care s-au acomodat vorbitorul și auditoriul. Convingerea este efectul produs atunci când cuvântul este rostit de persoana demnă de încredere. Ea apare ca expresie a ethos-ului care

[7]Platon, op.cit., 215
[8]Platon, *Phaidros*, Humanitas, București, 1993, 115
[9] Platon, op.cit., 118
[10]Platon, op.cit., 126
[11]Platon, op.cit., 131

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face parte din mentalul colectiv și prin care comunicatorul produce o impresie favorabilă aupra publicului.

Aristotel consideră că efectul produs asupra auditoriului produce judecăți și trăiri afective diferite, de durere sau plăcere, de prietenie sau ură. Asemenea efecte se înscriu în pathos-ul mesajului, cu privire la ”Ceea ce este potrivit pentru a convinge este convingător pentru cineva anume”[12] prin faptul că argumentele sunt credibile pentru oameni iar efectul este individual. Asemenea efect este urmărit și în comunicarea contemporană cu intenția de a oferi un suport credibil auditoriului, mai ales când acesta intră în conflict cu valorile mediului în care trăiește. (Vom reveni la pathos atunci când vom dezvolta identitățile religioase și legile moderne juridice.)

În Retorica aristotelică, un discurs trebuie să fie structurat pe două nivele: ”spune în legătură cu ce subiect este un fapt, și de a-l demonstra.”[13] Respectând logica discursului, Aristotel preia diviziunea isocratică a acstuia: exordiu, narațiunea, dovezile și peroația. ”Exordiul, este cel care în poezie este prolog, iar cântatul la flaut – preludiu.” [14] El distige între tipurile de discursuri: ”discursurile epidictice sunt pronunțate prin elogiu sau blam”,discursurile juridice sunt destinate auditoriului, se referă la un fapt paradoxal, unul neplăcut sau un fapt repetat de mulți și ”au aceeași valoare precum prologurile dramelor și preambulurile poemelor epice”.[15]

Partea a doua a discursului, narațiunea, se desfășoară urmând specia de discurs: discursurile epidictice necesită o prezentare cât mai riguroasă,expunând amănunțit faptele, discursul juridic are o narațiunea mai scurtă, încărcată de valori etice. Numai discursul public este caracterizat printr-o narațiune succintă, deoarece se sprijină pe fapte viitoare.În ce privește narațiunea deliberativă, aceasta are nevoie de exemple. O asemenea narațiune poate constitui suportul propriu fiecărui individ, cu efecte persuasive asupra unor grupuri de indivizi care așteaptă prezența unui lider carismatic, puternic prin care are loc internalizarea obiectivelor propuse. Efectele sunt imediate, fără a suscita reflecția critică a idealului promovat. Dacă limba are esență socială și este independentă de individ, limbajul exercită influență, nuanțând folosirea gândirii și transmițând diferite stări afective care modifică starea critică a receptorilor. Antichitatea a probat raționalitatea discursului, fără a produce efecte pozitive asupra celor care le-au practicat. Socrate este condamnat la moarte pentru trei cauze înțelese de cei 281 de jurați contra celor 278 care s-au opus inițial, Cicero este ucis de trimișii

[12]Aristotel, *Retorica*, univers enciclopedic gold, București, 2011, 95
[13]Aristotel, op.cit., 343
[14]Aristotel, op.cit., 345

[15]Aristotel, op.cit., 347

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triumviratului Antonius, Octavian și Lepidus, capul și mâinile sale fiind expuse pe platforma pe care-și ținea discursurile (rostra). Modernitate ridică libertățile și drepturile la rang de lege. Puterea forței subordonează puterea rațiunii și a cuvântului; momentele de criză sunt traversate prin sacrificiu. Abraham Lincoln este asasinat în incinta teatrului Ford (1865 război civil, criză morală, constituțională, politică), asasinii săi nutrind speranța că vor destrăma guvernul unionist și vor continua războiul.

Criza de identitate în spații cu diversități etnice

Tot ceea ce s-a argumentat asupra discursului public aparținând normelor antice va cunoaște modificări în fondul pathos-ului cu care sunt prezentate ideile pentru a persuada publicul receptor. Nu există context cultural care să nu formeze baza pentru identități sau, din contră, pentru izolarea individului și crearea unei rupturi din ciocnirea interculturală. Nu există individ care să nu asocieze libertatea de gândire cu libertatea de exprimare publică. ”Libertatea, cuvânt imens, larg întrebuințat în politică, dar care de câțiva ani, îl proscrie, libertatea a fost un ideal, un mit; un cuvânt plin de promisiuni pentru unii, de amenințări pentru alții, un cuvânt care i-a împins pe oameni să se revolte și să disloce caldarâmul.”[16] de exprimare trebuie însoțită de gândire. Problema vorbirii este una a trebuinței gândirii, fiind supervizată de înțelesurile din gândire și contribuind, prin dezvoltarea limbajului, la dezvoltarea gândirii. Când cuvintele devin publice, apar o serie de constrângeri care sfârșesc prin constrângerea către falsificare. ”Politica, constrânsă să falsifice toate valorile pe care spiritu are misiunea să le controleze, admite toate falsurile sau toate reținerile care-i convin, care sunt în acord cu ea, respingând, uneori, chiar violent sau interzicând pe cele care nu sunt.”[17] Mijloacele de comunicare, aflate într-o dinamică greu de egalat la nivelul spiritului critic, determină probleme de identitate și de diversitate culturală. Un fel de cacofonie epistemologică din care este greu de decelat ineresul politic, situat la nivelul unui hedonism imediat.”Aujourd’hui, dans une socété livré à des exigences d’immédiateté et d’efficacité, les techniques de communication visent à mobiliser des comportaments de l’ordre du réflexe social conditionné. La règne de l’opinion publique, comme prévoyait Habermas, risque alors de se transformer en un consensus fabriqué prêt à l’acclamation.”[18] De aici pot apărea falii între diferite practici culturale care scapă procesului cultural deternimant, formând legături parțiale, izolând comunități și realizând zone conflictuale între subiectele lor și ceea ce constituie înteresul social. Orizontul de așteptare al unor astfel de zone crează interese și

[16]Valery, P., *Criza spiritului și alte eseuri,* Polirom, Iași, 1998, 111
[17] Valery, P., op.cit., 113
[18]Canne, j. *Culture et communication*, Presses universitaire de Grenoble, 2006, 5-6

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aspirații superpozante culturii dominante. Este vorba de o excluziune socială, aparent lipsită de consistență, care va genera opoziție violentă din orice tip de motiv.

În raportul *Habitatul risipit de globalizare,* 2002, Eyroud, consideră că procesul mondializării înseamnă o ”dereglementare” a diferitelor sectoare de activitate, o infuzie de resurse umane, financiare și informaționale care determină o altfel de geografie a lumii. În acest proces, cuprindem atât factorii demografici cât și factorii economici. În primul caz, este vorba de un alt mod de viață, păstrând influențele ethos-ul în care s-au format și manifestând diferite forme de deschidere către cultura în care s-au stabilit. Ospitalitatea culturii gazdă produce o serie de mutații în statutul existențial al persoanelor nou venite.În acest sens, amintim trei posibile rezultate ale globlizării analizate de antropologul Ralph Leon Beals.[19]prima formă are loc prin identificarea cu cultura locală și pierderea identității în raport cu cultura de origine. Este cazul acelor personalități care se afirmă într-un domeniu, cu prioritate științific și artistic, prin condițiile pe care le oferă cultura locală. Al doilea caz, are loc asimilarea culturii translocale de către cultura locală. Acest proces este cunoascut ca reprezentând dubla identitate. Iar al treilea caz îl reprezintă fenomenul sociologic al adaptării, când cultura gazdă ajunge la un nou echilibru prin acomodarea conținutului celor două culturi. Cu alte cuvinte, important nu este ceea ce ne diferențiază ci impoartante sunt valorile comune.

La rândul său, sociologul Ronald Robertson surprinde interdependența dintre ideologiile inclusiviste și cele exclusiviste, dintre solidaritate și fragmentare, dintre deschidere și izolare. Robertson consideră că termenul de globalizare trebuie înlocuit cu cel de glocalizare pentru a estompa opoziția dintre local și global. Această intenție are în atenție depășirea vechii perspective sociologice care considera contradictorie relația dintre local și global. Căutarea ”rădăcinile” de acasă sunt o nevoie structurată de globalizare și nu un proces contra acestui fenomen. Cultura mondială nu se îndreaptă spre omogenitate și unitate, diferențierile se vor menține în funcție de nevoile comunităților locale și de structura socială.

Încă din 1945 Ralph Linton cerceta *Fundamentul cultural al personalității* și a elaborat conceptul de personalitate de bază. El considera că nu există mediu social fără cultură, așa cum nu pot exista nici indivizi aculturali. Gradul de asociere dintre cultură și indivizi este unul particular. Cultura oferă configurație comportamentelor învățate și conferă identitate fiecărui actor social. Variațiile unui model cultural se vor înscrie în manifestarea funcțională a unei personalități. În cazul în care îndivizii se înscriu într-un perimetru cultural nou, cu

[19]Beals, R., H. Hoijer, *An Introduction to Anthropology*. New York: Macmillan. 1971

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practici comportamentale neştiute, cu atât interesul lor va fi mai accentuat pentru a le înțelege. Cu o condiție: indivizii noi veniți să fie configurați cultural de mediul în care au trăit.

Aceste premise ne permit să facem câteva considerații asupra istoricului migrației pentru a înțelege fenomenul din zilele noastre. Acest fenomen este cunoascut din perioada de sfârşit a Antichității şi începutul sclavagismului timpuriu având ca efect popoarele din Asia şi Europa. Un alt moment, popoarele germanice în Europa centrală şi de nord iar cele slave în Europa de răsărit şi Peninsula Balcanică. Mileniul I este cuprins de migrația maghiarilor, apoi cuceririle arabe şi răspândirea lor în Orientul Mijlociu şi Apropiat, în țările din Africa de nord. Urmează prima jumătate a mileniului II, invazia mongolilor în Asia şi Europa răsăriteană, cuceririle turceşti din Asia Mică, incursiunile triburilor din Africa Ecuatorială în Asia de Sud.

Epoca descoperirilor ştiințifice înseamnă un alt aflux spre America, în a doua jumătate a secolului al XVIII-lea trecând peste ocean un milion de oameni. Au loc transmutări aunui număr impresionant de negri-sclavi din Africa în America. Secolul XIX-le şi începutul secolului XX-lea, cu acent pe perioada 1830-1850, marchează o medie anuală de 3 milioane de persoane. Din 1619 până în 1860 patru milioane de sclavi negri au fost mutați spre SUA iar în 1954, din Africa spre Europa, cu prioritate Franța, sunt aduşi un milion de persone africane. Aceste schimbări demografice continuă şi în continentul asiatic la mijlocul secolului al XIX-le şi până în 1910, când 2,5 milioane de persoane, îndeosebi indieni, chinezi şi japonezi emigrează. La aceste date succinte, adăugăm emigranții care părăsesc țările de origine după formarea sistemului socialist. Din 1970 se înregistrează un număr semnificativ de turci în Germania.

Migrația cuprinde tendințe de universalizare şi individualizare în acelaşi timp. Carateristice comune statutului exitențial uman, transformate în drepturi naturale, sunt recunoascute dincolo de orice diferențieri culturale. Acceptarea diferențierilor este fundamentată pe valori morale pozitive, respectul față de valorile şi credințele celuilalt. În mithos-ul oricărui emigrant se află trauma plecării din țara de origine şi-n acelaşi timp complexul străinului. De multe ori, asemenea traumă generează opoziții care au diferite forme de manifestare, de la izolare la violență. Ajungem la situația de astăzi a Franței şi Belgiei. Magrebienii, acei locuitori ai Marocului, Algeriei şi Tunisiei, au luat contact cu cultura franceză din perioada colonizării. Acum Parisul este înconjurat de cartiere musulmane care nu au fost armonizate cultural cu valorile culturii franceze. Ei au început să vină în Belgia cu 50 de ani în urmă, mai întîi din Maroc şi Turcia, apoi din Libia şi Egipt. Au urmat alții, începând din 1970, din Arabia Saudită şi statele din Golf. În Franța au ajuns mai întâi ca forță de muncă, apoi urmărind un

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alt standard de existență. Familia formată în țara de origine învață limba franceză și caută să respecte normativitatea socială. Tatăl le vorbește copiilor în franceză și respectă valorile religioase în care a fost educat. Venirea într-un teritoriu cultural nou înseamnă alte legi pe care le respectă, așa cum a respectat și normele morale, religioase și juridice în care s-a format. Tinerii se găsesc într-o situație identitară diferită de cea a părinților. Ei se aparțin unei generații noi și găsesc un mediu de viață care nu mai corespunde familiei în care s-au născut. Apare fenomenul de aculturație care se traduce, în virtutea șocului dintre generații, prin acțiunea de revoltă în raport cu noul context socio-cultural, context care pare a fi vinovat de toate nedreptățile pe care le trăiesc. Molenbeeck are 100.000 de locuitori și 10 moschei. Cartierul este structurat pe trei zone : bulevarde largi și blocuri, case particulare și zona arabă. Prin urmare, are loc o fragmentare a trei lumi cu moduri de viață diferite, cu un ethos diferențiat pe zone culturale. Comparația dintre modurile de viață și filosofiile diferite ale acestor nivele urbanistice a generat un comportament agresiv, îndreptat către cei care, în aparență, i-au nedreptățit creându-le lipsuri financiare, educaționale, de reprezentare. În Bruxelles există un milion de musulmani. În alte orașe, Anderlecht, Saint-Josse, Molenbeeck, Schaerbeek șomajul este de 50%. Este o realitate greu de rezolvat care arată că, izolarea unor grupuri etnice, fără integrarea acestora încă din etapa de sosire către un nou cadru cultural, naște seriase dificultăți statului care i-a acceptat. Diversitate culturale trebuie să aibă la bază normativitatea juridică egal aplicată pentru toți cetățenii unui teritoriu. Odată realizate enclavizările, locuitorii lor au impresia că trăiesc în spații diferite de cele ale statului gazdă și încearcă să-și impună propriile norme și valori pe care le consideră ca singurul sprijin în toate condițiile de viață. Trauma străinului se transformă în forță de impunere a minorității asupra majorității. Astfel apare o nouă formă de drepturi și libertăți care pot ajunge fie la violențe sociale, fie la considerarea culturii drepturilor sale superioară culturii drepturilor majorității. Ambele situații determină forme de barbarie. Suntem responsabili de ceea ce trăim și cum va arăta viitorul nostru.

Câteva idei de încheiere

Trauma migranților este trauma prin care au trecut marile imperii și s-au constituit popoarele modene. Alienarea pe care o resimt miile de migranți este un proces continuu, omniprezent și multifactorial. Nu a existat suficientă atenție pentru a diminua efectele acestui fenomen dramatic și pentru a cerceta căile și mijlocele cele mai potrivite diminuării traumei acestui fenomen. Zilnic primim informații despre noi tragedii ale vieții emigranților dar și multe fenomene de adversitate față de cultura locală. Acestor realități li se asociază fenomene de

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barbarie comise de imigranți incapabili de a se adapta normelor juridice și morale, libertăților și responsabilităților mediului în care trăiesc. Revolta unora i-a forma terorismului, a barbariei moderne. Reținem și faptul că astăzi, în dinamica proceselor culturale, identitatea fiecărui actor social nu se mai poate forma numai pe o singură cultură. Fiecare individ își asumă rolul de formator al propriei realități, valorile culturale cunoscând o dinamică excepională, fără bariere vamale și politice."Partea cea mai bună a viitorului este că vine în fiecare zi." (Abraham Licoln).

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NOTARIAL ACTIVITY BETWEEN JUS VALAHICUM AND EU REGULATION NO. 650/2012

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Abstract:The usefulness and efficiency of notary activity was demonstrated in each historical period which we will analyze in part, by the importance that every arrangement has granted it. At the same time, the confidence with which the beneficiaries of notary act relate to the notary service and to notary public, represents another element that will lead us to the conclusion that the institution of notary public is a real graceful court and the notary public is a true justice of the peace.

In this work we will analyze the notary activity in Romania since the late XIII century, continuing with the period during the nineteenth century and ending with the Romanian integration within European space. The work highlights the value of notarial activity both in terms of tradition, culture and national identity but also from the perspective of the European community requirements, of the application of intern law of some European directives and requirements arising from new social relationships, by the vision of ownership , by the value paid to the family, by the European and national relations, and not least by the free movement of European citizens as assumed value within the community area.

Keywords: notarial, activity, european, regulation, valahicum.

Consideraţii generale

"Notariatul public român – în forma sa actuală – este un notariat de tradiţie, care nu a apărut din neant, ci ca un rezultat al unei evoluţii normale, logice şi inerente a unei realităţi juridice care are o experienţă de secole."[1] Plecând de la această declaraţie a preşedintelui Uniunii Naţionale a Notarilor Publici din România, şi continuând cu principiul care consacră nevoia de studiere istorică a dreptului şi pe cale de consecinţă şi a corpurilor profesionale ce sunt chemate să aplice norma juridică, încercăm în prezentul material, să spulberăm unele

[1]Dr. Dumitru Viorel Mănescu, *Prefaţă la Documentar. Acte normative cu caracter notarial din perioada 1874-1975*, Bucureşti, Editura Notarom, 2006, pp.3.

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confuzii, dar şi să scoatem în evidenţă, tradiţia şi nobleţea unei profesii ce este dominată de valoarea consensualismului, profesie care administrează proceduri graţioase şi nelitigioase. De altfel, credem cu sinceritate, că într-o societate echilibrată, regula este clarificarea raporturilor juridice civile cu ajutorul procedurilor graţioase şi doar excepţia să genereze nevoia de a apela la o instanţă de judecată.

Credem de asemenea că, alături de celelalte profesii juridice, profesia de notar public, plasează profesionistul într-o zonă de excelenţă, ce furnizează acestuia atât drepturi cât şi obligaţii. Considerăm că notarul public este practic primul profesionist chemat să interpreteze şi să aplice legea imediat dupa naşterea acesteia şi că rolul de prevenţie juridică şi de evitare a unor litigii civile între membrii societăţii, este un rol pe cât de important, pe atât de apreciat. De altfel, consolidarea instituţiei notarului public, a actului autentic notarial şi a organizaţiei profesionale în ultima perioadă, atât prin legislaţia fundamentală – respectiv Codul civil cât şi Codul de procedură civilă, cât şi prin legislaţia uzuală şi subsecventă, a fost apreciată atât în plan naţional cât şi în plan internaţional de către instituţii ale statului, instituţiile europene şi de structurile profesionale internaţionale. Despre instituţia notarului public, la nivelul unei cercetări istorice, documentate, aplicate şi integrate, nu s-a scris foarte mult. Tocmai de aceea, apreciem într-un mod cu totul şi cu totul special lucrarea ”Notarul Public. Destinul unei profesii”, lucrare realizată de Cosmin Mihailovici, sub egida UNNPR[2].

Bazându-se pe o bibliografie extrem de bogată, autorul reuşeşte să descrie în detaliu, începuturile unei activităţi notariale articulate (sec. VIII), activitatea notarială din perioada notariatului de stat (1950-1989), precum şi perioada de modernizare a acestei instituţii prin liberalizarea acesteia, generată de Legea nr. 36/1995, lege privind notarii publici şi activitatea notarială.

Cu prilejul prezentului material, dorim să clarificăm din nou, diferenţa netă dintre *secretarul comunal* şi *notarul public*, având în vedere fantezia bogată şi neproductivă a acelora care, creând o confuzie regretabilă între cele două funcţii, îşi imaginează posibilitatea ca secretarul unităţii administrativ teritoriale să poată îndeplini proceduri succesorale. Neîncercând să ierarhizăm prin comparaţii cele două funcţii, amintim celor preocupaţi de asemenea experimente, că un mare număr dintre cei care compun corpul secretarilor din unităţile administrativ teritoriale, nu au pregătire superioară şi foarte puţini dintre aceştia, au pregătire juridică. În asemenea condiţii, ne întrebăm cum ar putea un onorabil secretar din cadrul unei unităţi administrativ teritoriale să îndeplinească o procedură succesorală şi să

[2] Cosmin Mihailovici, *Notarul Public. Destinul unei profesii*, Editura Notarom, Bucuresti, 2015.

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emită un certificat de moştenitor, respectând condiţiile legale şi fără să împieteze interesul legal al moştenitorului, al creditorilor sau al celorlalte persoane interesate, conform legii, de moştenire? Ne punem această întrebare, cunoscând faptul că, procedura succesorală este una complexă şi care necesită cunoştinţe solide ale legislaţiei naţionale în materie, ale legislaţiei europene şi internationale în domeniul moştenirilor, dar şi a tratatelor şi convenţiilor la care România este parte şi care au incidenţă în procedura dezbaterii moştenirii. Ne imaginăm pentru o clipă şi criticăm cu fermitate, posibilitatea afectării siguranţei circuitului juridic civil şi al interesului celor ce solicită îndeplinirea unei asemenea proceduri, în conformitate cu legea, în cazul unei succesiuni cu elemente de extraneitate, în situaţia în care se solicită eliberarea unui certificat european de moştenitor, se cere aplicarea Regulamentului UE 650/2012 sau vorbim de rezerve succesorale şi reducţii testamentare?

Amintim că, în conformitate cu "Enciclopedia Română"[3] vol III, realizată de Diaconovici Corneliu, notarul comunal pe teritoriul României, era secretarul primăriilor rurale, era ales de către Consiliul comunal, ulterior fiind obligatoriu să fie confirmat de prefect şi contrasemna concret toate actele primăriei.De remarcat că în Ungaria, alegerea acestui "notar" se realiza pe viaţă.

Spre deosebire de "notarul comunal", notarul – conform aceleiaşi enciclopedii, reprezenta persoana care întocmea şi contrasemna procesul vebal al unei sentinţe, primea spre conservare şi păstrare sau întocmea acte ce guvernau relaţii de drept privat, dându-le acestora caracter autentic. Prin lecturarea celor două definiţii, constatăm practic, că vorbim de două corpuri profesionale distincte, cu atribuţii diferite şi cu statut diferit.

Din aceste considerente apreciem că o cercetare istorică a dezvoltării instituţiei notarului, va trebui să aibă în vedere doar corpul profesional al notarilor deveniţi ulterior notari publici şi nu credem că este oportună analiza corpurilor profesionale care, ca urmare a apropierii terminologice sau a unor suprapuneri de competenţă, au generat şi generează încă, confuzii.

Ius Valahicum şi activitatea notarială

Norma juridică dominată de morală, asumată social, oferea un cadru de confluenţă al dreptului roman, al obiceiurilor tracice, a cutumelor locale şi a influenţelor juridice bizantine. "Istoricii dreptului au argumentat influenţa bizantină asupra instituţiilor juridice româneşti prin mijlocirea pravilei, produsă în contextul în care, sistemul de practici şi norme care

[3] Corneliu Diaconovici, *Enciclopedia Română, vol III*, Editura Krafft, Sibiu, pp. 418.

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alcătuiau dreptul nescris, a devenit insuficient, în raport cu realităţile unei societăţi în proces de maturizare feudală”[4].

De remarcat că, în perioada medievală, dreptul de proprietate era dreptul de proprietate domnească, dreptul de proprietate a feudalilor laici, dreptul de proprietate funciară urbană, dreptul de proprietate ţărănească, în conformitate şi clasificate în raport de titularii acestui drept. Din perspectiva modului de dobândire a proprietăţii, ca şi astăzi, aceasta se putea realiza prin acte *inter vivos* sau de *mortis causa*. Cele mai întâlnite acte de proprietate erau zapisul sau cartea de proprietate, urice, hrisoave, dresuri, etc., ce puteau fi realizate sub semnătura privata a părţilor sau puteau să conţină si sigiliul cancelariei domneşti.

Odată ce forma scrisă a contractelor devine tot mai des întâlnită, activitatea notarială evoluează de la logofătul ce întocmea în cancelaria domnească şi întărea cu sigiliul domnesc actele ce conţineau voinţa părţilor sau porunca domnească, la o formă ce tinde spre instituţionalizare. Deja se stabilesc proceduri. Aceste proceduri sunt făcute publice, devenind instrumente la îndemâna celor interesaţi. Logofătul însărcinat cu scrierea actului şi care deţinea şi sigiliul domnesc, are deja în subordinea sa “gramatici” sau “uricari” care scriau efectiv documentul. După o procedură destul de complicată, care ne aminteşte de votul Senatului roman în materia testamentelor, draft-ul sau schiţa de document, însoţit de un raport, era prezentat sfatului domnesc, acesta şi domnitorul urmând a delibera cu privire la solicitarea adresată de petiţionar. După ce sfatul hotăra, se scria textul definitiv, se corecta dacă era cazul, se autentifica şi în final, se înmâna părţii.

Documentele erau pecetluite cu sigiliul care demonstra originalitatea şi care în caz de pierdere trebuia “renovat”. Este interesant că la acea vreme exista consacrată şi o procedură de reconstituire a documentului pierdut sau distrus, procedură în care puteau fi folosiţi şi martorii. Pentru toate aceste operaţiuni, partea era chemată la achitarea unui onorariu: “Începând cu secolul al XV-lea membrilor Sfatului Domnesc (marele logofăt, marii vornici, marele hatman, marele vistiernic etc.) li se recunoştea dreptul de a efectua acţiuni notariale, semnându-le şi confirmându-le cu sigiliile lor. În cazuri deosebite, reprezentanţii Sfatului, uneori chiar şi foştii membri, se deplasau în teritoriu, unde, împreună cu dregătorii locali şi cu martorii necesari, perfectau şi legalizau actele de delimitare a hotarelor unor moşii, de partajare a unor proprietăţi imobiliare între succesori etc. Dezvoltarea social-economică şi mai ales acceptarea pe scară largă a actului scris a oferit posibilitatea şi dregătorilor de instanţă sau din administraţia oraşelor să se bucure de anumite atribuţii notariale, de elaborarea şi de

[4] Cosmin Mihailovici, *Notarul Public. Destinul unei profesii*, Editura Notarom, Bucuresti, 2015, pp. 9.

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legalizarea diverselor acte juridice. În atribuţiile lor intra întărirea documentelor de vânzare-cumpărare, danie sau testare a unor bunuri mobile sau imobile, emiţând în acest sens acte de confirmare"[5].

Odată cu "Cartea românească de învăţătură" adoptată de Vasile Lupu şi "Îndreptarea legii", adoptată de Matei Basarab, continuând cu "Pravilniceasca condică", realizată de Alexandru Ipsilanti în 1780 şi "Legiuirea Caragea", "Codul civil" al lui Scarlat Calimach, "Cererile norodului românesc" şi "Constituţia Cărvunarilor" - pe care le regăsim în "Regulamente Organice", nevoia de specializare a celor care redactează acte, devine una stringentă, şi astfel, în Transilvania, spre sfârştul secolului al XVII-lea, înâlnim în Cancelaria regală, notarul secretar, ce deţinea şi păstra sigiliul regelui, iar mai târziu, regăsim funcţia de "protonotar", care avea obligaţia să întocmească şi să organizeze documentele Cancelariei domneşti. Aşa cum întâlnim şi în documentul deja amintit *Notarul Public. Destinul unei profesii*, Cosmin Mihailovici - remarcăm faptul că: "În prima jumătate a secolului al XIV-lea este înregistrat un notar particular, nobilul Toma, fiul lui Dionisie de Reghin, iar din a doua jumătate a secolului, în scaunele şi oraşele săseşti, dar şi la Cluj, funcţionau scriitorii de documente (scribi) sau notari, dar şi notari publici, unii fiind chiar localnici. Notariatul public, adus de notarii italieni din suita legaţilor papali, va găsi în Ungaria şi Transilvania medievală, un concurent puternic – locurile de adeverire, care nu i-au permis o evoluţie asemănătoare cu cea din Statele Italiene sau Franţa unde s-a dezvoltat pe baza principiilor fundamentale ale profesionalismului, loialităţii faţă de stat şi de instituţiile sale, rigorii în controlul legalităţii actelor şi în apărarea drepturilor şi intereselor cetăţenilor, în deplină autonomie şi independenţă faţă de administraţia publică"[6].

Codul Civil promulgat la 1864 şi aplicat în 1865, reprezintă o forma integrată şi articulată de norme juridice de drept privat, prin care se stabilesc instituţii şi proceduri, care, sub influenţa legislaţiei franceze în mod special, dovedea modernitatea statului român şi nevoia acestuia de a răspunde unor cerinţe ce erau reclamate în viaţa socială. De remarcat este că, în art. 1171 regăsim chiar definiţia actului autentic şi trimiterea la notarul public, sub forma "funcţionarului public care are drept de a funcţiona în locul unde actul s-a făcut"[7]. De altfel, forţa probantă a actului autentic este accentuată, de articolul 1173 din Codul civil de la 1864,

[5] Cosmin Mihailovici, *Notarul Public. Destinul unei profesii*, Editura Notarom, Bucuresti, 2015, pp. 24.
[6] Cosmin Mihailovici, *Notarul Public. Destinul unei profesii*, Editura Notarom, Bucuresti 2015, pp. 42.
[7] Art. 1171 Cod civil de la 1864. Codul Civil a fost decretat la 26 noiembrie 1864, promulgat la 4 decembrie 1864 şi pus în aplicare la 1 decembrie 1865.

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stabilind că "actul autentic are deplină credinţă în privinţa oricărei persoane despre dispoziţiile şi convenţiile ce constată"[8].

Depăşind Legea autentificării actelor din 1886 şi modificările discutabile ale acesteia din 1887 şi cele din 1904, remarcăm proiectul de lege al Partidului Conservator, din 1907, care susţinea înfiinţarea instituţiei notarului public ca şi corp profesional de sine stătător şi preluăm din lucrarea "Notarul Public. Destinul unei profesii", aprecierile lui Ioan T. Cosma – primul preşedinte al Uniunii Generale a Notarilor Publici din România: "Viaţa de drept se bazează pe milioanele de acte juridice şi numai în subsidiar pe sentinţele judecătoreşti. Unde bunătatea, siguranţa şi păstrarea actelor juridice este asigurată de stat prin organe bine pregătite, încadrate în organizaţiune profesională îngrădită cu cea mai perfectă răspundere, autonomie, libertate şi demnitate, acolo se poate vorbi de viaţă de drept, de siguranţa şi ordinea încheierilor (actelor) de drept. Fiecare act juridic este cărămidă solidă în edificiul vieţii sociale. Este cea mai importantă parte a construcţiei morale a statului. Chiar şi codul civil îl decretează de legea părţilor contractante, dându-i prin această stabilire marea importanţă în viaţa statului. Pe aceste acte juridice, ce zi de zi continuu se încheie între cetăţeni formând noi obligaţiuni şi drepturi, mai importante şi de mai mare valoare, decât toate bogăţiile găsite în şi pe întinsul solului Patriei, pe aceste acte se bazează întreg edificiul statului. Dacă aceste milioane raporturi de drept sunt bine stabilite, bine administrate şi bine păstrate şi viaţa statului e bine şi temeinic clădită… Din actele încheiate în lipsa organelor fără răspundere şi pregătire juridică şi mai vârtos morală, se nasc litigii, duşmănii, procese, cheltuieli, nelinişte şi anarchie. Zadarnic este orice năzuinţă de a stăvili prin magistratură acest puhoi al duhui rău, căci orice muncă va fi fără folos, iar potopul procesor provenite din aceste acte va inunda cu apele sale otrăvite toate resorturile vieţii sociale şi de stat"[9].

Remarcăm de asemenea, Decretul nr. 79/1950 pentru organizarea Notariatului de Stat, decizia Ministrului Justiţiei nr. 1826 din 1950, privind înfiinţarea Birourilor de Notariat de stat în Bucureşti şi judeţul Ilfov, Decretul nr. 387/1952, Decretul 40/1953, Decretul 179/1959 şi nu în cele din urmă, Decretul nr. 377 din 14 octombrie 1960, decret ce marca intrarea Notariatului de Stat într-o nouă etapă instituţională. Ulterior, acest decret suferă anumite modificări, care stabilesc o nouă viziune organizatorică administrativ teritorială, lansând instituţia Notariatului de Stat într-o dezvoltare care generează 140 de entităţi notariale în care funcţionau, la începutul anului 1990, 277 de notari de stat.

[8] Art. 1173 Cod civil de la 1864.
[9] Cosmin Mihailovici, *Notarul Public. Destinul unei profesii*, Editura Notarom, Bucuresti, 2015, pp. 93.

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Perioada post revoluţionară şi Instituţia Notarului Public

Odată cu revoluţia din 1989, România se înscrie pe un drum de modernizare şi democratizare evident. Contextul socio-economic, politic şi administrativ, impun legiuitorului preluarea unor modele instituţionale ce funcţionează în alte state. Dezvoltarea relaţiilor economice şi sociale, reclamând soluţii la probleme noi apărute, impun eficientizarea activităţii notariale pentru o mai bună garanţie a circuitului juridic civil şi pentru promovarea cu prioritate a procedurilor graţioase, nelitigioase, administrate de notarul public ca şi un magistrat de pace. Nevoia de degrevare a instanţelor judecătoreşti, necesitatea rezolvării unor probleme juridice cu celeritate, dând posibilitatea cetăţenilor să beneficieze de o consiliere specializată, precum şi aglomerarea excesivă a celor 99 de entităţi notariale în care lucrau 344 de notari de stat, a făcut ca soluţia notarului public ca şi instituţie modernă, eficientă si corespondentă practicii europene, să se profileze tot mai concret. Notarii de stat au fost primii care, într-un demers curajos, au înfiinţat Asociaţia pentru promovarea instituţiei notarilor publici din România, organizaţie ce avea ca scop declarat, relansarea valorilor notariatului public transilvănean şi sensibilizarea puterii politice democratice pentru a prelua iniţiativa de reformare a notariatului de stat şi de înfiinţare, după modelul european a instituţiei notarului public.

La 17.11.1995 se înfiinţează Uniunea Naţională a Notarilor Publici din România (UNNPR), organizaţie naţională a corpului profesional de notari publici. Se înfiinţează camerele notarilor publici, la nivelul circumscripţiilor Curţii de Apel şi se deschide astfel, o nouă pagină de istorie a notarului şi începe evoluţia modernă a unei instituţii europene consolidate şi eficiente.

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REVIVING THE ROMAN EMPIRE'S FALL: EMIC AND MULTICULTURAL PERSPECTIVES

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Abstract: A fairly large number of voicesare pointing out a troubling analogy between the contemporary Europe and the end of the Roman Empire. The external intromission went along with the attitude toward the own cultural values and self-perception. A similar detachment from the vernacular spirituality allowed a massive penetration of the foreign imaginary and recrudescence of archaic superstitions. Concomitantly, we witness the invasion of the values of the street's subcultures and the aggressive self-promotion of the minorities' identities, which are both far to be harmonized in a coherent entity compatible with the European cultural specific. The similarities between the multi-cultural society at the end of the Antiquity and the contemporary Europe are rather easy perceptible; yet there are fundamental differences too: the most salient being the European astonishing self-denial which persists in various forms since over a century. Under such circumstances, the Arts together with Art institutions and Art shools are crossing an epoch of transformations where losses and gains is worth to be highlighted. We consider that it occurs a new opportunity to discuss the logical splinter between culture and cultures and to figure out whether the European specific has still anything to share to the world or not. We aim at demonstrating that nowadays the non-verbal Arts are assuming a particular importance, especially in education, which might be responsibly regarded.
Keywords: culture(s), religions, mentality, Arts, communities, inter-cultural connections

Problematica spiritualității și culturii europene aflată într-un dublu asediu, din interior și exterior prezintă tulburătoare similitudini cu declinul Imperiului Roman. *Metamorfozele* lui Lucius Apuleius, scrise la sfârșitul secolului al II-lea după Christos descriu abandonarea propriilor credințe religioase și idealuri ale societății respective, urmate firesc de importul masiv de cultură, cu precădere din Orient. Și Imperiul Austro-Ungar a explodat sub presiunea

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multelor națiuni care-l compuneau, totuși amprenta culturală Central-europeană, nu numai că a dăinuit, dar a continuat să fie un ideal pentru națiunile eliberate.

În Europa contemporană, falsul antagonism dintre omogenitate și diversitate eșuează în soluții birocratice, în care cultura este determinată de criteriul teritorial și/sau etnic. Cvasi-unanimitatea vocilor celor preocupați de „destinul culturii europene" promovează intransigent principiul diversității, mai ales că omogenizarea (globalizarea) culturală a fost în ultimele decenii frecvent asociată cu „americanizarea"[1]. De fapt, cel puțin în ceea ce privește muzica de divertisment *Pop, Rock, Metal* etc. precum și filmele, dominația americană este evidentă, în ciuda unor eforturi susținute de a i se contrapune un model european. Dar mult depreciata omogenitate culturală nu este doar rezultatul americanizării sau al altor forme de dominare rezultate din dezvoltarea naturală a comunităților europene, ci poate fi întâlnită chiar la nivelul cel mai de sus al instituțiilor europene. „Agenda europeană pentru cultură" „Grupul de lucru european privind cultura și dezvoltarea" sau nenumăratele „Directive" sunt câteva exemple ale unei politici de dominare și dirijare dinspre Bruxelles sau Strasbourg care, neîndoios, induc o omogenizare a conceptelor și practicilor. Controlul este realizat cu precădere prin modalități de promovare, sistem unitar de educație și mecanisme de finanțare, dar, cu certitudine și uniformitatea discursului public – noua limbă de lemn – se pare că joacă un rol de influențare, cel puțin la nivel subliminal. Directivele Uniunii Europene sunt, de altfel, reflectate în miile de eseuri, documente, dezbateri publice, prelegeri universitare etc. ce nu fac decât să le repete întocmai, cu o conștiinciozitate pe care ar fi invidiat-o lectorii cursurilor de învățământ politic din epoca socialistă.

Culturi versus cultură

Încercările de a sistematiza și de a controla dezvoltarea culturală pe întreg teritoriul european sunt contrazise chiar de mult-prețuita diversitate a popoarelor componente. Nu există un „popor european", în afara statisticilor demografice și „el nu poate fi creat artificial, în conformitate cu indicațiile UE"[2], care au o tulburătoare similitudine cu tentative, nu foarte vechi pe scara istoriei, de creare a „omului nou". Este neîndoios că Europa este un mozaic cultural, cu adevărat ne-omogen, care implică tradiții, acte artistice, mod de viață, forme de spiritualitate etc. Una din întrebările importante care ar trebui să se pună ar fi, de exemplu, în

[1] Mircea Brie: „European culture between diversity and unity" în: *Annals of the University of Oradea*, 2010, pag. 79
[2] Anthony Coughlan: „The European Union in Crisis", în: *NST – Nature, Society andThought* 19 (I), 2006, pag. 77

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ce măsură acest mozaic poartă o amprentă sau o dinamică specifică care îl poate deosebi de spațiile culturale extra-europene. O altă perspectivă ar putea fi dată de observarea dinamicii schimburilor și schimbărilor formelor artistice – adică: ce se importă, ce se exportă și ce se muzeifică, observare ce ar trebui să-l excludă pe „ar trebui să" – indiferent cât de democratic sau de politic corectă ar fi motivată intervenția. Sesizăm în discursul oficial european despre cultură mai multe carențe care pot fi sistematizate în trei direcții principale: abordarea superficială, lineară a actului cultural, respectiv ignorarea nivelului de adâncime, tratarea superficială a compatibilităților culturale transfrontaliere și lipsa componentei temporale în definirea specificului european.

Politicile culturale ale UE promovează, în schimb, uniformizarea, emfaza pe marginal care adesea frizează un cult al derizoriului. În încercarea de a combate naționalismul excesiv „celebrating diversity" sau alte lozinci asemănătoare se străduiesc să impună o deschidere multiculturală, conformă cu imperativele instituțiilor care decid în numele Europei, deschidere care, de fapt, nu este în mod tradițional reprezentativă pentru spațiul cultural european și care n-ar trebui să poate fi adoptată fără discernământ. O componentă esențială care apropie epoca noastră de amurgul Imperiului Roman este negarea propriei identități religioase. Tradiția creștină a fost, totuși definitorie pentru cultura europeană din ultimul mileniu și jumătate, fie prin asumare fanatică, fie chiar prin construcțiile culturale iscate de negarea sa.

O perspectivă interesantă asupra definirii conceptului de cultură o dă comparația dintre dicționare. American Heritage English Dictionary, de exemplu definește în prezent cultura ca „totalitatea comportamentelor, credințelor, artelor, instituțiilor precum și a tuturor produselor minții și muncii umane care se transmit în societate". O altă definiție contemporană mai nuanțată se referă la „caracteristicile spirituale, de cunoaștere și sentimente, la fel ca și condițiile materiale ale unei societăți sau ale unui grup de societăți". În această concepție, „cultura nu înseamnă doar literatură și artă, dar și stiluri de viață, sisteme de valori, tradiții și credințe. Fiecare individ și fiecare națiune au propria cultură existentă în spațiu și timp"[3]. Inițial, această tendință a pornit de la necesitatea deschiderii conceptului cultural considerat îngust și elitist. Spre comparație, definiția culturii era cu totul alta în secolul XIX și anume: „antrenarea, dezvoltarea și rafinarea minții, gustului și obiceiurilor".

[3]Pham Duy Duc: „Cultural Diversity under Conditions of Globalization" în: *NST – Nature, Society andThought* 19 (I) 2006, pag. 100

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„Alternativa culturală" şi mai ales extinderea conceptului de cultură pare potrivită pentru evitarea monotoniei și crearea necesarului de varietate şi culoare.Aparent, masiva deschidere a politicilor culturale europene contemporane pare a oferi şanse tuturor formelor de manifestare artistică şi tuturor comunităţilor, dar tocmai absolutizarea acestei deschideri şi lipsa totală a unui consens asupra criteriilor de valoare duce la aneantizarea şi uniformizarea oricărui nou venit, acceptat doar pentru că reprezintă – în mod egal – o regiune sau o minoritate. Considerăm că termenul „cultură" este întrebuinţat abuzivtocmai pentru că îmbracă practic orice formă de manifestare a unei identităţi organizaţionale. Uniunea Europeană urmează astfel un drum bine pavat cu intenţii democratice dintre cele mai onorabile, dar care duce la deteriorarea ierarhiilor stabilite în ultimele secole, în care autoritatea cărţii, a erudiţiei definise un nivel al aspiraţiei umane cu un grad mare de generalitate și care, de fapt, oglindea mult mai fidel specificul culturii europene.

Cultura a urmat, de fapt, procesul de desacralizare al gândirii religioase. Deşi aparent similar cu modelul „religie-religii", multiplicarea fără discernământ a termenului „cultură" duce la degradarea acestuia. Dacă termenului „religie" i se pot contrapune noţiuni colective cu care nu se poate confunda (credinţe, dogme, culte, superstiţii etc.) termenul „cultură" se minimalizează prin propriul plural. Conceptul alternativ propus de Doina Işfănoni[4] , de „spiritualitate etnică" ar putea îmbrăca mai adecvat componenta spaţială, vizibilă – importantă, desigur – dar nu singura definitorie. Tendința de separare a culturii de o sferă accesibilă doar elitelor a fost consecința logică a democratizării societății europene moderne din secolul XIX. În prima jumătate a secolului trecut, voci (nu multe dar stridente) clamau, pe lângă reînnoirea totală a artelor și redefinirea conceptului de cultură.

În 1938, Antonin Artaud lansa un protest „împotriva imensei restrângeri impuse de ideea de cultură, ce este redusă la un fel de Panteon inimaginabil [...] protest împotriva ideii că viața și cultura ar fi separate, ca și cum cultura n-ar fi în fond altceva decât un mod rafinat de a înțelege viața". Același autor însă ajungea să afirme și: „capodoperele trecutului sunt bune [doar] pentru trecut", în consonanță cu crezul avangardiștilor primei jumătăți a secolului trecut. Deloc întâmplător, primul citat al lui Artaud figurează și în documentele Grupului de lucru european privind cultura și dezvoltarea, publicate 60 de ani mai târziu. Este remarcabil

[4]Işfănoni, Doina: *Interferenţe între magic şi estetic în recuzita obiceiurilor tradiţionale româneşti din ciclul vieţii*, Ed. Enciclopedică, 2002

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şi faptul observat de Ştefana Voicu că termenii „artă" şi „cultură" nu sunt folosiţi în documentele publicate de Uniunea Europeană[5].

Specificul cultural european

Actul artistic, precum şi evoluţia profesională a artistului sunt astăzi condiţionate de trei factori: profitul comercial, gustul (precar) al publicului şi imperativul noutăţii cu orice preţ. Spaţiul public contemporan „a fost refeudalizat sau colonizat prin manipularea marketingului şi a publicităţii comerciale, prin sondajele care produc o opinie publică factice şi prin sub-cultura difuzată de mijloacele de comunicare în masă"[6]. Aceste servituţi, care sunt de fapt profund anti-culturale, nu se datorează Uniunii Europene. Ele au apărut treptat, ca produs subsecvent modernizării şi democratizării societăţii. Europa, după un scurt interludiu în care autoritatea cărţii a dominat (şi în ciuda faptului că prin acest lucru a atins un prestigiu pe care cuceririle militare nu l-au egalat), se reneagă pe sine şi înlocuieşte un principiu de adâncime spirituală cu o înşiruire de provincii. Etichetarea zonală se sprijină preponderent pe etnologie şi pe principiul egalităţii minorităţilor, până la clasificări hilare. La aceasta se adaugă şi alegerea circumstanţială a eşantionului cultural „reprezentativ", alegere ameninţată de multe ori de precaritate culturală şi gust vulgar, în care „criteriul democratic" se traduce prin gustul massei ce oferă rating sau plata biletelor. Încă din secolul XIX, Vilfredo Pareto atrăgea atenţia asupra „*ofelimităţii*"[7] şi asupra pericolului transformării comunicării artistice într-o afacere.

În ceea ce priveşte noutatea, am semnalat în diferite ocazii că schimbarea, reînnoirea uneori radicală face parte din structura intrinsecă a culturii europene. Modelul cultural asiatic, dimpotrivă, păstrează fidel tradiţii milenare; orice noutate fie din sânul propriei societăţi, fie importată, coexistă alături de acestea. Ideea că schimbarea echivalează cu progresul este pur europeană şi a sfârşit întotdeauna prin a învinge rezistenţele puse de-a lungul vremii de instituţiile conservatoare. Încăîn Grecia antică cultura şi formele artistice se schimbau. Toate

[5]Ştefana Voicu, Capitolul 8, pag. 235-275: „Cultură naţională versus cultură străină în contextul globalizării", în: *Barometrul de consum cultural* 2014, pag. 238
[6]Bernard Floris: *Întreprinderea din perspectiva spaţiului public*, în *Spaţiul public şi comunicarea*, Paillard, Isabelle (coord.) Polirom, Iaşi, 2002, pag. 132
[7]Acest termen are două înţelesuri: 1. Satisfăcător din punct de vedere economic 2. Însuşirea de a place. Cuvântul provine din greacă *ophelimos* [ὠφέλιμος] = folositor, profitabil (apud *New Dictionnary of the History of Ideas* Maryanne Cline Horowitz, Ed. Thomson 1945). Se pare că Pareto a utilizat termenul prima oară în Cursul său de economie politică de la Universitatea din Lausanne (1896-97).

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scrierile despre structura școlilor muzicale elene descriu schimbări. În vremea lui Sofocle teatrul se schimbase semnificativ în raport cu epoca lui Eschil[8]. Exemplele din lumea artelor sunt numeroase, dar chiar și ideologiile, marile curente religioase au suportat schimbări, care, odată admise, înlocuiau precedentele structuri. Începând cu secolul XIX tendința de schimbare, până atunci mai lentă, uneori ocultă începe a se accelera, devenind la începutul secolului următor principalul criteriu valoric. Operele ce se expun sunt de multe ori justificate doar prin coordonatele noutății sau șocantului, când nu prin stilul de viaţă al artistului. „Épater le bourgeois" devine dintr-un teribilism al unei minorități marginale principalul atu al operei de artă. Acest fenomen este vizibil cu precădere în artele vizuale, dar și în muzica profesionistă (identificată impropriu ca „muzică clasică")[9].

O altă caracteristică a culturii europene este autonomia Școlii în raport cu instituțiile de autoritate, centrele religioase și trendul social conjunctural. Desigur, un atare proces a avut importante perioade de discontinuitate sau compromisuri. Totuși, gândirea științifică și ulterior și cea artistică s-au constituit treptat în entități stabile, în continuă perfecționare generatoare de forme și structuri care stau la baza civilizației contemporane. Școala, în sens larg a sfârșit prin a domina societatea europeană, iar cultura scrisă reprezintă de câteva secole forma prin excelență de transmitere și păstrare. Firește, cultura europeană nu evoluează ca un bloc unitar, ci prezintă caracteristici specifice fiecărei discipline. Modul real de cucerire al Europei nu a fost impunerea unui stil particular, ci pedagogia unei supra-construcţii spirituale, născută, e adevărat, în ţări europene, dar care nu se mai identifică exclusiv cu stilurile culturale originare. Gradul înalt de elaborare al acestei construcţii sintetizează influenţe diverse, dar ele nu mai definesc un spaţiu, ci un timp cultural, împărtăşitde mulţi intelectuali ne-europeni, care nu-şi simt deloc periclitat stilul cultural legat de geografia țărilor lor.

Îmbogățire culturală prin auto-negare – o invenție europeană

Diferența esențială dintre Europa contemporană și imperiile în extincție sus-menționate este auto-negarea generală, lepădarea europenilor de cea mai mare parte a tradițiilor proprii. Îmbogățirea culturală prin permeabilizarea graniţelor, prin schimburi, preluări etc. aduce un cert beneficiu comunicării, dar tocmai prin extindereafără discernământ a acestui fenomen, identitatea începe să fie îndoielnică. Pătrunderea imaginarului alogen (arhaic sau străin) în creaţia artistică cultă a schimbat radical peisajul cultural, nu numai

[8]Vito Pandolfi: *Istoria teatrului universal*, Editura Meridiane, București, pag. 82
[9] Clasicismul desemnează o perioadă delimitată în istoria muzicii culte (aproximativ între jumătatea secolului XVIII și primele decenii ale secolului XIX)

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artistic al Europei către graniţa dintre secolul XIX şi XX. Dar chiar în momentul în care Europa culturală tradiţională (vestică), în special prin formele artistice, ajunsese la apogeul celui mai important fenomen de aculturaţie, influenţând hotărâtor arta şi învăţământul la o scară globală, în sânul societăţii europene artistice apăreau tendinţe radicale de reformă, bazate preponderent pe negarea propriei tradiţii culturale. Un atare crez a dus în anii '90 la crearea unor puternice centre de opinie, dintre care multe chiar în cadrul universităţilor (așa-numitele Studii Culturale) ce incriminează „cultura bărbaților albi și morți".

Şi în Extremul Orient, ca și în Europa sfârșitului de secol XIX modernizarea a antrenat extindere tematică şi recrearea formelor, limbajelor şi stilurilor, ca și o deschidere fără precedent faţă de influenţele străine. Diferenţa între permisivitatea extrem orientală şi cea europeană este că în Asia, chiar tolerându-se noutatea, nu s-au negat nici un moment formele culturale tradiţionale. Franz Marc, unul din apologeţii curentului Blaue Reiter, scrisese deja în 1911: „Trebuie să fim curajoşi şi să întoarcem spatele la tot ce până acum, europeni cumsecade au considerat a fi valoros şi esenţial. Ideile şi idealurile noastre trebuie înveşmântate în haine de blană, trebuie hrănite cu lăcuste şi miere sălbatică, nu cu istorie, dacă vrem să scăpăm vreodată de sleirea prostului nostru gust european".Cel mai violent curent de respingere a trecutului, Futurismul, în care se afirma că „este mult mai frumos un motor zgomotos de maşină decât înaripata Victorie de la Samotrace" (Marinetti, 1910), înţelegea prin „trecut" moştenirea Renaşterii şi a tradiţiei clasicismului grecesc. De fapt, marile curente înnoitoare înlocuiau acest trecut cu unul mult mai vechi, cel al operelor primitive, exotice sau naive[10].

Într-un plan mai general, euro-fobia nu a fost doar o excentricitate a artiştilor. Diagnoza unui proiect de analiză nu poate ignora faptul că referinţa negativă, chiar demonizată, duşmanul, este societatea şi cultura de tip european. Această ostilitate uneşte categorii greu reconciliabile logic precum grupări anarhiste, comando-uri teroriste, secte religioase, grupări ocultiste, fasciste, de stânga, găşti de tineri şi lista se completează cu intelectualii europeni, care adoptă mimetic o incredibilă smerenie şi lepădare de propriile valori.

În Europa cea considerată autoritaristă, toate credinţele au drept la liberă exprimare şi la respect, mai puţin tradiţia proprie. Se tolerează lipsa de respect şi chiar blasfemia faţă de religia şi bisericile europene tradiţionale. Nu cred că cineva îşi poate imagina în Japonia, de exemplu, un discurs public al unui emigrant, care să atace ţara gazdă, valorile ei religioase şi,

[10]Robert Goldwater: *Primitivismul în arta modernă*, (Trad. rom.) Ed. Meridiane, 1974, pag.183

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mai mult, să ameninţe şi cu atacuri teroriste. Nici în China... Dar în Germania și Franța s-a întâmplat. A denigra cultura, religia fundamentală şi civilizaţia proprie a devenit, mai mult decât o modă, un imperativ european al manifestării publice.

Multi-culturalism și coabitare

Istoria recentă a conflictelor doctrinare ce au produs atâtea victime în secolul XX a avut un rol decisiv la crearea unei idiosincrazii faţă de orice „Principiu Unic Director", sau, poate, tendinţa generală a istoriei culturii permite coabitarea în acelaşi spaţiu noetic a celor mai divergente idealuri. Şi din acest punct de vedere, civilizaţia noastră seamănă cu cea a apogeului Imperiului Roman sau cu Epoca Helenistică, civilizaţie permisivă, în care tronează alegoria înţelepciunii Regelui Solomon, respectiv: „şi tu ai dreptate"… Eliminarea componentei axiologice, precum şi lipsa unui criteriu sprijinit pe o coerenţă intelectuală minimală, aduce atingere mai ales imaginii publice a minorităţilor, care devin astfel, valabile prin categorie şi nu prin performanţe. Valoarea potenţială a unora se pierde în lista numerică, ordonată geografic sau sociologic (când nu patologic). Frumoasa sintagmă „toţi au dreptul" conţine în fapt şi pe „nimeni nu are valoare". Giovanni Sartori observă pertinent că paralelismul multicultural este dăunător în aceeaşi măsură ca extrema pe care încearcă s-o combată: asimilarea forţată[11].

Cultura non-verbală și cu precădere cea muzicală pot înlesni cu mai multă claritate înțelegerea fenomenelor culturale, mai ales în ceea ce privește latura lor comunicațională și interferențială. Principalul argument îl reprezintă depășirea barierelor lingvistice, precum și mai marea apropiere a acestor discipline de formele fundamentale de spiritualitate. În plus, gestul energetic se pliază pe un pattern general uman, indiferent de deosebirile de limbaj sau de gradul de complexitate al actului artistic propriu-zis. Muzica vestică conține acele caracteristici care au determinat să fie rapid și, în multe privințe semnificativ asimilată de culturi cu totul diferite, în momentul în care au ajuns în contact cu aceasta. S-a încercat, fără succes, demonizarea așa-numitei „aculturație muzicală"de către europeni și non-europeni deopotrivă. În fapt, acest tip de muzică a fost cerut și asimilat spontan. Numărul uriaș de muzicieni performanți de muzică europeană din Coreea, China sau Japonia stau mărturie despre disponibilitatea liber consimțită a acestora de a-și apropria muzica europeană. Exemplul lui Menuhin, ca și al altor artiști importanți din toate colțurile lumii demonstrează în

[11]Giovanni Sartori: *Pluralismo, Multiculturalismo e Stranieri* (Trad. rom.), Ed. Humanitas, București, 2007 pag. 10 și urm.

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ce măsură criteriul cultural al topos-ului este derizoriu şi nu interesează decât formele locale de spiritualitate minoră.

Fenomenul globalizării a împărţit harta muzicală a lumii în mai multe straturi. La primul nivel se află formele de spiritualitate etnică, respectiv civilizaţia muzicală orală, ce mai dăinuie în anumite zone, cu precădere în afara spaţiului vest-european. Straturile transversale, supra-frontaliere au o zonă destinată divertismentului, o alta a muzicii tinerilor, iar stratul cel mai subţire este cel al muzicii culte de tip vest-european. Dar nu numai muzica cultă este clădită pe pattern european. Chiar şi baza muzicală a straturilor populare (divertisment, *Rock*, *Pop* etc.) are la bază tot limbajul muzical provenit din zona Europei de vest, chiar dacă aceste forme de artă adaugă şi elemente de percuţie, costumaţie şi body art africane sau sud-americane.

Trebuie precizat că există o singură zonă pe glob care a fost şi a rămas opacă la diseminarea stilului muzical european, zona ce cuprindevestul Asiei şi nordul Africii. O explicaţie plauzibilă este că muzica acestor locuri prezintă nişte caracteristici particulare, mai greu compatibile cu muzica vestică[12]. O coincidenţă face ca în perimetrul acestei enclave muzicale religia să fie Islamul. Stilul muzical al acestor popoare îşi prelungeşte influenţa şi înspre nord-vest în Peninsula Balcanică, România la sud de Carpaţi şi, în mai mică măsură, în Ardeal şi Ungaria.

Printr-un paradox ce pare cu dificultate a fi întâmplător, intenţiile Uniunii Europene de promovare a drepturilor şi libertăţilor cetăţeneşti, ca şi cele menite a favoriza cultura şi creativitatea se întorc împotriva valorilor europene tradiţionale. Directivele controlează şi amendează propriii cetăţeni şi nu pe intruşii ostili. Tratatul care instituie Constituţia Europeană este deocamdată ratat, ca urmare a confruntării concrete cu aspiraţiile reale ale cetăţenilor. „Deficitul democratic" al unei structuri supra-statale, un „imperiu neo-colonialist în care 25 de oameni conduc aproximativ 450 milioane"[13] este mai vizibil decât oriunde în politicile culturale. Obligaţia de respect pentru tradiţiile altora este impusă europenilor, iar dreptul la afirmarea identităţii culturale şi religioase este pentru ceilalţi. Efectele concrete ale acestor contradicţii apar la toate nivelurile.

În plan religios, sectele proliferează geometric, preluând controlul asupra microgrupurilor umane, iar în plan cultural, se constată o labilitate a criteriilor de valoare care, deşi permit experimentul şi creativitatea neîngrădită, totuşi, nu de puţine ori favorizează

[12]Pentru cei cu pregătire muzicală, este vorba de o muzică cromatică, monodică, dominată de melisme.
[13]Anthony Coughlan: „The European Union in Crisis" *NST – Nature, Society and Thought* 19 (I) pag. 80

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impostura sau derizoriul.Intelectualii de tip umanist din zilele noastre, sunt asediaţi de sub-cultura străzii, semn al non-constrângerii generalizate. Dar trebuie amintit că tirania gloatei şi demonetizarea ştiutorului de carte se datorează în bună parte chiar teoriilor acestuia... Profesorii şi cercetătorii asistă resemnaţi la sărăcirea intelectuală a vieţii publice, la criteriile care fac diferenţa între o vedetă mediatizată şi restul lumii, sau la nivelul de exigenţă cerut astăzi în centrele universitare, unde nu mai pot avea o opinie decisivă nici în ceea ce priveşte durata studiilor. Nu profesorii au decis legiferarea ciclului de trei ani pentru obţinerea diplomei universitare în Europa, indiferent de tradiţiile locale sau de exigenţele specialităţilor, ci, în primul rând, banul, manevrat de o clasă de indivizi cu foarte puţine în comun cu erudiţia și, poate nu în ultimul rând, schematizarea unitară, simplificată și conformă cu nevoia de ordine și control asiduu promovată.

În privința consumului de artă, observăm adesea că un artist, un curent, sau o lucrare sunt judecate, nu în sine, ci ca imagini reprezentând o categorie. Distingem atât timorarea în faţa modelului (ceea ce a dus, de pildă, în România anilor ’90 la o explozie de simboluri religioase, Crişti şi icoane pe care nu îndrăzneşti să le judeci în termeni culturali sau estetici pentru că, nu-i aşa, „reprezintă”...), cât şi sfiala în faţa anumitor categorii din care fac parte autorii, sfială vizibilă în special la consumatorul de artă occidental.

Astfel, definind metonimic întregul prin una din componente şi încercând împăcarea comandamentului politic-corect al diversităţii culturale cu găsirea unui șablon comportamental general, se obține o deprimantă sărăcire a conceptului cultural, văduvit de componenta sa temporală (păstrare, ierarhie şi evoluţie). Deplasarea definiţiei „cultură” înspre categoria diversităţii o văduveşte de componenta ei axiologică, deoarece ni se pare evident că nu numai diferenţa decide calitatea culturală a unei comunităţi. Extinderea accepţiunii referitoare la habitus-ul grupului în defavoarea celei care presupune obligatoriu un nivel semnificativ de elaborare uniformizează nepermis niveluri diferite. Noile tendinţe reduc astfel criteriul de selecţie la topos sau la minoritate. Amândouă categoriile interesează diferenţa sesizabilă fără mari eforturi în plan superficial, al vizibilităţii directe, ignorând încărcătura timpului cultural implicat în dezvoltarea respectivei societăţi.

Nu analogia cu năvălirea barbară în Imperiul Roman ar trebui să ne îngrijoreze, ci atitudinea de pasivitate și timorare, dublată de zelul conducătorilor de a face pe plac noilor veniți. De asemenea, nu importul de cultură, religii, obiceiuri au fost pernicioase în sine, cât decăderea prealabilă a propriilor tradiții. Un termen de comparație, ne-european este semnificativ: China a fost cucerită de mongoli în secolul 12 după Christos. Superioritatea

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militară a mongolilor era certă, dar nu și cea culturală. Năvălitorii, practic au fost asimilați de societatea chineză și, curând, au dispărut din istorie, împreună cu obiceiurile, credințele sau comportamentele lor. Blestemul endemic european al permanentei înnoiri și permanentei renegări face ca istoria să se întoarcă, fără a părea că învățăm ceva din lecția ei.

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PARADIGM AND CONSIDERATIONS ALLIANCES AND INTRNATIONAL COOPERATION IN GLOBALIZATION

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Abstract: 90 years were characterized by the use of new ways of internationalization, listed as a competitive strategy. Thus, one of the most significant trends in this area is the development of strategic alliances established between different multinational companies operating in the global market, strategic alliances are a component of marketing strategies aimed at entering the market and are agreements between two or more companies that intend to compete on the internal market and especially foreign.

The internationalization of business activities can be achieved through various forms of strategic alliances and international cooperation, which can be framed in terms of internationalization intensity between business operations and the implantation abroad.

Alliances and cooperations aimed at establishing sustainable relations to achieve a common strategy of management in specified fields of activity.

Keywords: industrialization, modern technologies, internationalization strategies, strategic alliances, international markets.

1.Introduction

The rapid process of change of political structures, social and economic product over the last decade of the twentieth century, has accelerated the process of globalization. The collapse of the Soviet Union and the so-called "World Socialist System" ended bipolarism emerged after the Second World War, has created new conditions for international political and economic system restructuring. Pluralist and participatory democracy, respect for human rights, human responsibility and awareness that human rights are complementary, liberal market economy, transparency and ethics of national and international concern for the environment have become basic principles effect worldwide.

We are witnessing what essentially can be considered "Globalization - the state of affairs and mind" concept resulted from constantly expressed tendency of humanity to rediscover the primordial unity [1].

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A universally accepted definition of globalization was offered by the European Commission in 1997 to address its economic "globalization can be defined as a process of further trends in the markets and productions in different countries are becoming increasingly interdependent due to the dynamics of trade goods and services and flows of capital and technology. "

Globalization is a historical phenomenon, but at the same time megatrends developed based on industrialization that brought raw common practice in companies structurally different in terms of cultural (practice by new scientific and technical developments which aplicativitate and generalization have been considerably speeded up the process developing and deepening social division of labor). Modern manufacturing technologies based, first, on the strength of steam and, later, that of electricity were held universally valid principles and rules of operation and use of the systems equipping cars under productive units. What our attention is that the use of more efficient means of production entailed rationality rightly considered a fundamental solvent globalization. Rationality has contributed greatly to the depersonalization of business, the latter being guided by the same principles worldwide efficiency.

2. Globalization and its impact on national economies

Globalization tends to be interpreted as an advanced internationalization of economic activities, as greater integration and interdependence. This definition implies an extension, deepening the already existing international economic interaction. She stresses that globalization is a process not entirely new, but one returned with the completion date East-West confrontation generated by the collapse of the socialist economic system [2]. Globalization is expanding today in areas of the world that remained for a long time self-isolated (with regard to the states that belonged to the former socialist system including and Romania) - a situation that led to economic backwardness and technological countries concerned. Meanwhile globalization is expanding increasingly to developing countries and the non-aligned countries (which goes sailing between East and West, lost time to become real actors of the process). The global economy went through a difficult period over the last decade. At first the Mexican crisis, then the Russian crisis, the Asian crisis and the Brazilian rocked global conomic balance. Triumph, American neoliberal model proclaims global hegemony. The world's problems, however, are far from being solved, because in the face of growing danger of destabilizing the international order due to the marginalization of countries in the Third World and ex-communist, appears pressing need for their integration in the global economy today, the world economy is in face a triple challenge:

- Globalization and its implications on the competitiveness of national economies;

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- Contradiction of the laws of the market (economic logic) and the duty of states to ensure a certain degree of "distributive justice" (social logic);
- The contradiction between economic logic and need for environmental protection in order to ensure the survival of mankind.

It can be said that much of the forecast of economists in the 1960s proved to be realistic. The exception is the assessment on the migration of commercial power to developing nations (which has so far not occurred, these countries being in an economic impasse that will probably extend for longer);

It is obvious that we are witnessing a triple revolution, technological, economic and sociological.

First is a technological revolution, because as the industrial revolution anticipated replacement of physical work by car, so the information revolution current ("IT world") sees the replacement of the human brain (at least a number of c EIN more important functions its) computer. Then it is a revolution remains the dominant economic globalization phenomenon, ie independence increasingly stronger economies in many countries as a result of generalization free exchange trading. Due to the increasing development of technology, globalization especially the financial sector now dominates the economic sphere. Operating under rules that they have set themselves, today's financial markets impose their political representatives of states and their laws.

In other words, economics dictate politics. Finally it is a sociological revolution for democracy loses a great deal of credibility because citizens can not effectively intervene in the economy. Moreover, economics is increasingly disconnected from social, refusing to accept the consequences (mass unemployment, pauperization, etc.) causing adopting the logic of globalized markets;

Undoubtedly the biggest economic powers today are those of the Atlantic. The share of the two continents (North America and Europe) in world trade is almost the same (about 1-8%).

3. Internationalization versus strategic alliances and international cooperation

The internationalization of business activities can be achieved through various forms of strategic alliances and international cooperation, which can be classified in terms of internationalization intensity between business operations and the implantation abroad. Alliances and cooperations aimed at establishing sustainable relations to achieve a common strategy of management in specified fields of activity. These relationships may have an

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informal character (managerial level agreements) may be based on contracts or cooperation can be achieved within the framework of institutionalized structures.

In relation to commercial operations, alliances and cooperations customizes the subject of complex, cooperative spirit and character stability of relations between partners, creation and development of complementarities technical, commercial, financial parties. On the other hand, in relation to forms of implantation abroad, alliances and cooperations presents a lesser degree of integration and institutionalization, keeping partners and autonomous decision making and legal identity [3].

The main forms of alliances and international cooperation are:

- Cooperation on contractual basis, which may be included in licensing agreements, franşizarea, subcontracting, etc., all are forms of international transfer of production technology (licensing, subcontracting) or marketing (franşizarea)
- Strategic alliances form of associations, consortia, etc. on building objectives in common, turnkey deliveries, consulting - engineering, etc .;
- Institutionalized cooperation, represented by joint ventures;

4. The operations of technology transfer

In relation to these operations involving the international sale not export manufactured product, but use a strategic advantage materialized in trade marks, patents, technical expertise. It follows that the relationship of the parties no longer stands or falls not only trade field, but they involve production systems partners. Therefore, we need another approach to business, aspects of cooperation (based on the common interests of the partners) tending to overlap the specific elements relations debtor - creditor [4].

Licensing (English. Licensing) is selling the right to use technical knowledge patented by an exporter to a beneficiary stranger, for a price to be paid through a lump sum, through periodic payments (royalties) or by combining the two formulas [5]. Thus, the licensor - the owner the right to license - enters with lower risks in the external market and share their strategic advantage and the licensee - the owner the right to use - benefits from the experience of production or product, but also a learning process, which afford to provide or to increase their competitiveness.

Unlike export, if the license product or service is done abroad and not in the home. By using the license as a form of penetration in foreign markets, a company can ensure its presence in certain markets without investing capital in these markets.

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We can therefore say that the transfer license has advantages, but it has also some disadvantages. [6] Thus, the assignment of licenses in the branches high tech has dual advantage entering fast environments strongly competitive, which allows the licensor to define technology standards leading and rapid return on research expenditures - development (the Japanese firm "Motorola" for example, has licensed its technology to achieve microprocessor company "Toshiba" precisely for these reasons).

Assignment of the license can be successfully used by companies that do not have the necessary skills more active involvement in the international market. Also, licensing is an appropriate strategy in those markets that do not have a high enough potential to justify far-reaching actions or have not been tested enough. In this way, the license provides a good opportunity to test those markets without capital investment.

In some countries where political and economic situation was unclear license agreement avoids the potential risks associated with investing abroad.

In some countries where domestic markets are strongly protected, transfer of license may be the only form of penetration in those markets so because many countries have imposed monopoly on tobacco company "Philip Morris" could not get in six developing countries in Europe Western and Eastern Europe via four licensing governments of these countries production and sale of its brands. Furthermore, licensing creates the possibility for the licensor to negotiate parallel agreements that are not directly related to custom license for the supply of materials and components, thus expanding its market presence [7].

Assignment of the license has drawbacks. One is the strong dependence of the licensor's work, which does not always have the ability to run successful businesses. How fees are usually charged as a percentage of sales, the licensor may suffer financial losses. Also licensed and product quality may suffer. Licensor and the image may be affected, if the product deviates from the standards of quality. License agreements typically ends for a period of time. Although the assignment may be extended, some governments do not allow this. Licensee can become, in this case, the competitor of the licensor. This is the reason why Japanese companies, for example, are reluctant to enter into license agreements with Chinese companies. Due to lower wages in China by the Japanese license transfer would create strong competitors not only in China but in markets that are currently present Japanese firms.

A special form of licensing represents franţiza (English. Franchising). The franchise is a commercial technology transfer, beneficiaries receive the right to carry out economic activities (manufacturing and services) as a recognized brand belonging exporter. As with

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licensing, business success for both parties depend on the extent that they succeed in establishing sustainable relations with nature cooperation.

The franchise is a form of licensing booming, the franşizorul provide a standard package of products, systems and services management, and franşizatul provides market information, capital and management staff. Combining skills allow flexibility in dealing with local market conditions and at the same time provide franchise company a certain degree of control. Franşizorul can track marketing process, which runs until final point of sale. This is an important form of marketing vertical integration. Franchise system can achieve an effective combination of centralization with decentralization of operations and capabilities has become an important form of international marketing. [8]

Underproduction or subcontracting (English. Subcontracting) departing mainly from requirements creation of competitive advantage by enhancing complementarities between partners: the exporter transfers the production of a finished product (underproduction of capacity) or in parts and subassemblies (underproduction specialist) the company importer, benefiting from more favorable production conditions (lower costs of labor, access to material resources, investment facilities); importer has access to technology manufacturing exporter (technical documentation, personnel training etc.), and could assert inputs.

5. Strategic Alliances

The objectives of companies by creating strategic alliances are:

- Keeping global competitiveness by linking research efforts for development by several companies, which reduces the individual costs, considered very high in contemporary economy;
- Economies of scale generated by the production increase, obtainable by such a partnership;
- The experience, technology and know-how of each company for the benefit of joint strategic alliance.

Factors that may make the success of strategic alliances are generated by: purpose, strategy for achieving the goals, decision-making position equal to the participating companies, compliance with a set of reciprocal cultural values, organizing appropriate management structures.

Depending on the purpose, strategic alliances can be ămpărţite into three categories [9]:

- Alliances formed to develop production, which aims to improve production efficiency and capitalizing on the advantages held by each company (eg companies "General Motors" - USA - and "Toyota" - Japan - concluded an alliance through which they made the point production

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of small capacity cars for the US market: those from "General Motors' successful experience in manufacturing Japanese small cars," Toyota "making a lot easier penetration in the US market);

- Alliances formed to develop distribution through which uses experience in distribution of any of the companies (for example, the alliance concluded between firms "Hitachi" - Japan - and "Fiatallis" - Italy - allowed the Italian company to sell excavators Japanese exchange possibility of using the distribution network of the Japanese company); this form strategic alliances is called piggy-back and can have many forms, depending on the range accepted by the partner and be distributed according to the number of foreign markets that are contained in that agreement;

- Alliances formed to develop technology that reduce costs and risks of scientific research; These alliances are based on technology transfer (this was the case of companies "Phillips" and "A. T. & T", who concluded such an arrangement that allowed the mutual transfer of digital technology, with direct effects on the expansion of markets). Outside this group, it can form strategic alliances and develop marketing mix components for one of the target markets.

Included amongst foreign markets penetration strategies, strategic alliances, joint ventures may be mistaken. The characteristic elements of strategic alliances, joint ventures which separates them are [10]:

- Strategic alliances ends, usually between companies that have a close economic and forming part of industrialized countries opposed to joint ventures in which it is performed and agreements between partners situated at different stages of development;

- Companies that make strategic alliances are at the same time, partner and competitor in certain markets;

- To joint ventures where there is a gap between the capital contribution of component companies, strategic alliances equity participation is substantially close;

- An essential goal in establishing strategic alliances exploitation of knowledge partners, purpose not covered, usually in joint ventures.

In addition to the benefits they generate, creating a strategic alliance also involves a number of possible risks:

- Security alliance may be jeopardized by cultural and organizational differences between firms;

- Decision making in a strategic alliance is difficult because it is a process involving a large

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number of factors and involving the top management of the companies and lead to a slowdown in decision-flow operation;

-Misunderstandings can arise in relation to the sharing of profits;

- It can create a dangerous dependency for companies involved: if one company has problems, they are sent to the alliance.

6. Institutionalized cooperation

Consortia are similar joint ventures can be classified and differentiated following characteristics:

- Involves a large number of members;

- Operate in a country or market in which none of the members is still present. Consortia are being developed for the purpose of financial and managerial resources together, but also to minimize the risks. Often, construction projects are conducted through agreements type consortium, the Contracting Parties, coming from different business areas, forming a separate company to make a deal. Usually the driver is one of the companies, but the new corporation can exist independently of those who founded it. Exports of industrial facilities - contracts "turnkey" - (English. Turnkey Projects) has features that distinguish them from simple exports, even if the contractual relationship is one basic type of creditor-debtor.

When an international company is committed to achieve exports of industrial facilities, it assumes responsibility for the design and construction of the entire operation, and with completion of the project, according to the company that taught the entire management staff. In return for the project, the international company receives an amount of money that can be very substantial. International companies are involved in the construction of electricity stations in the construction of roads and the complex of factories and refineries, chemical plants, automotive plants [11].

The joint venture (English. Joint venture) is a form of cooperation between the Parties, whereby two or more partners from different countries conducted jointly, within an independent entity with legal personality, production activities, marketing and sales, financial etc., through sharing the benefits and risks of the business.

Cooperation through joint ventures characteristics are:

- Their relations are long-term partners jointly contribute to business management and joint responsibility;

- Cooperation is organic in nature (institutionalized) in the sense that the partners hold parts of

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a society that can be newly created or resulting from the conversion of an existing company (by taking action by one of the partners);

- Cooperation is a complex object and evolutionary in that it may refer to both the marketing actions and sales (joint venture marketing as a form of distribution (and to the productive activities (form of cooperation in production) or the bank (banks mixed).

A joint venture thus differs from other types of strategic alliances or collaboration that it represents a partnership of two or more companies that have joined forces to create a separate legal entity.

Cooperation through joint ventures represent an evolutionary form of internationalization, could lead to business development through direct investments or mergers and acquisitions in the global market.

Joint ventures are a form commonly used for penetrating international markets as it offers important advantages for all partners. A first advantage is risk sharing, which has great importance as political and economic conditions in many countries are still volatile. Joint ventures also enable, maintain better relations with governments, local authorities and trade unions. Favorable relations with local governments is actually the main reason for setting up of joint ventures in developing countries (some governments provide incentives to foreign partners in joint ventures). Another advantage is the local partner familiarity with economic and cultural environment of the country, which allows a better perception of changing conditions and market needs. [12]

Not all were successful joint ventures, this being due to the disadvantages involved in setting up a joint venture. Thus, among the major problems that may arise are related to maintaining good relations between the partners. Causes that lead to this are conflicts of interest, disclosure of sensitive information discontent on profit distribution, lack of communication, cultural differences. Thus, the joint venture "Autolatina" established firms "Ford Motors Co." and "Volkswagen AG" in Latin America, was dissolved after seven years, despite the fact that it was profitable until the last moment, due to cultural differences between American managers and German.

Implantation abroad is via direct investment, which requires long-term option from the company investing and participating in management of the company in the third country. Unlike commercial operations, when the process of internationalization refers to the activities of supply - selling, in this case it is an internationalization of the company itself, which

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creates the external market organizational structures own ("internal growth") or participate in structures background ("external growth") [13].

Implantation aimed at creating your own structure abroad can be achieved only through the efforts of the investor (by opening trade offices, branches or creating subsidiaries) or in association with a local partner (creating a company with foreign capital). The main features of implantations abroad as a form of internationalization are: create new entities (organizational structure) abroad who either belong to the originator company (trade offices, branches) or are autonomous legal entities (subsidiaries); internationalization process has an institutional basis and involve activities indefinitely, certainly compared with profit opportunities in the host country; structures established abroad may perform foreign trade, but can equally involved in production operations;

The main forms of direct investments abroad are a. The office of representation; b. branch and c. subsidiary, which are highlighted directly proportional to increase the financial effort required for their activity [14].

7. Conclusions

The roots of globalization of an industry specific environment can be searched or strategy itself one or more participants in the industry. In some cases, globalization was initiated by fundamental changes in consumer demand or market characteristics such as manufacturing technologies. In such industries companies have responded extensively to the existing pressures of globalization. In other industries specifics globalization was triggered by the company that managed to obtain a competitive advantage following a global strategy. Irrespective of the causes that generated it, there were always a number of market-specific circumstances that led to the adoption of a global strategy:

- The existence of pressure force for global integration of business;
- The need to use advanced technologies, which in turn requires a close operational cooperation between the boiler and its manufacturing subsidiaries worldwide spread;
- Access to scarce resources of raw materials and energy, or the human resources and research infrastructure;
- Pressure from production costs which calls for economies of scale, able to serve multiple national markets;
- The existence of pressure forces for overall strategic coordination;

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- Consumer behavior aiming always to buy cheaper (which causes companies to coordinate pricing policy abroad)

-Market presence of global competitors;

- Investment intensity, knowing that some industries require a high level of accumulation and research and development.

Analysis of the data in the literature highlights some interesting aspects. First, it is confirmed that the major economic groupings structured geographical North America, Western Europe and East Asia and Southeast operates still as relatively closed blocks. For instance, North America held 36% of its exports of goods within, Western Europe (in which distinguishes European Union) achieved nearly 69% of exports Intra-zone and Asia sell more than 50% of its products through exchanges intracontinentale . Specific trade North America as the center of gravity has very close economic relations between the United States and Canada conducted mostly on NAFTA agreements, as in Asia, the post locomotives are Japan and China.

Secondly, it appears that North America is the main trading partner of Latin America, followed, of course, the exchanges that occur between countries in the region and Western Europe which has placed significant capacity particularly in Brazil and Argentina. Thirdly, that North America is less dependent on oil imports from the Middle East, unlike Western Europe and Asia, which generally do not have too rich natural resources. Finally, as expected, Western Europe still remains, legally nearest commercial Central and Eastern Europe, the traditional bonds now being resumed with increased intensity.

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ACTORS INVOLVED IN PUBLIC ADMINISTRATION: FROM THEIR IDENTITY TO PUBLIC ORGANISATIONAL MANAGEMENT

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Abstract: The behavior of the actors involved in the public policies process is the result of some reasons enabled, behind which are mostly standing the individuals who have different identities marked by different types of personality, such as the theoretical type, the economic type, the aesthethical type, the political type, the social type or the reliigious type, with different features and that are part of te subjective area of the actors involved in public administration. All of these types of personality activate different social, political, economic, administrative values or religious values that influence or can influence the managmeent of the organisation. From this point of view the personality of the actors can influence in different ways the decision making process, creating in a private and different manner the institutional agenda, the formulation of public policies, their selection, their implementation and evaluation. The present article aims to identify the features of a certain type of personality (the religious type) with the goal of seeing the specific features and elements of public management activated by this type in Romanian Public Administration.
Keywords: decision making process, public administration, religious type, personality, public management

Elements of the personality in public administration

One of the structures of the personality is the character. The character refers to the most complex mental qualities that are specific to an individual and which is formed along its becoming [1, p. 200]. Etymologically, the term character is derived from Ancient Greek and means pattern, seal, and by reference to the man, refers to systems of traits, lifestyle. The character actually means a profound dimension of personality, which manifests through behavior.In order to develop the character of an actor, we must try to answer to the fundamental question, "why?", to ask about the reasons of an action, and about the values that underlie someone's behavior.

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Andrei Cosmovici, highlighting two fundamental dimensions of the character – an axiological values-oriented one – other executive and voluntary - said:"the character is that structure that expresses the hierarchy of a person's motives, as well as the opportunity to translate into fact the decisions taken in accordance with them" [2, p. 82]. The character is "the degree of effective ethical organization of all the individual forces" [3, p. 42]. It is "a psycho-organic mood to inhibit the impulses according to a regulator principle" [3, p. 15] or " a will moral organized " [3, p. 16].

The character is a relational, in value subsystem, whose purpose is adjusting the personality which is expressed through a set of attitudes-values. The attitude expresses a way of reporting against certain aspects of the reality and involves emotional, cognitive and behavioral reactions. In the structure of the character are distinguished three groups of fundamental attitudes: attitudes towards himself: modesty, pride, dignity, sense of inferiority, guilt; attitudes towards others and attitudes towards society: humanism, patriotism, political attitudes and attitude towards work.

Whether we are talking about one of the dimensions of personality, when we look at the public policies and public administration, the decision maker's personality traits can make their mark on the processes. In a study of the psychological types of the actors from the romanian administration, Pavel Popescu Neveanu identifies several typologies that shapes the personality of individuals [4, pp. 129-149]: emotivitaty, hypertimic model, hyper-perseverance and demonstrativity. From the study of these dimensions of the character, the author Bruno Ştefan believes that we can talk about certain types of personalty in the area of public policies and public administration [5, pp. 87-90].

The theoretical type is represented by a pearson more theoretical, "an ideal typa" [5, p. 88] which focuses on decisions and actions which are in conformity with the notion of truth. His attitude is a cognitive one through that he searches similarities and differences, differences or commonalities that is rational and through which he observes, but who do not make judgments regarding the beauty or usefulness of an object, action or decision. He has an intellectualist trend, its main purpose being to order and systematize the knowledge.

The economic type is the ideal economic man, interested in what is useful. Initially, he has needs that link to satisfy basic needs (self-preservation). His interest is the utility applied to actions, practical decisions in the business world: production, trade of goods and services, funding, lending, buildup of tangible wealth. In personal life he makes a confusion between

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luxury and beauty; in relationships between people, he is more interested to surpass the others in wealth than to dominate them (policy value), or to serve others (social value) [5, p. 89].

The aesthetical type's core values are the shape and the harmony. Every experience, action or decision is judged from the perspective of the symmetry, of correspondence. Life is for that person a diversity of events that causes him a unique and singular feeling that e is sipping quietly. You do not have an artist of genius or a decadent in his pearson. He is the person who finds his life motivation in aesthetic and artistic criteria. Such criteria are the total opposite of the theoretical type and assume the knowledge of diversity and the identification of personal experiences. The economic plan is not an attraction for the aesthetical type and his social plan does not require welfare, but also the knowledge of other persons from the perspective of diversity. He is still an individualistic person and tends towards self-sufficiency. They are attracted by thepower, but they don't agree with it when it tends toward individualism.

The social type has a total openness towards people on the path of friendship, charity. He is good, unselfish, and refuses the idea of power.

The political type is more interested in the political row. Its activities are not just political, but they are generating success thanks to the self-confidence of the political individual gives evidence. They are true leaders that value life as a competition.

The religious type main value is the unity. He is mystical and tries to understand the world around him. The economy is seen by this type differently. "The economy needs to be based on a being who understands one's meaningand the knowledge of the true value of one's action. Because nothing can be builtin a deserted soul. Beyond wealth, power and pleasure (the three 'golden calves'),beyond the simplicity of life, in order to become complete, man needs meaning,love, faith and hope, needs dreams and colours to make a more beautiful life" [6, p. 36].In fact, he has a refractory attitude towards the economic and also to the social front, considering him as a comprehensive totality. This opening to transcendence may lead some of them very active socially in this line of nature's own affirmation. The religious type serves to guide educational practice in the direction of forming the human "being mystic, has unity as a supreme value, understands the world as a unitary whole, and constantly relates to the world in its entirety. The mental structure of the religious human is constantly oriented in the direction of creating a perfect experience of the highest value" [7, p. 9].

Here, basically, we can talk, on the background of the literature in the field of management and public administration, about the existence of several styles of leadership, decision-making styles, which are related to personality types.

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Therefore, outlineing these dimensions of the subjective side of individuals, on the line of personality, the analytical approach logically continues with the identification of the personality types of the actors at administrative level in order to map out a specific profile based on the theory of Bruno Ştefan in the administrative area and and strictly individually. For psychology of religion, for the public administration, also, the types of personality, the intrinsic/extrinsic motivational attitudes "are an important factor in investigating and interpreting congregational commitment in religious settings" [10, p. 2]. Congregational commitment might be argued as associated to a certain tzpe of personality, to intrinsic/extrinsic motivation "in terms of maintaining and executing activities that in the realm of a religious affiliation provide a measure of looking at in-group relations, understanding out-groups conflicts, whilst also creating a balance to differing inter-group societal interests", a different decision making process [10, p. 2].

More than that, the relation between religion and public sphere, between what we named the religious type and public administration, is formed al the level of the action. "Church's social doctrine suggests principles of reflection, extracts principles of appreciation and offers directions for action" [11, p. 10]. In our study, the action refears to the decision making process in public administration.

2. Metodology and sample

In this study we carried out the theory developed by Bruno Ştefan on the values existing at the administrative level and on the personality typologies and the way they are intertwined at the level of institutional and administrative structures [5, p. 91], creating six types of personality:

1. the theoretical type - that has the items: to search and support the truth and the desire to know as much as possible
2. the economic type - items: pragmatism and ability to dominate the others
3. the aesthetic type - items: creativity and individualism.
4. the social type - items: philanthropy and altruism.
5. the political type - items: competitiveness and ability to hold power
6. the religious type - items: the unifying spirit and active participation.

At this stage of the analysis, we will present the initial results obtained in general on each item separately (the frequency of the questions of the items based on the dual type answers Yes / No) and, subsequently, we try to determine the type of personality to each respondent separately, as well as the frequencies of these types.

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The present study is a prescriptive one and aims to identify the mechanisms and processes that the decision-making process enables at levels of Government under the three models of decision-making: the rational actor model, the incremental model and the model of bureaucratic organization. The questionnaire uses the three models based on some items in the form of closed questions that are designed to place the respondent in a decision making model.

The research sample is composed of 648 respondents, employees of the mayoralties of cities: Piatra Neamţ, Iaşi, Bacău, Vaslui, Suceava, Botoşani, Galaţi, Focşani.

The sample is representative for the population of Moldova region, the civil servants employed in institutions of the Moldovian cityhalls being quite homogeneous, meaning an average of 1,51% from the total population of civil servants of these institutions (5317). The sample is representative and it is based on probabilistic process, trying to ensure that "each element of the population has equal opportunities to sample" [12, p. 256]. In relation to the size of the sample, the probabilistic error is most likely somewhere around 6% [12, p. 257].

3. Results

For the theoretical type: to truth-seeking and sustaining 54,5% of respondents provided an affirmative answer, 40,1% - negative; the desire to know as much as possible- 53,2% - yes, 41,4%- no. Economic type: 21,1% yes for pragmatism, 73,6% - no; the ability to dominate the others – 3,1% -Yes 91,7% - No. Aesthetic type: 51,1% of respondents answered "Yes" for creativity, 43,7% - no; individualism -1, 9% yes and 92,9% - No. Social type: 1,2% yes for philanthropy and 93,5% - no; altruism – 12,3% and 82, 4% no for altruism. Political type: for competitiveness 48,5% said yes, 46,1% - no; the ability of holding power – 4,3% -Yes and 90,4% - No. Religious type: the unifying spirit 11,1% -Yes and 83,6% - no; active participation 70,8% - yes and 23,8% - No.

Subsequently, on the basis of the above analysis, here we outlined the typologies of personality of the respondents who had chosen four traits of those twelve attached toevery kind of pesonality two by two. We arrived finally at a multitude of combinations among the six types of personality, along with the six pure types previously enunciated (see **Table 1**: Typologies of the personality according to the theory of Bruno Ştefan).

Table 1: Typologies of the personality according to the theory of Bruno Ştefan

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Types of personality		Frequency	Percent	Valid Percent	Cumulative Percent
1	**Thetheoretical type**	**218**	**33,6**	35,5	35,5
2	**The economic type**	**9**	**1,4**	1,5	37,0
3	**The aesthetic type**	**3**	**0,5**	0,5	37,5
4	**The social type**	**1**	**0,2**	0,2	37,6
5	**The political type**	**13**	**0,2**	2,1	39,7
6	**The religious type**	**82**	**12,7**	13,4	53,1
7	theoretical-economic	1	0,2	0,2	53,3
8	theoretical-political	3	0,5	0,5	53,7
9	theoretical-religious	25	3,9	4,1	57,8
10	theoretical- economic-religious	6	0,9	1,0	58,8
11	theoretical-economic-social-religious	17	2,6	2,8	61,6
12	**Theoretical- aesthetic-political-religious**	**101**	**15,6**	16,4	78,0
13	theoretical-aesthetic-social-religious	14	2,2	2,3	80,3
14	economic-aesthetic-political-religious	22	3,4	3,6	83,9
15	theoretical-political-religious	6	0,9	1,0	84,9
16	theoretical-social-political-religious	14	2,2	2,3	87,1
17	theoretical-social-political	1	0,2	0,2	87,3
18	political-religious	2	0,3	0,3	87,6
19	theoretical-economic-aesthetic-political	11	0,7	1,8	89,4
20	aesthetic-social-political-religious	5	0,8	0,8	90,2
21	theoretical-aesthetic-political	5	0,8	0,8	91,0
22	theoretical-economic-aesthetic-religious	20	3,1	3,3	94,3

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23	aesthetic-social	1	0,2	0,2	94,5
24	theoretical-economic-social-political	4	0,6	0,7	95,1
25	economic-aesthetic	2	0,3	0,3	95,4
26	theoretical-aesthetic-religious	6	0,9	1,0	96,4
27	theoretical-aesthetic-political-religious	1	0,2	0,2	96,6
28	theoretical-economic-political-religious	8	1,2	1,3	97,9
29	aesthetic-religious	1	0,2	0,2	98,0
30	economic-religious	2	0,3	0,3	98,4
31	theoretical-aesthetic-social-political	5	0,8	0,8	99,2
32	economic-aesthetic-social-religious	4	0,6	0,7	99,8
33	economic-political	1	0,2	0,2	100
	Total	614	4,8	100	

Thus, as a result of the calculations, we have identified 33 of the possible combinations of the types of the personality, of which six are the pure types. Since the percentages are very low on most of them, we will focus the attention only on the pure types and those that have the highest percentages: 33,6% of respondents fall within the theoretical type, 12,7% - the religious type, 2% - the political type, 1,4%, economic type, 0,5% - aesthetic type, 0,2% social type and in a significant percentage -15, 6% of the respondents are subsumed to a combination of all the types of the personality: theoretical-aesthetic-political-religious. Further, the analysis will focus on the religious type (12,7%).

3. 1. Who is the religious type?

From the perspective of socio-demographic characteristics, 25,3% from the religious type respondents are masculine and 74,4% female; 7.8% were aged up to 30 years old; 27,5% between 31 and 40 years; 37,3% between 41 and 50 years and 27,5% over 51 years old. 91% are Orthodox, and 9% are Catholics (see **Table 2**), and in relation to what are these

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respondents employed at the typology of "religious" and religious affiliation declared, we put the question if there is any correlation between the two variables.

Table 2. Religious affiliation

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Ortodox	61	74,4	91,0	91,0
	Catholic	6	7,3	9,0	100,0
	Total	67	81,7	100,0	

According to the correlation between the two varibiles, the relationship established is a negative one, implying that if the respondent is more religious, then his religious orientation appears to be slight. It should be noted, on the one hand, that the two variables set such an operation with each other, and, on the other hand, the correlation value is very low (see **Table 3**).

Table 3. Correlations between personality and religious

		The personality is:	Religious:
The personality is:	Pearson Correlation	1	-.040
	Sig. (2-tailed)	.	.352
	N	614	534
Religious	Pearson Correlation	-.040	1
	Sig. (2-tailed)	.352	.
	N	534	538

It can be asserted that the two dimensions of religiousness of the actors affect each other, but the relationship between them is not very strong. 70,8% are married; 16,9% are unmarried; 9,2% are divorced, and 3,1% are widowed. 15,8% are high school graduates; 6,6%-school educational institutions; 50% - of faculty; 26,3% - of masters and 1,3% have a PhD. 17,7% are graduates of technical sciences; 38,7% - Economics; 11,3% - legal sciences; 9,7% - social sciences; 17,7% - public administration; 3,2% - architecture; 1,6% - mathematics and informatics; 45,5% are counsellors; 33,3% are inspectors; 9,1% are heads of desk and 12,1% are Officers. 27,5% are working in public administration up to 5 years; 35,3% have a length of up to 10 years; 37,3% have more than 10 years. 38,2% earns on average up to 1000 lei;

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35,3% earn between 1001-1500 lei; 20,6% between 1501-2000 lei, while 5,9% over 2000 lei. 1,3% are part of a political party, and 98,7% are not.

3 2. Characteristics of the administrative decision-making process from the perspective of the religious type

Identifying these types of personality at administrative level, the next level of the analysis involves the identification of the features of the administrative decision-making process from the perspective of the religious type of the actors involved. 13% of the religious type respondents consider that in the institution in which they work the decisions are taken by the individuals or by certain groups clearly set out at the beginning of the decision-making process; 9,1% - by the individuals or groups set out along the way; 77,9% - by the institution as a whole or by the bosses.

77,2% claim that the decision follows the steps: defining the problem, identifying the goals, identifying all the alternatives, choosing the best alternatives mainly based on economic criteria; 13,9% claim that the problem definition is followed by the identification of the known alternative and its implementation on the basis of this criterion, if necessary, redefine the problem depending on the developments of the situation; 8,9% claim that the decision-making process is a negotiation starting with the defining the problem, the search for an alternative solution that is recognized by all actors who have negotiated. 34,2% claim that when a decision is taken, it assumes even drastic changes; 46,6% support keeping the existing policies and 19,2% support the change, but not drastic. 78,2% claim that when a decision is taken, all issues are discussed; 10,3% - some problems can be ignored in favor of others; 11,5% - problems are imposed by the coordinator, some of them can be circumvented. 74,4% - the decision is a strategic act, coherent, planned; 6,7% - the decision is not necessarily coherent, can be changeable; 18,7% - the decision is subject to rules, but may be inconsistent. 16% - argue that the institutional process matters; 56% - the process can be repeated if somewhere there was an error; 28%-the decision making process focuses on coordinating the activity of the groups involved, even if this type of activity is characterized by routine. 11,6% claim that when decisions are taken, all the actors try to find the consensus of all; 5,8% -the partnership of at least some of those involved; 79,1% - the cooperation between the members or groups. 50% claim that the decision has a dominant purpose; 25% - it is a combination of specific purposes; 25% - it watch the interests of the group directly involved. 47,6% claim

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that the decision-making process supposes the the majorities subject the minorities; 19% - everyone who is involved can make decisions; 17,1% - there may be minorities within the working group. In the decision-making, process, 51,2% claim that fair information counts from the beginning; 17,1% - the information shall be given on the roadmap, but may resume if errors occur; 20% - the process for informing is strict without error, but that can be modified.

Also, beyond these features that provides specific features to the decision-making process from the perspective of the religious type of actor involved in the process, another aspect in addition required to be elucidated. First, if there is a correlation between the degree of religiosity of the respondents and the stages of the decision-making process. From this point of view, the two variables establish a negative oriented correlation (see **Table 4**).

Table 4. Correlations between personality and the steps of the decision making process

		Steps in decision making process
The personality is:	Pearson Correlation	-.101(*)
	Sig. (2-tailed)	.016
	N	575

* Correlation is significant at the 0.05 level (2-tailed).

Secondly, this item pursued showes that the decision making process is influenced by the degree to which varies what we called the religious type from the taxonomy identified at the respondents involved in the decision making process. From this point of view, we can say that the religious type actors develop the specific characteristics of the decision-making process that is precisely determined by them. In this way, our theoretical hypotese was one more time demonstrated. The decision making process has the features presented only because the religious type activates them.

4. Conclusions

At the administrative level, the subjective sphere of the actors involved in the decision making process is a variable that influences the whole process. The personality typologies, in particular the religious type, differentiates between them and are clearly different. The religious type dominant variables are the unifying spirit and active participation, and as socio-

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demographic characteristics, he is individualized throught the fact that he is mainly a feminine person, mature (over 30 years old), educated (who had completed at least higher education), Ortodocse and who is working in public administration particularly as counsellor.

Based on these specific dimensions of the actors involved in public administration, the decision-making characteristics are determined by this typology of decision-makers: the decision-making process is rather centralized in the hands of the bosses; defining the problem, identifying the goals, identifying all the alternatives, choosing the best alternatives mainly based on economic criteria; all issues are discussed; the decision is a strategic act, coherent, planned, but incremental; the process can be repeated if somewhere there was an error; the decision-making process supposes the the majorities subject the minorities; the decision has a dominant purpose and the fair information counts from the beginning.

Concluding, the decision making process from the perspective ot the religious type is one that respects the principles of rational actor theory (economic principles), but this theory is much more tempered by a cautious incrementalism, the momentum of economic rationality is not, as we have seen, an attribute of the religious type.

More than that, we are aware that there are other variables besides the religiosity, which influence the decision making process. From this point of view, trhe researchess on decision-making in public administration are open in the future and will have to focus much more on the close relation between the public space - the administrative one - and the private space - the individual one, of the actors.

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L´UNION EUROPÉENNE ET LES POLITIQUES ÉCONOMIQUES EUROPÉENNES

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Abstract: L´Europe économique s´est construite progressivement à partir de la SecondeGuerre Mondiale. Enrevanche, depuis le milieu des années '80, l´élaboration de ce qui est aujourd'hui l´Unionéconomiqueetmonétaireeuropéenne s´est fortementaccélérée.

L´idée européenne s´est construite autour d´un objectifpolitiquemajeur, la réconciliation franco-allemande et plus généralement la volonté de ne plus revivrelesconflitspassés.

Le vecteurutilisé a été l´économie, la coopérationentrelesnationspassant par la mise enœuvre de vastesprojetscomme la constitution d´un grandmarché ou la mise encirculation d´unemonnaieunique.

L´Union Européenne constitue un cadre économique et politique. Il semble important d´analyser, dans ce contexte, le rôle des pouvoirs publics, à travers les politiques économiques qu´ils mettent en œuvre.

Ces politiques s´inscrivent sur le court terme (politiques conjoncturelles) et sur le long terme (politiques structurelles) avec des objectifs différents selon l´horizon temporel retenu. Avec l´arrivée de l´euro, le pouvoir monétaire s´est déplacé à l´échelon communautaire avec la mise en place de la Banque Centrale Européenne. Parallèlement, les politiques budgétaires sont restées du ressort des autorités nationales. Champ d´application et centres de décisions sont différents selon que l´on s´intéresse aux deux dimensions essentielles des politiques conjoncturelles.

Deux mouvements prédominent dans la construction européenne. Le projet européen s´est d´abord élaboré autour de l´idée de marchés, marchés commun puis marché unique.

La deuxième étape est monétaire. De l´écu à l´euro, de serpent monétaire à la zone euro, l´Europe a réussi progressivement à se doter d´une monnaie unique. La volonté politique

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d´aboutir, à une Europe monétaire a fortement contribué à la convergence des économies européennes.

Les principales étapes du développement de l'Europe des marchés

Paradoxalement, on peut considérer que les États-Unis ont joué un rôle important dans la mise en oeuvre du projet européen. Le plan Marshall visant à aider les pays européens dans leur effort de reconstruction a, en effet, été à l'origine, en 1948, de la création de l'OECE (Organisation Européenne de Coopération Économique). Cette organisation, regroupant les pays bénéficiaires de l'aide américaine, avait déjà pour objectif d'améliorer les relations commerciales entre les différentes nations. On peut mentionner également l'UEP (Union Européenne de Paiements), créée en 1950 et abandonnée en 1958, a l'origine de l'organisation des règlements entre les différents pays.

Pourtant, il est souvent d'usage de dater l'émergence de l'idée européenne à la création de la CECA (Communauté européenne du charbon et de l'acier) en 1951. Cette communauté, initiée par Jean Monnet et Robert Shuman, constitue la première réalisation en matière de marche commune puisqu'elle consistait à faire disparaître les droits de douane et les contingentements sur le charbon, l'acier et le minerai de fer, et de déterminer un tarif extérieur commun.

Symbole de la coopération franco-allemande qui constituera le moteur essentiel de la construction européenne, la CECA va contribuer à la mise en place d'une véritable communauté avec la signature du traité de Rome en 1957, malgré les échecs en 1953 de la communauté politique et en 1954 de la communauté européenne de défense. La traité de Rome marque la naissance de l'ESA (ou Euratom, Europe de l'Énergie Atomique qui ne sera pas couronnée de succès en raison du faible prix du pétrole), mais surtout de la CEE (Communauté Européenne économique).

La CEE instaure le marché commun entre les six pays fondateurs. Les objectifs sont ambitieux puisqu'il s'agit de faire disparaît les droits de douane, d'instaurer la libre circulation des hommes et des capitaux et déterminer un tarif extérieur commun (droit de douane vis-à-vis des pays hors CEE).

Les résultats du marché commun sont divers. Il contribue à la disparition des droits de douane à l'intérieur de ses limites et l'on pourrait considérer, qu'a la fin des années '60, il symbolise le libre échange en Europe. Toutefois, si les barrières tarifaires ont disparu, de nombreuses

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barrières non tarifaires contribuent toujours à cloisonner les marchés. De plus, la libre circulation des hommes et des capitaux demeure très théorique du fait de la persistance de nombreuses réglementations.

Ainsi, des insuffisances du marché commun apparaissent qui ne permettent pas d'apporter tous les bénéfices espérés, pour les consommateurs et les producteurs, du libre jeu de la concurrence. Cette volonté d'aller plus loin va se concrétiser avec la signature en 1985 de l'Acte Unique Européen qui donne naissance au marché unique.

Un logique de marchés

L'Acte Unique en instaurant le marché unique fait rentrer définitivement l'Europe dans une logique de libre circulation des marchandises, des services, des hommes et des capitaux. La libre circulation des marchandises doit être améliorée par l'élaboration de normes techniques et sanitaires qui soient communes à l'ensemble des États membres.

Dans le même esprit, les contrôles aux frontières des biens et des personnes sont abandonnés. La libre circulation des personnes doit être facilitée par l'instauration de la liberté d'établissement pour les travailleurs indépendants et par la reconnaissance mutuelle des diplômes. La suppression de toute réglementation visant à limiter les mouvements de capitaux est instaurée à partir de 1990. Enfin, une législation communautaire doit permettre d'harmoniser le droit en matière de propriété industrielle.

Les bénéfices de l'unification sont nombreux:

Ce vaste marché génère d'importantes opportunités commerciales pour les entreprises en faisant disparaît les frais administratifs que provoquaient les contrôles aux frontières.

La libre circulation des facteurs de production, facteur travail et facteur capital, doit contribuer, pour sa part, à optimiser l'allocation des ressources.

La construction européenne s'inscrit, également, dans une logique de réduction des secteurs publics nationaux, l'Acte unique intégrant l'ouverture des marchés publics.

D'autre part, le marché unique ne fait disparaît des comportements de consommation qui restent influencés par la provenance du produit. Ainsi on peut s'interroger sur l'existence d'un consommateur véritablement européen.

L'Europe monétaire

Jacques Rueff, économiste et financier français déclarait des 1949: *« l'Europe sera monétaire ou ne sera pas »*. Les premières tentatives de construction d'une Europe monétaire vont apparaître au début des années '70 avec la mise en place du serpent monétaire européen (plan Werner). Face au problème posé par la fluctuation des changes à la suite de l'abandon de la

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convertibilité du dollar en or en 1971, les européennes ont cherché à mettre en place un système de change permettant de limiter les variations des devises européens entre elles. La décision fut prise de maintenir les taux de change européens autour d'une référence mobile, le dollar. Il s'agissait, alors, de définir le taux de change de la devise américaine comme une moyenne pondérée des devises européennes. L'objectif était de maintenir les devises européennes dans une marge de fluctuation de plus ou moins 2,25%.

Toutefois, de nombreuses devises ne vont pas parvenir à rester dans le système (la lire, par exemple) ou vont en sortir et revenir plusieurs fois (le franc français notamment). Le serpent monétaire est un échec mais il constitue le point de départ de la construction monétaire et dès 1978, un nouvel système apparaît, le Système Monétaire Européen (SME). Dans ce cadre, un nouvel instrument monétaire, l'écu apparaît. Il s'agit d'une moyenne pondérée des monnaies européennes, qui va servir, notamment, pour déterminer les parités des devises deux à deux. L'idée de marges de fluctuation de 2,25% est à nouveau retenue mais les banques centrales s'engagent dans une gestion active du système avec des interventions conjointes et des financements mutuels.

Au cours des années '80, le système monétaire européen parvient à fonctionner malgré un certain nombre de dévaluations.

En 1992-1993, le SME va connaître une grave crise. Les politiques d'ancrage au deutsche mark et la volonté de respecter les règles du SME vont contraindre de nombreux pays à suivre la politique allemande de taux d'intérêts élevés, alors que leurs économies enregistrent des rythmes de croissance faibles. Si le serpent monétaire avait fait naître la volonté de rechercher la stabilité en matière de change, le SME va renforcer cette volonté et donner naissance, avec l'écu, à l'idée d'une monnaie unique. Ce projet sera réalise avec la signature du traité de Maastricht en 1992.

L'Europe sociale et fiscale

Marché unique et monnaie unique imposent de nouvelles règles aux économies européennes. La construction de la zone euro, et, d'une façon plus générale la marché unique, pose le problème de l'absence d'harmonisation des politiques fiscales. Des nombreuses propositions vers la fin des années '80 allaient dans le sens d'une plus grande homogénéité des législations fiscales mais n'ont pas véritablement abouti. L'euro contribue à aggraver le problème car la monnaie unique va évidemment intensifier les échanges et parfaire l'intégration économique et financière. Le travail d'harmonisation s'est heurté à des obstacles très sérieux parmi les

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lesquels les différences d'intérêts entre les places financières notamment) la fiscalité apparaît comme un des éléments de l'attractivité d'une place boursière).

Les différences fiscales ne se limitent pas à des divergences sur les taux mais concernent également le calcul des assiettes fiscales, les régimes dérogatoires voire même les procédures de recouvrement.Les divergences nationales en matière de TVA posent un problème de tarification dans un marché unifié. En effet, l'objectif de l'Union économique et monétaire est de renforcer la concurrence et devrait aboutir à une convergence des prix par le jeu des mécanismes de marché. Des divergences apparaissent également quant aux conditions de dérogations ou de déductions.

En matière de fiscalité des entreprises, les différences sont également très importantes. On enregistre des divergences très sensibles dans les taux d'impôts sur les sociétés.

Une Europe sociale hétérogène

La dimension sociale est également à l'origine de nombreuses divergences. En effet, les conditions de travail, de rémunérations, de formation initiale et continue, ainsi que la protection des individus contre les risques sociaux, sont autant de paramètres du jeu concurrentiel. Or, dans ce domaine, les autorités politiques sont soumises à des pressions contradictoires. En effet, la mobilité des capitaux les pousse à adopter des stratégies de *« moins-disant social »,* alors, que, dans le même temps, la situation sur le marché du travail les incite a accroitre la protection sociale. De plus, les différents États européennes doivent faire face à des problèmes communs à l'ensemble de l'Union. Les conséquences du vieillissement de la population et de la hausse des dépenses de santé expliquent notamment l'accroissement des dépenses de protection sociale. Mais face à cette tendance globale, on constate des approches sensiblement différentes.

La compétitivité de l'Union européenne

Le capitalisme européen n'est pas encore homogène. Ainsi, l'esprit d'entreprendre et les contraintes administratives à la création d'entreprise débouchent sur des disparités, notamment entre le nord et le sud.

L'analyse de la compétitivité des entreprises européennes fait ressortir deux constats. D'une part, les meilleures entreprises de l'Union économique et monétaire sont bien placées dans leur secteur d'activité à l'échelle mondiale. D'autre part, cette analyse confirme le prédominance de certains pays (Allemagne, France etc.) et le retard de développement d'autres économies (Grèce, Portugal, Roumanie etc.).

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La construction de l'Union économique et monétaire provoque également des transformations des systèmes bancaires. L'ouverture du marché unique avait déjà entraîne des mouvements d'internationalisation et la diversification des activités bancaires (secteur des assurances et banques d'affaires).

Nous nous intéresserons à la compétitivité de l'Union économique et monétaire face aux deux autres grands pôles de l'économie mondiale que sont le Japon et les États-Unis.

Le concept de politique économique

Selon la définition d´Éliane Moussé, un politique économique est, un ensemble de décisions cohérentes prises par les pouvoirs publics, et visant, à l´aide de divers instruments, à atteindre des objectifs relatifs à la situation économique d´un pays, la poursuite des objectifs pouvant être recherchée à plus ou moins long terme Cette définition montre que la politique économique se place dans un cadre interventionniste contraire au, *« laisser faire les hommes, laisser passer les merchandisings »* de Vincent de Gournay (1712-1759).

La politique économique vise, à long terme, à rechercher un certain nombre de finalités. On recense traditionnellement, parmi les finalités essentielles de toute politique, la solidarité nationale, la justice sociale, la réduction des inégalités, l´amélioration de la qualité et du niveau de vie. Les finalités se distinguent des objectifs en ce sens les objectifs ne constituent que des étapes conduisant vers les finalités. Les instruments, pour leur part, représentent les moyens qui permettent d´atteindre les objectifs.

La politique conjoncturelle et la politique structurelle

La politique conjoncturelle vise à maintenir ou à rétablir les grands équilibres économiques et financiers à court terme (équilibre sur le marché du travail, sur le marché des biens et services, équilibre extérieur).

La politique structurelle a pour but de modifier les structures de l´économie à long terme, d´adapter, de préparer, d´orienter, d´impulser les modifications structurelles pour suivre l´évolution du changement économique.

La distinction entre politique conjoncturelle et politique structurelle n´est pas toujours nette. En effet, certaines politiques de court terme sont poursuivies pendant longtemps et provoquent des modifications de structure. Par exemple, une politique de monnaie forte contraint les entreprises à se moderniser pour être compétitives au niveau international, et oblige celles qui n´y parviennent pas à disparaître. La structure productive nationale en est alors profondément transformée.

Les grands objectifs de la politique économique

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On peut considérer que tout le monde est d´accord sur les finalités de la politique économie, même si cela est contestable.

Jan Tinbergen (1961) distingue alors quatre grands objectifs de toute politique économique:

la croissance de la production;

le plein emploi des facteurs de production;

la stabilité des prix ;

l´équilibre extérieur.

Les instruments traditionnels de la politique économique

Il s´agit ici de présenter les instruments qui permettent d´atteindre les objectifs de politique économique. Chacun de ces instruments correspond lui-même à une sous-catégorie de politique économique.

La politiquemonétaire

La politique monétaire consiste à jus ter la quantité de monnaie en circulation avec les besoins de l´activité économique.

Elle vise la stabilité interne de la monnaie par la régulation de la masse monétaire. En la matière, la politique oscilleentre le *„ni trop”* et le *„ni trop peu”* . en effet, la quantité de monnaie en circulation dans l´économiene doit être ni trop importante pour éviter les phénomènes inflationnistes (théorie quantitative de la monnaie), et en quantité suffisante pour que les transactions entre les agents économiques puissents´opérer.

La régulation de la masse monétaire consiste essentiellement à contrôler la création de monnaie. Or, la source principale de création monétaire étant le crédit, il convient d´agir sur les taux d´intérêts et les réserves obligatoires pour influencer le volume des crédits distribuent par les banques.

La politique budgétaire

La politique budgétaire s´appuie sur l´élaboration du budget de l´État, qui n´est autre que la prévision de l´ensemble des recettes et dépenses de l´État pour l´année.

Le solde budgétaire constitue un instrument de politique économique en ce sens qu´il agit sur l´activité économique. En effet, dans une perspective keynésienne (rôle du multiplicateur d´investissement), un déficit budgétaire peut permettre de relancer l´activité économique grâce au supplément de revenu distribué aux agents économiques.

La croissance des revenus qui en résulte, va permettre, en retour, d´augmenter les recettes fiscales et de diminuer le déficit budgétaire. Même un budget équilibré influe sur

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l´activité économique si l´on observe les structures des recettes et des dépenses. Par exemple, une redistribution des revenus, par l´intermédiaire du budget, des ménages à faible propension à consommer vers les ménages à forte propension peut permettre un soutien de la demande (consommation).

Les choix contemporains en matière de politique économique

Deux conduites sont possibles pour atteindre les objectifs de politique économique. On trouve, tout d´abord, le rétablissement des grands équilibres à court terme: l´équilibre sur le marché du travail (problème du chômage), l´équilibre sur le marché des biens et services (croissance non inflationniste de la demande et croissance de la production), l´équilibre extérieur (biens, services et capitaux). On retient, ensuite, l´adaptation à long terme des structures de l´économie aux changements de l´environnement national et mondial. En somme, aux politiques conjoncturelles s´ajoutent des politiques structurelles.

D´une façon générale, la politique économique a différentes dimensions, elle peut être à la fois conjoncturelle ou structurelle ce qui explique qu´il est d´usage de parler des politiques économiques au pluriel. La question est plus complexe concernant l´Union Européenne. En effet, le champ d´application diffère selon la nature des politiques économiques. Ainsi, pour réguler la conjoncture économique en Europe, une politique monétaire commune et des politiques budgétaires nationales peut être mises en œuvre conjointement.

Cette coexistence rend nécessaire l´harmonisation des objectifs pour répondre aux différentes formes de déséquilibres qui peuvent apparaître dans certaines zones ou dans l´Union Européenne dans son ensemble.

De plus, la stabilisation des économies impose une articulation entre les moyens mis en œuvre qu´il soient de nature budgétaire ou monétaire.

Même dans le cadre de politiques communes comme le sont les politiques commerciale, agricole ou de la concurrence, la définition *« d´ une »* politique européenne rencontre des obstacles liés aux différences de structures et d´intérêts des économies européennes.

On peut aller plus loin et considérer que l´hétérogénéité de l´espace européen rend possible des stratégies nationales en matière de politique économique visant à tirer profit de la construction européenne au détriment des autres partenaires.

Traditionnel ment, il est d´usage de décomposer les politiques conjoncturelles en deux volets: la politique monétaire et la politique budgétaire.

Le budget européen

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Étant donné les difficultés de mise en œuvre des politiques budgétaires nationales et des résultants incertains qu´elle pourraient obtenir, on peut s´interroger sur les possibilités qu´offre le budget européen comme instrument de stabilisation.

La politique budgétaire est un instrument essentiel de stabilisation qui ne peut plus être utilisé de façon isolée par un État membre dans le cadre de l´Union Européenne. En conséquence, la recherche d´une plus grande coordination s´avère indispensable. Dans cet esprit, deux approches sont souvent présentées.

Les discussions, au sein de l´Européen, permettent actuellement aux autorités nationales de définir leurs politiques en disposant d´une meilleure connaissance de la situation des autres États.

L´articulation entre la politique monétaire et les politiques budgétaires

Les relations entre la Banque Centrale Européenne et les différents gouvernements demeurent encore difficiles. On citera, notamment, les différents rappels à l´ordre dont ont été l´objet certains États membres de la part du gouverneur de la Banque Centrale Européenne concernant le relâchement de leurs efforts en matière de discipline budgétaire. Pourtant, il est indispensable de coordonner les politiques européennes au risque de rentrer dans un cercle vicieux.

En effet, l´absence de discipline budgétaire conduirait les autorités monétaires à durcir leurs positions, ce qui pourrait inciter les gouvernements à un laxisme plus grand encore. De plus, l´absence même d´une coordination des politiques budgétaires se révèle être un obstacle à la bonne articulation entre les deux politiques économiques.

L ´Union Européenne demeure un espace économique très hétérogène.

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CRIMINAL ACTION AND CIVIL ACTION IN LIGHT OF NEW REGULATIONS CRIMINAL TRIAL

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Summary: Criminal action or civil action has great meaning for the development of the trial, regardless of which one it is, because without the use of action during trial it can not get to the prosecution of a person and the sanction laid down by the rule infringed. Criminal proceedings aim the criminal liability of individuals who have committed offenses, civil action aims civil liability of legally responsible individuals for damage caused by the offense committed. Procedural legality of criminal or civil action depends on compliance with the conditions for placing in motion and the exercise of stipulate procedural law. Criminal proceedings are initiated and carried out when there is evidence of the reasonable assumption that an individual has committed a crime and there are no cases that prevent the initiation or pursuit. The civil action is exercised by the injured party or its successors, that is a civil party against the defendant and, where appropriate, civil legally responsible party. Due to the different kind of their subject, criminal action has features different from those of the civil action, which can be noticed during the whole criminal trial. Subject of criminal or civil action - legal accountability - must exist both at the setting in motion moment and throughout its exercise otherwise being devoid of purpose, action goes out and can no longer be exercised.

Key words: criminal action, civil action, object, subjects, features, prosecution.

Introducere. În cazul încălcării unei norme de drept substanţial – penal, civil – intervine răspunderea juridică a celui ce a încălcat norma, prin chemarea acestuia în faţa autorităţii judecătoreşti pentru a suferi constrângerea de stat prevăzută de lege pentru fapta săvârşită. Tragerea la răspundere juridică a celor care au încălcat o normă de drept substanţial se obţine prin intermediul acţiunii penale sau civile, exercitată în cadrul unui proces.Se numeşte acţiune penală sau civilă instrumentul juridic prin care o persoană este trasă la răspundere juridică în faţa autorităţii judecătoreşti pentru a fi obligată să suporte constrângerea de stat corespunzătoare normei de drept încălcate. După felul răspunderii juridice care decurge din

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norma de drept încălcată – penală, civilă – acţiunea prin intermediul căreia persoana vinovată este adusă în faţa autorităţii judecătoreşti spre a răspunde de fapta săvârşită poartă numele de acţiune penală sau civilă. Spre a se putea aplica sancţiunea prevăzută de norma de drept substanţial încălcată, acţiunea penală sau civilă se exercită în faţa instanţelor judecătoreşti, deoarece, conform legii, justiţia se realizează prin aceste autorităţi publice ale statului de drept.

Acţiunea penală sau civilă are o mare însemnătate pentru desfăşurarea procesului, de orice natură ar fi, căci fără exercitarea acţiunii în cadrul procesului nu se poate ajunge la tragerea la răspundere a unei persoane şi la aplicarea sancţiunii prevăzute de norma încălcată. Fără acţiune exercitată nu poate avea loc judecata în faţa instanţelor judecătoreşti şi înfăptuirea, astfel, a justiţiei. De aceea, exercitarea acţiunii penale sau civile constituie elementul dinamic care impulsionează desfăşurarea procesului până la pronunţarea unei hotărâri definitive de instanţa judecătorească. Importanţa acţiunii penale sau civile constă şi stabilirea limitelor în care urmează să se desfăşoare judecata, instanţele judecătoreşti urmând a se pronunţa cu privire numai la faptele şi persoanele faţă de care a fost exercitată acţiunea penală sau civilă. Pentru depăşirea acestor limite ale judecăţii este necesară extinderea acţiunii penale sau civile fie exercitarea unei noi acţiuni. În literatura juridică se face distincţia între acţiunea penală sau civilă, de natură procesuală, dreptul la acţiune, de natură substanţială, şi cererea în justiţie, ca act procesual.

Dreptul la acţiune penală sau civilă decurge din edictarea normei de drept substanţial şi constă în împuternicirea legală a celui prejudiciat de săvârşirea unei fapte ilicite de a trage la răspundere juridică în faţa justiţiei persoana care a încălcat legea. Astfel, în cazul săvârşirii unei infracţiuni, statul are dreptul să tragă la răspundere penală pe autor, aducându-l în faţa justiţiei pentru a i se aplica sancţiunea prevăzută de legea penală. Persoana prejudiciată printr-o faptă ilicită are dreptul de a trage la răspundere civilă pe autorul faptei, aducându-l în faţa justiţiei spre a fi obligat la repararea prejudiciului. Realizarea dreptului de a trage la răspundere juridică se obţine prin exercitarea acţiunii penale sau civile, care are caracter procesual. Aşadar, dreptul la acţiune penală sau civilă constituie temeiul juridic substanţial al acţiunii, sub aspect procesual.

Elementele răspunderii juridice sunt reglementate de legea substanţială - penală, civilă – iar întrunirea lor în fapta săvârşită şi în persoana făptuitorului constituie temeiul de drept şi de fapt care permite promovarea şi exercitarea acţiunii penale sau civile. Astfel, numai dacă s-a săvârşit o infracţiune şi făptuitorul răspunde penal devine întemeiată acţiunea penală şi, prin

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exercitarea ei, se realizează tragerea la răspundere penală a infractorului. Deşi în vocabularul judiciar se confundă uneori acţiunea penală sau civilă cu cererea în justiţie, în realitate ne aflăm în prezenţa a două noţiuni, cererea în justiţie constituie doar un act procesual iniţial, prin care se pune în mişcare acţiunea în faţa instanţei judecătoreşti, după introducerea cererii în justiţie, şi, ca urmare, a punerii în mişcare a acţiunii, aceasta este exercitată în continuare, dinamizând întreaga desfăşurare a procesului penal, până la pronunţarea unei hotărâri judecătoreşti definitive, aşadar, cererea în justiţie constituie doar un moment al exercitării acţiunii penale sau civile.

Obiectul şi subiecţii acţiuniipenale sau civile. Acţiunea penală sau civilă are un obiect, determinat de temeiul juridic din care decurge, constând în tragerea la răspundere juridică a persoanei împotriva căreia este îndreptată. Acţiunea penală are ca obiect tragerea la răspundere penală a persoanelor care au săvârşit infracţiuni, acţiunea civilă tragerea la răspundere civilă a persoanelor care răspund din punct de vedere civil pentru paguba cauzată prin fapta săvârşită. Tragerea la o numită răspundere juridică semnifică aducerea persoanelor în cauză în faţa autorităţii judecătoreşti pentru ca aceasta să stabilească răspunderea lor şi să aplice sancţiunile care decurg din norma de drept încălcată prin fapta lor. Obiectul acţiunii penale sau civile este determinat de norma de drept substanţial, care prevede condiţiile în care intervine răspunderea şi sancţiunile care pot fi aplicate. Astfel, răspunderea penală este reglementată de legea penală, care prevede că singurul temei al răspunderii penale este infracţiunea, stabilind totodată trăsăturile esenţiale şi conţinutul infracţiunii, precum şi sancţiunile ce pot fi aplicate în realizarea răspunderii penale.

Răspunderea civilă este reglementată de legea civilă, care prevede elementele răspunderii civile precum şi sancţiunile ce pot fi aplicate – reparaţia în natură sau prin despăgubiri civile. Există obiect al acţiunii penale sau civile cât timp subzistă, potrivit legii substanţiale, răspunderea juridică a celor care au încălcat legea. În momentul în care intervine o cauză legală care înlătură răspunderea, acţiunea penală sau civilă rămâne fără obiect, se stinge, şi nu mai poate fi promovată sau, dacă a fost promovată, nu mai poate continua exercitarea ei. Acţiunea penală sau civilă este promovată şi susţinută de un subiect activ, care este de regulă persoana vătămată prin încălcarea legii, şi este îndreptată împotriva persoanei care răspunde din punct de vedere juridic pentru fapta sa, denumită subiect pasiv al acţiunii penale sau civile. Dreptul la acţiune penală sau civilă, în sens substanţial, aparţine persoanelor ocrotite de legea substanţială, şi care, în urma săvârşirii unei fapte ilicite au suferit o vătămare – morală, fizică, materială – fiind subiecţi pasivi ai faptei ilicite.

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În cazul săvârşirii unei infracţiuni, statul, a cărei ordine de drept a fost încălcată, şi-a rezervat dreptul de a trage la răspundere penală pe infractor, drept care este, în acelaşi timp şi o îndatorire, în cazul unei fapte ilicite care a provocat o pagubă, subiectul pasiv este persoana lezată care devine subiect activ al acţiunii în justiţie, pentru a obţine repararea pagubei suferite. Dacă subiect activ al dreptului la acţiune este determinat de legea materială, subiectul activ la acţiunii penale sau civile este determinat de legea procesuală, care reglementează titularii exerciţiului acţiunii penale sau civile. Astfel exerciţiul acţiunii penale este încredinţat, de regulă, Ministerului Public, dar, în anumite cazuri, poate fi încredinţat persoanei vătămate sau altor autorităţi iar acţiunea civilă este exercitată, de regulă, de persoana prejudiciată sau de reprezentanţii săi, dar, în anumite cazuri, poate fi exercitată şi de Ministerul Public.

Subiectul pasiv al acţiunii penale sau civile, deci persoana împotriva căreia se exercită acţiunea, este determinată de legea materială, singura care poate stabili ce persoană poate fi trasă la răspundere juridică. Legea penală prevede că răspunde penal numai persoana care a săvârşit o infracţiune, răspunderea fiind personală, totodată se prevede că nu răspund penal minorii ce nu au împlinit 14 ani, minorii între 14-16 ani lipsiţi de discernământ şi persoanele iresponsabile, potrivit legii civile, răspunde din punct de vedere civil persoana fizică şi juridică care a cauzat prejudiciul sau persoana care răspunde, potrivit legii civile, pentru paguba cauzată prin fapta acestuia. Acţiunea penală sau civilă este întemeiată numai dacă persoana împotriva căreia se îndreaptă face parte dintre subiecţii pasivi ai acelei acţiuni, determinaţi de legea materială corespunzătoare.

Punerea în mişcare şi exercitarea acţiuniipenale sau civile. Pentru tragerea efectivă la răspundere juridică a unei persoane este necesar, în primul rând, ca aceasta să fie legală şi temeinică, în sensul existenţei dreptului la acţiune penală sau civilă şi, în al doilea rând, să fie pusă în mişcare şi exercitată acţiunea în cadrul unui proces. Dacă existenţa dreptului la acţiune penală sau civilă se stabileşte în raport de condiţiile cerute de legea materială, punerea în mişcare şi exercitarea acţiunii penală sau civilă are loc potrivit normelor procesuale – penală, civilă. Astfel, Codul de procedură penală reglementează cine poate pune în mişcare acţiunea, şi apoi, exercita acţiunea penală – Ministerul Public, persoana vătămată – care este actul procesual prin care se pune în mişcare acţiunea, care sunt actele prin care acţiunea este exercitată în cursul judecăţii. Legalitatea procesuală a acţiunii penale sau civile depinde de respectarea condiţiilor de punere în mişcare şi exercitare prevăzute de legea procesuală. Nerespectarea condiţiilor de punere în mişcare şi de exercitare a acţiunii penale sau civile, reglementate de legea procesuală, nu duce la împiedicarea exercitării acţiunii penale sau

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civile, deoarece actele procesuale contrare legii sunt anulate şi apoi refăcute potrivit normelor legale procesuale. Astfel, dacă rechizitoriul prin care a fost pusă în mişcare acţiunea penală nu respectă normele procesuale, se dispune restituirea cauzei la procuror şi refacerea lui şi noul rechizitoriu va pune din nou în mişcare acţiunea penală.

Acţiunile penale sau civile exercitabile în procesul penal. Săvârşirea unei infracţiuni poate aduce atingere, în primul rând, ordinii de drept, care nu poate fi restabilită decât prin tragerea la răspundere penală a infractorului, aceeaşi infracţiune poate, însă, produce o pagubă unei persoane fizice sau juridice, iar instrumentul juridic pentru obţinerea reparării pagubei este acţiunea civilă. Acţiunea penală şi acţiunea civilă care decurg din săvârşirea aceleiaşi infracţiuni pot fi exercitate separat, acţiunea penală în cadrul procesului penal, acţiunea civilă în cadrul procesului civil, dar cele două acţiuni pot exercitate şi alăturat în cadrul procesului penal. Conform Noului Cod de procedură penală acţiunea penală are ca obiect tragerea la răspundere penală a persoanelor care au săvârşit infracţiuni. Acţiunea penală se pune în mişcare prin actul de inculpare prevăzut de lege. Acţiunea penală se poate exercita în tot cursul procesului penal, în condiţiile legii.Acţiunea penală se pune în mişcare şi se exercită când există probe din care rezultă presupunerea rezonabilă că o persoană a săvârşit o infracţiune şi nu există cazuri care împiedică punerea în mişcare sau exercitarea acesteia.

Acţiunea penală nu poate fi pusă în mişcare, iar când a fost pusă în mişcare nu mai poate fi exercitată dacă:

a) fapta nu există;

b) fapta nu este prevăzută de legea penală ori nu a fost săvârşită cu vinovăţia prevăzută de lege;

c) nu există probe că o persoană a săvârşit infracţiunea;

d) există o cauză justificativă sau de neimputabilitate;

e) lipseşte plângerea prealabilă, autorizarea sau sesizarea organului competent ori o altă condiţie prevăzută de lege, necesară pentru punerea în mişcare a acţiunii penale;

f) a intervenit amnistia sau prescripţia, decesul suspectului ori al inculpatului persoană fizică sau s-a dispus radierea suspectului ori inculpatului persoană juridică;

g) a fost retrasă plângerea prealabilă, în cazul infracţiunilor pentru care retragerea acesteia înlătură răspunderea penală, a intervenit împăcarea ori a fost încheiat un acord de mediere în condiţiile legii;

h) există o cauză de nepedepsire prevăzută de lege;

i) există autoritate de lucru judecat;

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j) a intervenit un transfer de proceduri cu un alt stat, potrivit legii.

În cursul urmăririi penale acţiunea penală se stinge prin clasare sau prin renunţare la urmărirea penală, în condiţiile prevăzute de lege. În cursul judecăţii acţiunea penală se stinge prin rămânerea definitivă a hotărârii judecătoreşti de condamnare, renunţare la aplicarea pedepsei, amânarea aplicării pedepsei, achitare sau încetare a procesului penal. În caz de amnistie, de prescripţie, de retragere a plângerii prealabile, de existenţă a unei cauze de nepedepsire sau de neimputabilitate ori în cazul renunţării la urmărirea penală, suspectul sau inculpatul poate cere continuarea procesului penal. Infractorul este adus în faţa organelor de cercetare penală şi a Ministerului Public, ca suspect de săvârşirea unei infracţiuni, după care, dacă sunt întrunite condiţiile legale, este tras la răspunderea ca inculpat, iar atunci când instanţa de judecată îi aplică sancţiunea prevăzută de legea penală devine condamnat, realizându-se, astfel, tragerea la răspundere penală ca obiect al acţiunii penale. Conform Noului Cod de procedură penală acţiunea civilă exercitată în cadrul procesului penal are ca obiect tragerea la răspundere civilă delictuală a persoanelor responsabile potrivit legii civile pentru prejudiciul produs prin comiterea faptei care face obiectul acţiunii penale.

Acţiunea civilă se exercită de persoana vătămată sau de succesorii acesteia, care se constituie parte civilă împotriva inculpatului şi, după caz, a părţii responsabile civilmente. Când persoana vătămată este lipsită de capacitate de exerciţiu sau are capacitate de exerciţiu restrânsă, acţiunea civilă se exercită în numele acesteia de către reprezentantul legal sau, după caz, de către procuror, în condiţiile legii, şi are ca obiect, în funcţie de interesele persoanei pentru care se exercită, tragerea la răspundere civilă delictuală. Acţiunea civilă se soluţionează în cadrul procesului penal, dacă prin aceasta nu se depăşeşte durata rezonabilă a procesului. Repararea prejudiciului material şi moral se face potrivit dispoziţiilor legii civile.

Constituirea ca parte civilă se poate face până la începerea cercetării judecătoreşti. Organele judiciare au obligaţia de a aduce la cunoştinţa persoanei vătămate acest drept. Constituirea ca parte civilă se face în scris sau oral, cu indicarea naturii şi a întinderii pretenţiilor, a motivelor şi a probelor pe care acestea se întemeiază. În cazul în care constituirea ca parte civilă se face oral, organele judiciare au obligaţia de a consemna aceasta într-un proces-verbal sau, după caz, în încheiere. În cazul nerespectării vreuneia dintre condiţiile prevăzute mai sus, persoana vătămată sau succesorii acesteia nu se mai pot constitui parte civilă în cadrul procesului penal, putând introduce acţiunea la instanţa civilă.

Până la terminarea cercetării judecătoreşti, partea civilă poate:

- îndrepta erorile materiale din cuprinsul cererii de constituire ca parte civilă;

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- mări sau micşora întinderea pretenţiilor;
- solicita repararea prejudiciului material prin plata unei despăgubiri băneşti, dacă repararea în natură nu mai este posibilă.

În cazul în care un număr mare de persoane care nu au interese contrarii s-au constituit parte civilă, acestea pot desemna o persoană care să le reprezinte interesele în cadrul procesului penal. În cazul în care părţile civile nu şi-au desemnat un reprezentant comun, pentru buna desfăşurare a procesului penal, procurorul sau instanţa de judecată poate desemna, prin ordonanţă, respectiv prin încheiere motivată, un avocat din oficiu pentru a le reprezenta interesele. Încheierea sau ordonanţa va fi comunicată părţilor civile, care trebuie să încunoştinţeze procurorul sau instanţa în cazul în care refuză să fie reprezentaţi prin avocatul desemnat din oficiu. Toate actele de procedură comunicate reprezentantului sau de care reprezentantul a luat cunoştinţă sunt prezumate a fi cunoscute de către persoanele reprezentate. Dacă dreptul la repararea prejudiciului a fost transmis pe cale convenţională unei alte persoane, aceasta nu poate exercita acţiunea civilă în cadrul procesului penal. Dacă transmiterea acestui drept are loc după constituirea ca parte civilă, acţiunea civilă poate fi disjunsă.

Acţiunea civilă care are ca obiect tragerea la răspundere civilă a inculpatului şi părţii responsabile civilmente, exercitată la instanţa penală sau la instanţa civilă, este scutită de taxă de timbru. Introducerea în procesul penal a părţii responsabile civilmente poate avea loc, la cererea părţii îndreptăţite potrivit legii civile, până la începerea cercetării judecătoreşti. Atunci când exercită acţiunea civilă, procurorul este obligat să ceară introducerea în procesul penal a părţii responsabile civilmente, în condiţiile de mai sus. Partea responsabilă civilmente poate interveni în procesul penal până la terminarea cercetării judecătoreşti la prima instanţă de judecată, luând procedura din stadiul în care se află în momentul intervenţiei. Partea responsabilă civilmente are, în ceea ce priveşte acţiunea civilă, toate drepturile pe care legea le prevede pentru inculpat.

Partea civilă poate renunţa, în tot sau în parte, la pretenţiile civile formulate, până la terminarea dezbaterilor în apel. Renunţarea se poate face fie prin cerere scrisă, fie oral în şedinţa de judecată. Partea civilă nu poate reveni asupra renunţării şi nu poate introduce acţiune la instanţa civilă pentru aceleaşi pretenţii. În cursul procesului penal, cu privire la pretenţiile civile, inculpatul, partea civilă şi partea responsabilă civilmente pot încheia o tranzacţie sau un acord de mediere, potrivit legii. Inculpatul, cu acordul părţii responsabile civilmente, poate recunoaşte, în tot sau în parte, pretenţiile părţii civile. În cazul recunoaşterii

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pretenţiilor civile, instanţa obligă la despăgubiri în măsura recunoaşterii. Cu privire la pretenţiile civile nerecunoscute pot fi administrate probe. Acţiunea civilă rămâne în competenţa instanţei penale în caz de deces, reorganizare, desfiinţare sau dizolvare a părţii civile, dacă moştenitorii sau, după caz, succesorii în drepturi ori lichidatorii acesteia îşi exprimă opţiunea de a continua exercitarea acţiunii civile, întermen de cel mult două luni de la data decesului sau a reorganizării, desfiinţării ori dizolvării.

În caz de deces, reorganizare, desfiinţare sau dizolvare a părţii responsabile civilmente, acţiunea civilă rămâne în competenţa instanţei penale dacă partea civilă indică moştenitorii sau, după caz, succesorii în drepturi ori lichidatorii părţii responsabile civilmente, în termen de cel mult două luni de la data la care a luat cunoştinţă de împrejurarea respectivă. Instanţa se pronunţă prin aceeaşi hotărâre atât asupra acţiunii penale, cât şi asupra acţiunii civile. Când acţiunea civilă are ca obiect repararea prejudiciului material prin restituirea lucrului, iar aceasta este posibilă, instanţa dispune ca lucrul să fie restituit părţii civile. Instanţa, chiar dacă nu există constituire de parte civilă, se pronunţă cu privire la desfiinţarea totală sau parţială a unui înscris sau la restabilirea situaţiei anterioare săvârşirii infracţiunii.

În caz de achitare a inculpatului sau de încetare a procesului penal, instanţa lasă nesoluţionată acţiunea civilă. Instanţa lasă nesoluţionată acţiunea civilă şi în cazul în care moştenitorii sau, după caz, succesorii în drepturi ori lichidatorii părţii civile nu îşi exprimă opţiunea de a continua exercitarea acţiunii civile sau, după caz, partea civilă nu indică moştenitorii, succesorii în drepturi ori lichidatorii părţii responsabile civilmente în termenul legal. Instanţa poate dispune disjungerea acţiunii civile, când soluţionarea acesteia determină depăşirea termenului rezonabil de soluţionare a acţiunii penale. Soluţionarea acţiunii civile rămâne în competenţa instanţei penale. Disjungerea se dispune de către instanţă din oficiu ori la cererea procurorului sau a părţilor. Probele administrate până la disjungere vor fi folosite la soluţionarea acţiunii civile disjunse.

Dacă nu s-au constituit parte civilă în procesul penal, persoana vătămată sau succesorii acesteia pot introduce la instanţa civilă acţiune pentru repararea prejudiciului cauzat prin infracţiune, judecata în faţa instanţei civile se suspendă după punerea în mişcare a acţiunii penale şi până la rezolvarea în primă instanţă a cauzei penale, dar nu mai mult de un an. Persoana vătămată sau succesorii acesteia, care s-au constituit parte civilă în procesul penal, pot introduce acţiune la instanţa civilă dacă, prin hotărâre definitivă, instanţa penală a lăsat nesoluţionată acţiunea civilă. Probele administrate în cursul procesului penal pot fi folosite în faţa instanţei civile. Persoana vătămată sau succesorii acesteia care s-au constituit parte civilă

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în procesul penal pot să introducă acţiune în faţa instanţei civile dacă procesul penal a fost suspendat.

În caz de reluare a procesului penal, acţiunea introdusă la instanţa civilă se suspendă în condiţiile legii. Persoana vătămată sau succesorii acesteia, care au pornit acţiunea în faţa instanţei civile, pot să părăsească această instanţă şi să se adreseze organului de urmărire penală, judecătorului ori instanţei, dacă punerea în mişcare a acţiunii penale a avut loc ulterior sau procesul penal a fost reluat după suspendare. Părăsirea instanţei civile nu poate avea loc dacă aceasta a pronunţat o hotărâre, chiar nedefinitivă. În cazul în care acţiunea civilă a fost exercitată de procuror, dacă se constată din probe noi că prejudiciul nu a fost integral acoperit prin hotărârea definitivă a instanţei penale, diferenţa poate fi cerută pe calea unei acţiuni la instanţa civilă. Persoana vătămată sau succesorii acesteia pot introduce acţiune la instanţa civilă, pentru repararea prejudiciului născut ori descoperit după constituirea ca parte civilă.

Hotărârea definitivă a instanţei penale are autoritate de lucru judecat în faţa instanţei civile care judecă acţiunea civilă, cu privire la existenţa faptei şi a persoanei care a săvârşit-o. Instanţa civilă nu este legată de hotărârea definitivă de achitare sau de încetare a procesului penal în ceea ce priveşte existenţa prejudiciului ori a vinovăţiei autorului faptei ilicite. Hotărârea definitivă a instanţei civile prin care a fost soluţionată acţiunea civilă nu are autoritate de lucru judecat în faţa organelor judiciare penale cu privire la existenţa faptei penale, a persoanei care a săvârşit-o şi a vinovăţiei acesteia. Acţiunea civilă decurgând din săvârşirea unei infracţiuni poate fi exercitată şi separat, în cursul unui proces civil.

În argumentarea acestui sistem se porneşte de la temeiul de fapt al celor două acţiuni – săvârşirea unei fapte penale – care constituie, în acelaşi timp, şi o infracţiune, ca temei al răspunderii penale, şi o fapta ilicită cauzatoare de prejudiciu, ca temei al răspunderii civile. Prezintă interes, în această situaţie, ca cele două acţiuni care îşi au izvorul în aceeaşi faptă şi se referă la aceeaşi persoană care trebuie trasă şi la răspundere penală şi la răspundere civilă să fie exercitate concomitent, în acelaşi proces. Întrucât acţiunea penală nu poate fi exercitată decât în cadrul unui proces penal, s-a creat posibilitatea ca în acelaşi proces să poată fi exercitată şi acţiunea civilă. Exercitarea celor două acţiuni în cadrul unui singur proces penal prezintă avantaje atât pentru justiţie, cât şi pentru persoanele interesate. Astfel, pentru justiţie înseamnă o economisire de timp şi de mijloace dacă cele două acţiuni sunt exercitate în acelaşi proces şi soluţionate printr-o singură hotărâre judecătorească, evitându-se astfel administrarea repetată de probe pentru aceleaşi fapte, precum şi eventualitatea unor contradicţii ce ar putea interveni în hotărârile a două instanţe judecătoreşti diferite. Pentru

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persoana prejudiciată prin infracţiune constituie un mijloc mai lesnicios şi mai rapid pentru obţinerea reparării pagubei suferite, cu cheltuieli mai reduse. Pentru inculpat există posibilitatea de a-şi putea concentra apărarea, în acelaşi timp, şi cu privire la acţiunea penală şi cu privire la acţiunea civilă, ceea ce reduce şi cheltuielile pe care ar trebui să le suporte. Atunci când persoana prejudiciată printr-o infracţiune consideră preferabilă exercitarea acţiunii civile în cadrul unui proces civil, i se recunoaşte un drept de opţiune pentru alegerea acestei căi. În cazurile în care acţiunea civilă nu poate fi exercitată în cadrul procesului penal, datorită unei împiedicări legale, persoana vătămată nu poate exercita acţiunea civilă decât în faţa instanţei civile. **Raportul dintre acţiunea penală şi acţiunea civilă exercitate în procesul penal.** Caracteristic pentru procesul penal este acţiunea penală, căci fără acţiune penală nu poate fi promovat procesul penal, iar dacă a fost promovat nu poate continua. În cazul în care se exercită ambele acţiuni în cadrul aceluiaşi proces penal, acţiunea penală constituie acţiunea principală, iar acţiunea civilă devine acţiune accesorie. Poziţia de acţiune principală şi acţiune accesorie rezultă din câteva prevederi procesuale, astfel, acţiunea civilă nu poate fi pusă în mişcare în procesul penal dacă nu există o acţiunea penală pusă în mişcare, ceea ce subliniază caracterul accesoriu în exercitarea acţiunii civile. Dacă acţiunea civilă ar întârzia soluţionarea acţiunii penale, se poate disjunge acţiunea civilă în vederea judecării ei separat, dar în acelaşi proces penal. Modul în care se soluţionează acţiunea penală are influenţă asupra soluţiei ce trebuie dată acţiunii civile, după regula „accesoriul urmează principalul".

Când acţiunea penală şi acţiunea civilă se exercită concomitent, procesul penal cuprinde două laturi: latura penală, în care se exercită acţiunea penală, şi latura civilă, în care se exercită acţiunea civilă. Dacă una dintre acţiuni se stinge în cursul judecăţii, atunci procesul penal continuă numai în latura în care acţiunea este exercitabilă, astfel, dacă acţiunea penală se stinge prin amnistie sau decesul inculpatului, latura civilă continuă pentru tragerea la răspundere civilă a moştenitorilor săi, dacă acţiunea civilă se stinge, prin renunţarea la reparaţii civile, latura penală continuă pentru condamnarea penală a inculpatului. Sunt cazuri în care un inculpat este judecat pentru mai multe infracţiuni, ceea ce implică exercitarea mai multor acţiuni penale, câte una pentru fiecare infracţiune, iar în latura civilă se exercită mai multe acţiuni civile dacă fiecare infracţiune a produs pagube şi se cere repararea acestora.

Trăsăturile acţiunii penale şi aleacţiunii civile. Datorită obiectului lor de natură diferită, acţiunea penală are trăsături diferite de cele ale acţiunii civile, care se pot observa în tot cursul procesului penal. Dreptul de a trage la răspundere penală aparţine statului, iar exercitarea

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acestui drept prin acţiunea penală are caracter de ordine publică şi este inevitabilă, ca urmare, exerciţiul acţiunii penale este încredinţat unei autorităţi publice specializate - Ministerului Public – care are îndatorirea de a exercita acţiunea penală din oficiu. În cazuri speciale, exerciţiul acţiunii penale este încredinţat şi altor titulari, de exemplu persoanei vătămate prin infracţiune, situaţie în care exercitarea acţiunii penale devine facultativă.

Dreptul de a trage la răspundere civilă aparţine persoanei vătămate prin infracţiune, care are facultatea de a-l exercita, ca urmare, legea încredinţează exerciţiul acţiunii civile titularului ei - persoana vătămată – sau reprezentantului ei, iar exercitarea acestei acţiuni este facultativă şi la cerere, deoarece se poate renunţa la dreptul de a cere reparaţii civile. Totuşi, pentru protecţia proprietăţii publice, sau pentru protecţia persoanelor fără capacitate de exerciţiu sau cu această capacitate restrânsă acţiunea civilă se exercită obligatoriu şi din oficiu.

Răspunderea penală este personală, deoarece nu pot fi trase la răspundere decât persoanele care au participat la săvârşirea unei infracţiuni, ca autori, complici, instigatori. Ca urmare, acţiunea penală nu poate fi exercitată decât împotriva acestora, stingându-se prin decesul lor. Răspunderea civilă este patrimonială, caracter imprimat şi acţiunii civile, care poate fi îndreptată nu numai împotriva persoanei care a produs paguba – inculpatul – ci şi împotriva persoanei responsabile civilmente şi chiar împotriva moştenitorilor lui.

Acţiunea penală este indivizibilă, fiind obligatorie exercitarea ei împotriva tuturor participanţilor la infracţiune care răspund penal, nefiind posibilă restrângerea ei numai la unii dintre participanţi. Descoperirea ulterioară şi a altui participant la infracţiune va atrage, în mod obligatoriu, extinderea acţiunii penale şi împotriva acestuia. Acţiunea civilă este divizibilă, persoana vătămată îndreptându-se împotriva tuturor celor care răspund din punct de vedere civil sau numai împotriva unora dintre ei. Acţiunea penală este indisponibilă, în sensul că Ministerul Public, ca titular al exerciţiului ei, nu mai poate, odată ce a exercitat-o, să renunţe la acţiune, aceasta urmând a-şi găsi soluţionare prin hotărâre judecătorească. În cazurile prevăzute de lege, persoana vătămată poate renunţa la exercitarea acţiunii penale prin retragerea plângerii prealabile sau prin împăcare. Acţiunea civilă este disponibilă, persoana vătămată având facultatea să renunţe la exerciţiul ei.

În cazul pagubelor aduse proprietăţii publice sau persoanelor fără capacitate de exerciţiu sau cu această capacitate restrânsă, acţiunea civilă capătă un anumit caracter de indisponibilitate. Trăsăturile diferite pe care le-am examinat se referă la acţiunea civilă ca instituţie a procesul penal. Există însă şi deosebiri între acţiunea civilă care se exercită în procesul penal şi acţiunea civilă cu acelaşi obiect care se exercită în procesul civil, separat de acţiunea penală.

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Astfel, când fapta are un caracter civil, acţiunea civilă nu poate fi introdusă decât la instanţa civilă, unde i se aplică prevederile Codului de procedură civilă. În acest caz, acţiunea în realizarea răspunderii civile are caracterul oricărei acţiuni civile, exercitându-se facultativ şi la cerere, fiind disponibilă şi divizibilă.

Acţiunea civilă ce se exercită în procesul penal este o instituţie a acestui proces şi împrumută astfel elemente din trăsăturile acţiunii penale, în special elemente de oficialitate, prin derogare de la principiul disponibilităţii, aplicabil procesului civil. Astfel dacă repararea pagubei se face în natură, procurorul şi instanţa de judecată pot acţiona din oficiu prin restituirea lucrului sau prin restabilirea situaţiei anterioare săvârşirii infracţiunii. În celelalte cazuri, sunt obligate să cheme persoana vătămată şi să îi pună în vedere că poate cere repararea pagubei exercitând acţiunea civilă în procesului penal. Dacă paguba a fost cauzată proprietăţii publice sau persoanelor fără capacitate de exerciţiu sau cu această capacitate restrânsă, acţiunea civilă se porneşte şi se exercită din oficiu. În acest mod, acţiunea civilă ce se exercită în procesul penal prezintă deosebiri faţă de acţiunea civilă care se exercită în cadrul procesului civil, fiind o instituţie a procesului penal. Trăsăturile caracteristice ale acţiunii penale şi ale acţiunii civile au determinat şi reguli diferite în ceea ce priveşte subiecţii lor activi şi subiecţii lor pasivi, punerea în mişcare şi exercitarea lor, după cum diferite sunt şi soluţiile pe care pe pot căpăta prin hotărârea instanţei de judecată.

Concluzii. După cum am arătat, pentru a putea fi pusă în mişcare şi exercitată o acţiune penală sau civilă trebuie, mai întâi, să se respecte normele de drept material care reglementează elementele răspunderii juridice, să aibă, deci, ca temei juridic o prevedere legală prin care se sancţionează încălcarea normei de drept, şi ca temei de fapt, existenţa faptei ilicite săvârşite de o persoană care răspunde din punct de vedere juridic. Dacă nu sunt întrunite elementele răspunderii juridice prevăzute de legea materială, acţiunea în justiţie este lipsită de temei juridic şi nu poate fi pusă în mişcare, deoarece singurul temei al răspunderii penale este săvârşirea unei infracţiuni. Dacă fapta săvârşită nu a produs nici un prejudiciu, acţiunea civilă este lipsită de temei juridic, existenţa prejudiciului fiind un element al răspunderii civile. Obiectul acţiunii penale sau civile - tragerea la răspundere juridică – trebuie să existe atât în momentul punerii în mişcare al acţiunii cât şi în tot timpul exercitării ei, altfel acţiunea rămâne fără obiect, se stinge şi nu mai poate fi exercitată.

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ASSESSMENT GRIDS FORCOOPERATIVE TEAMWORK AND LEADERSHIP

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Abstract: The present article discusses the consistent number of benefits found in the implementation of EU CLIL assessment grids for cooperative teamwork and leadership training activities. They are as follows: encouraging student autonomy; developing critical judgment by assessing the work of others, thereby allowing students to gain insight into their own performance; improving motivation; learning to evaluate their own and their peers' achievements realistically in view of lifelong learning; and, last but not least, improving key skills development such as critical thinking, communication, self-motivation; time and self management, cooperation and providing constructive criticism. The analysis continues by pointing out the issues impeding this process: the reluctance of one or more students to participate in the activities; the general dislike of assessing or judging team members; the character conflicts; the time consuming organization; and students' lack of evaluative/assessment skills. Clearly, the benefits are more than the drawbacks, as this type of assessment provides an insight into individual learning achievements; gives information for evaluating the teaching program; provides an enriching teaching strategy that engages students in their learning; gives further information in order to plan teaching and learning to meet individual student needs; enables the targeting of realistic outcomes for students; and finally enables students to become aware of their strengths and the areas that need improvement.

Keywords: cooperation, teamwork, leadership, strategic thinking,EU CEFR CLIL assessment criteria

Manualele universitare ar trebui să se înscrie într-o serie de lucrări de concepţie unitară privind educaţia pentru antreprenoriat, team-work şi leadership, realizate de echipe complexe de autori români şi străini, astfel încît să beneficieze de consultanţă de specialitate şi de bune

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practici atît autohtone cît şi globale, multiculturale şi incluzive. *Manualul* întotdeauna însoţit de *activity book* – caietul de exerciţii – şi de *ghidul profesorului*, ar constitui un cîştig în exersarea principiilor generale predate în cadrul cursurilor şi seminariilor sau pe parcursul lucrărilor practice, alături de un *set de teste de progres* pe care profesorii le-ar putea folosi ca atare sau adapta în funcţie de situaţia specifică a grupei de studenţi. În acelaşi format s-ar putea include aspecte vizînd *Drepturile Omului* şi *Educaţie în Spiritul Cetăţeniei Democratice.* Ar trebui adăugate elemente de educaţie în spiritul valorilor şi educaţie pentru dezvoltarea viitoarei cariere. Deprinderile în domeniu ar putea fi cultivate concomitent cu activităţile din proiectele referitoare la predarea limbilor străine în domeniul vocaţional, prin workshops, plenary lectures, dissemination sessions.

O multitudine de competenţe sînt necesare în interacţiunea antreprenorială în limbi străine, iar felul în care aceste competenţe, aparent disparate, sînt exersate împreună constituie un ansamblu coerent, capabil să stimuleze educaţia pentru antreprenoriat, team-work şi leadership. Semnalăm cu bucurie în acest sens succesul cărţii *Coherence of Principles, Cohesion of Competences: Exploring Theories and Designing Materials for Teacher Education*, Strasbourg/Graz: Council of Europe, European Centre for Modern Languages, 2006, coautor şi co-editor al volumului fiind profesor doctor Ruxandra Popovici, team leader British Council Bucharest, care explorează aspecte teoretice şi metodologice de concepere a materialelor folosite în instruirea didactică pe astfel de teme. Demersul se bazează pe un studiu investigativ asupra instituţiilor care pregătesc cadre didactice şi vizează modul în care competenţa comunicaţională impulsionează alte competenţe, cum ar fi inter-acţiunea socială, utilizarea conştientă a stilurilor şi nuanţelor limbajului, abordarea inter-culturală şi autonomia în învăţare. Adiţional, se pot include elemente de literatură de specialitate, cultură şi civilizaţie, drepturile omului şi structuri de comunicare eficientă şi oficială în limba străină.

Educaţia în antreprenoriat, team-work şi leadership e stimulată de profesorii care vorbesc, în general, două sau trei limbi străine, nu neapărat din aceeaşi familie (germanice, romanice), întrucît ei demonstrează un orizont didactic mai larg şi un rafinament cultural mai pronunţat, sînt capabili de conexiuni între civilizaţii şi perioade de dezvoltare istorică, deci abordează cu mai mare uşurinţă, eficienţă şi credibilitate teme inter-culturale incluzive. Studenţii ai căror părinţi folosesc o limbă străină au şanse crescute să obţină rezultate mai bune, să fie mai motivaţi să citească şi să studieze suplimentar. Durata studiilor de limbă străină (formal şi non-formal) pentru învăţămîntul terţiar variază între unu şi trei ani. Majoritatea părinţilor generaţiilor actuale de studenţi au studiat în şcoală franceză/engleză,

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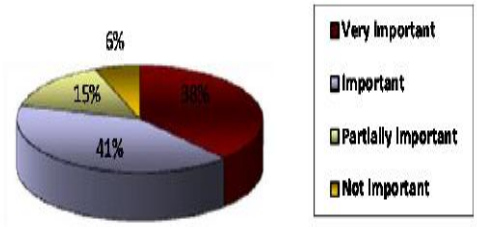
mai rar germană/rusă/spaniolă/italiană. Beneficiarii noilor manuale de studiu ar face faţă mult mai bine unui mediu în care se vorbeşte limba străină studiată, progrese indiscutabile înregistrîndu-se pentru deprinderile de ascultare şi vorbire fluentă, unde vocabularul devine în mod vizibil mai bogat, facilitînd comunicarea pentru antreprenoriat, team-work şi leadership. Ar fi o reuşită, de asemenea, faptul că am putea să influenţăm preferinţele pentru resursele utilizate în învăţare, orientîndu-i pe doritori spre mijloace interactive.

Analiza pilotării unor astfel de cerinţe în cadrul unei activităţi studenteşti din universitatea noastră (Simpozionul Stiinţific Studenţesc USAMV MIEADR 2015 şi 2016) cu aproximativ 400 de participanti, într-o abordare comparativă, pe ediţii succesive, a condus la urmatoarele rezultate: 38% au considerat experienţa de studiu foarte relevantă, 41% au considerat-o importantă, 15% au găsit ca e parţial utilă, iar 6% au afirmat că erau familiarizaţi cu standardele şi nu au avut alt cîştig decît confirmarea propriei valori, atestate ca atare în manifestări anterioare, unde doar contextul varia.

Rezultatele s-au obţinut în urma aplicarii urmatoarei grile EU CEFR CLIL assessment criteria:

	1-4	5-7	8-10
ATTITUDE	Requires a lot of encouragement. Struggles to demonstrate effort or curiosity	Demonstrates effort and enthusiasm during class activities most of the time	Demonstrates a lot of effort, curiosity and enthusiasm in all the activities
PARTICIPATION	Struggles to participate in discussion and activities	Participates in discussion when requested and is working to develop positive peer relations	Leads discussion and group activities, assist others, initiates positive peer relations
CLASS WORK	Many activities are incomplete and sent out of time.	Some of the activities are done and sent on time	All the activities are well done and sent on time.
RESPONSIBILITY	Not very self-directed, requires a lot of prompting.	Usually self-directed and uses materials in a safe way most of the times.	Very self-directed, uses materials and resources safely and accepts class activities
CONTENT	Doesn't apply the contents to the class activities	Applies the information and contents to the activities but needs help	Applies the information and contents to the activities in a good way



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Scores	Descriptors	Number of students
1 Unsatisfactory	Student demonstrates no knowledge of the subject or of the targeted specific vocabulary.	
2 Almost satisfactory	Student demonstrates insufficient background knowledge and uses specific vocabulary wrongly. Student isn't able to solve exercises that apply the algorithm taught in the lesson.	
3 Satisfactory	Student demonstrates essential knowledge of the subject. Student uses most of the specific vocabulary correctly. Students solves exercises that apply the algorithm taught in the lesson correctly.	
4 Good	Student demonstrates complete knowledge of the subject. Students uses specific vocabulary correctly and appropriately. Student solves at least one new type of exercises correctly.	
5 Excellent	Student demonstrates complete and thorough knowledge of the subject. Student solves new types of complex exercises correctly.	

Fig. 1. EU CLIL Final Rubric Assessment Criteria, cf. *CLIL at School in Europe*, Eurydice, 2006

Acelaşi studiu menţionează pentru adulţii tineri următoarele priorităţi:

- Aproximativ trei sferturi dintre studenţi recunosc deschis că buna cunoaştere a unei limbi străine, engleza mai ales, îi va ajuta în reuşita profesională, pentru antreprenoriat, team-work şi leadership. Sînt foarte puţini cei care folosesc simultan mai multe limbi străine, însă toţi se declară în favoarea utilităţii studierii simultane a două limbi străine, ca urmare a echilibratei şi variatei oferte din licee.
- Cunoştinţele din facultate ar trebui să fie foarte utile şi relevante, dar asta nu depinde doar de manuale sau de conturarea unui cadru organizatoric şi administrativ bine definit. Depinde şi de oamenii implicaţi. Unii studenţi consideră că au un stil personal de muncă intelectuală cristalizat, dar practica îi contrazice. Dincolo de această categorie superficială, există mulţi cu stil bine format în abordarea intelectuală, aspect pe care îl îmbunătăţesc acceptînd sugestiile îndrumătorilor didactici.
- Sistemul de notare influenţează semnificativ performanţa şi modernizarea în sensul extinderii aplicaţiilor practice pentru antreprenoriat, team-work şi leadership constituie un punct de interes.
- Ponderea deţinută de activităţile de antreprenoriat, team-work şi leadership în limbi străine şi în examene ar trebui să fie mai mare, prin îmbogăţirea programei şi diversificarea testării.

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- Cele mai potrivite forme de evaluare/notare pentru antreprenoriat, team-work şi leadership sînt, în primul rînd probele scrise şi orale, combinate în proporţii variate, apoi project work şi portofoliul.
- Toate formele de activitate enumerate (individuală, pe grupe, frontală, student – student, student – profesor, tutor –student, echilibrat îmbinate, conform obiectivul didactic şi profilului grupului de studenţi sînt adecvate pentru asigurarea competenţelor evaluate la examen, care ar trebui să reflecte stereotipurile de învăţare pozitivă create la curs şi seminar. Probabil, însă, că, în realitate, sistemul de subiecte postate pe Internet şi sistemul de examinare pot încuraja memorarea şi acumularea informaţiilor în mod neaprofundat. E necesar ca temele pentru acasă să concorde cu itemii de examinare. Evaluarea trebuie să reflecte în totalitate sistemul de pedare-învăţare utilizat.
- Calităţile esenţiale apreciate la profesori par a fi: competenţă ştiinţifică, autoritate didactică şi leadership, abilitate de explicare şi comunicare, capacitate de îndrumare şi supraveghere, aptitudine de motivare în studiu, inteligenţa, prestanţa, eleganţa conduitei, exigenţa, corectitudinea în evaluare, profesionalismul, credibilitatea şi sinceritatea, punctualitatea şi tactul pedagogic, discursul corect, fluent, accesibil şi flexibilitatea în abordare. Cadrul didactic universitar are însă şi alte atribuţii:

Fig. 2. Atribuţiile profesorului de limbă străină, cf. www.cambridgeesol.org/teach

- În privinţa utilităţii manualelor alternative/opţionale din prisma evaluării, subiectele trebuie să exprime curriculum-ul în diferite forme ce reflectă stiluri de învăţare diferite iar profesorii, cînd aleg manualul, trebuie să cunoască particularităţile de învăţare ale studenţilor lor, ajutîndu-i să descopere, din perspectiva aplicată a drepturilor omului, concepte esenţiale privind dezvoltarea individului şi a lumii contemporane: identitate, egalitate, demnitate, decizie, putere, implicare şi responsabilitate. Proiectul e considerat novator în următoarele direcţii:

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1. integrarea domeniilor de activitate: predarea-învăţarea, aspecte educative, guvernare eficientă.
2. importanţa educaţiei pentru drepturile omului: întărirea de sisteme depractici democraticeşi atitudini civice, înţelegerea constructivă a drepturilor şi libertăţilor individului, în calitate de cetăţean român şi european, sporirea încrederii în sine şi cultivarea deprinderilor de a afirma astfel de drepturi, participînd activ în dezvoltarea comunităţii.
3. implică un proces de învăţare participativă, dezvoltînd deprinderile cognitive: identificare de cauză şi effect, analiză, delimitarea evenimentului de opinia asupra lui, strategii de comunicare, cooperare, gîndire critică, negociere şi atingere a consensului.
4. dezvoltarea toleranţei, lipsei de prejudecăţi, respectării diversităţii, adevărului, justiţiei, demnităţii umane şi libertăţii de exprimare, asigurînd interconectarea comunităţilor la nivel global.
5. motivează studenţii din dublă perspectivă, lingvistică şi cetăţenească, pentru independenţa înînvăţare, toleranţa pentru indivizi/puncte de vedere diferite, şi asigură legătura dintre comunicare şi coeziunea socială, dintre cetăţenie democratică şi inter-culturalitate. Dialogul democratic devine abilitatea cheie vizată, astfel încît să conducă la interacţiuni sociale constructive şi la deschiderea unor noi canale de comunicare între vorbitori şi ascultători, facilitînd antreprenoriatul, munca în echipă şi leadership-ul constructiv, spre a le integra activ în cotidian. Comunicarea de succes impică respect şi înţelegerea celuilalt, mai ales în contextul larg al utilizării limbii engleze ca *lingua franca.*
6. discută probleme contemporane relevante: identitate, apartenenţă etnică, diversitate, stereotipuri culturale, mentalităţi depăşite, egalitate/discriminare, toleranţă, demnitate umană/sărăcie degradantă, munca minorilor, drepturile copilului şicelor cu dizabilităţi, organisme modificate genetic şi mediu, substanţele nocive, conflict şi implicare activă, responsabilitate şi opţiune, instituţii ca UE şi CEDO.
7. instruirea cadrelor didactice în predarea eficientă a subiectelor controversate, în managementul conflictelor interpersonale în cadrul grupului, în domeniul strategiilor de mediere şi negociere, în

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impementarea activă a conduitei civice, precum şi în domeniul predării deprinderilor de comunicare, în consens cu diagrama standard referitoare la competenţa de comunicare inter-culturală.

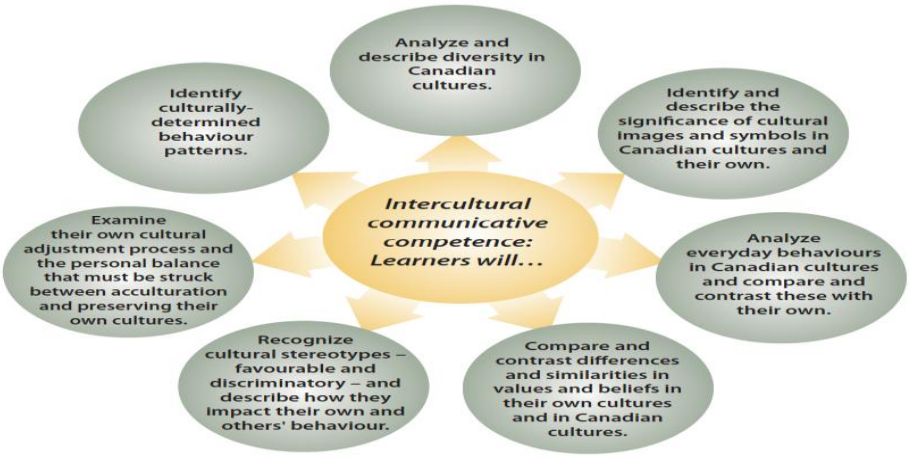

Fig 3. Competenţa de comunicare inter-culturală, cf. www.educationuk.org

Educaţia pentru antreprenoriat, team-work şi leadership îi provoacă pe studenţi să găsească soluţii creative la problemele propuse. Are ca scop încurajarea gîndirii orientate spre business şi so-luţii concrete, dezvoltarea abilităţilor de identificare a oportunităţilor, negociere şi sporire a aportu-lui inovativ. Se continuă astfel proiectele prin care tinerii sînt familiarizaţi cu domeniul de afaceri şi antreprenoriat şi sînt încurajaţi să comunice relevant şi eficient, să conlucreze şi să fie originali.

Proiectul vizează în mod esenţial schimbul de experienţă/bune practici prin parteneriate între instituţii pentru dezvoltarea de standarde ocupaţionale şi curriculum adaptat pieţei muncii. Conform agendei reformei sistemului vocaţional, educaţia pentru antreprenoriat, team-work şi leadershipîn mediul academic vizează dezvoltarea capacităţilor de a cerceta piaţa şi de a folosi aspectele de limbă engleză necesare în sectorul respectiv, pentru formarea profesorilor în scopul elaborării de materiale adecvate pentru sectorul vocaţional, selectarea de exemple provenite din studii de piaţă şi elaborarea de cursuri sprijinite de o platformă web şi de un forum de discuţii, care pot fi accesate de toţi cei interesaţi, profesori, elevi sau studenţi. Se doreşteinfluenţarea profesorilor de nivel terţiar, a forma-torilor şi decidenţilor de profil, spre dezvoltarea deprinderilor, metodelor şi materialelor de învăţare centrate pe student conform cerinţelor din sectoarele economice relevante. Cercetarea de piaţă se face, în principal, în instituţiile unde se face practică. S-a implementat urmatoarea grilă de ghidaj:

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	Criteria	5 excellent	4 good	3 satisfactory	2 almost satisfactory	4 unsatisfactory	Score
CONTENT	**Use of basic subject concepts and knowledge (what)**	Has acquired all the basic concepts and principles of the topic. Well structured, correct and comprehensiv e explanation; excellent personal evaluation	Has acquired most of the basic concepts and principles of the topic. Generally well structured, correct and adequate explanation; good personal evaluation.	Has acquired some basic concepts and principles of the topic. Sufficient explanation, with a limited number of errors; limited personal evaluation.	Has acquired only a few basic concepts and principles of the topic. The explanation shows major deficiencies in terms of logical structuring and formulation.	Hasn't acquired any of the basic concepts and principles of the topic. The explanation is severely deficient in terms of logical structuring and formulation; no personal evaluation.	
	Application of knowledge to new situations (how it relates)	Has used new knowledge with confidence and creativity, applying it in an original way.	Has used new knowledge and applied it correctly in new situations.	Has used new basic concepts and applied them in simple situations.	Has used a few simple concepts and applied them when guided.	Hasn't achieved any knowledge.	
	Creativity / evaluation	Has shown critical thinking, creativity and initiative.	Has shown a good level of creativity and evaluation capability.	Has shown sufficient evaluation capability and sometimes original ideas.	Has not always shown sufficient evaluation ability and has presented poor creativity.	Has shown inability to evaluate and very poor creativity.	

	Criteria	5 excellent	4 good	3 satisfactory	2 almost satisfactory	4 unsatisfactory	Score
LANGUAGE	**Use of language:** - **listening** - **speaking** - **reading** - **writing** - **interaction**	Consistent grammatical control and appropriate use of vocabulary. Can express him/herself with a natural flow and interact with ease.	Good grammatical control and generally appropriate use of vocabulary. Can express him/herself and interact with a good degree of fluency.	A few mistakes in grammar and vocabulary use do not lead to misunderstand ing. Can express him/herself and interact with a reasonable degree of fluency.	Systematically makes mistakes in grammar and vocabulary use but the message is generally clear. Can manage the discourse and the interaction with effort and must be helped.	Systematic grammar mistakes and the narrow range of vocabulary makes the message meaningless. Communicatio n is totally dependent on repetition, rephrasing and repair.	
	Cooperative work	Original and creative.	Good level of interaction.	Sufficient degree of interaction.	Partial cooperation.	Unable to work in group.	

Fig. 4. EU CLIL Analytic Assessment Grid for Content, Language and Cooperative Work, cf. *CLIL at School in Europe*, Eurydice, 2006

Echipele care au participat la proiect au fost formate din profesori de limba engleză care au lucrat împreună cu studenţii lor, cu profesori care predau materii de specialitate şi cu reprezentanţi din industrie, în scopul elaborării unor materiale adecvate pentru învăţarea eficientă. S-a lucrat în echipă cu experienţă de predare/formare didactică. Iată diagrama interacţiunilor reprezentative întreprinse:

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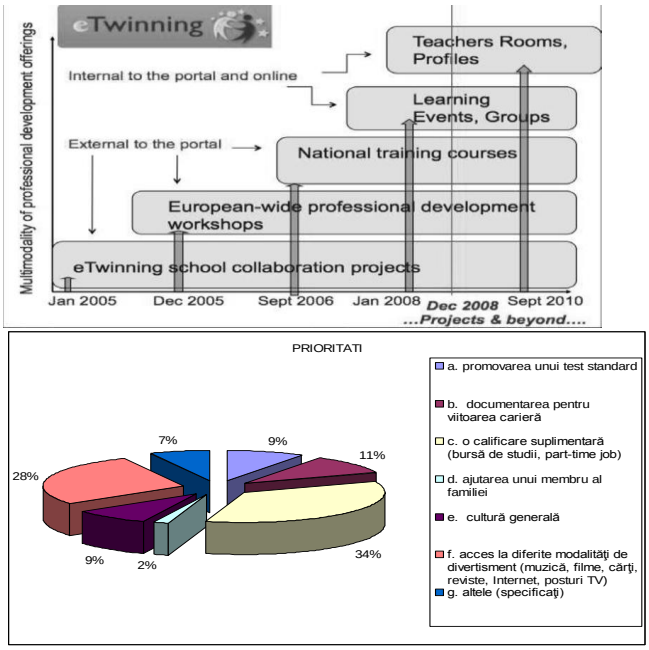

Fig. 5. Rezultate implementare EU CLIL Analytic Assessment for Content / Language / Cooperation reflectat şi în modalităţile de progres profesional din *On the Move:Careers*, Program 0UK24M80S

Assessment grid for content

Scores	Descriptors
1 Unsatisfactory	Student shows no knowledge of the subject.
2 Almost satisfactory	Student is lacking necessary background knowledge. S/he isn't able to solve simple exercises.
3 Satisfactory	Student has essential knowledge of the subject. S/he solves simple exercises similar to the ones done during lessons.
4 Good	Student shows a complete knowledge of the subject. S/he solves new exercises correctly.
5 Excellent	Student shows a complete and thorough knowledge of the subject. S/he solves most difficult exercises easily.

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Assessment grid for language

Scores	Descriptors
1 Unsatisfactory	Student doesn't use the everyday English and the specific vocabulary on the subject matter at all.
2 Almost satisfactory	Student is able to use the everyday English and the specific vocabulary on the subject matter improperly.
3 Satisfactory	Student is almost able to use the everyday English and the specific vocabulary on the subject matter.
4 Good	Student is able to use the everyday English and the specific vocabulary on the subject matter properly.
5 Excellent	Student is able to use the everyday English and the specific vocabulary on the subject matter perfectly.

Assessment grid for cooperative work

Scores	Descriptors
1 Unsatisfactory	Student is unwilling to participate in the activities either feel-ing shy or uncomfortable about using the language.
2 Almost satisfactory	Student is willing to participate in some of the activities which require simple structures and vocabulary in English.
3 Satisfactory	Student is almost able to participate in many of the activities which require some complex structures and specific vocabulary in English.
4 Good	Student is able to participate in the activities which require good level of English.
5 Excellent	Student is able to participate in the activities which require perfect level of English.

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Assessment grid of oral performance

Criteria	Content	Language	Points
excellent	Student shows a complete and thorough knowledge of the subject. Explanations are well structured. Examples are provided. Able to answer teacher's/examiner's questions.	Uses appropriate vocabulary. Grammar structures are correct or mostly correct (1-2 inaccuracies). Answers to questions relevant to the subject and are expanded. Fluent speech.	13-15
good	Most information and facts are correct. Some facts may be omitted. Basic concepts used appropriately. Explanations are logically sequenced. Unable to answer 1-2 questions.	Basic topical vocabulary is used. Good grammar command in terms of structure although some inaccuracies may be present (3-5). Speech mostly fluent, may pause to look for answer or vocabulary item.	10-12
satisfactory	Some information and facts are given. Knows the main concepts. The speech lacks logical structure. Partly unable to give answers.	Some basic vocabulary is used. Inaccuracies in grammar (6-9). Lacks fluency, speech is stumbling. Does not understand some questions.	5-9
unsatisfactory	Cannot provide relevant information. Unable to answer questions. Or: not enough to evaluate.	Inappropriate use of basic topical vocabulary or lack of it. Many mistakes (10 and more). Serious problems in interaction.	0-4

Fig. 6. Punctaje alocate şi criterii detaliate de notare a studenţilor în cadrul aplicării EU CLIL Grid in Analytic Assessment for Content/Language/Cooperation and Oral Performance

Importantă e educarea celor ce studiază pentru a face faţă realităţilor şi provocărilor secolu-lui XXI. În acest scop e necesară implementarea unor mecanisme de networking între asociaţiile de profesionişti în domeniul didactic, pentru a dialoga eficient pe teme moderne din teoria şi practica predării. Parteneriatul între asociaţiile didactice şi companii direcţionează sprijinul financiar către activităţile de eficienţă şi impact maxim în sensul modernizării şi atingerii obiectivelor propuse.

Programele şi manualele de limbi străine, în special de engleză, au fost lider şi forţă motrice în actualizarea, modernizarea şi sincronizarea conţinuturilor didactice şi a metodologiei de predare cu demersurile contemporane şi cu imperativele vieţii cotidiene. Ele au dat tonul cursurilor de mo-dernizare a tehnologiei didactice şi a pregătirii profesorilor, furnizînd tipare de bună practică, asu-mare de roluri precise şi constructive, precum şi organizare profesională pentru diseminarea largă a informaţiilorşi rezultatelor proiectelor.

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Profesioniştii spun că engleză şi utilizare performantă a computerului trebuie să ştie oricine, spre a se integra bine în carieră şi în viaţă. Ajunşi în contextul de a lucra ori studia în ambient internaţional, absolvenţii români acţionează optim, cu deprinderi lingvistice de ordin superior atestate prin CAE şi IELTS cu scoruri de C1/C2, adică nivel academic al vorbitorilor nativi:

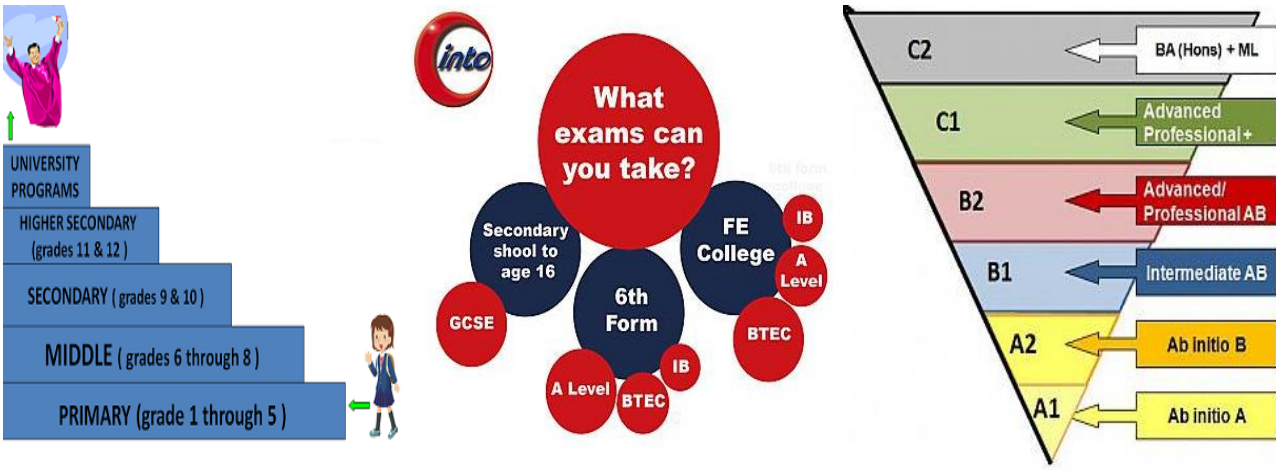

Fig. 7. Sistemul britanic de învăţământ şi locul limbii engleze, cf. www.educationuk.org

Se învaţă limba engleză din diverse motive: acces la divertisment, obţinerea unei imagini bune în societate, promovarea unui examen, obţinerea unui certificat internaţional standard sau a unei burse de studii în străinătate; toţi cred că engleza le asigură condiţii de muncă mai bune şi o ascensiune rapidă în carieră, mai ales cînd există acces pe piaţa internaţională a forţei de muncă.

Mijloacele didactice folosite în educaţia pentru antreprenoriat, team-work şi leadership sînt: vizite pe teren, proiecte si portofolii cu scheme şi diagrame, diapozitive, video, proiector, fişe de lucru şi seturi de documentatii suplimentare, albume, reviste, postere, pliante, laborator multimedia/ computer/ soft educaţional.

Disciplina noastră a perceput astfel utilizarea mijloacelor didactice:

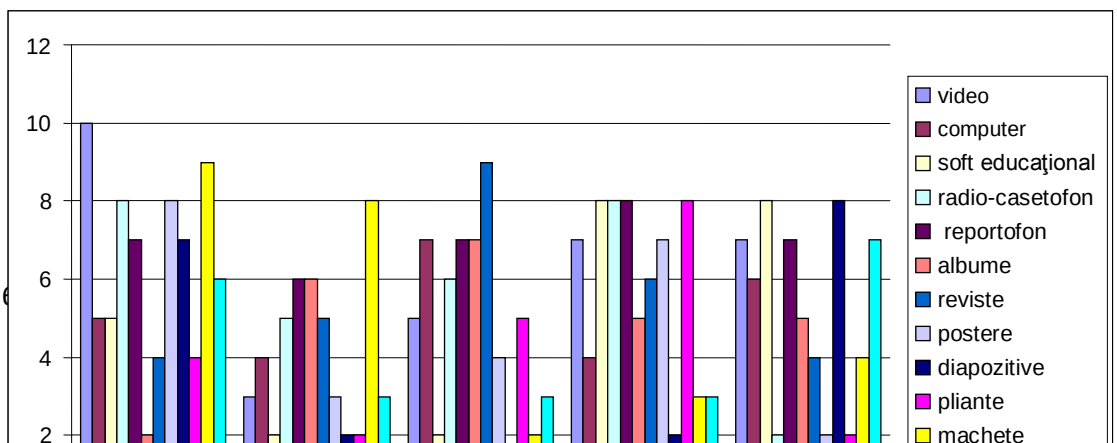

Fig. 8. Evoluţia ponderii utilizării mijloacelor didactice, extras din studiul organizat în cadrul proiectului *On the Move Careers,* cod Program 0UK24M80S3

In concluzie, portretul profesorului universitar eficient la disciplina educaţie antreprenorială, team-work şi leadership se centrează pe competenţă ştiinţifică, didactică şi lingvistică, model de strategie comunicaţională şi discurs corect, fluent, de prestanţă, tact şi umor constructiv, capabil să explice, să negogieze şi să motiveze, flexibil în abordare şi corect în evaluare, adică profesionist. Studenţii consideră participarea la dezbateri şi dezinvoltura afirmării propriului punct de vedere în dialogul cu profesorul şi colegii drept cel mai clar progres simţit pe parcursul pregătirii academice.

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EVALUATION CRITERIA FOR CLIL MODULES INENTREPRENEUR EDUCATION

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Abstract: The current approach analyses CLIL professors' competences in entrepreneur education in Romanian universities. Evaluation criteria are suggested for key areas such as: giving and applying instructions, managing student interactions and co-operative work, enhancing communication using contemporary social registers, and adjusting to social/academic dialogue and negotiation standards in step with the demands of given contexts. Entrepreneur education via CLIL calls for varying discourse registers in presenting information, in clarifying and checking understanding levels, and in mitigating difficulties as they are perceived by students in their practice contexts characterized by exploratory, cumulative, or critical features. CLIL modules in entrepreneur education for business engineering students foster learner autonomy, critical and creative thinking, helping learners link various subjects across the curriculum. Hence study processes benefit from further learning environments that complement the classroom (e.g., discussion forums, study groups, academic practice intervals, and community centers). In the case of team-&co-teaching, efficient task-sharing can be developed, thus respecting diversity and creating reassuring and enriching learning environments, able to support individual and differentiated learning.
Keywords: EU CLIL assessment criteria, entrepreneur education, linguistic content, leadershipstrategies

Contextul european are ca viziune promovarea unui învățământ orientat pe valori, creativitate, capacități cognitive, volitive și acționale, cunoștințe fundamentale și noțiuni, competențe și abi-lități de utilitate directă, în profesie și în societate. Misiunea asumată de sistemul de învățământ este de formare, prin educație, a infrastructurii mentale a societății românești, în acord cu noile cerințe, derivate din statutul României de țară membră a Uniunii Europene și

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din funcționarea în contextul globalizării, urmărind generarea sustenabilă de resurse umane naționale înalt competitive, capabile să funcționeze eficient în societatea actuală și viitoare.

Idealul educațional al școlii românești constă în dezvoltarea liberă, integrală și armonioasă a individualității umane, în formarea personalității autonome și în asumarea unui sistem de valori care sînt necesare pentru împlinirea și dezvoltarea personală, pentru dezvoltarea spiritului antreprenorial, pentru participarea cetățenească activă în societate, pentru incluziune socială și pentru angajare pe piața muncii. Statul asigură cetățenilor români drepturi egale de acces la toate nivelurile și formele de învățămînt pre-universitar și superior, precum și la învățarea pe tot parcursul vieții, fără nici un fel de discriminare. Aceleași drepturi se asigură și cetățenilor altor state membre UE.

Educația și formarea profesională a tinerilor și a adulților au ca finalitate principală formarea competențelor, înțelese ca ansamblu multifuncțional și transferabil de cunoștințe, deprinderi/abilități și aptitudini, necesare pentru:

- împlinirea și dezvoltarea personală, prin realizarea propriilor obiective în viață, conform intere-selor și aspirațiilor fiecăruia și dorinței de a învăța pe tot parcursul vieții;
- integrarea socială și participarea cetățenească activă;
- ocuparea unui loc de muncă și participarea la funcționarea și dezvoltarea unei economii durabile;
- formarea unei concepții de viață, bazate pe valorile umaniste și științifice, pe cultura națională și universală și pe stimularea dialogului intercultural;
- educarea în spiritul toleranței, respectării drepturilor și libertăților umane fundamentale;
- cultivarea sensibilității față de problematica umană, față de valorile moral-civice și
- cultivarea respectului pentru natură și mediul înconjurător natural, social și cultural.

Uniunea Europeană şi-a stabilit un obiectiv ambiţios: să devină cea mai competitivă şi mai dinamică economie bazată pe cunoaştere din lume. Realizarea unei mai mari coeziuni sociale şi ge-nerarea unei creşteri economice durabile, capabile să ofere locuri de muncă mai multe şi mai bune, reprezintă o parte a acestui obiectiv. Politica privind educaţia ocupă un loc central, iar învăţarea lim-bilor străine e esenţială în acest context. Pentru a veni în sprijinul Strategiei de la Lisabona, miniştrii educaţiei din Uniunea Europeană şi-au fixat trei obiective majore: ameliorarea calităţii şi eficienţei educaţiei şi sistemelor de formare; garantarea accesului la educaţie pentru toţi cetăţenii; deschiderea către lume a educaţiei şi formării. Obiectivele fundamentale şi măsurile specifice se gasesc în programul Educaţie şi Formare şi sînt reprezentate conform graficului următor:

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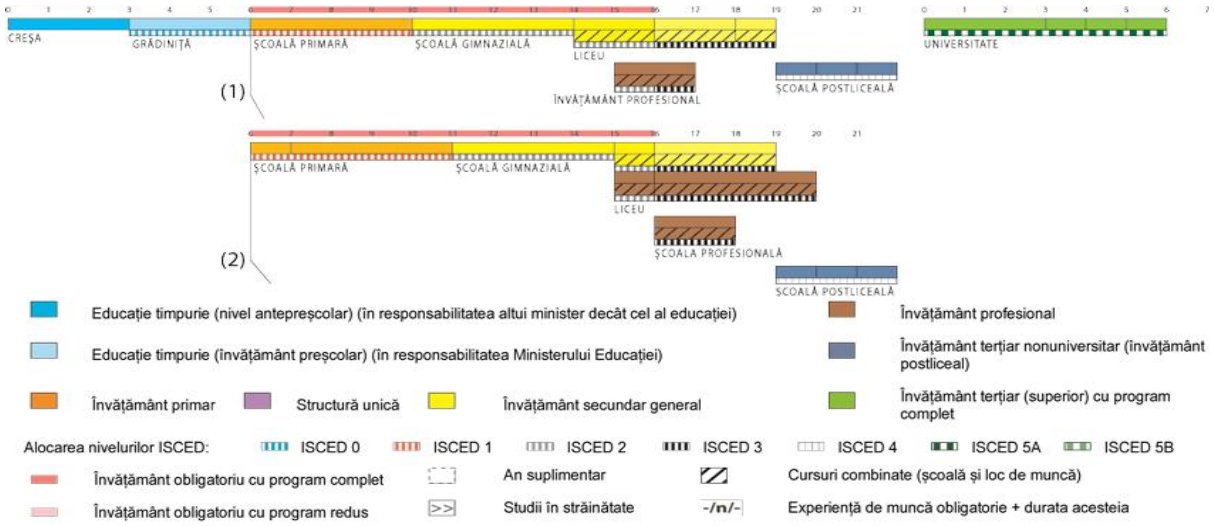

Fig. 1. Programul Educaţie şi Formare cf www.europa.org

Acest program de educaţie şi formare vizează o gamă largă de aspecte. Stabileşte ambiţiile comune pentru un larg orizont de timp şi se referă, printre altele, la includerea diversităţii şi coope-rării în obiectivele globale. Precizează şi cum pot fi atinse aceste obiective – prin metoda deschisă a coordonării, statele membre acceptînd în acest caz să colaboreze şi să fie evaluate după standarde comune cu treisprezece obiective specifice:

- ameliorarea educaţiei şi formării pentru profesori/formatori
- dezvoltarea competenţelor necesare în societatea cunoaşterii
- garantarea accesului la tehnologiile informaţiei şi comunicării pentru toţi cetăţenii
- intensificarea recrutării în domeniul ştiinţific şi tehnic
- folosirea cît mai eficientă a resurselor
- crearea unui mediu favorabil învăţării
- creşterea nivelului de atractivitate al învăţării
- promovarea cetăţeniei active,
- garantarea egalităţii de şanse şi a coeziunii sociale
- consolidarea legăturilor dintre piaţa muncii, cercetare şi societate în general
- dezvoltarea spiritului antreprenorial
- ameliorarea procesului de învăţare a limbilor străine
- creşterea mobilităţii şi a programelor de schimb
- consolidarea cooperării europene

Obiectivul de învăţare a limbii străine pentru antreprenoriat, team-work şi leadership s-a definit astfel încît să contribuie la realizarea obiectivului global care vizează deschiderea către lume a educaţiei şi formării. UE se ghidează după principiul potrivit căruia orice

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persoană ar trebui să fie aptă să vorbească două limbi străine pe lîngă limba maternă. Programul de educaţie şi formare stabi-leşte standardele de evaluare a progreselor înregistrate de statele membre şi prioritizează trei direcţii ce vor beneficia de pe urma schimbului de experienţă: metode&modalităţi de organizare a predării limbilor străine; învăţarea lor de la vîrstă mică; promovarea învăţării&exersării lor în multe contexte.

Orizontul Educaţie&Formare 2020 are deviza *sisteme diferite, obiective comune*. Concluziile Consiliului privind cadrul strategic pentru cooperarea europeană în domeniul educaţiei şi formării se bazează pe progresele înregistrate în cadrul programului anterior de lucru şi stabilesc patru obiective strategice: transpunerea în practică a conceptelor de învățare de-a lungul vieții și de mobilitate edu-caţională; îmbunătățirea calității și a eficienței sistemelor de educaţie şi formare profesională; pro-movarea egalității, a coeziunii sociale şi a cetăţeniei active; stimularea inovării și a creativității, in-clusiv a spiritului antreprenorial, la toate nivelurile de educație și formare profesională. Acţiunile derulate în vederea atingerii acestor obiective vor contribui la implementarea procesului inter-guvernamental Bologna în domeniul învăţămîntului superior.

Declaraţia de la Bologna a încurajat cooperarea europeană în domeniul asigurării calităţii în învăţămîntul superior pentru antreprenoriat, team-work şi leadership, urmărindu-se dezvoltarea unor criterii şi metodologii comparabile. De aceea, încă de la început, s-a pus accent puternic pe calitate. Toate declaraţiile şi comunicatele ministeriale care au urmat au acordat de asemenea atenţie deose-bită programelor de lucru concentrate pe asigurarea calităţii în educaţia europeană. Miniştrii de re-sort au definit principalele responsabilităţi de asigurare a calităţii în instituţiile academice şi au con-venit asupra elementelor de bază : definirea responsabilităţilor organelor şi instituţiilor implicate, evaluarea programelor şi a instituţiilor, inclusiv evaluarea internă, examinarea externă, participarea studenţilor şi publicarea rezultatelor, un sistem de acreditare, certificare şi proceduri comparabile, precum şi participarea, cooperarea şi crearea de reţele la nivel internaţional. S-au adoptat apoi stan-dardele şi liniile directoare pentru asigurarea calităţii în Spaţiul European al Învăţămîntului Superior. Ele sînt aplicate în toate instituţiile de învăţămînt superior şi în agenţiile europene care se ocupă de asigurarea calităţii, avînd scopul de a promova încrederea reciprocă simultan cu respectarea diver-selor contexte şi arii tematice la nivel naţional şi instituţional. A urmat stabilirea Registrului Euro-pean pentru Asigurarea Calităţii în Învăţămîntul Superior (EQAR). Acesta e un registru al agenţiilor ce acţionează vizibil în sensul asigurării calităţii ca prioritate cu noi instrumente, mecanisme şi iniţiative astfel concepute încît să furnizeze informaţii

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complete despre universităţi. Sînt relevante progresele înregistrate în dezvoltarea sistemelor de asigurare a calităţii în interiorul Spaţiului Euro-pean al Învăţământului Superior la nivel extern şi la nivel intern. Sînt urmărite principalele diferenţe care apar între sistemele europene de asigurare a calităţii, precum şi dezvoltarea unor tendinţe în sensul unei internaţionalizări la scară extinsă în domeniul acesta. Asigurarea calităţii în învăţământul superior poate fi înţeleasă prin intermediul politicilor, procedurilor şi practicilor menite să atingă, să menţină sau să perfecţioneze calitatea, aşa cum este aceasta înţeleasă în context specific.

De la lansarea Procesului Bologna în 1999 s-a înregistrat o transformare rapidă a sistemelor de asigurare externă a calităţii în Europa. Îmbunătăţirea calităţii în învăţământul academic pentru antreprenoriat a constituit o prioritate de prim rang pentru toate ţările europene. Spaţiul European al Învăţământului Superior e cu siguranţă catalizatorul acestui proces prin faptul că asigurarea calităţii e un element legat în mod clar de stabilirea încrederii tuturor părţilor interesate.

Ţările de proveniență ale agenţiilor din Registrul EQAR sînt: Austria, Belgia, Bulgaria, Cro-aţia, Danemarca, Finlanda, Franţa, Germania, Irlanda, Olanda, România, Spania. Doar cîteva state implementaseră un sistem extern clar de asigurare a calităţii înainte de Procesul Bologna. După lan-sarea Procesului Bologna, 22 de ţări şi-au înfiinţat agenţii nationale pentru asigurarea calităţii (cf. Eurydice, 2010). În state cum ar fi Danemarca, Franţa şi Italia, noile agenţii au înlocuit instituţii existente. Luxemburg a dezvoltat o abordare eficientă a evaluării centrate pe îmbunătăţirea calităţii, incluzînd atît factorii implicaţi cît şi o largă internaţionalizare.

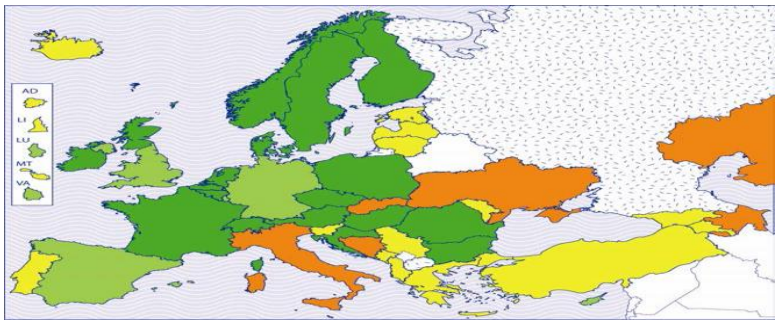

Fig. 3. Graficul performanţelor evaluate la nivel UE, cf. ENQA 2005, p. 11

- Sistemul de asigurare a calităţii e complet operaţional la nivel naţional. Agenţia de asigurare a calităţii a fost evaluată şi e conformă cu Standardele europene. Sistemul de asigurare a calităţii se aplică tuturor instituţiilor&programelor şi acoperă următoarele

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elemente principale: predarea, serviciile de sprijin pentru studenţi, sistemul intern de asigurare şi management al calităţii;

- Sistemul de asigurare a calităţii e complet operaţional la nivel naţional. Agenţiile de asigurare a calităţii au fost evaluate şi sînt conforme Standardelor europene. Sistemul de asigurare a calităţii se aplică tuturor instituţiilor/programelor şi acoperă o parte din elemente principale menţionate.
- Sistemul de asigurare a calităţii e operaţional la nivel naţional. Nu a fost evaluat pentru stabilirea conformităţii cu standardele. Se aplică tuturor instituţiilor şi/sau programelor şi acoperă predarea, serviciile de sprijin pentru studenţi şi sistemul intern de asigurare/management al calităţii.
- Un sistem de asigurare a calităţii e operaţional la nivel naţional. Nu a fost evaluat pentru confor-mitate cu standardele. Se aplică tuturor instituţiilor şi programelor menţionate.
- Un sistem de asigurare a calităţii e operaţional la nivel naţional dar nu a fost evaluat pentru conformitate cu Standardele şi liniile directoare europene. Se aplică unor instituţii/programe şi acoperă o parte dintre elemente principale menţionate.

Deşi, practic, toate statele şi-au stabilit într-o formă sau alta sisteme externe de asigurare a calităţii, există diferenţe semnificative în filozofia şi abordarea din spatele acestora. O distincţie importantă e accentul care cade fie pe instituţii, fie pe programe, fie pe ambele. A doua distincţie priveşte gradul în care agenţia naţională de asigurare a calităţii sau organismul naţional de decizie în acest domeniu e investit cu autoritatea de a da permisiune de funcţionare unor instituţii sau programe. Deşi multe caracteristici ale sistemelor naţionale fac ca în realitate lucrurile să fie complexe (de exemplu, gu-vernele pot să aibă sau nu autoritatea de a emite diplome la nivel central), aceste orientări oferă o imagine de ansamblu sugestivă asupra asigurării calităţii. Marea majoritate a sistemelor de asigurare a calităţii se concentrează în prezent mai degrabă pe o combinaţie de instituţii şi programe (24 ţări) decît numai pe programe (7 ţări) sau numai pe instituţii (4 ţări). De aceea, prin ansamblul de stan-darde şi linii directoare, s-a căutat găsirea unui echilibru corespunzător între crearea&dezvoltarea culturii interne a calităţii şi rolul pe care procedurile de asigurare externă a calităţii pot să îl joace.

In vederea monitorizării calităţii educaţiei pentru antreprenoriat, team-work şi leadership în Facultatea de Management, Inginerie Economică în Agricultură şi Dezvoltare Rurală, Universitatea de Stiinţe Agronomice şi Medicină Veterinară, Bucureşti USAMV –

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MIEADR, am implementat următoarea grilă pentru modulele CLIL – Content and Language Integrated Learning:

	Criteria	5 excellent	4 good	3 satisfactory	2 almost satisfactory	1 unsatisfactory	Score
CONTENT	Use of words learned about recovery, recycling and reuse in simple sentences	Student uses all new words correctly and appropriately in simple sentences.	Student uses at least 15 new words correctly and appropriately in simple sentences.	Student uses at least 10 new words correctly and appropriately in simple sentences.	Student uses at least 5 new words in simple sentences.	Students uses less than 5 new words in simple sentences.	
	Identification of relevant information from various sources of information	Student identifies relevant information from at least four sources of at least three different types.	Student identifies relevant information from at least three sources of at least two different types.	Student identifies relevant information from at least two sources (possibly of the same type).	Student identifies relevant information from at least one source.	Student does not identify relevant information from any source.	
CREATIVITY	Originality in preparation and execution of visual materials (drawings, symbols, images, photos), to raise awareness of ecological life-view	Student has at least 3 original ideas in designing and preparing visual materials (drawings, symbols, pictures, photos) to raise awareness of recycling.	Student has at least 2 original ideas in designing and preparing visual materials (drawings, symbols, pictures, photos) to raise awareness of recycling.	Student has at least one original idea in designing and preparing visual materials (drawings, symbols, pictures, photos) to raise awareness of recycling.	Student has some contribution to designing and preparing original visual materials (drawings, symbols, pictures, photos) to raise awareness of recycling.	Student has no contribution to designing and preparing original visuals materials (drawings, symbols, pictures, photos) to raise awareness of recycling.	
	Criteria	5 excellent	4 good	3 satisfactory	2 almost satisfactory	1 unsatisfactory	Score
EVALUATION	Ability to assess own progress	Student completes in a graph the number of words and phrases learned in four exercises.	Student completes in a graph the number of words and phrases learned in at least three exercises.	Student completes in a graph the number of words and phrases learned at least two exercises.	Student completes in a graph the number of words and phrases learned in at least one exercise.	Student never records the number of words and phrases learned.	
LANGUAGE	Use of language Speaking: To seek dialogue	Student responds very well orally to messages related to recycling.	Student responds well orally to messages related to recycling.	Student responds orally in a satisfactory manner to messages related to recycling.	With the teacher's or peers' help, student responds orally to messages.	Student does not respond to oral messages at all.	
	Use of language Listening: Understanding of oral directions related to the recovery, recycling, reuse	Student responds promptly to all oral directions in L2.	Student responds promptly to most oral directions in L2.	Student responds to most oral directions in L2 after they have been repeated.	Student responds to some oral directions in L2 after they have been repeated.	Student never responds to oral directions in L2.	
	Use of language Reading: Reading aloud a familiar text in L2	Student always reads familiar text in L2 correctly.	Student reads familiar text correctly in L2 most of the time.	Student reads at least three sentences correctly in L2 without help.	Student reads at least three sentences correctly with little help from teacher or peers.	Student reads fewer than three sentences correctly despite significant help from teacher or peers.	
	Use of language Writing	Student writes original sentences correctly and makes minor mistakes when using unfamiliar structures or words.	Student writes original sentences with some minor mistakes, but does not attempt to use unfamiliar structures.	Student writes sentences with mistakes in familiar structures or words, and does not attempt to use unfamiliar structures.	Student writes incomplete or incomprehensible sentences.	Student writes incomplete or incomprehensible words.	
COOPERATIVE WORK	Ability to cooperate in carrying out group tasks	Student performs very well as a group member all the time, demonstrating initiative, organization skills and continuous encouragement of all group members to engage in the activity.	Student performs well as a group member most of the time, demonstrating initiative and support for other members.	Student sometimes performs well as a group member, demonstrating some initiative and support for other members.	At least once, the student has initiative or offers support for other members.	Student does not perform well as a group member at any time.	

Fig. 2. EU CEFR CLIL Analytic Assessment Grid for Content, Language and Cooperative Work, cf. *CLIL at School in Europe*, Eurydice, 2006

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Rezultatele analizei demonstrează că standardele şi liniile directoare de asigurare a calităţii în spaţiul european al învăţământului superior, aplicate la noi, ar trebui să se concentreze pe:

- creşterea preocupării studenţilor, angajatorilor şi societăţii, în sens larg, faţă de calitatea academică;
- importanţa acordată autonomiei instituţionale, însoţită de ideea că ea atrage uriaşe responsibilităţi;
- asigurarea externă a calităţii să fie adecvată scopului propus iar plusul de responsabilitate pe care îl adaugă asupra instituţiilor să fie necesar şi adecvat atingerii obiectivelor propuse.

Datorită progresului masiv înregistrat în dezvoltarea sistemelor în ultimul deceniu, indica-torii de monitorizare s-au formulat pe sisteme externe de asigurare a calităţii, pe nivelul participării studenţilor la acest proces şi pe nivelul participării internaţionale la asigurarea calităţii. Indicatorul 4 combină elemente ce evaluează cît de cuprinzător este sistemul, gradul în care asigurarea calităţii acoperă elementele cheie (predarea, serviciile de sprijin pentru studenţi, sistemul intern de asigurare şi management al calităţii) şi dacă agenţiile sau alte organisme responsabile din sistem au fost evaluate pentru stabilirea conformităţii cu Standardele şi liniile directoare europene. Acest proces de evaluare constituie o cerinţă obligatorie atît pentru calitatea de membru plin al ENQA, cît şi pentru agenţiile din EQAR. Indicatorul e foarte dificil de atins şi reprezintă expresia progresului realizat în domeniul asigurării calităţii, în primul deceniu al implementării procesului.

Una dintre caracteristicile remarcabile ale dezvoltării sistemelor de asigurare a calităţii în Europa, pe parcursul ultimului deceniu, o constituie recunoaşterea importanţei participării efective a actorilor implicaţi la asigurarea calităţii şi în special importanţa participării studenţilor ca grup cheie al reprezentanţilor învăţământului superior. Toate documentele Bologna subliniază faptul că studen-ţii ar trebui să fie pe deplin angajaţi în îmbunătăţirea şi consolidarea învăţământului superior şi a propriilor lor experienţe de învăţare. Forma acestui tip de angajament trebuie să fie cît mai largă, implicînd studenţii în toate chestiunile de asigurare a calităţii. De aceea, indicatorul menţionat are în vedere prezenţa studenţilor în structurile de conducere ale agenţiilor naţionale de asigurare a calităţii, în echipele de analiză externă a calităţii, la pregătirea rapoartelor de auto-evaluare, în procesele de luare a deciziilor şi în procedurile de follow-up. Acestor elemente li se atribuie o pondere specifică egală, deoarece toate sînt considerate a fi modalităţi esenţiale prin care vocea studenţilor ar trebui să se facă auzită, după care se poate trece la acţiune. Rezultatele arată că e loc de mai bine: 11

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sisteme academice arată că studenţii sînt prezenţi sistematic în toate structurile de asigurare a calităţii. Aspectul cel mai puţin acoperit se referă la lipsa implicării studenţilor în procedurile de follow-up, fiind frecvent întîlnită neimplicarea lor în procesele de luare a deciziilor ce rezultă din evaluare.

Implicarea angajatorilor în sistemele de asigurare a calităţii e esenţială. Liniile directoare eu-ropene indică importanţa contribuţiei tuturor celor interesaţi iar standardele precizează că asigurarea calităţii programelor academice trebuie să includă „feedback constant din partea angajatorilor, pieţei forţei de muncă şi din partea altor organizaţii relevante“, cf. ENQA 2005, p. 17. De exemplu, Marea Britanie arată că implicarea angajatorilor depinde de orientarea instituţiei de învăţămînt superior în curs de evaluare. Autonomia instituţională primează în faţa cerinţelor angajatorilor.

În Procesul Bologna dimensiunea socială e semnificativă. Declaraţia de la Praga stimulează includerea studenţilor şi cere oportunităţi de mobilitate disponibile pentru toţi, in contextul proble-melor legate de coeziunea socială a populaţiei şcolare din învăţămîntul superior şi pe inegalităţile sociale şi de gen. S-a menţionat necesitatea de a îndepărta obstacolele generate de statutul social şi economic al studenţilor. La nivel UE există angajamente generale şi specifice de a face învăţămîntul superior accesibil tuturor; guvernele au obligaţia să-i ajute pe studenţii din grupuri sociale dezavan-tajate în accesul la educaţie. Aceştia participă şi îşi finalizează studiile la toate nivelele, iar procesul trebuie să reflecte cît mai exact diversitatea populaţiilor la nivel european.

Eurostudent şi Eurostat arată necesitatea mai multor cercetări comparative pe dimensiunea socială a învăţămîntului superior, bazate pe date recente, care să fie apoi utilizate de factorii de deci-zie. Rapoartele Eurydice spun că, deşi în multe ţări se aplică măsuri speciale de sprijin al anumitor grupuri, conform statutului socio-economic, genului, dizabilităţilor şi apartenenţei etnice, aceste mă-suri constituie foarte rar elemente centrale ale politicilor privind învăţămîntul superior.

Creşterea ratelor de participare şi de finalizare a studiilor superioare şi creşterea capacităţii absolvenţilor de a-şi găsi un loc de muncă mai bun continuă să fie o provocare în ţările UE. Limitele în evaluarea angajabilităţii şi decalajele existente între datele disponibile obstrucţionează evaluarea situaţiei curente. Se înregistrează creşterea numărului de persoane (şi a ponderii lor în totalul popu-laţiei) care obţin o diplomă de absolvire a unei instituţii de învăţămînt superior. Diversitatea situaţiei curente este confirmată de informaţiile statistice privind intrările în reţea şi ratele de absolvire. Chiar dacă majoritatea statelor raportează

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aplicarea de politici ce contribuie la creşterea nivelului de finali- zare a studiilor, doar un număr mic de ţări au adoptat strategii comprehensive la nivel naţional care abordează o gamă mai largă de factori care determina abandonul şcolar. Astfel de strategii combină iniţiative naţionale şi instituţionale cu stimulente pentru instituţii dar şi pentru studenţi.

Cu toate că noţiunea de angajabilitate e folosită pe scară largă în dezbaterile politice, există probleme în definirea indicatorilor de îmbunătăţire sau înrăutăţire a situaţiei. În cele mai multe ţări, datele statistice privind rata şomajului arată că obţinerea unei calificări de nivel terţiar îmbunătăţeşte perspectivele de angajare. In mod similar, cei cu nivel educaţional ridicat îşi găsesc primul job mai repede decît cei cu studii medii şi realizează, în medie, venituri mai mari. Sînt diferenţe între absol-venţii de învăţămînt superior: cei recenţi se confruntă cu dificultăţi de integrare pe piaţa muncii. În jumătate dintre ţările UE, ponderea şomajului absolvenţilor recenţi e cu 10 % mai ridicată, repre-zentînd o valoare de trei ori mai mare decît rata medie a absolvenţilor de facultate în urmă cu trei ani sau mai mult. În plus, aproximativ 20 % dintre absolvenţi sînt supracalificaţi pentru locurile de muncă actuale, cei mai afectaţi fiind cei din domeniul serviciilor. Ponderea a fost stabilă în 2000-2010, sugerînd că ratele de supracalificare sînt influenţate mai mult de structurile pieţei muncii şi de inovaţiile din diverse domenii, decît de creşterea numărului de studenţi. Dificultăţile ce apar în eva-luarea impactului politicilor privind forţa de muncă şi angajabilitatea constituie schimbări în statutul general al economiei şi sînt un factor ce determină disponibilitatea şi calitatea ofertelor de muncă.

Doar atunci cînd ţările raportează date privind principalele forme ale structurilor de învăţare pe tot parcursul vieţii în care sînt implicate instituţiile de învăţămînt superior devine evident faptul că există anumite diferenţe trans-naţionale. Structurile cel mai frecvent asociate cu academic life-long learning includ cursuri de învăţămînt non-formal oferite indivizilor de instituţiile de învăţămînt superior, în paralel cu programele de educaţie formală. În paralel cu demersurile educative desfăşurate în afara programului academic, o pondere semnificativă a ţărilor din SEIS se referă la programele de esenţă academică derulate în conformitate cu o serie de reglementări, altele decît cele tradiţionale, cu durată integrală. În aceste cazuri se indică programele de studiu flexibile din învăţă- mîntul superior, programele cu durată redusă, învăţămîntul deschis, la distanţă, virtual (e-learning), cursuri fără prezenţă obligatorie, cursuri serale sau care se desfăşoară la sfîrşit de săptămînă, etc. Cu toate acestea, există ţări care nu fac niciun fel de referire la astfel de structuri, chiar dacă sistemele lor educaţionale oferă studenţilor posibilitatea de a se înscrie la aceste cursuri cu statut formal, altul decît cel al

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studenţilor înmatriculaţi în programele de durată integrală; ţări ca Armenia, Vatican, Le-tonia, Moldova, România şi Slovacia nu includ programele academice cu reglementări flexibile în conceptul de învăţarea pe tot parcursul vieţii în învăţământul superior. Alte structuri academice de învăţare pe tot parcursul vieţii se găsesc în învăţământul continuu şi de orientare/perfecţionare profe-sională în calificările obţinute deja ca urmare a absolvirii unei instituţii de învăţământ superior. Alte tipuri de activităţi, în puţine state, includ structuri personalizate pentru industrie/companii şi alte categorii de parteneri externi (Germania, Ungaria, Italia, Malta, Moldova, Olanda, Slovenia, Marea Britanie), structuri pentru cursuri publice, seminarii, conferinţe, mese rotunde şi ateliere (Austria, Liechtenstein, Moldova, Slovenia, Marea Britanie), servicii de orientare/consiliere specifică (Franţa, Ucraina şi Marea Britanie), structuri de acces pentru atragerea grupurilor non-tradiţionale de stu-denţi (Portugalia şi Marea Britanie) şi posibilitatea oferită publicului larg de a utiliza diverse resurse asociate cu învăţământul superior, inclusiv bibliotecile din universităţi (Estonia şi Ucraina).

În ansamblu, învăţarea pe tot parcursul vieţii la nivel terţiar pare un concept fragmentat, un mozaic compus din diferite tipuri de structuri educaţionale în care numărul elementelor variază de la o ţară la alta. În unele state există o gamă largă de activităţi derulate în învăţământul superior apre-ciate prin prisma contribuţiei lor la învăţarea pe tot parcursul vieţii, dar în alte cazuri lista activită-ţilor legate de lifelong learning la nivel academic este relativ scurtă. Poziţia centrală a învăţării pe tot parcursul vieţii în dezbaterile politice este reflectată şi de faptul că, în peste trei sferturi dintre ţările din SEIS, ea se înscrie în misiunea recunoscută a tuturor instituţiilor academice.

Două elemente se disting ca importanţă în învăţarea pe tot parcursul vieţii în mediul aca-demic, respectiv livrarea flexibilă a programelor educaţionale şi recunoaşterea educaţiei anterioare. E relevant nivelul performanţelor atinse în diferite sisteme academice pentru atragerea studenţilor mai în vîrstă şi a celor cu tranziţie întîrziată şi participarea acestora la programele educaţionale din sistemul formal de învăţământ superior. Diferenţele trans-naţionale în înţelegerea conceptului de stu-diu pe tot parcursul vieţii în sistemul terţiar de instruire sînt dificil de surprins. Doar în puţine state documentele directoare ale învăţământului superior includ o definiţie pentru lifelong learning. Unde există, are caracter vag, ce nu permite implementarea în universităţi şi în activităţi. Decalajele trans-naţionale devin şi mai vizibile cînd se compară principalele forme de învăţare pe tot parcursul vieţii în care sînt

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implicate în general instituţiile de învăţământ superior. În timp ce, în unele ţări, studiul pe tot parcursul vieţii în învăţământul superior are game largi de activităţi, în altele, lista e limitată.

Dincolo de promovarea lifelong learning ca noţiune de sine stătătoare, s-ar putea acorda atenţie politică mai consistentă promovării unor activităţi încă nepercepute ca făcînd parte din struc-turile asimilate cu învăţarea pe tot parcursul vieţii (de exemplu, structuri educaţionale personalizate pentru mediul de afaceri sau companii şi alte categorii de parteneri externi, servicii de asistență şi consiliere pentru grupuri ţintă specifice, structuri de acces pentru atragerea altor categorii de per-soane care învaţă, nu cele tradiţionale, posibilitatea ca publicul larg să utilizeze diverse resurse de care dispun instituţiile de învăţământul superior). În ciuda diferenţelor conceptuale în înţelegerea no-ţiunii în dezbatere, în majoritatea statelor UE, lifelong learning a devenit o misiune asumată de toate facultăţile şi nu se poate realiza fără dialog competent într-o limbă de largă circulaţie.

Fluxurile de activitate în domeniu variază de la o instituţie la alta. Instituţiile universitare se specializează în anumite activităţi de lifelong learning, în timp ce alte elemente ale învăţării pe tot parcursul vieţii ramîn în afara ofertei lor de studii. Motivele sînt variate şi includ constrîngeri legale specifice, lipsa de reglementare a recunoaşterii educaţiei anterioare sau imposibilitatea furnizării unor programe formale de studiu de către facultăţi într-un context flexibilă.

Din perspectivă financiară, învăţarea pe tot parcursul vieţii în mediul academic implică di-verse surse de finanţare. Universităţile rareori dispun de bugete alocate programelor de lifelong learning. Adesea, instituţiile finanţează astfel de activităţi educaţionale din bugetele generale, com-binate cu alte mijloace financiare. Două treimi din statele UE au un statut oficial special pentru stu-dentul lifelong learning, diferit de cel al studentului în program cu durată integrală. Programele de studiu pe tot parcursul vieţii implică investiţii private consistente comparativ cu programele tradi-ţionale. Datele despre participarea educabililor la programe de studiu part-time arată că studenţii maturi preferă preponderent să aleagă tipurile de programe cu durată redusă. Livrarea programelor flexible în învăţământul superior şi învăţarea pe tot parcursul vieţii sînt două teme interconectate. La nivel trans-naţional, comparaţiile între modalităţile alternative de studiu trebuie tratate cu prudenţă.

Elementul cheie în învăţarea pe tot parcursul vieţii la facultate – recunoaşterea educaţiei anterioare – a fost urmărit printr-un indicator separat, încă din anul 2007. Principalul obiectiv a fost recunoaşterea educației anterioare, nonformale şi informale. Analiza a vizat

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două aspecte distincte: accesul la învăţământul superior şi continuarea studiilor în acest tip de educaţie. S-a cuantificat şi gradul în care recunoaşterea educaţiei anterioare a devenit o practică obişnuită la nivel universitar. Rezultatele obţinute arată că o mare parte a statelor UE sînt situate la extreme: fie dispun deja de un sistem bine implementat de recunoaştere a educaţiei anterioare, fie nici nu au iniţiat încă acţiunile necesare de lansare a activităţii în acest domeniu. În ţările unde recunoaşterea educaţiei anterioare a fost deja implementată, procesul are numeroase limite şi rareori conduce la obţinerea unei diplome ce atestă o calificare completă pentru absolventul acelei instituţii de învăţământ superior. În timp ce abordările strategice privind învăţarea pe tot parcursul vieţii în universităţi diferă de la o ţară la alta, gradul de participare a cursanţilor non-tradiţionali (studenţii mai în vîrstă şi cei în tranziţie întîrziată) la programele formale de studiu universitar e utilizat ca substitut în evaluarea performanţelor siste-melor acadenice în implementarea unei culturi a învăţării pe tot parcursul vieţii. Statele europene au profiluri foarte diferite în privinţa nivelului de participare a studenţilor non-tradiţionali la învăţămîn-tul superior. În unele state cei maturi şi/sau cei aflaţi în tranziţie întîrziată au o pondere semnifica-tivă din totalul populaţiei şcolarizate la nivel academic, în altele ponderea acestora e relativ scăzută.

Modelele de evoluţie diferă: în aproximativ jumătate dintre state, ponderea studenţilor maturi înma-triculaţi în programe formale în învăţământul superior a crescut, în timp ce, în altele, reciproc, a scăzut. Apare deci problema unei culturi a învăţării pe tot parcursul vieţii cu intensităţi diferite, mai ales in domeniile antreprenoriat, team-work şi leadership.

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L´INTERVENTION DE L´ÉTAT DANS L´ÉCONOMIE

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Abstract: Les débatsautour du rôle de l´État dans l´économie ont toujours été nombreux et de teneurs différentes selon les périodes. En effet, l´intervention de l´État a connu une intensité variable selon les époques: très important lors des trente glorieuses, le rôle de la puissance publique semble, aujourd´hui , fortement remis en cause. Toutefois, l´État demeure toujours présent dans l´économie et son action peut globalement être analysée sous deux formes. La prèmiere d´entre elles se traduit par une intervention visant à agir les structures et le fonctionnement des marchés.

L´État, en tant que producteur ou régulateur à travers les règlements qu´il impose, agit directement sur les mécanismes de marché.

Mais l´action de l´État prend, également, une deuxième forme avec pour objectif de faire face, cette fois, aux conséquences des dysfonctionnements générés par ces mécanismes de marché: il intervient par différentes mesures pour lutter contre les inégalités et combattre les déséquilibres.

L´intervention publique contribue-t-elle au bien être collectif?

De nombreuses définitions du terme État existent:

forme de gouvernement d´une nation;

administration suprême d´un pays;

ensemble des citoyens considéré comme un corps politique;

étendue des pays soumis à une seule souveraineté politique, etc.

Toutes ces définitions renvoient à la notion de pays ou de nation et plus généralement à l´idée de colectivité. La nécessité d´une organisation colective dans certains domaines, comme la justice et l´armée par exemple, s´est rapidement imposée pour donner naissance dès le XV-e siècle à la forme moderne de l´État.

L´intervention étatique, en matière économique, pose en revanche de nombreuses questions. Nombreux sont, en effet, les courants de pensée, qui la jugent, en grande partie ou totalement, inutile. La *„main invisible*" d´Adam Smith (1723–1790) ou l´individualisme mèthodologique

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des néo-classiques prèsentent le fonctionnement de l´économie comme la résultante des comportements individuels, voire égoistes, des acteurs économiques. L´intervention de l´État dans l´économie n´est donc pas une évidence en soi. Elle le deviendra à partir du moment où les économies connîtront des déséquilibres importants. Ainsi, l´action publique s´est fortement renforcée à la suite de la crise des années ’30.

Mais, au-delà de la nécessité de l´intervention de l´État, se pose également la question de la pertinence des actions menées par les pouvoirs publics. Quelle garantie avons-nous, notamment, de la capacité de l´État à prendre les décisions qui assurent efficacement le bien-être collectif sur un plan économique?

De plus, si l´État relève d´une dimension collective, les décisions prises en son nom conservent un caractère individel dans le sens où elles émanent des responsables politiques ou de hauts fonctionnaires. On peut alors s´interroger pour savoir si l´intérêt individuel des décideurs et l´intérêt collectif de la nation sont toujours convergents.

L´efficacité l´État, en matière économique, ne dépend-elle pas de la forme et de l´intensité de ses interventions?

En 1959, Richard Musgrave définissait les trois fonctions principales assurées par l´État:

la fonction d´affectation (production ou financement de la production de biens et services);

la fonction de redistribution (transferts entre agents économiques);

la fonction de régulation (recherche de plein emploi, de croissance, de compétitivité extérieure et de maîtrise de l´inflation).

À la question de l´efficacité de l´action publique, il semble donc difficile d´apporter une réponse trop globale. Les trois fonctions sont, en effet, de nature différente, en premier lieu, par les finalités poursuivies. Selon les cas, il s´agira de se substituer ou d´encadrer les mécanismes de marché ou bien encore d´en combattre les dysfonctionnements. L´analyse du bien-fondé de ces différentes fonctions implique d´étudier, au préalable, la pertinence des objectifs visés. Il sera possible, alors, de s´interroger sur la capacité supérieure de l´État à éliminer déséquilibres et dysfonctionnements.

Enfin, l´efficacité de l´intervention de l´État se pose, également, en termes de dosage: des actions trop lourdes peuvent entrîner des effets plus déstabilisants encore, alors que des opérations de faible ampleur ne contribueraient pas à réduire les déséquilibres.

Pendant longtemps, l´État est intervenu de façon massive dans l´économie. Son rôle était alors multiple, État producteur, État protecteur, État régulateur. Progressivement, à partir des années ’70, l´action des pouvoirs publics a connu un net recul et s´est transformée. La

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libéralisation des marchés, y compris à l´échelle mondiale, ne permet plus à l´État de diriger directement l´activité économique. Il s´agit dorénavant de réguler les marchés en veillant au respect, par les différents acteurs, des règles du jeu concurrentiel.

De même, devant l´ampleur des déficits budgétaires et des dettes publiques, l´État n´a plus la possibilité d´agir directement sur la conjoncture économique en augmentant les dépenses publiques. Les directives européennes rendent, de plus, pratiquement impossibles de telles pratiques. D´une façon plus générale, l´Union européenne pose le problème de la souveraineté et donc du rôle de l´État.

Les centres de décisions, en matière budgétaire et monétaire, mais également dans les domaines social et fiscal, se situent à des niveaux différents (niveau européen et national, État et Banque centrale européene), rendant indispensable leur coordination. C´est toutefois dans ce cadre plus complexe, que doivent se construire les politiques économiques, les États n´ayant bien évidemment pas abandonné totalement leur volonté d´influer sur le cours des événements économiques.

La justification de l´État producteur

Pendant longtemps, sous l´influence de la pensée classique, le rôle de l´État devait se limiter à ce que l´on appelle les fonctions régaliennes, en d´autres termes organiser et assurer les fonctions de justice, de police et d´armée. Cependant, l´idée que l´État puisse intervenir dans l´économie en se substituant aux mécanismes de marché s´est progressivement développée, pour s´imposer dans la deuxième moitié du XX-e siècle.

L´intervention de l´État dans l´économie, en tant que producteur, se justifie généralement pour trois raisons essentielles. La première cause de l´action des pouvoirs publics réside dans l´existence des services collectifs, services consommés en même temps et dans leur totalité par un ensemble d´utilisateurs. On distinguera les services collectifs privés pour lesquels il est facile de contraindre les utilisateurs à payer (par exemple, une place de cinéma) des services collectifs publics pour lesquels il est impossible ou trop coûteux de faire le prix au consommateur (par exemple,la défense nationale).

Ces services seront pris en charge par l´État qui, par les prélèvements obligatoires, a la possibilité d´assurer leur financement. L´existence de *„biens collectifs purs"* a été mise en évidence par Paul Anthony Samuelson (1915-2009) qui montre que ces biens ne peuvent faire l´object d´une appropriation individuelle (l´éclairage public par exemple).

L´intervention de l´État s´explique, également, par l´existence d´effets externes ou d´externalités. Les externalités apparaissent à chaque fois que les décisions d´un agent

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économique ont des effets non prévus ou non désirés sur d´autres agents. On donne souvent comme exemple les dépense de formation qui profitent à chacun mais qui ont des effets sur la collectivité du fait des conséquences en termes de gains de productivité qu´elles induisent.

Ces externalités faussent les mécanisme d´allocation des ressources, puisque chaque agent dans son calcul économique n´intègre que son intérêt personnel et ne prend pas en compte le bien être collectif. Ainsi, les effets externes négatifs comme la pollution sont souvent très importants car l´entreprise ne tient pas compte des nuisances sur l´environnement qu´entraîne son processus de production.

Enfin, le poids économique de certains agents privés nécessite l´intervention de l´État. Le développement de certaines activités conduit spontanément à des situations de monopole ou de quasi monopole. C´est le cas dans les secteurs où le montant du financement des infrastructures est lourd (on parle souvent de réseaux: électricité, transport, telecommunication etc.).

Dans ce cas, sur des périodes très longues, les rendements sont croissants: doubler la production ne revient pas à doubler les coûts en raison de charges fixes importantes. Pour faire face à ces coûts fixes, la taille est un critère essentiel . En conséquence les entreprises fusionnent ou disparaissent. Ce processus aboutit progressivement à un monopole naturel qui opère sur des biens et services jugés très souvent comme indispensables au bien-être individuel et collectif. Ces monopoles ont, alors, un pouvoir énorme dont ils peuvent abuser au détriment de la collectivité (ressources utilisées de façon non optimale, aucune contrainte sur les prix, abandon de certaines exploitations jugées non rentables.

L´État dirigiste

L´État producteur intervient à travers les entreprises publiques. Ces entreprises sont contrôlées directement ou indirectement par les administrations publiques (État, collectivités publiques). Le secteur public se développe par des opérations de nationalisations qui consistent à transférer juridiquement à collectivité la propriété d´une entreprise ou d´un groupe d´entreprises.

Les interventions de l´État face aux dysfonctionnements des marchés

Tout au long de l´histoire économique, les pays ont connu des déséquilibres d´ampleur plus ou moins grande. Ces déséquilibres macroéconomiques sont le chômage, l´inflation ou bien encore des déficits, voire des excédents, importants du commerce extérieur. La crise des années ’30 a montré que la régulation par les marchés était insuffisante et que, par voie de

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conséquence, l´intervention de l´État demeurait indispensable. John Maynard Keynes(1883 – 1946), sur un plan théorique, va justifier cette intervention.

Pour Keynes, l´équilibre économique se réalise toujours *ex post*, c´est–à-dire une fois que toutes les opérations effectuées par les agents sont terminées (consommation, investissement). Il peut y avoir, bien évidemment, des différences entre ce que les agents ont anticipé et ce qui se produit véritablement (plus de production mise en œuvre que de demande réelle). Dans ce cas, il y aura toujours un revenu d´équilibre, les agents étant contraints de réajuster leur revenu, soit en épargnant, soit en ajustant leurs stocks, c´est-à-dire leurs investissements. Mais ce revenu d´équilibre n´a pratiquement aucune chance de correspondre au revenu de plein emploi qui se définit comme le revenu le plus élevé que puisse obtenir une économique sans inflation et pour lequel toutes les ressources sont utilisées.

En conséquence, si le revenu d´équilibre est inférieur au revenu de plein emploi, on constatera du chômage et une pression à la basse des prix, puisque le niveau de la demande (en d´autres termes le niveau d´activité) sera inférieur à celui qui avait anticipé été anticipé. Inversement, si le revenu d´équilibre est supérieur au revenu de plein emploi, il n´y aura plus de chômage mais les ajustements se réaliseront par une hausse des prix, en d´autres termes de l´inflation.

D´autre part, une trop grande flexibilité dans la fixation des salaries afin de favoriser les mécanismes de marché peut être à l´origine d´inégalités, voire de pauvreté, en n´assurant pas à certains agents un revenu suffisant pour satisfaire leur besoins les plus élémentaires. De plus, les marchés ne prennent pas en compte un certain nombre de risques sociaux.

Les mécanismes économiques découlant de décisions strictement individuelles n´intègrent pas des besoins qui s´éxpriment à l´échelle de la nation. Ainsi, le renouvellement démographique indispensable pour maintenir l´équilibre d´un pays et sa pérennité, ne peut être obtenu par le simple jeu concurrentiel. De même, la formation et l´éducation sont sources d´externalités positives.

L´insuffisance des revenus ou leur répartition inégalitaire, l´existence de risques et de besoins sociaux non pris en compte par les marchés, sont autant de raisons qui justifient l´intervention des pouvoirs publics et l´apparition d´un État protecteur.

Pour les économistes classiques en général, l´État doit se contenter de remplir ses fonctions régaliennes (police, justice, armée), même si l´on trouve déjà chez Adam Smith l´idée que l´État doit prendre en main les activités utiles à la nation, mais délaisses par le marché. Enfin, Ricardo et Smith, notamment, sont des partisans du libre échange.

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DEFENDANT THROUGH CRIMINAL PROCEDURE REGULATIONS

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Summary: According to the New Criminal Procedure Code when the document instituting fulfills the conditions of law and determines that no cases which preclude criminal proceedings, the prosecuting authority starts prosecution regarding the offense.When from data and evidence available in a case arise reasonable indications that a particular person has committed the offense for which prosecution has begun, the prosecutor decides the prosecution continues against that person, who becomes the suspect. From the moment it is set in motion the criminal action against the suspect, he becomes the defendant and party in the trial, the passive subject of the exercise of criminal. If against the defendant a final sentence has been decided, he becomes convict, no longer a party to the proceedings, but being a subject of criminal judgement of final conviction implementing process. Status of suspect gives him the role of subject of criminal proceedings having certain procedural rights and obligations, while the quality of defendant grants the role of party to the proceedings, passive subject of the exercise of criminal action which broadens the scope of criminal procedural rights and obligations. The defendant has, during the trial, all the procedural rights granted to him by law in order to achieve his rights of defense.
Keywords: suspect, defendant, convict, rights, obligations.

Introducere. În procesul penal persoana care a săvârşit o infracţiune şi este chemată să răspundă penal în faţa autorităţilor publice judiciare poartă denumiri diferite în raport de stadiul de desfăşurare a procesului penal. Legea foloseşte denumirea de făptuitor atunci când se referă la persoana presupusă a fi săvârşit o infracţiune dar faţă de care nu s-a început încă activitatea judiciară. Conform Noului Cod de procedură penală când actul de sesizare îndeplineşte condiţiile prevăzute de lege şi se constată că nu există vreunul dintre cazurile care împiedică exercitarea acţiunii penale, organul de urmărire penală dispune începerea urmăririi penale cu privire la faptă.

Începerea urmăririi penale se dispune prin ordonanţă care cuprinde, după caz, menţiuni privind:

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- denumirea parchetului şi data emiterii;
- numele, prenumele şi calitatea celui care o întocmeşte;
- fapta care face obiectul urmăririi penale, încadrarea juridică a acesteia şi, după caz, datele privitoare la persoana suspectului sau inculpatului;
- semnătura celui care a întocmit-o.

Când din datele şi probele existente în cauză rezultă indicii rezonabile că o anumită persoană a săvârşit fapta pentru care s-a început urmărirea penală, procurorul dispune ca urmărirea penală să se efectueze în continuare faţă de aceasta, care dobândeşte calitatea de suspect.

Faţă de persoanele pentru care urmărirea penală este condiţionată de obţinerea unei autorizaţii prealabile sau de îndeplinirea unei alte condiţii prealabile, efectuarea urmăririi penale se poate dispune numai după obţinerea autorizaţiei ori după îndeplinirea condiţiei.

Pentru realizarea obiectului urmăririi penale, organele de cercetare penală au obligaţia ca, după sesizare, să caute şi să strângă datele ori informaţiile cu privire la existenţa infracţiunilor şi identificarea persoanelor care au săvârşit infracţiuni, să ia măsuri pentru limitarea consecinţelor acestora, să strângă şi să administreze probele cu respectarea prevederilor legale.

Organele de cercetare penală au obligaţia de a efectua actele de cercetare care nu suferă amânare, chiar dacă privesc o cauză pentru care nu au competenţa de a efectua urmărirea penală. După începerea urmăririi penale, organele de cercetare penală strâng şi administrează probele, atât în favoarea, cât şi în defavoarea suspectului ori inculpatului.

Organul de urmărire penală se pronunţă, prin ordonanţă motivată, în condiţiile legii, asupra cererilor de administrare a probelor, în limita competenţei sale. Când organul de cercetare penală apreciază că este necesară administrarea unor mijloace de probă sau folosirea unor metode speciale de supraveghere, care pot fi autorizate ori dispuse, în faza de urmărire penală, numai de procuror sau, după caz, de judecătorul de drepturi şi libertăţi, formulează propuneri motivate, care trebuie să cuprindă datele şi informaţiile care sunt obligatorii în cadrul acelei proceduri. Referatul este trimis procurorului împreună cu dosarul cauzei.

Secretul bancar şi cel profesional, cu excepţia secretului profesional al avocatului, nu sunt opozabile procurorului, după începerea urmăririi penale.

Organul de urmărire penală este obligat să strângă probele necesare pentru identificarea bunurilor şi valorilor supuse confiscării speciale şi confiscării extinse.

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Persoanei care a dobândit calitatea de suspect i se aduc la cunoştinţă, înainte de prima sa audiere, această calitate, fapta pentru care este suspectată, încadrarea juridică a acesteia, drepturile procesuale legale, încheindu-se în acest sens un proces-verbal.

Din momentul în care s-a pus în mişcare acţiunea penală împotriva suspectului, acesta devine inculpat şi are calitatea de parte in proces, subiect pasiv al exerciţiului acţiunii penale.

Conform Noului Cod de procedură penală acţiunea penală se pune în mişcare de procuror, prin ordonanţă, în cursul urmăririi penale, când acesta constată că există probe din care rezultă că o persoană a săvârşit o infracţiune şi nu există vreunul dintre cazurile de împiedicare.

Punerea în mişcare a acţiunii penale este comunicată inculpatului de către organul de urmărire penală care îl cheamă pentru a-l audia. La cerere, inculpatului i se eliberează o copie a ordonanţei prin care a fost dispusă măsura. Atunci când consideră necesar, procurorul poate proceda personal la audierea inculpatului şi la comunicarea prevăzută de lege.

Organul de urmărire penală continuă urmărirea şi fără a-l audia pe inculpat atunci când acesta lipseşte nejustificat, se sustrage sau este dispărut.

În cazul infracţiunii flagrante, orice persoană are dreptul să îl prindă pe făptuitor. Dacă făptuitorul a fost prins în condiţiile de mai sus, persoana care l-a reţinut trebuie să îl predea de îndată, împreună cu corpurile delicte, precum şi cu obiectele şi înscrisurile ridicate, organelor de urmărire penală, care întocmesc un proces-verbal.

În cazul în care, după începerea urmăririi penale, organul de urmărire penală constată fapte noi, date cu privire la participarea unor alte persoane sau împrejurări care pot duce la schimbarea încadrării juridice a faptei, dispune extinderea urmăririi penale ori schimbarea încadrării juridice.

Organul de cercetare penală care a dispus extinderea urmăririi penale sau schimbarea încadrării juridice este obligat să îl informeze pe procuror cu privire la măsura dispusă, propunând, după caz, punerea în mişcare a acţiunii penale.

Organul judiciar care a dispus extinderea urmăririi penale sau schimbarea încadrării juridice este obligat să îl informeze pe suspect despre faptele noi cu privire la care s-a dispus extinderea. În cazul în care extinderea urmăririi penale s-a dispus cu privire la mai multe persoane, organul de urmărire penală are obligaţia să le aducă la cunoștință calitatea de suspect.

Procurorul sesizat de organul de cercetare în urma extinderii urmăririi penale sau din oficiu poate dispune extinderea acţiunii penale cu privire la aspectele noi.

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Dacă împotriva inculpatului s-a pronunţat o hotărâre definitivă de condamnare, acesta capătă denumirea de condamnat, nemaifiind parte în proces, dar având calitatea de subiect al raportului procesual de executare hotărârii penale definitive de condamnare. Dintre calităţile procesuale de suspect, inculpat şi condamnat, cea mai importantă este cea de inculpat, întrucât aceasta îi atribuie calitatea de parte în proces, având plenitudinea drepturilor procesuale ale părţilor.

Inculpatul, ca subiect pasiv al acţiunii penale, este cea mai importată parte în proces, întreaga activitate judiciară desfăşurându-se în legătură cu tragerea sa la răspundere penală şi civilă. Dacă există cauze penale la care nu participă partea vătămată, partea civilă şi partea responsabilă civilmente, nu poate exista judecată penală şi condamnare fără inculpat. De aceea, inculpatul este partea principală şi indispensabilă aprocesului penal.

Recunoaşterea situaţiei de parte în proces a inculpatului constituie o expresie a umanismului dreptului procesual penal contemporan, deoarece se dă posibilitatea celui împotriva căruia se exercită acţiunea penală să aibă o contribuţie activă la stabilirea şi întinderea răspunderii penale. De asemenea, atunci când, din eroare, este pusă sub inculpare o persoană nevinovată, este firesc ca aceasta să aibă posibilităţi maxime de a face să triumfe adevărul cu privire la nevinovăţia sa.

Odată ce orice persoană acuzată de săvârşirea unei infracţiuni este considerată nevinovată până la dovedirea vinovăţiei sale prin probe legal administrate, nu se poate admite decât situarea acestei persoane pe o poziţie procesuală egală cu a celorlalte părţi, a procurorului care acuză, acordându-i-se cel puţin aceleaşi şanse în duelul judiciar ce se desfăşoară în faţa instanţei de judecată. De aceea, legea a prevăzut pentru inculpat, ca parte in proces, cele mai numeroase drepturi procesuale, înarmată cu puternice garanţii juridice, de exemplu, cazurile de asistenţă juridică obligatorie pentru inculpat sunt mai numeroase decât pentru celelalte părţii şi sunt prevăzute sub sancţiunea nulităţii absolute.

Calitatea de inculpat o poate avea o persoană fizică sau juridică.

Persoana fizică sau juridică pentru a deveni inculpat trebuie să fie determinată, căci numai unei persoane cunoscute i se poate aplica o pedeapsă.

Când nu se cunoaşte cine este infractorul, se desfăşoară activitatea de urmărire penală pentru identificarea sa.

Determinarea persoanei inculpatului constă în indicarea numelui, prenume lui şi a celorlalte date ce o deosebesc de orice altă persoană; cu toate acestea, atunci când persoana care a

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săvârşit infracţiunea este cunoscută, dar îşi ascunde identitatea reală, prin nume false sau porecle, ea poate deveni inculpat căci identitatea sa fizică este determinată.

Inculpat poate fi persoana fizică sau juridică ce a comis o infracţiune în formă consumată sau de tentativă, în calitate de autor, instigator ori complice.

Acţiunea penală, având ca obiect tragerea la răspundere penală a persoanelor care au săvârşit infracţiuni, nu poate fi subiect pasiv al acestei acţiuni decât cel care, în sensul legii penale, a comis o infracţiune. Totuşi, poate deveni inculpat şi o persoană care nu este subiectul activ al infracţiunii, nu este deci infractor, ci o persoană cu privire la care există date că a săvârşit infracţiunea, fără ca aceste date să corespundă realităţii.

Soluţia de achitare a inculpatului pe temeiul că nu el a săvârşit infracţiunea, prevăzută de lege, constituie o dovadă a unei astfel de posibilităţi, pe care nu de puţine ori o întâlnim în practica instanţelor judecătoreşti. Dacă regula este coincidenţa dintre infractor şi inculpat, prin excepţie se poate produce şi eroarea judiciară a inculpării unei persoane nevinovate, dar împotriva căreia există date probatorii care o incriminează. Având în vedere posibilitatea unei asemenea erori, procesul penal modern a instituit mijloacele procesuale necesare pentru infirmarea vinovăţiei aparente împotriva inculpatului.

Inculpat poate fi persoana fizică determinată care răspunde din punct de vedere penal; persoanele cărora legea le recunoaşte imunitatea penală - Preşedintele României, diplomaţii din alte ţări şi persoanele asimilate lor - nu pot fi inculpate, fiindcă legea penală nu li se aplică, de asemenea, minorii care, la data săvârşirii faptei, nu răspund din punct de vedere penal, având sub 14 ani, nu pot fi inculpaţi decât printr-o gravă eroare judiciară.

Pentru a fi inculpat se cere capacitatea deplină de exerciţiu a drepturilor, astfel că un minor având 14 ani împliniţi şi discernământ poate fi inculpat şi judecat fiind necesară asistarea de persoanele prevăzute de legea civilă.

Întrucât drepturile şi obligaţiile procesuale ale inculpatului nu sunt uniforme pe întreaga desfăşurare a procesului penal, examinarea acestora se face diferenţiat pe faze procesuale.

Drepturile şi îndatoririle procesuale ale suspectului şi inculpatului. În faza de urmărire penală, persoana cu privire la care se efectuează urmărirea penală poate avea, până la finalizarea urmăririi, numai calitatea de suspect sau poate dobândi, în această fază procesuală şi calitatea de inculpat dacă procurorul dispune, prin ordonanţă punerea în mişcare a acţiunii penale împotriva sa.

Calitatea de suspect îi dă acestuia poziţia de subiect al procesului penal având anumite drepturi şi obligaţii procesuale, în timp ce calitatea de inculpat conferă poziţia de parte în

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proces, de subiect pasiv al exerciţiului acţiunii penale care lărgeşte sfera drepturilor şi obligaţiilor procesual penale.

Suspectul, fiind un posibil subiect pasiv al exerciţiului acţiunii penale, iar inculpatul fiind efectiv un astfel de subiect pasiv supus deci unei activităţi procesuale de tragere la răspundere penală este necesar ca legea să-i recunoască drepturi care să infirme o acuzare neîntemeiată sau să aducă la nivelul realităţii o acuzare în mod eronat agravată. Totalitatea acestor drepturi procesuale formează dreptul la apărare a suspectului sau inculpatului.

Întrucât multe din drepturile procesuale sunt comune suspectului şi inculpatului, examinarea lor se face pe cât posibil împreună.

Datorită caracteristicilor de desfăşurare, a urmăririi penale, mijloacele procesuale pe care le poate folosi suspectul sau inculpatul în apărarea sa sunt: formularea de cereri, prezentarea de memorii şi obiecţii şi, cu titlu mai restrâns, participarea la efectuarea actelor de urmărire penală şi atacarea actelor considerate nelegale.

Prin cereri, suspectul sau inculpatul poate solicita organelor de urmărire penală să administreze probele pe care le consideră necesare (audierea unor martori, efectuarea de constatări medico-legale şi tehnico-ştiinţifice, efectuarea de expertize),poate obţine imparţialitatea celui ce efectuează urmărirea prin cererea de recuzare, de trecere a cauzei la alt organde urmărire, să ceară înlocuirea, revocarea sau încetarea măsurilor procesuale luate împotriva sa, să se continue procesul penal în caz de amnistie, prescripţie sau retragere a plângerii prealabile, să ceară clasarea sau încetarea urmăririi în cazurile prevăzute de lege etc.

Prin memorii şi obiecţii, suspectul sau inculpatul explică apărările pe care şi le face, argumentând nevinovăţia sa ori măsura în care se consideră vinovat, justifică soluţia pe care a propune.

Cererile şi memoriile pot fi prezentate fără nici o restricţie în tot cursul urmăririi penale şi se adresează organului care efectuează urmărirea penală sau procurorului care o supraveghează.

Participarea suspectului sau inculpatului la efectuarea actelor de urmărire penală este mai restrânsă decât participarea inculpatului la judecată şi este justificată de caracterul operativ şi, uneori, secret al unor acte de urmărire. Într-adevăr, în timp ce toate actele de judecată se efectuează în şedinţa de judecată, unde participarea inculpatului este asigurată, actele de urmărire se efectuează în momentul necesar şi la locul potrivit, în tot cursul urmăririi penale, ceea ce creează greutăţi în asigurarea prezenţei suspectului sau inculpatului la efectuarea lor.

Codul de procedură penală prevede faptul că suspectul sau inculpatul are dreptul să participe la efectuarea percheziţiei, a cercetării la faţa locului şi la reconstituire, la autopsii. Fiind un

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drept procesual, organul de urmărire penală nu are dreptul să interzică suspectului sau inculpatului participarea la aceste acte, dar dacă acesta nu se prezintă la locul şi data anunţată, actul de urmărire se îndeplinește şi în lipsa acestuia, dar în prezenţa unui reprezentant sau avocatului său.

La efectuarea altor acte de urmărire participarea suspectului sau inculpatului esteposibilă dar numai cu încuviinţarea organului de urmărirepenală. Aşadar, nu se recunoştea un drept ci doar a vocaţie care, în practică, nu estetranspusă aproape niciodată în executare. În tot cursul urmăririi penale suspectul sau inculpatul are dreptul să fie asistat de avocat, iar avocatul are dreptul să asiste la efectuarea oricărui act de urmărire penală, ceea ce instituie contradictorialitatea în efectuarea acestor acte.

Lipsa avocatului nu împiedică efectuarea actului de urmărire, dacă există dovada că avocatul a fost încunoştinţat de data şi ora efectuării actului. Aşadar, în lipsa unui avocat ales, actul de urmărire va putea fi efectuat atunci când condiţiile de mai sus sunt îndeplinite, menţinându-se astfel contradictorialitatea la efectuarea unor acte de urmărire penală.

Sunt însă acte de urmărire penală la care participarea personală a suspectului sau inculpatului este necesară, fără prezenţa sa actul neputând fi efectuat. Astfel, audierea suspectului sau inculpatului, ori confruntarea sa cu alte persoane, nu se poate efectua decât în prezenţa acestuia, de asemenea, materialul de urmărire penală trebuie prezentat personal suspectului sau inculpatului, cu care ocazie acesta urmând să-şi precizeze apărările pe care le face sau să prezinte noi declaraţii. Numai atunci când prezenţa suspectului sau inculpatului nu poate fi asigurată ca urmare a culpei sale (este dispărut, se sustrage), actul de urmărire penală respectiv nu mai are loc.

Atacarea, prin plângere a actelor de urmărire penală pe care le consideră nelegale şi netemeinice constituie un mijloc important pe care îl are suspectul sau inculpatul de a-şi apăra drepturile şi interesele sale legitime.

Plângerea se adresează organului de urmărire penală care a efectuat actul, dar se rezolvă de către procurorul care supraveghează activitatea de urmărire penală.

Inculpatului i se recunosc şi alte drepturi procesuale. Astfel, în cazul în care procurorul a luat împotriva sa măsura arestării preventive, inculpatul se poate plânge instanţei de judecată, care are obligaţia să se pronunţe de îndată, prin hotărâre motivată.

Inculpatului i se recunoaşte dreptul de a cunoaşte acuzarea pentru care s-a pus în mişcare acţiunea penală şi de a i se da explicaţii cu privire la drepturile şi obligaţiile procesuale pe care le are, de a i se aduce la cunoştinţă întotdeauna materialul de urmărire penală, înainte de

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a fi trimis în judecată, iar în cazurile prevăzute de lege devine obligatorie asistarea de către avocat, sub sancţiunea nulităţii absolute.

Suspectul sau inculpatul are şi obligaţii procesuale, printre care cele mai importante sunt: să se prezinte personal la citarea organelor de urmărire, sub sancţiunea efectuării actelor de urmărire în lipsa sa, să se supună măsurilor preventive, măsurilor asigurătorii, măsurilor procedurale de aducere, percheziţiei, examinării corporala.

Din ansamblul drepturilor şi îndatoririlor procesuale ale suspectului sau inculpatului în cursul urmăririi penale rezultă că el se apără împotriva unei activităţi publice ce se îndreaptă împotriva sa, că este deci subiect pasiv al exerciţiului acţiunii penale, dar investit cu un puternic drept la apărare, în raport cu procurorul, care efectuează sau supraveghează urmărirea penală, suspectul sau inculpatul se află subordonat procesual acestuia, căci procurorul are dreptul de decizie asupra punerii în mişcare a acţiunii penale şi a trimiterii în judecată, precum şi asupra tuturor cererilor pe care i le-ar adresa acesta. În condiţiile unui stat de drept, deciziile procurorului, pot fi atacate de către suspect sau inculpat.

Drepturile şi îndatoririle procesuale ale inculpatului în faza de judecată. În cursul judecăţii, împotriva inculpatului se exercită acţiunea penală, care are de obiect dovedirea acuzării şi susţinerea vinovăţiei inculpatului pentru a i se aplica sancţiunile prevăzute de legea penală. Ca urmare, inculpatului, ca subiect pasiv al exerciţiului acţiunii penale, trebuie să i se asigure o astfel de poziţie procesuală încât să dispună de plenitudinea drepturilor prin care poate infirma o acuzare neîntemeiată sau atenua o acuzare eronat mai gravă.

Întrucât însă cel ce s-a făcut vinovat de săvârşirea unei infracţiuni trebuie să fie condamnat potrivit legii penale, este necesar ca acestuia să i se impună şi îndatoriri procesuale, care să permită instanţei să desfăşoare în bune condiţii judecata şi să pronunţe o hotărâre conformă legii şi adevărului.

În vederea realizării scopului de mai sus, judecata este aşezată pe principiile publicităţii, contradictorialităţii şi oralităţii, ceea ce implică egalitatea de mijloace procesuale între cel ce acuză şi cel ce se apără.

Disputa prin mijloace egale între Ministerul Public şi partea vătămată, pe de o parte, şi inculpat, pe de altă parte, creează cele mai bune condiţii pentru instanţa de judecată să cunoască realitatea faptelor, probele şi argumentele aduse in susţinerea şi combaterea acuzării, astfel ca hotărârea pe care o pronunţă să fie legală şi temeinică. Ca şi Ministerul Public, în cursul judecăţii inculpatul se află de aceea, subordonat procesual numai instanţei de judecată,

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aceasta pronunţându-se asupra tuturor cererilor şi concluziilor formulate atât de acuzare - Ministerul Public - cât şi de apărare - inculpatul.

Inculpatul se bucură, în cursul judecăţii, de toate drepturile procesuale pe care i le acordă legea în vederea realizării dreptului său la apărare.

Principalul mijloc de apărare constă în participarea inculpatului la desfăşurarea şedinţei de judecată, alături de Ministerul Public şi celelalte părţi din proces, cu care ocazie îşi poate formula, dovedi şi argumenta toate apărările în legătură cu acuzarea ce i se aduce.

Participarea inculpatului la desfăşurarea judecăţii este considerată esenţială pentru justa soluţionare a cauzei, raţiune pentru care sunt instituite multiple garanţii eficiente. Astfel, inculpatul este chemat la judecată prin citaţie, neîndeplinirea procedurii de citare împiedicând desfăşurarea judecăţii, iar dacă este deţinut, chiar şi în altă cauză, trebuie adus la judecată. Dacă inculpatul este deţinut sau minor instanţa nu poate proceda la judecată în absenţa sa sub sancţiunea nulităţii absolute cu excepţia cazului în care se dovedeşte că minorul se sustrage de la judecată. Dacă inculpatul este împiedicat să se prezinte la judecată datorită unei împrejurări temeinice de împiedicare, instanţa este datoare să amâne judecata până ce acesta se poate prezenta.

Participarea inculpatului la judecată fiind un drept procesual, afară de cazurile arătate anterior, când este o obligaţie procesuală, lipsa nemotivată a inculpatului nu împiedică instanţa să procedeze la judecarea cauzei, considerându-se că acesta doreşte să fie judecat în absenţa sa. În acest mod, este înlăturată orice încercare a inculpatului de a paraliza desfăşurarea judecăţii prin sustragerea lui de la şedinţa de judecată.

În practică s-a constatat că neprezentarea inculpatului la şedinţa de judecată se datorează, în multe cazuri, unor motive întemeiate de împiedicare, dar care nu au putut ajunge la cunoştinţa instanţei în timp util pentru a se amâna judecata. Ca remediu pentru asemenea situaţii s-a propus, având în vedere importanţa participării inculpatului la judecată, de a se institui, ca regulă, participarea obligatorie a inculpatului la şedinţa de judecată în primă instanţă, excepţia formând-o cazurile când se dovedeşte că inculpatul se sustrage de la judecată sau se află în străinătate şi nu poate fi extrădat.

Pentru ca participarea inculpatului la judecată să fie eficientă în realizarea apărării, legea prevede pentru acesta numeroase drepturi procesuale, dintre care semnalăm pe cele mai importante: să cunoască dosarul cauzei din primul moment al judecăţii şi în tot cursul desfăşurării ei, iar dacă este deţinut să i se comunice o copie după actul de sesizare a instanţei, să dea explicaţii cu privire la acuzarea ce i se aduce; să ia parte prin întrebări, la ascultarea

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celorlalţi inculpaţi, a părţilor, a martorilor, să ceară administrarea de probe noi, să formuleze oral şi în scris cereri cu privire la orice chestiune care îl interesează şi să ridice excepţii (de necompetenţă, de nulitatea unor acte procesuale), să pună concluzii cu privire la orice chestiune adusă în discuţia instanţei, să aibă ultimul cuvânt asupra fondului cauzei, de asemenea, în cazul în care este nemulţumit de hotărârea pronunţată, poate folosi căile de atac ordinare şi, după rămânerea definitivă a hotărârii, pe cele extraordinare.

În tot cursul judecăţii, inculpatul poate fi asistat de către avocat, iar în anumite cazuri, mai numeroase decât în cursul urmăririi penale, asistenţa juridică a inculpatului este obligatorie.

Nerespectarea unora din drepturile procesuale ale inculpatului este sancţionată cu nulitate absolută a hotărâri pronunţate (judecarea în lipsă atunci când prezenţa sa este obligatorie, lipsa avocatului în cazurile când legea prevede obligativitatea asistenţei juridice), pentru încălcarea altor drepturi procesuale operează numai o nulitate relativă, aceasta intervenind atunci când s-a produs o vătămare ce nu poate fi înlăturată altfel.

Inculpatul are, în cursul judecăţii, şi îndatoriri procesuale: să se prezinte personal la toate termenele de judecată, să se conformeze ordinii şi solemnităţii şedinţei de judecată, să suporte măsurile procesuale, precum şi măsurile de aducere silită, percheziţia corporală şi domiciliară, îndepărtarea din sala de şedinţă în caz de atitudine turbulentă, de asemenea, drepturile procesuale trebuie exercitate cu bună credinţă şi potrivit dispoziţiilor legale, altfel actele îndeplinite vor fi anulate sau nu vor fi luate în considerare.

Îndatoririle şi drepturile procesuale ale condamnatului. După rămânerea definitivă a hotărârii de condamnare, acţiunea penală fiind stinsă prin soluţionarea ei, calitatea inculpatului de parte în proces încetează şi acesta capătă calitatea de condamnat penal, cu îndatoriri şi drepturi procesuale.

În legătură cu executarea condamnării penale ce i s-a aplicat, în primul rând, condamnatul are îndatorirea de a plăti amenda la care a fost obligat, de a executa pedeapsa închisorii prin prezentarea la locul de executare sau de a se supune arestării în vederea încarcerării sale. Dar condamnatul are şi drepturi procesuale, printre care şi acelea de a cere înlocuirea sau modificarea pedepsei aplicate, în cazurile prevăzute de lege, amânarea şi întreruperea executării pedepsei închisorii, în cazurile prevăzute de lege, eşalonarea în rate a plăţii amenzii, liberarea condiţionată, de a introduce contestaţie la executare, cerere de reabilitare judecătorească.

Fără a fi parte în proces, condamnatul rămâne un subiect procesual în cadrul procedurilor judiciare care au ca obiect determinarea legală a condamnării şi a executării ei. Când este

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chemat la judecată într-o asemenea procedură de executare condamnatul foloseşte aceleaşi procedee procesuale: participarea la judecată, cu dreptul de a prezenta cereri, memorii şi obiecţii, de a ridica excepţii, de a pune concluzii, de a folosi căile de atac, dar în limitele obiectului procedurii de executare şi cu unele restricţii faţă de drepturile inculpatului.

În cazul în care, în urma exercitării unei căi extraordinare de atac, este desfiinţată hotărârea definitivă de condamnare, se reia judecata, fie în primă instanţă fie într-o cale ordinară de atac, condamnatul redevine inculpat, parte în proces, şi îşi reia toate drepturile procesuale acordate inculpatului, însă în limitele în care s-a dispus rejudecarea.

Concluzii. Persoana care a săvârşit o infracţiune şi este chemată să răspundă penal în faţa autorităţilor publice judiciare poartă denumiri diferite în raport de stadiul de desfăşurare a procesului penal. Legea foloseşte denumirea de făptuitor atunci când se referă la persoana presupusă a fi săvârşit o infracţiune dar faţă de care nu s-a început încă activitatea judiciară, de suspect atunci când a fost începută urmărirea penală asupra unei persoane, de inculpat atunci când a fost pusă în mişcare acţiunea penală asupra unei persoane şi de condamnat atunci când instanţa de judecată emite o hotărâre definitivă de condamnare. Cele mai multe drepturi, îndatoriri şi obligaţii le are inculpatul în cursul procesului penal, acesta fiind întâlnit atât în faza de urmărire penală cât şi în faza de judecată.

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SIGNIFICANCE OF FINANCIAL ACCOUNTING ACTIVITY IN THE TOURISM UNITS THROUGH INVESTMENT DECISIONS

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Abstract: The objective of our research was chosen due to the importance of the investment decision in the reflection and transmission of assets value gradual products and works executed an entity of the deep. Located at the intersection of the two spheres (of tourist markets and financial transactions), tourism entity from Romania is interested in identifying the formula to provide financing by attracting resources from domestic sphere, on the one hand, and, on the other hand, is interested in meeting the high level of demand and getting profit from economic sphere. Society is not an entity; it evolves continuously in many forms that vary with time and place. Tourism development, national and/or regional levels should be based on a uniform and coherent policy, which includes many high-quality, long-term forecasts of the rhythms of development, in-depth knowledge of the mutation and events nationally, all included in the multiple choice scenarios underlie a plan.

Keywords*: tourism, tourist market, profit, decision, investment*

JEL Classification: E62, H20, L83, M10

1. INTRODUCTION

Society today is much deeper, has become one of knowledge, freedom and dynamism, and the tourism specifically illustrates its valences. Naturally, the journey meant as always, in essence, travel in time and space, discovery, communication and spiritual enrichment.

Romania has huge natural reserves, untapped tourism, and economic prospects.

On the other hand, Romania is becoming a more interesting country for international investors; they are ready to invest in local and viable projects.

Develop strategy for tourist entity is a challenge for obtaining competitiveness, thus incorporating all stakeholders in strategic management expectations.

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An appropriate management at the level of the company contributes to the achievement of better products, at lower prices of higher wages and at the same time the attainment of some increases revenues for those who have we invest capital in the company.

The financial side of the management of the company is to be found in all the components of the managerial activity within the framework of company, namely:

■ in respect of all the functions of the management: forecast, organization, coordination, training and control;

■ within all the elements of the management system: the organization system, the information system, the decision system;

■ within the entire structure and the materialization of the functions: research - development, production, personnel, the financial-accounting.

Therefore, financial management represents a subsystem of general management of the company, aiming and securing the necessary financial resources, allocation and uses their profitable, increasing the value and safety of society the heritage (*Bogdan I., 2002*).

Financial management is based on the information. Accounting is the source that provides the information to be used in economic decision making, while the main functions of financial management are to plan, deliver and use financial funds.

The totalities of operations of an entity have an equivalent and in financial terms too.

Successive phases of operations belong to the three categories of investment cycles: investment cycle, the cycle of exploitation and financing cycle's cycle what are organized and operated for the purpose of attaining the policy entity.

2. MATERIALS AND METHODS

2.1. Financial management of the investment cycle.

In a business, the investments play a role of impulse leading to its creation, helps to unfold and develop.

Management accounting, management entity that supports the company's management in substantiation decisions of all kinds, many of which are based on information on costs, revenues and operating results or investment or financing, is a valuable tool of efficient management (*Cristea H., Buglea A., 2014*).

Cycle in economic sense, is defined to be the sequence of phenomena that occur in the evolution of an economic process.

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Investment cycle corresponds to the acquisition of real estate necessary to maintain or increase productive capacities. It is divided into two phases: initial expenditure, representing the purchase and recovery of material, through the discovery of the depreciation as a result of physical and moral usage.

Investments are an expression of the selection decision for several types of projects to develop the company's activity.

Their financing is ensured from capital that can cope with the expenses throughout the period of immobilization created.

„The infrastructure for the transportation services, telecommunication, electricity, water, gas and waste management are very important for the initiation and development of businesses" (*Milin A., et all, 2009*).

2.2. Amortization method for property

The decision of managers with regard to investment policy is dependent on funding sources to which it has access. A correct decision to invest will consider maintaining permanent financial balance, through its fundamental rules, as follows:

■ permanent needs for acquisition of fixed assets should be financed from permanent sources, i.e. equity and liabilities medium and long term;

■ current needs have to be covered from sources;

■ the revolving fund must be bigger than the demand for revolving fund to liberate a positive cash flow.

Maintaining financial equilibrium affects two important decisions: the decision of investment and financing decision.

Funding may come from sources outside the company: consideration to equity, bank loans, leasing, credit providers, credit, financing, foreign debenture or from internal sources (self-financing).

Self-financing (internal financing) is determined primarily by the size of the undistributed profit, depreciation and provisions calculated and not consumed. With the exception of the capital, other internal sources are not onerous.

Whereas depreciation fixed assets is an important element of profit influence their own sources which directly affect the ability of self-financing of the society.

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Depending on the purpose, the management entity determines the depreciation method which is most appropriate, able to bring about a surplus in financing the company, at a tolerable. The size of value depreciation is determined by three factors:

■ value of depreciable fixed asset;

■ duration of service;

■ depreciation method that is chosen.

Depreciable amount of an asset is systematically allocated, immobilized during the service life of the asset.

The value corresponding to each period depreciation is recognized as an expense.

The depreciation method used reflects the way in which future economic benefits are consumed by the company. There is no recommendation regarding what depreciation method should be chosen.

The depreciation methods are selected according to the estimation of future economic benefits associated with the asset.

Therefore, the choice of a declining balance method involves a great deal of subjectivity. The economic literature and practice have devoted several depreciation methods of fixed assets, which may be used in the allocation of the value of assets during the life period.

The method adopted is according to ability assets to bring future economic benefits.

The method, once chosen, must be kept from one period to another, while respecting the principle of the proposed methods.

However, the method can be changed; if the criteria were taken into account in the choice of the method have undergone significant changes.

In this case, you need in-depth information in financial statements (accounting policies and explanatory notes) about the decision to change the method and effects of the change of method of the outcome of the exercise.

From the study of the works of reference, the present depreciation methods most often used are:

◙ linear, which is based on the allocation of the value of depreciable fixed assets, uniformly throughout the life of the asset;

◙ digressive, which burden the cost with decreased amounts. The depreciation rate is applied to the remaining depreciation;

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◙ accelerated, which is included in the cost of depreciation of 50% of the input value in the first year of operation, still looking for salvage value applies to linear depreciation method;

◙ production, which is based on the assumption that depreciation is the result of the operation, and the duration of service has no importance in the calculation of depreciation;

◙ softy-variant of quotas, which are calculated by the number of reporting year on the length of normal service taken downwards, the sum of the years of the life of normal service;

◙ softy-variant of quotas, which are calculated by the number of reporting year on the length of normal service taken in regard to the breeder, the years of the life of normal service.

Using the straight-line method, depreciation is constant, being directly linked to the duration of the operation.

This is usually in the first year, when the asset was purchased during the year, and in the last year. Using the accelerated method, declining, shares, in the first years of operation, depreciation is higher, after which decreases each year, arriving in their final years at values below those recorded by the straight-line method. The methods are preferred when management seeks a speedy recovery in the value of fixed assets. Increasing quotas method is characterized by a small depreciation from the beginning of the activity, which increases, reaching that final year running to record at the highest level. It is a less-used method, because it does not take into account the obsolescence of the asset valuations, which in many cases is superior to natural usage.

The method of production is closer to the linear method. Depreciation varies in proportion to the volume of production. If the production volume is linear, the two types of depreciation are overlapping.

The damping as element cost increases in proportion to the moral and physical usage or obsolescence of the asset valuations and is an element of profit and loss account, and vice versa in proportion to the value of net fixed assets, which represents an element of the financial position.

Each company can choose the method that considers that fits best with the strategy adopted. Most opt for society The straight-line method, calculable, and divided proportionally asset value throughout the service, the company's costs.

2.3. Investment decision

Managers are faced with major decisions that involve cash flows.

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The importance of financial management accounting result primarily from its strategic role, which consists of attending general policy decisions (acquisitions, investments, transfers, use of financial resources), but also operational in respect of the financial management activities and financing of the operation of the company.

Investment activity is generating streams include the purchase and sale of fixed assets and debt securities and loans recovery *(Costi B., Boiță M., 2014)*.

In business management, information and accounting techniques they are often used for making a decision.

Advantages offered by financial situations offer users reliable, comparable data regarding the results of the company's financial performance, changes in capital and maintenance, thus facilitating making appropriate decisions by users (*Doba Ş., 2014*).

The decision is a product of processing information and choosing the appropriate solution. Investment-related decisions appeal frequently at the financial and accounting information. To this end, it is necessary to call upon past results, as to be forward-looking, and give a touch of credibility of the estimates. Investment decision is based on information taken from the inside of the entity, information taken from outside entities, but also on the prognosis and diagnosis.

Frequently used information of financial management, coming from inside the company, can be classified as information of financial and non-financial information, which together form the basis for decision making required data:

In the category of financial and accounting information, there are:

- structure of fixed assets;
- the book value, the depreciation value and the remaining fixed assets;
- the amount of fixed assets acquired:
  - the purchase price;
  - fees and commissions;
  - transportation expenses;
  - installation and assembly;
  - other expenses incurred with the fixed assets until such time is placed into operation
- during the realization of the investment costs in its own purposes;
  - material cost;
  - wages costs;

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- social costs;
- external benefits costs;
- costs amortization fixed assets;
- the costs with interest loans for financing investment;

■ investment funding possibilities under the conditions of maintaining financial equilibrium;

- a forecast of sales;
- a forecast of costs;
- a forecast of cash flows.

In category of nonfinancial information, there are:

- policies estimation of service life of fixed assets, depreciation methods used;
- production capacity;
- workforce;
- products;
- current and potential customers etc.

Information from outside the processed the accounting systems are necessary in addition to the internal information, for correct estimation of the future credible values that should underpin decisions:

■ the cost of investment in procurement;

■ technical and economic performance of future investment;

■ the life of the investment;

■ the evolution of supply and demand for specific products on the market;

■ main competitors;

■ statistical information:

- inflation rate;
- the interest rate;
- the average rate of return at the branch level;
- the risk rate, etc.

Investment decision is based on information from the compilation and the grounding of several economic indicators with different complexity, and estimates of financial flows, information provided by accountants.

If part of the corporations in the world have passed the international phase to market orientation, when they need to address each different foreign markets in the industry, much of the companies, acting on the business environment (*Blaga R., 2013*).

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To accept or reject a proposed investment is a decision that the company's leadership should take, taking into account numerous parameters, such as:

■ the project's profitability;

■ the various types of risk they present;

■ the availability and cost of capital intended to finance it;

■ the consistency of the draft with the strategy of the enterprise.

These decisions arise when managers must decide whether to promote a project of capital investment.

The appreciation of a project of investment, from the point of view of efficiency, is made by evaluating cash flows emitted by it, and by their estimate *(Cristea H., Pirtea M., 1999):*

■ output streams of treasury;

■ treasury input streams;

■ payment savings, due to the mode of action of taxation;

■ in the initial phase (of the project);

■ during the period of exploitation;

■ at the end of the operation.

Accepting or rejecting an investment project shall be carried out according to the expected results to be achieved as a result of new investments. These decisions are based on several criteria for selecting investments, influenced by type, objectives and funding sources of the investment.

DISCUSIONS

Our goal was to reflect the importance of the investment decision in the reflection and gradual transmission of assets value on products and works executed by a tourism entity.

Romanian tourist entity is interested in identifying the formula to provide financing by attracting resources from domestic sphere, on the one hand, and, on the other hand, is interested in meeting the high level of demand and getting profit from economic sphere.

Investment decision is based on information from the compilation and the grounding of several economic indicators with different complexity, and estimates of financial flows, information provided by accountants.

Frequently used information of financial management, coming from inside the company, can be classified as information of financial and non-financial information, which together constitute the necessary database decision-making.

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CONCLUSIONS

Adequate financing of the Romanian tourism industry would bring a medium-term national economic stimulus.

Whereas the tourist enterprise performance recognized by the market depends of investors ' typology too and of how it is percept by investors, being well known the sophisticated investors experience and competence in estimating compared to unsophisticated investors, managers must be interested in permanent official recognition of their performance and increase their prestige on the market.

The importance of financial management result primarily from its strategic role, which consists of attending general policy decisions (acquisitions, investments, transfers, use of financial resources), but also operational in respect of the financial management activities and financing of the operation of the company. Therefore, financial management represents a subsystem of general management of the company, aimed at securing the necessary financial resources, allocating and using their lucrative enterprise, increasing the value and safety of heritage.

In conclusion, in the context of a fast internationalization and growing of service sectors, the size and the scale of operation of companies of a country represent the major attributes of their competitive position in the market of tourist services,

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CONSECRATION OF OMBUDSMAN AS A REPRESENTATIVE DEMOCRATIC INSTITUTION IN THE EUROPEAN DEMOCRATIC STATES

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Abstract: Ombudsman is one of the most important state institutions and mechanisms of effective protection of human rights in democracy. His appearance in the world of Scandinavian - by the will of the monarchy to limit the powers of the executive - had a beneficial effect for the evolution of modern constitutional system, demonstrating that the State itself should be "censored" in its action so that administration is not oppressive in relation to citizen.Swedish experience was taken after the Second World War, primarily by Western political regimes, seeking tools to enhance the quality of democratic life and for effective control of bureaucratic mechanisms. Ombudsman Institution was given a Constitutional and was structured according to national policy features, which now true models of operation: Scandinavian, Anglo-Saxon, French, German , southerner. An important step in the extension of the operation of the Ombudsman was made with the disintegration of the Soviet empire and the removal of communist regimes in Eastern Central Europe.

Keywords: Ombudsman, European democracies, democratic institutions, human rights.

1. Introducere

În ultimele decenii ale secolului XX, cuvântul de ordine în spaţiul politic a fost „democratizarea". Atât în ţările cu regimuri democratice tradiţionale şi stabile din Occident, cât şi în lumea fostă comunistă sau în ţările Asiei, Africii şi Americii Latine, fenomenul democratizării a fost şi continuă să fie problema esenţială a clasei politice şi a societăţii civile. Pentru demararea şi continuarea sa în cadre rezonabile şi durabile, au fost puse în mişcare, pe de o parte, structuri instituţionale oficiale, iar pe de altă parte organizaţii ale societăţii civile (unele de inspiraţie naţională, altele având statut de adevărate „reţele internaţionale").

Întrucât derapajele democraţiei se pot petrece chiar şi acolo unde acest regim pare solid şi de neclintit, dar cu atât mai lesne în tinerele regimuri constituţionale pluraliste, statele lumii au adoptat o instituţie de provenienţă scandinavă – *Ombudsman*-ul –, menită să prevină

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abuzurile autorităţilor politico-administrative în raport cu cetăţenii. Lucrarea noastră urmăreşte modul în care *Ombudsman*-ul a apărut şi s-a dezvoltat în diverse sisteme constituţionale, pe fondul mai amplu al regimului democratic. Astfel, am tratat în problema democraţiei şi a democratizării ca proces, am examinat *Ombudsman*-ul din sistemele democratice consacrate.

Analiza comparativă a acestei instituţii cu rol de „paznic al democraţiei" şi apărător al drepturilor omului a presupus o amplă documentare în domeniul instituţiilor politice şi al dreptului constituţional, principalul obstacol în realizarea studiului nostru fiind relativa sărăcie a textelor românești. Cu toate acestea, efortul de sistematizare a modelelor de consacrare a *Ombudsman*-ului în diverse regimuri democratice (mai vechi sau mai noi) s-a dovedit unul extrem de util şi profitabil pentru înţelegerea modului în care democraţia a reuşit să se impună şi să dureze în lume, în pofida tentaţiilor autoritare şi deseori în conflict cu mentalităţile etatiste ale factorilor de putere. Nu în ultimul rând, studiul *Ombudsman*-ului în diverse regimuri democratice ne ajută să surprindem diferenţele şi asemănările dintre ariile culturale şi de civilizaţie, în contextul globalizării.

2. Democraţie şi democratizare. Repere teoretice

Prin *democraţie* se înţelege de regulă guvernarea de către popor. În antichitate, era socotită ca o formă de guvernământ alături de monarhie şi aristocraţie. Dacă Socrate şi Platon au socotit-o a fi un regim ce nu reuşea să instaureze binele public, pentru că îi lipsea autoritatea legii şi competenţa aplicării specifice celorlalte două, începând cu Aristotel ea a început să fie concepută ca o componentă a unui regim mixt. Ideea a fost readusă în atenţie în Renaştere de către Machiavelli.

Modernitatea a făcut din democraţie un regim etalon, fapt legat de noul tip de legitimitate a instituţiilor pe care l-a introdus: odată ce puterea suverană şi instituţiile sale sunt produsulvoinţei corpului social exprimată în contractul social, regimul politic ce conservă legitimitatea acestora nu poate fi decât acela care dă posibilitatea indivizilor să participe la actul guvernării în cel mai mare grad. Democraţia reprezentativă a fost socotită a fi un astfel de regim. Dacă ipoteza contractului social a furnizat temeiul teoretic al democraţiei moderne, la nivel practic ea s-a impus prin extinderea dreptului de vot, secolul al XIX-lea însemnând pentru ţările din Occident tocmai această trecere de la teorie la practică. În secolul al XX-lea democraţia a fost concepută în diverse forme. Întrebările la care ideologiile contemporane au încercat să răspundă au fost: cine, în ce limite, în ce scop şi prin ce mijloace trebuie să conducă? Cine conduce? Pornind de la supoziţia egalităţii naturale a indivizilor, transferată în

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egalitatea de drept în societate, liberalii consideră că poporul este cel care trebuie să guverneze. Dar, dacă prin popor se înţelege majoritatea oamenilor, condiţia fundamentală ce trebuie îndeplinită este ca această majoritate să nu devină tiranică, să nu deposedeze pe individ de drepturile sale fundamentale.

În secolul XX, disputa pe tema participării s-a dus între neoaclasici şi liberalii bunăstării sociale. Neoclasicii socotesc că fiecare individ participă la guvernare în virtutea dreptului de vot din democraţia reprezentativă. Dacă la guvernare este tot timpul o elită, acest fapt nu este antidemocratic, pentru că nu toţi indivizii au competenţa participării la guvernare – decât să ne preocupăm de cantitatea celor ce participă la guvernare, este mai bine să ne concentrăm asupra calităţii celor care ne reprezintă (principiu susţinut şi de către conservatori). Încercarea statului de a realiza o egalizare economică cu scopul lărgirii participării politice este socotită de către neoclasici ca o manifestare a tiraniei majorităţii. Liberalii bunăstării socialesusţin că inegalitatea economică afectează participareapolitică. Statul trebuie, în acest caz, să asigure participarea tuturor, pentru că, aşa cum spunea Mill, participarea politică este o cale spre dezvoltarea fiinţei umane. Această ideea a sprijinit mişcările emancipatoare, cele care au vizat eliminarea discriminărilor ce afectau anumite categorii (femei, negri etc).

Şi social-democraţia susţine că democraţia este guvernarea poporului, prin aceasta înţelegând că fiecare trebuie să aibă o influenţă egală în guvernare: „un om, un vot”. Pentru a realiza acest lucru, este necesară o redistribuire a puterii, pornind de la cea economică, deoarece, cred ei, doar eliminarea inegalităţilor economice dintre indivizi face posibilă participarea lor la jocul politic cu şanse egale. În acelaşi ton, dar luând distanţă de orientările social-democrate, socialiste şi comuniste, s-a înscris, în anii '60, şi concepţia „Noii Stângi” despre democraţie. Susţinătorii acestui curent socoteau că societatea capitalistă este antidemocratică, transformând individul în consumator şi nu în cetăţean activ. Ei au propus „democraţia participativă”, posibilă într-o societate în care majoritatea oamenilor sunt capabili să exercite un mai mare control asupra deciziilor care le afectează viaţa.

Pe creşterea gradului de participare insistă şi ecologiştii, care cred că maximizarea participării individuale într-un sistem descentralizat, care permite cea mai directă participare posibilă, este cea mai bună cale de responsabilizare faţă de conservarea mediului în care trăim.

Comuniştii au susţinut democraţia populară, socotind că oamenii obişnuiţi (proletarii, clasa muncitoare) sunt cei care trebuie să guverneze. Asta nu însemna că proletarii controlau guvernul în mod direct, ci că guvernarea trebuia exercitată de către Partidul Comunist care guverna în interesul clasei muncitoare. Ideologia fascistă respinge democraţia, socotind-o sursă

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a tuturor relelor, pentru că principiul după care funcţionează este cel a divizării. Societatea, considerată ca un tot, trebuie să fie condusă de o elită, mobilizată de o etică specifică, singura capabilă să asigure funcţionarea corpului social.

În ce limite?Liberaliiconsideră că guvernarea populară trebuie să fie riguros limitată constituţionalpentru a nu restrânge sfera privată. Limita între sfera publică şi cea privată este obiectul disputelor şi negocierilor dintre neoclasici (apropiaţi de conservatori) şi liberalii bunăstării sociale (a căror poziţie se apropie mai mult de cea a social-democraţilor).

Plecând de la premisa că guvernarea este un instrument al cetăţenilor capabili de realizarea binelui public, *social-democraţii* consideră că sfera de acţiune a acesteia trebuie să fie lărgită în concordanţă cu nevoile celor mulţi. Comunismulconsideră că guvernământul va acoperi toată societatea în întregul ei,distincţia dintre public şi privat nemaiexistând. Ideea aceasta o găsim şi în fascism. Cu ce scop?Liberalii consideră că scopul guvernământului democratic este apărarea drepturilor,intereselor şi libertăţilor indivizilor privaţi de la care emană. Social-democraţiiconsideră că scopul guvernământului democratic este realizareaegalităţii şi a dreptăţii sociale, pentru aceasta fiind îndreptăţită redistribuirea avuţiei. Comunismulconsideră că scopul democraţiei populare îl constituie suprimareacapitaliştilor şi a burgheziei pentru a institui societatea fără clase în care principiul fundamental este „de la fiecare după capacităţi, fiecăruia după nevoi”. Ecologiştii cred că scopul guvernării democratice este responsabilizarea tuturor faţă de problematica conservării mediului înconjurător. Prin ce mijloace?Liberalii şi social-democraţiiconsideră că guvernarea democratică trebuie să serealizeze prin instituţiile reprezentative. Primii consideră că participarea la guvernare trebuie să se realizeze într-un sistem descentralizat. Cei din urmă pun accentul pe un sistem dirijat de instituţiile centrale. O seamă de autori (H. Arendt, J. Habermas etc) propun o trecere de la democraţia reprezentativă la cea participativă, considerând că prin apropierea de modelul participativ se elimină prăpastia dintre individ şi instituţii, specifică modelului reprezentativ. Comuniştiiconsideră că democraţia populară trebuie exercitată iniţial prin instituţiileburgheziei, prin care se instituie „dictatura proletariatului”, pentru ca după aceea să se manifeste prin participarea directă.

3. Fenomenul democratizării şi efectele lui în materia drepturilor omului

Democratizarea este un proces extrem de complex, petrecut, de-a lungul secolului XX, deopotrivă în ţările cu un vechi regim constituţional şi în cele care au fost guvernate, până de curând, în manieră autoritară sau dictatorială. În cele dintâi, democratizarea a constat în

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„umanizarea" birocraţiei, în descentralizare şi transparentizarea proceselor decizionale; în cele din urmă, a privit însuşi fundamentul autorităţii politice. Deşi priveşte în mod cert întreaga umanitate, democratizarea este asociată, în multe analize contemporane, doar acelor sisteme angajate fie în schimbarea ordinii politice (prin înlăturarea dictaturilor sau a regimurilor autoritare în favoarea democraţiei – păstrându-se însă organizarea economică de tip capitalist – , aşa cum s-a întâmplat în Grecia, Spania şi Portugalia, ca şi în numeroase ţări din America Latină şi din Asia), fie în recompoziţia radicală a politicii şi a economiei deopotrivă (prin trecerea de la socialism la capitalism – proces specific ţărilor din Europa Est-Centrală).

Odată cu mutaţiile spectaculoase şi neaşteptate din interiorul fostei lumi socialiste, problema succesiunii epocilor istorice şi a regimurilor politice a revenit în actualitate, cu aceeaşi efervescenţă cu care se derulaseră dezbaterile din a doua jumătate a secolului al XIX-lea privind sensul istoriei şi calea pe care trebuia să o urmeze societatea industrială. Astfel, dovedind o vie conştiinţă a tranziţiei şi a situării într-un punct nodal al istoriei, modernitatea oferise trei alternative de organizare: liberalismul, socialismul revoluţionar şi social-democraţia. Liberalismul reuşise să imprime deja epocii sale spiritul întreprinzător şi concurenţial în plan economic; în materie de politică, proiectul său era acela al statului minimal, al pluralismului şi al libertăţii rezonabile. Socialismul marxist crease scenariul trecerii, prin revoluţie violentă, de la „preistoria omenirii" (istoria luptei de clasă) la un fel de post-istorie (o epocă a egalităţii, lipsită de exploatare şi de alienare). Ultima dintre soluţiile gestionării sistemului industrial – social-democraţia –, apărută ca o deviaţie de dreapta de la marxismul ortodox, optase pentru o evoluţie „naturală" şi paşnică a raporturilor economice şi politice, mizând pe socializarea producţiei şi a capitalului, precum şi pe consolidarea pluralismului şi a democraţiei parlamentare, în care interesele maselor salariale să poată fi corect reprezentate. După revoluţia bolşevică din 1917, capitalismul şi democraţia ajunseseră să concureze cu economia centralizată şi dictatura proletară a regimului sovietic, instituind un dualism al civilizaţiilor care părea să dureze multă vreme.

Eşuarea experimentului comunist a atras după sine căderea în desuetudine a teoriei marxiste despre succesiunea modurilor de producţie; aceasta şi-a pierdut forţa explicativă şi atractivitatea, lăsând loc altor construcţii ideologice, de la cele deja clasice (care reprezentaseră vreme de un secol contraponderea la socialismul revoluţionar), până la formule cu pretenţie de noutate absolută şi de depăşire a ideologiilor. Astfel, s-a ajuns la ideea că lumea nu se va îndrepta niciodată definitiv spre o societate a egalităţii, întrucât aceasta ar contrazice însăşi natura umană şi infinita diversitate a indivizilor. Mai curând s-ar contura la orizont o „planetă

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liberală" sau un „sfârşit al istoriei" (după celebra expresie a lui Francis Fukuyama). Şi alţi analişti considerau că, după căderea comunismului, ţările care l-au practicat într-o formă sau alta nu fac altceva decât să se ralieze la viziunea occidentală a guvernământului moderat; reînnodând perspectiva liniară a dezvoltării, sistemele politice europene s-ar afla în marş spre un ideal unic – acela al democraţiei de tip liberal –, însă fiecare situându-se într-o altă etapă a acestei mişcări de-a dreptul irezistibile.[1]

Privită ca întoarcere a societăţilor estice în matca unui model de civilizaţie pe care îl abandonaseră în urma revoluţiilor socialiste, tranziţia a fost numită uneori – mai în glumă, mai în serios – „restauraţie", acestui termen trecându-i-se sub tăcere conotaţiile negative, care trimit la situarea în contra-sensul istoriei. Tranziţia ar însemna, din această perspectivă, reîntronarea valorilor autentice ale libertăţii, după toate derivele totalitare care au siluit individul şi societatea.

Tranziţia spre democraţie a mai fost asociată şi conceptului de criză. Societăţile organizate potrivit modelului sovietic, după expansiunea socialismului la sfârşitul celui de-Al Doilea Război Mondial, au intrat într-o criză de sistem, încă de la mijlocul anilor '70. Această criză, manifestată prin eşecul economiei hipercentralizate şi prin erodarea fundamentului ideologic al „democraţiei populare", s-a accentuat spectaculos în anii '80, astfel încât ţările socialiste s-au regăsit într-o dilemă insolubilă: „succesul economic nu putea fi atins decât cu preţul stabilităţii politice, în timp ce stabilitatea politică putea fi susţinută numai cu preţul eşecului economic".[2] Situarea în această dilemă şi cronicizarea efectelor ei au condus la prăbuşirea regimurilor totalitare de inspiraţie sovietică. Au rezistat numai câteva „insule" de socialism, în acest efect al dominoului (Coreea de Nord, confruntată cu grave probleme economice, perpetuează încă regimul comunist printr-o inerţie a supunerii şi a adorării liderului charismatic; Vietnamul şi Cuba au fost nevoite să-şi reconsidere raporturile cu lumea occidentală şi să-şi asume responsabilitatea crizei; China a evitat prăbuşirea ideologică printr-o combinaţie de liberalizare economică şi de represiune politică).

Chiar dacă actuala criză a societăţilor aflate în tranziţie nu se poate identifica (nici temporal şi nici din perspectiva conţinutului) cu criza generală a lumii socialiste, trebuie remarcat totuşi faptul că deriva politică, economică şi morală din prezent rezultă în mare

[1] Christian Bidegaray, *Réflexions sur la notion de transition démocratique en Europe centrale et orientale* , în: "Pouvoirs", nr. 65 ("Morale et politique"), P.U.F., Paris, 1993, p. 131.
[2] Zbigniew Brzezinski, *Mareleeşec. Naşterea şi moartea comunismului în seco-lul XX*, Editura Dacia, Cluj-Napoca,
1993, p. 227.

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măsură din „condamnarea" pe care regimul comunist a pronunţat-o pentru viitor. Aceasta constă într-o destructurare pe termen lung a societăţii globale, întrucât criza socială are totdeauna la bază o criză politică, iar criza politică este generată de o criză morală, de un deficit grav de educaţie şi de cultură, nu numai de recesiunea economică.

În contextul analizei fenomenelor aflate în derulare în societăţile post-totalitare, apare adesea termenul de reformă. Acesta nu este însă nou în limbajul politic al Estului, întrucât şi-a început cariera în perioada de liberalizare a socialismului din ţări ca Iugoslavia, Cehoslovacia şi Ungaria (în deceniile 7-9) şi de reconciliere a statului socialist cu ordinea de drept degrevată de funcţia de represiune politică (a se vedea, în acest sens, conceptul de „stat socialist de drept", avansat în literatura politică sovietică din vremea lui Gorbaciov). Actualmente, „reforma" este un concept utilizat pentru a numi cu precădere procesele de schimbare care au loc în domeniile nepolitice (cum sunt economia, învăţământul, sănătatea, asistenţa socială etc.), dar care necesită o acţiune politică orientată, în compartimentul ei legislativ şi executiv, către o modificare corectivă treptată a vechilor structuri, astfel încât ansamblul social să se adapteze din mers la noile realităţi mondiale.

Pentru sistemul politic, ca şi pentru unele segmente nepolitice ale socialului din fosta lume comunistă, termenul de reformă nu este totdeauna adecvat şi operaţional. În domeniul politic, schimbările au fost mai curând revoluţionare decât reformatoare, înlocuind – cel puţin la nivel instituţional, formal – regimul totalitar cu unul democratic (aşa încât de la monolitismul puterii s-a ajuns la separaţia puterilor în stat, de la monopartidism, la pluripartidism etc.). Cât priveşte proprietatea, ca axă a economicului, aceasta s-a înscris pe o coordonată a reprivatizării, mai ales în sectorul agricol. Pentru numeroase domenii de activitate productivă, schimbarea a constat mai mult într-o prăbuşire accelerată sau chiar într-un faliment şi nicidecum în restructurare. Economia estului european a fost pur şi simplu lăsată să intre în colaps, considerându-se că acesta este cel mai eficient mod de a distruge comunismul. Utopia politică ce a presupus că istoria poate fi luată de la zero a împiedicat dezvoltarea unei strategii reformatoare, compromiţând astfel recuperarea din vechiul sistem a achiziţiilor sociale şi a unor modele eficiente de organizare a producţiei (asemănătoare, de altfel, celor practicate în planificarea capitalistă). Pe ansamblul fostului bloc socialist, procesele reformiste s-au desfăşurat cu bune rezultate doar în acele ţări în care schimbarea regimului politic a fost efectul unor negocieri de durată între vechea gardă comunistă (constrânsă la compromisuri), reformatorii din sânul partidelor comuniste şi, mai târziu, noile forţe politice reprezentând societatea civilă (forţe lăsate chiar de către guvernanţi să se nască, fie pentru a răspunde

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cerinţelor mediului politic internaţional, fie dintr-o dorinţă sinceră de deschidere şi liberalizare). În rest, acolo unde comunismul nu a putut fi înlocuit paşnic şi treptat, a existat un refuz ideologic al reformei, refuz agrementat cu o sete distructivă alimentată de teama că un comunism care reuşeşte să se reformeze îşi păstrează şansa de a rămâne un competitor redutabil în jocurile democraţiei pluraliste.

Reformarea comunismului (mai precis, a regimurilor politice şi a sistemelor socio-economice organizate după principiile socialismului de inspiraţie sovietică) a reprezentat aşadar o realitate a anilor '60-'80 în ţări ca Iugoslavia, Cehoslovacia, Ungaria, Polonia şi URSS. În unele cazuri, reforma a dat rezultate, deschizând societăţilor respective calea spre capitalism şi democraţie; în altele, s-a încheiat trist, cu lovituri restauratoare ale forţelor conservatoare. Cât priveşte schimbarea de sistem desfăşurată pe fundalul *perestroikăi* iniţiate de Gorbaciov – cea mai apropiată în timp şi ca substanţă de tranziţia din anii '90 –, procesele ei au contribuit la o modernizare autoritară, care nu se putea acomoda total cu libertatea politică propriu-zisă şi cu pluralismul real. Grupate de către unii analişti politici (ca Oleg Roumiantsev, Laszlo Bruszt sau Timothy Garton-Ash) sub numele de *démocrature* sau de *réfolution*[3], aceste procese au fost privite ca un amestec instabil de democraţie şi de dictatură, ca un compromis politic între adepţii conservării fundamentului socialist al organizării sociale şi politice şi cei care doreau o cu totul altă lume: a statului de drept şi a economiei de piaţă. Miza înşelătoare a respectivului compromis a reprezentat-o statul de drept, conceput „fie ca o etapă, o fază de tranziţie analogă celor pe care le-au cunoscut regimurile occidentale însele, cum au fost monarhiile constituţionale sau regimurile mixte, fie ca un alibi, ca un ultim refugiu al inamicilor democraţiei (care acceptau să-şi limiteze puterea tocmai pentru a şi-o conserva mai bine), fie în sfârşit ca o condiţie, indispensabilă şi de nedepăşit, a regimurilor non-tiranice".

După 1990, idealul statului socialist de drept a fost înlocuit cu acela al construcţiei unui stat de drept imun la deformările ideologice ale ideii de justiţie, iar „pluralismul socialist" al opiniilor a fost abandonat în favoarea pluralismului politic. Totuşi, stilul şi metodele „democraturii" s-au păstrat, într-o anumită măsură, în exerciţiul puterii, ca şi în comportamentele actorilor societăţii civile. Respingând ideea de reformă din considerente ideologice, dorind o reconstrucţie *ex nihilo* a spaţiului politic, multe forţe politice din fostele ţări socialiste s-au trezit în plină utopie a „democratizării prin decrete". Ieşirea din această nouă

[3] Termenul de „refoluţie" a fost creat de Timothy Garton-Ash pentru a desemna evenimentele de la Varşovia şi Praga, întrucât ele au fost, în esenţă, reforme realizate de către guvernanţi ca răspuns la presiunile revoluţionare ale celor guvernaţi. În schimb, pentru evenimentele de la Berlin şi Bucureşti, Garton-Ash foloseşte fără ezitare termenul de "revoluţie", acesta dând seamă de schimbarea rapidă şi radicală a regimurilor politice din ţările respective.

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utopie a solicitat, în mod necesar, o evaluare critică nu numai a realităţilor politice şi economice aflate în derulare, ci şi a conceptelor şi sintagmelor care exprimă aceste realităţi. Aşadar, *restauraţie* (fie ca restauraţie socială a capitalismului, completată cu revenirea la democraţia de tip interbelic, fie restauraţia socialismului sub forme noi, insuficient teoretizate), *criză, reformă, modernizare autoritară, democratură* sau *refoluţie* (reformism revoluţionar)reprezintă tot atâtea formule care încearcă să surprindă specificul proceselor de transformare a societăţilor central şi est-europene în ultimele două decenii ale secolului XX şi în primii ani ai secolului XXI. Câtă vreme respectivele procese s-au desfăşurat în interiorul sistemului socialist, ele s-au prezentat ca încercări de democratizare şi reformare a sistemului, confirmând tezele convergentismului. De îndată ce regimurile politice bazate pe supremaţia partidelor comuniste au fost înlocuite cu forme de organizare asemănătoare democraţiilor occidentale, analiştii politici au abandonat termenii utilizaţi anterior, pentru a face apel la nebuloasa "tranziţie".

Luând drept etalon stadiul lor de dezvoltare şi propria lor organizare politică, democraţiile occidentale s-au raportat la regimurile autoritare şi la dictaturi ca la nişte forme degenerate, ca la nişte deviaţii de la calea guvernării moderate, sau ca la moduri pur şi simplu „primitive" de exercitare a puterii, care trebuiau să evolueze, obligatoriu, către democraţia pluralistă. În prezent, analiza tranziţiei post-comuniste readuce în atenţie problemele „tranziţiei democratice" începute cu aproape patru decenii în urmă şi care a făcut ca regimurile autoritare (numite, după caz, „birocratice", „neo-bismarkiene", „neo-bonapartiste", „modernizator-conservatoare" etc.) să fie înlocuite de regimuri pluralist-constituţionale. Dacă pentru procesele de democratizare petrecute în Spania, Portugalia şi Grecia s-a utilizat sintagma „tranziţie democratică", utilizarea ei pentru a desemna mutaţiile care au avut loc în Europa Centrală şi de Est a presupus asumarea supoziţiei că evoluţia ţărilor din fostul bloc socialist va fi identică (sau cel puţin asemănătoare) cu cea a tinerelor democraţii meridionale.

Desigur, există unele puncte comune între procesele de democratizare din sudul Europei şi America Latină, pe de o parte, şi centrul şi estul european, pe de altă parte. În primul rând, democratizarea în plan politic s-a produs după o lungă perioadă de dictatură, fapt care a necesitat înainte de toate reconstrucţia societăţii civile şi a culturii politice democratice. Fără sprijinul societăţii civile, aşa fragilă cum era ea, formele instituţionale ale regimului democratic riscau să se prăbuşească; fără cultura politică democratică (transmisă şi asimilată destul de repede graţie unei multitudini de factori socializatori), indivizii puteau fi tentaţi de „avantajele" societăţii de masă şi puteau aluneca spre o critică sterilă a democraţiei, din unghiul unei

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nostalgii a consensului. În al doilea rând, Europa Centrală şi de Est a cunoscut şi ea, cel puţin la începutul perioadei de tranziţie, acţiunea unor lideri charismatici (democraţi modernizatori) şi a unor coaliţii sau mişcări fondatoare de regimuri democratice (Solidaritatea în Polonia, Forumul Civic în Cehoslovacia, Frontul Salvării Naţionale în România etc.), la fel ca şi ţările care au trecut prin tranziţia democratică în anii '70-'80.

Cu toate acestea, deşi nu putem afirma că există un strict raport de determinare între economic şi politic[4], trebuie arătat că ţările fostului bloc socialist au avut şi au încă o sarcină mult mai grea decât a avut-o Spania, spre exemplu. Astfel, dacă regimul lui Franco nu distrusese economia de piaţă, ci permisese chiar o semnificativă relansare economică, regimurile comuniste – gestionare ale unor economii centralizate – au indus blocaje pe termen lung şi lipsa capacităţii de adaptare la fluxurile schimburilor mondiale. Aşa se explică faptul că, dacă după război comuniştii încercaseră să construiască socialismul fără proletariat, astăzi e vorba despre a restaura capitalismul în absenţa unei burghezii. De aceea analiza tranziţiei post-comuniste implică un cadru mult mai larg: nu este vorba numai de o schimbare la nivelul instituţiilor politice, ci şi de relansarea economică şi de schimbarea structurii sociale. Este cunoscut faptul că regimurile occidentale se bazează pe o puternică clasă de mijloc, interesată de aplanarea conflictelor şi de difuzarea valorilor echilibrului şi armoniei comunitare. Pretutindeni acolo unde clasa mijlocie lipseşte sau este slab reprezentată, democraţia nu funcţionează deloc (fiind detronată de regimuri autoritare), sau se menţine într-un echilibru precar, la nivel formal-instituţional. Fostele ţări comuniste sunt încă departe de a avea o semnificativă clasă de mijloc, iar dificultăţile economice cu care se confruntă nu pot fi compensate de avansul politic rezultat din acţiunea conjugată a unor factori interni (ale căror interese sunt conjunctural legate de stabilitatea democraţiei) şi a presiunilor internaţionale.

Asociind democraţia cu problemele create de restructurarea economiei, populaţia acestor ţări se află într-o stare de dezorientare: lipsa culturii politice o împiedică să perceapă valorile democraţiei şi să creadă în ele necondiţionat, pe când criza economică face ca prosperitatea – asociată capitalismului şi modului său de guvernare – să fie un vis îndepărtat. În aceste circumstanţe, pentru omul de rând, ca şi pentru analiştii politici şi economici, apare întrebarea: către ce societate ne îndreptăm sau care este sensul tranziţiei post-comuniste? În contextul dezbaterilor referitoare la „tranziţia democratică" a unor ţări din sudul Europei, din America Latină şi Asia de Sud-Est, s-au profilat trei modele de capitalism, cu trăsături

[4] După opinia lui Robert Dahl (*Polyarchy. Participation and Opposition*, 1971), dezvoltarea economică nu conduce în mod necesar la un înalt nivel al dezbaterii politice, după cum nici democraţia politică nu este o condiţie necesară sau suficientă pentru a se imprima un ritm alert dezvoltării economice.

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specifice. După cum precizează Silviu Brucan, cele trei modele sau tipuri de capitalism sunt: a) capitalismul dezvoltat de tip occidental, caracterizat în plan economic de un produs intern brut de 15-20.000 de dolari pe cap de locuitor, o populaţie activă rurală sub 10% din totalul populaţiei active şi un puternic sector terţiar (care angajează mai bine de jumătate din populaţia activă); în plan politic, ţările capitaliste occidentale au toate regimuri pluraliste constituţionale; b) capitalismul est-asiatic este specific celor patru „tigri" din Pacific: Coreea de Sud, Taiwan, Hong-Kong şi Singapore – state care în ultimele decenii au realizat o rată impresionantă a creşterii economice, intrând în grupul ţărilor dezvoltate; capitalismul est-asiatic se bazează pe următoarele principii politice, economice şi morale: regim politic autoritar, capabil să concentreze efortul naţional în direcţia realizării unor obiective strategice; industrializare orientată spre domeniile de vârf; finanţare masivă a învăţământului şi cercetării; etică a muncii şi disciplină socială înaltă; cultivarea spiritului comunitar (spre deosebire de individualismul specific liberalismului occidental); încurajarea investiţiilor străine, paralel cu sprijinirea de către stat a capitalului naţional; c) capitalismul sud-american este o structură economică şi social-politică organizată pe bazele mecanismului Nord-Sud, care se referă la raporturile de dominare existente între Statele Unite şi sudul continentului american; aceste raporturi presupun trei elemente: comerţul inegal (balanţa comercială net favorabilă Statelor Unite, exportatoare de produse finite de înaltă tehnicitate şi importatoare de materii prime), datoria externă uriaşă a Sudului şi supremaţia dolarului. Dominaţia Statelor Unite reprezintă doar o componentă a capitalismului sud-american. Cealaltă dimensiune este dată de factorii interni, de specificul societăţilor sud-americane: populaţia este puternic polarizată (o pătură subţire a proprietarilor industriali, a bancherilor şi latifundiarilor, opusă marii majorităţi a populaţiei sărace şi slab educate), clasa de mijloc fiind aproape inexistentă; burghezia naţională nu are suficientă putere economică pentru a se constitui într-un actor important pe piaţa mondială; pe fondul sărăciei generale, tentaţia îmbogăţirii miraculoase este mai mare decât etica şi disciplina muncii. Lumea sud-americană este una a telenovelei (care compensează toate frustrările săracilor) şi a jocurilor financiare piramidale (care îi atrag pe aceiaşi săraci în plasa unor inginerii financiare dubioase şi extrem de păguboase)[5].

Analizând condiţiile interne şi situaţia internaţională în care evoluează România, Brucan ajungea la concluzia că tranziţia post-comunistă are ca direcţie capitalismul occidental, deşi există unele asemănări cu celelalte două modele. Astfel, structura socială prezentă, dar mai ales cea pe care o putem prevedea pentru următorul deceniu, ne apropie de modelul est-asiatic;

[5] Cf. Silviu Brucan, *Stâlpii noii puteri în România* , Editura Nemira, Bucureşti, 1996.

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în schimb, etica muncii şi „mecanismul Nord-Sud" (existent şi în raporturile dintre Occident şi Europa Centrală şi de Est) ne apropie de capitalismul sud-american. Lumea post-comunistă în care s-au creat cadrele formale ale democraţiei s-a caracterizat, în perioada de tranziţie, prin multiplicarea mecanismelor de apărare a drepturilor omului, unele dintre ele aparţinând instituţiilor statului, altele societăţii civile.

4. *Ombudsman*-ul în democrațiile consacrate Europene

Dată fiind importanţa sa în sistemul protecţiei drepturilor omului, Avocatul Poporului are în cele mai multe ţări o consacrare în însăşi legea fundamentală. Această situaţie a fost determinată, printre altele, şi de momentul istoric al consolidării culturii drepturilor omului, în perioada postbelică, perioadă care coincide cu o semnificativă producţie constituţională – deopotrivă în democraţiile tradiţionale şi în statele independente rezultate în urma decolonizării. Există, însă, şi ţări în care reglementarea funcţionării *Ombudsman*-ului nu se originează în Constituţie, ci în acte juridice de un rang mai scăzut. Aşa stând lucrurile la nivel global, pentru a radiografia cât mai complet *Avocatul Poporului*, trebuie să ţinem seama nu doar de sistemul de drept în cadrul căruia a fost consacrat (de drept roman, drept germanic, *Common Law* sau de drept scandinav), ci şi de caracterul consacrării legale, de caracterul şi mijloacele responsabilizării, de condiţiile istorice în care a apărut, de sistemul constituţional şi administrativ din fiecare ţară.

a) Consacrarea Ombudsman-ului în sistemul scandinav

Analiza modului de consacrare a Ombudsman-ului mai întâi în sistemul nordic, scandinav, este justificată de originea acestei instituţii în spaţiul suedez. După apariţia sa, la începutul secolului al XVIII-lea, şi după consacrarea constituţională din Suedia anului 1809, instituţia a devenit un reper pentru maniera de garantare a drepturilor şi libertăţilor şi pentru corectitudinea administraţiei, fiind reglementată la nivelul actelor de bază ale ordinii constituţionale.

Ordinea constituţională suedeză estecompusă din patru texte, considerate legifundamentale ale regatului: Constituţia propriu-zisă (*Regeringsformen*), care a făcut obiectul unei revizuiri totale în 1974; Legea succesiunii la tron (*Successionsordningen*), adoptată în 1810 şi modificată în 1979; Legea cu privire la libertate presei (*Tryckfrihetsförordningen*), adoptată în 1949; Legea supra libertăţii de expresie (*Yttrandefrihetsgrundlagen*), din 1992. Regulamentul *Riksdag*-ului (*Riksdagsordningen*)

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adoptat tot în 1974, ocupă o poziţie subordonată celorlalte 4 acte enumerate, dar superioară legilor ordinare. În actuala Constituţie a Suediei se specifică, în articolul 6 din Capitolul XII (referitor la controlul parlamentar): „Riksdag va alege unul sau mai mulţi *Ombudsmani* pentru supravegherea, conform instrucţiunilor date de *Riksdag*, a aplicării la nivel de sevicii publice a legilor şi a altor statute. Un *Ombudsman* poate demara proceduri legale în cazurile precizate în aceste instrucţiuni. Un Ombudsman poate fi de faţă la deliberările unei curţi sau ale unei autorităţi administrative şi va avea acces la procesele verbale şi alte documente ale oricărei astfel de curţi sau autorităţi. Orice autoritate de justiţie sau administrativă şi orice oficial al Statului sau al unei guvernări locale va furniza *Ombudsman*-ului informaţiile şi rapoartele pe care acesta le solicită. O responsabilitate asemănătoare se raportează la orice altă persoană aflată sub supravegherea Ombudsman-ului. Un procuror public va oferi asistenţă *Ombudsman*-ului la cerere. Regulamentul *Riksdag*-ului conţine dispoziţii de detaliu privind mediatorii”.[6] Din conţinutul articolului menţionat, rezultă că *Ombudsman*-ul suedez este menţionat în textul de bază al ordinii constituţionale şi explicitat în Regulamentul *Riksdag*-ului – document cu statut de lege organică.

În ultimii ani, Parlamentul a adoptat o serie de amendamente la Actul *Riksdag* şi la Actul cu Instrucţiuni pentru *Ombudsmanii* Parlamentari. Cel mai important amendament dă Parlamentului dreptul de a alege unul sau mai mulţi *Ombudsmani* Delegaţi pentru mandate de doi ani, pe lângă cei patru *Ombudsmani* Parlamentari. În Capitolul 8 al Actului *Riksdag* (privitor la oficiali şi corpuri reprezentative), se specifică faptul că în *Riksdag* vor fi incluşi patru *Ombudsmani* Parlamentari, un Lider Parlamentar al *Ombudsman*-ului şi trei *Ombudsmani* Parlamentari. Liderul Parlamentar al *Ombudsman*-ului va fi Director Administrativ al Biroului *Ombudsman*-ilor şi va hotărî asupra direcţiei principale a activităţilor acestuia. Alegerea *Ombudsman*-ului Parlamentar Principal va fi coordonată separat, iar ceilalţi *Ombudsmani* Parlamentari vor fi aleşi individual. Un *Ombudsman* este ales pentru o perioadă care se întinde de la momentul alegerii sale, sau orice altă dată ulterioară stabilită de *Riksdag*, până la momentul unei noi alegeri, la o distanţă de patru ani. Totuşi, la cererea Comitetului privind Constituţia, *Riksdag* îl poate elibera din funcţie înainte de trecerea celor patru ani pe un *Ombudsman* care i-a înşelat încrederea. Dacă un *Ombudsman* se retrage înainte ca mandatul să îi expire, *Riksdag* va alege un succesor pentru un nou mandat de patru ani cât de repede posibil. Dacă un *Ombudsman* este împiedicat să îşi îndeplinească funcţiile pentru multă vreme datorită

[6] Parliamentary Ombudsmen, http://www.jo.se/

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unei boli sau altor cauze, *Riksdag* va alege un înlocuitor pentru perioada cât un asemenea impediment este prezent.

Constituţia Regatului Norvegiei consacră*Ombudsman*-ul parlamentar pentru administraţie publică. Constituţia a fost adoptată la 17 mai 1814, de Adunarea Constituantă la *Eidsvoll*. De-a lungul timpului, au fost adoptate unele amendamente, cel mai recent fiind adoptat la 23 iulie 1995. Funcţia *Ombudsman*-ului parlamentar pentru administraţia publică este stipulată în Art. 75 al Constituţiei: „Este de datoria *Storting*-ului să numească o persoană care să nu fie membru al *Storting*-ului, în maniera stipulată prin lege, pentru a superviza administraţia publică şi care să activeze în serviciul său pentru a asigura că nu este făcută nicio injustiţie cetăţeanului individual”.[7]

Pe lângă consacrarea constituţională, *Ombudsman*-ul norvegian îşi are reglementată punctual activitatea în *Legea Ombudsman-ului pentru administraţia publică*, adoptată la 22 iunie 1962 şi amendată succesiv prin Legile de la 22 martie 1968, 8 februarie 1980, 6 septembrie 1991, 11 iunie 1993, 15 martie 1996. În Legea menţionată, se precizează că: „După fiecare Alegere Generală, *Storting*-ul va alege un *Ombudsman* pentru Administraţie Publică, Ombudsman-ul Civil. Alegerea este făcută pentru o perioadă de patru ani de la 1 ianuarie a anului care urmează Alegerilor Generale. *Ombudsman*-ul trebuie să aibă calificările stipulate pentru un judecător al Curţii Supreme. El nu trebuie să fie un membru al *Storting*-ului. Dacă *Ombudsman*-ul decedează sau devine incapabil să-şi execute îndatoririle, *Storting*-ul va alege un nou *Ombudsman* pentru perioada rămasă de mandat. Acelaşi lucru este valabil dacă *Ombudsman*-ul renunţă la funcţie sau dacă *Storting*-ul decide printr-o majoritate de cel puţin două treimi să-l elibereze din funcţie. Dacă *Ombudsman*-ul este împiedicat temporar de o îmbolnăvire sau din alte motive să-şi îndeplinească îndatoririle, *Storting*-ul poate alege un *Ombudsman* adjunct care să execute îndatoririle în timpul perioadei de absenţă.

În Constituţia Finlandei (adoptată în data de 17 iulie 1919 şi modificată de Actul Consituţional 1221/1990 şi de Actul Constituţional 969/1995), *Ombudsman*-ul este consacrat ca instituţie în Articolul 49, care prevede următoarele: „*Ombudsman*-ul va fi ales de către Parlament pentru o perioadă de 4 ani, în cadrul unei sesiuni obişnuite a acestuia. Persoana aleasă în această funcţie trebuie să aibă cunoştinţe solide de legislaţie. Alegerea va fi organizată conform aceloraşi proceduri utlilizate şi pentru alegerea Preşedintelui Parlamentului. De asemenea, vor fi aleşi pentru aceeaşi perioadă şi conform aceloraşi proceduri un *Ombudsman* Parlamentar Adjunct (care îl va asista pe acesta şi care îi va îndeplini

[7] Parliamentary Ombudsman for Public Administration, http://www.sivilombudsmannen.no/

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funcţiile în cazul în care este necesar) şi un înlocuitor al *Ombudsman*-ului Adjunct (care îl va înlocui pe acesta din urmă în îndeplinirea sarcinilor, atunci când acesta este descalificat din funcţie). În cazul în care *Ombudsman*-ul Parlamentar moare sau renunţă la funcţie înainte de expirarea mandatului, Parlamentul poate alege un nou *Ombudsman* Parlamentar pentru perioada rămasă din mandat".[8] Obligaţia *Ombudsman*-ului Parlamentar este aceea de a supraveghea modul în care Judecătoriile sau alte autorităţi sau oficialităţi publice îşi exercită activitatea, dar şi modul în care aplică legea şi îşi îndeplinesc obligaţiile angajaţii instituţiilor publice, precum şi alte persoane cu funcţii în serviciul public. În îndeplinirea obligaţiilor sale, *Ombudsman*-ul Parlamentar, trebuie de asemenea să supravegheze implementarea drepturilor fundamentale ale omului.

Pe lângă menţionarea sa în Constituţie, *Ombudsman*-ul are şi un act normativ special, asemănător cu cel suedez (lucru explicabil dacă ţinem seama de faptul că Finlanda a fost multă vreme o provincie a regatului Suediei): *Regulamentul privind Ombudsman-ul Parlamentului* (adoptat în 1920, cu amendamentele ulterioare). Considerând că Danemarca aparţine aceleiaşi tradiţii constituţionale nordice, scandinave, vom arăta că *Ombudsman*-ul Parlamentar din această ţară este consacrat în Articolul 55 din Constituţia adoptată în 1953: „Folketing-ul va alege una sau două persoane care să nu fie membre ale Parlamentului, pentru a supraveghea activitatea administraţiei de stat, civile şi militare".[9] Pe lângă consacrarea constituţională, există şi o Lege a *Ombudsman*-ului, nr. 473 din 12 iunie 1996, care prevede alegerea unui *Ombudsman* după fiecare scrutin general sau după oricare vacanţă a postului. Această prevedere se aseamănă cu cea din legislaţia norvegiană.

b. Consacrarea Ombudsman-ului în sistemul anglo-saxon

În spaţiul anglo-saxon (indiferent dacă ne referim doar la Insulele Britanice sau la întreg arealul care a moştenit sistemul *Common Law*), *Ombudsman*-ul este consacrat prin diferite legi, la nivel naţional şi regional. Sistemul fundamentat de *Common Law* este destul de complicat, cu multe ramificaţii şi particularităţi regionale. În Marea Britanie, spre exemplu, operează la nivel naţional Legea privind Comisarul Parlamentar pentru Administraţie (1967). La nivel local, a fost instituit *Ombudsman*-ul guvernului local (prin Legea guvernului local, din 1974), cu referire la Anglia şi Ţara Galilor. În fine, există şi o altă categorie de *Ombudsmani*,

[8] Parliamentary Ombudsman, http://www.ombudsman.fi/
[9] Parliamentary Ombudsman, http://www.ombudsmanden.dk

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creată prin Legea Comisarului Departamentului de Sănătate din 1993 (de asemenea cu aplicare în Anglia şi Ţara Galilor).

Cât priveşte Scoţia, Parlamentul acesteia a dat un Decret în anul 1988 pentru crearea *Ombudsman*-ului Serviciilor Publice Scoţiene. Însă reglementarea legală a controlului corectitudinii actelor administraţiei şi ale diverselor servicii publice în raport cu cetăţenii are un suport mult mai larg şi mai vechi decât Decretul menţionat. Astfel, enumerăm în acest sens: *Ordonanţa privind organele locale ale Guvernului (din Scoţia) din 1975*; *Ordonanţa privind organele locale ale Guvernului din 1978*; *Ordonanţa privind organele locale ale guvernului, fondul funciar şi planificarea acestuia din 1980*; *Ordonanţa privind Sănătatea Psihică din 1984*; *Ordonanţa privind procedura reclamaţiilor din spitale din 1985*; *Ordonanţa privind Reforma Legislativă (diverse prevederi) din Scoţia din 1985*; *Ordonanţa privind Asistenţa Juridică din 1986*; *Ordonanţa privind organele locale ale Guvernului din 1988*; *Ordonanţa Domeniilor Private din 1988*; *Ordonanţa privind secretul de serviciu din 1989*; *Ordonanţa privind organele Guvernului şi administraţia locală din 1989*; *Ordonanţa privind Comisiile de Servicii de Sănătate Publică din 1993*; *Ordonanţa privind Drepturile Copiilor din 1995*; *Ordonanţa privind Procesul de Dezvoltare Urbană şi Rurală din 1997*; *Ordonanţa privind Dezvoltarea (Edificii considerate şi Areale de Conservare) Scoţiei din 1997*; *Ordonanţa privind Dezvoltarea Scoţiei (Substanţele periculoase) din 1997*; *Ordonanţa privind Ombudsman-ul Serviciilor Legale Scoţiene şi Comisarul Administraţiei Locale din Scoţia din 1997*; *Ordonanţa privind standardele de etică din viaţa publică din 2000*; *Ordonanţa privind Parcurile Naţionale din Scoţia din 2000*; *Ordonanţa privind Libertatea Informaţiei din 2000*; *Ordonanţa privind reglementarea AsistenţeiMedicale din 2001*.[10]

O reglementare la nivel de lege specială o regăsim şi în sistemul de control al actelor administraţiei din Republica Irlanda: este vorba despre *Ombudsman Act*, din 1980. În Irlanda de Nord – parte a Regatului Unit – operează, în schimb, sistemul britanic. Canada face şi ea parte din aria sistemului anglo-saxon, remarcându-se prin existenţa *Ombudsman*-ilor clasici, instituiţi prin legi speciale, în aproape toate provinciile (cu excepţia provinciilor Terra Nova şi Insula Prinţul Eduard). Nu există, însă, un *Ombudsman* la nivel federal, deşi au existat încercări de creare, prin 1977. Există, totuşi, la acest nivel, mai multe birouri cu funcţii similare *Ombudsman*-ului, în materii restrânse: Verificatorul General al Canadei (care anchetează problemele legate de finanţe şi de bunurile publice), instituit prin Legea verificatorului general şi Legea anchetei; Comisarul pentru Protecţia Vieţii Private (însărcinat cu cercetarea

[10] Parliamentary and Health Service Ombudsman, http://www.ombudsman.org.uk/
Scottish Public Services Ombudsman, http://www.scottishombudsman.org.uk/

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plângerilor formulate în baza prevederilor Legii protecţiei informaţiilor cu caracter personal); Comisarul pentru Informaţii (anchetează plângerile despre nerespectarea de către Guvern a Legii privind accesul la informaţii); Comisarul pentru Limbile Oficiale (Ombudsman-ul drepturilor lingvistice, garantate prin Legea limbilor oficiale). În sectorul public, canadienii dispun şi de alte instituţii tip *Ombudsman*, create prin lege, dar având mai mult o funcţie de mediere: *Ombudsman*-ul Ministerului Afacerilor Externe şi Comerţului Internaţional, *Ombudsman*-ul Afacerilor Indiene şi al Nordului Canadian, Agenţia Canadiană de Dezvoltare Internaţională, Biroul Anchetatorului Corecţional.[11]

c. Consacrarea *Ombudsman*-ului în sistemul german

Lumea germanică (Germania şi Austria) se remarcă prin existenţa multiplelor pârghii de protecţie a drepturilor cetăţenilor în spaţiul civil, motiv pentru care instituţia *Ombudsman*-ului este mai bine reprezentată în domeniul militar. Astfel, în afara apelului ultim la *Ombudsman*, germanii pot beneficia de acţiunea instanţelor cu jurisdicţie specifică, fie administrativă, fie fiscală, fie referitoare la asigurările sociale. Cu toate acestea, există şi *Ombudmani* „clasici", specializaţi pe investigarea plângerilor faţă de nedreptăţile administraţiei. De exemplu, prin Articolul 45 litera c) din Constituţia Republicii Federale Germania, se instituie un Comitet al Petiţiilor. Primul birou de acest fel a fost creat în landul Renania-Palatinat, prin Constituţia adoptată în mai 1947. Rolul *Ombudsman*-ului va fi mai bine fixat, ca apărător al cetăţenilor în relaţia cu administraţia, prin amendamentul la Constituţie adoptat în 1974.[12]

Constituţia Federală a Austriei reglementează, în Capitolul VII, Articolul 148, litera a, că oricine poate depune plângere la *Volksanwaltschaft* (*Ombudsman*-ul din Austria) împotriva presupusei administraţii defectuoase de către Bund (Federaţie), inclusiv împotriva activităţii acesteia de susţinător al drepturilor private, cu condiţia ca acestea să fie încălcate de o astfel de administraţie defectuoasă, şi în măsura în care nu se mai poate recurge la o măsură de îndreptare legală. Reclamantul va fi informat despre rezultatul investigaţiei şi, dacă este cazul, despre ce măsură a fost luată.

În anul 1977, a fost adoptată de către Parlamentul Austriac Legea Federală cu privire la funcţiile şi organizarea *Volksanwaltschaft* pe o perioadă determinată (1977-1983). În anul 1981, aceste reglementări au fost introduse în Constituţia Federală a Austriei (Capitolul VII,

[11]Linda C. Reif, Mary Marshall, Charles Ferris (editors),*The Ombudsman Diversity andDevelopment* (papers presented at the 1992 Workshop on The Ombudsman: Diversity andDevelopment in Edmonton), I.O.I. Books, 1993.
[12]Doina Balahur,*Protecţia europeană a drepturilor omului*, Editura Universităţii "Al. I. Cuza",Iaşi, 2006

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Articolul 148). *Volksanwaltschaft* este astfel o autoritate consacrată constituţional, independentă în exercitarea atribuţiilor sale. Consacrare constituţională întâlnim şi în cazul *Ombudsman*-ilor de la nivelul landurilor austriece: Legea Constituţională a Statului din 21 Septembrie 1988 asupra Constituţiei Statului Tyrol (art. 59); Legea privind Constituţia Landului Voralberg din 1984 (Articolul 57: Desemnarea şi funcţiile unui Landesvolksanwalt). Acesteia i se adaugă specificaţiile din legile privitoare la *Volksanwaltschaft* (*Ombudsman*-ul federal – Legea din 1982) şi la *Landesvolksanwalt*.[13]

d. Consacrarea Ombudsman-ului în sistemul francez

Franţa – una din primele ţări care a impus dezbaterea politico-juridică referitoare la drepturile omului – a importat şi ea instituţia de origine suedeză, consacrând-o prin Legea nr. 73-6 de la 3 ianuarie 1973 care înfiinţează un Mediator al Republicii Franceze. În conformitatea cu condiţiile stipulate în această Lege, Mediatorul Republicii Franceze, o autoritate independentă, va primi plângerile cu privire la nemulţumirile publicului faţă de acţiunea instituţiilor guvernamentale, a autorităţilor locale, instituţiilor publice şi a oricăror alte organisme care deţin o misiune de serviciu public. În limitele competenţei sale, el nu va primi ordine de la nicio altă autoritate.

După prima reglementare şi consacrare a instituţiei Mediatorului Republicii, au urmat alte acte normative, pentru o mai bună precizare a competenţelor sale. Astfel, prin Legea din 24 decembrie 1976, s-a întărit legătura cu Parlamentul şi s-a lărgit baza de acţiune, către domeniul echităţii măsurilor administrative. Legea din 13 ianuarie 1989 îi conferă Mediatorului statutul de autoritate independentă. În februarie 1992, o altă lege dă dreptul persoanelor morale de a sesiza Mediatorul Republicii. Apoi, prin Legea din 12 aprilie 2000, Mediatorul este autorizat să se autosesizeze în materie de reformă; este consacrată existenţa delegaţilor şi se defineşte rolul lor; de asemenea, prin acelaşi act normativ, se instituie obligaţia prezentării unui Raport anual în faţa Parlamentului. Legea din 2 august 2005 dispune că, pentru facilitarea investigării plângerilor contra administraţiei, delegaţii pot să-şi exercite activitatea în cadrul camerelor consulare. Prin Legea din 5 februarie 2005, se creează un delegat al Mediatorului Republicii în instituţiile departamentale pentru persoanele cu handicap, crescând astfel egalitatea de drepturi şi de şanse, precum şi participarea cetăţenească a persoanelor cu dizabilităţi. Din 2007, se derulează programe pilot pentru introducerea delegatului Mediatorului în închisori, cu posibilitatea generalizării acestei prezenţe. Modelul de

[13] Ombudsman Board, http://www.volksanw.gv.at/

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reglemetare a Mediatorului Republicii este prezent în ţările francofone din Africa, dar inspiră şi alte instituţii similare din noile democraţii apărute după căderea comunismului.[14]

e. Consacrarea *Ombudsman*-ului în Europa Meridională

Statele Europei Meridionale au cunoscut, după al Doilea Război Mondial, o evoluţie tensionată a mecanismelor de apărare a drepturilor omului, confruntându-se cu perioade mai lungi sau mai scurte de guvernare autoritară sau, după caz, cu perioade de instabilitate politică. După revenirea la democraţie sau după depăşirea crizelor de guvernabilitate, ele au încercat să consacre instituţia Ombudsman-ului, ca un garant suplimentar al drepturilor şi libertăţilor cetăţeneşti.

În Italia, spre exemplu, apariţia instituţiei *„Difensore civico"* este legată de momentul politic al reformei regionale. Apărătorul civic a fost creat mai întâi în trei regiuni, pentru a se extinde apoi în aproape toate celelalte: Toscana – l974, Liguria – 1974, Campania – 1978, Umbria – 1979, Latio – 1980, Lombardia – 1980, Friuli-Veneţia Iulia – 1981, Marcas – 1981, Piemonte – 1981, Apulia – 1981. Consacrarea lor rămâne una la nivel de lege, cu specificarea că, în pofida unor evoluţii promiţătoare, nu există încă o consacrare a funcţiei de Difensore civico la nivel naţional. Mai mult, baza legală a funcţionării Ombudsman-ului regional italian complică mult accesul cetăţenilor la această instituţie şi îi scade considerabil capacitatea de a acţiona pentru protecţia drepturilor.[15]

În Portugalia, instituţia Apărătorului Dreptăţii (*Provedor de Justiça*) a fost creată după revoluţia din aprilie 1974. Crearea sa a fost dovada şi simbolul revenirii Portugaliei la regimul democratic, motiv pentru care s-a procedat la o consacrare constituţională a acestei instituţii (Constituţia Republicii Portugalia din 2 aprilie 1976 – Varianta revizuită nr. 3 din 1992). În Partea I (Drepturi şi obligaţii fundamentale), Articolul 23 din Legea fundamentală se specifică: „1. Cetăţenii au dreptul de a formula plângeri către *Provedor de Justiça* pentru fapte sau neglijenţe din partea autorităţilor publice, urmând ca acesta să le verifice fără a avea capacitate de decizie, şi să facă recomandări organelor competente în vederea prevenirii unor astfel de acţiuni viitoare sau comiterii unor acte nedrepte. 2. *Provedor de Justiça* va acţiona independent de orice decret de amnistiere sau orice acţiune legală prevăzute în prezenta constituţie sau în legislaţie. 3. Instituţia *Provedor de Justiça* este o instituţie independentă; *Provedor de Justiça*

[14] Mediator of the Republic, http://www.mediateur-de-la-republique.fr/
[15] Doina Balahur,*Protecţia europeană a drepturilor omului*, Editura Universităţii "Al. I. Cuza",Iaşi, 2006.

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va fi ales de către Adunarea Republicii. 4. Instituţiile publice şi personalul din cadrul acestora vor sprijini *Provedor de Justiça* în îndeplinirea prerogativelor sale”.[16]

Ulterior consacrării constituţionale, Parlamentul Portugaliei a adoptat o lege specială pentru Provedor de Justiça: Legea constitutivă a Instituţiei *Provedor de Justiça* nr. 10/78 din 2 martie 1978. Aceasta va fi înlocuită de Legea nr. 9/91, din 9 Aprilie 1991 (modificată prin Legea nr. 30/96 din 14 august 1996). În Art. 1 al acesteia din urmă se arată: „1. Conform Constituţiei, *Provedor de Justiça* este ales de Parlament şi reprezintă o instituţie publică, rolul său fiind cel de promovare şi protejare a drepturilor, libertăţilor, garanţiilor şi intereselor legitime ale cetăţenilor, asigurând în acelaşi timp, fără forme legale, ca exercitarea puterii din partea autorităţilor să se facă conform legii şi justiţiei. 2. *Provedor de Justiça* îşi va desfăşura activitatea în mod absolut independent”.

O traiectorie asemănătoare cu cea portugeză întâlnim şi în cazul instituţiei spaniole numite *Defensor del Pueblo*. Aceasta a apărut tot ca urmare a democratizării (trecerea Spaniei de la dictatura lui Franco la monarhia constituţională), motiv pentru care s-a procedat la consacrarea constituţională. Constituţia Spaniei (din 27 decembrie 1978) prevede, în Partea 1 (Drepturi fundamentale şi obligaţii), Capitolul IV (Garantarea drepturilor fundamentale şi a libertăţilor), Articolul 54, următoarele: „Curtea Supremă stabileşte printr-o Hotărâre Specială postul de *Defensor del Pueblo*, desemnat de către aceasta în scopul de a proteja drepturile incluse în această parte din Constituţiei, în acest sens având dreptul să supervizeze activitatea Administraţiei şi obligaţia de a îi raporta Curţii despre aceasta”. Ulterior, la 6 aprilie 1981, a fost adoptată Legea Organică privind *Defensor del Pueblo*.

Pe lângă consacrarea constituţională şi prin lege organică la nivel naţional, în Spania există şi o consacrare şi o funcţionare regională a instituţiei *Defensor del Pueblo*. De exemplu, în Insulele Canare, este în vigoare Legea nr. 1/1985 (12 februarie), publicată în Monitorul Oficial al Statului nr. 71 din 23 martie 1985 şi respectiv în Monitorul Oficial al Comunităţii Autonome Canare nr. 20 din data de 15 februarie 1985. În Catalania, este în vigoare Legea nr. 14/20 martie 1984 privind Instituţia *„Sindic de Greuges”* (Comisarului Parlamentului), lege publicată în Monitorul Oficial al Guvernului Catalan nr. 421/30 martie 1984. Aceasta a fost modificată prin Legea nr. 12/29 noiembre 1989 (Publicată în Monitorul Oficial al Guvernului Catalan nr. 1234/22 decembrie 1989).[17]

În Grecia, apariţia şi consacrarea Ombudsman-ului (Sinigoros Tou Politi) este destul de târzie, comparativ cu celelalte ţări din Europa Meridională: Legea nr. 2477, semnată de

[16] Ombudsman of Portugal, http://www.provedor-jus.pt/ingles/
[17] People's Defender, http://www.defensordelpueblo.es/

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Preşedinte pe 17 aprilie 1997. Aceasta instituie un Ombudsman la nivel naţional, numit prin decret al Preşedintelui, la propunerea Consiliului de Miniştri, pentru un mandat de cinci ani. Malta – o altă ţară din zonă, membră şi ea a Uniunii Europene – a consacrat instituţia *Ombudsman*-ului printr-o lege din iulie 1995, *Ombudsman* Act (ACT XXI din 25 iulie 1995, amendată prin ACT XVI din 1997 şi *Legal Notices 425 / 2007 şi 105 / 2008*). Existenţa *Ombudsman*-ului Parlamentar maltez a fost generată, într-o anumită măsură, de nevoia de a ameliora tratamentul la care sunt supuşi emigranţii sosiţi ilegal în această ţară. Practic, Malta este cea mai mică dintre cele 10 ţări admise în UE în anul 2004, dar cea mai „frecventată" de emigraţia ilegală, dinspre Africa şi Orientul Mijlociu. Insula, cu o suprafaţă de doar 316 Km^2, dar cu o populaţie foarte densă – apropare 400 000 locuitori –, este asaltată mereu de emigranţii veniţi dinspre Tunisia şi Libia, ţări aflate la doar 300 de km distanţă, peste Mediterana; în plus, Malta este foarte aproape de Sicilia, cei 93 de km care o despart de teritoriul italian reprezentând o barieră nesemnificativă pentru emigranţii care doresc să acceadă în spaţiul continental al UE. De aceea guvernul a luat unele măsuri restrictive în privinţa accesului emigranţilor, ducând chiar o politică de descurajare, presărată cu abuzuri faţă de persoanele deţinute pentru trecerea ilegală a frontierei[18].

Cipru, ţară cu un statut asemănător Maltei, din punctul de vedere al includerii în UE şi alproblemelor emigraţiei ilegale, a consacrat funcţia de Comisar pentru Administraţie (Γραφείου Επιτρόπου Διοικήσεως) prin Legea nr. 3 din 1991, amendată prin Legea nr. 98/1994, Legea nr, 101/1995, Legea nr. 1/2000 şi Legea nr. 36/2004[19].

5. bariere sistemice în funcţionareaombudsman-ului

Deşi consacrată constituţional şi reglementată prin legi speciale de funcţionare, instituţia *Ombudsman*-ului nu a reuşit să se naturalizeze eficient în noile democraţii, pe de o parte din cauza spiritului conservator al clasei politice care a pus în operă mecanismele instituţionale, iar pe de altă parte din cauza unor bariere sistemice rezultate din precara cultură politică a naţiunilor proaspăt ieşite din comunism sau, după caz, din regimurile autoritare de dreapta. Am mai putea adăuga, la cele menţionate, chiar şi bariere culturale mai profunde decât cele ce ţin de *pattern*-urile politice – respectiv elemente din cultura populară. Toate acestea se evidenţiază, însă, mai clar la nivelul expresiilor politice ale vieţii cotidiene din noile democraţii

[18] Cf. Claire Rodier, Catherine Teule, Enfermement des étrangers: l'Europe sous la menace du syndrome maltais, în: Revue Cultures et Conflits, nr. 57 (L'Europe des camps. La mise à l'écart des étrangers), printemps 2005, http://www.conflits.org/index1710.html.
[19] ***, Republic of Cyprus, *The Commissioner for Administration Laws 1991 to 2004*, Office of the Law Commissioner, Nicosia, February 2007.

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şi anume în: imaginea politicii în mentalul colectiv, imaginea statului şi a guvernului, imaginea democraţiei etc.

În fostele ţări socialiste din Europa Est-Centrală, vreme de patru decenii şi jumătate politica fusese un exerciţiu rezervat nomenclaturii de partid; aceasta politizase domenii ale vieţii sociale prin excelenţă nepolitice şi golise de conţinut tocmai acele sfere de activitate care ar fi trebuit să fie politice. După 1990 (iar în unele ţări chiar mai devreme), dezbaterea politică a fost readusă în spaţiul public. Mai mult, pentru o scurtă perioadă de timp, aceasta a constituit preocuparea de căpătâi a oricărui cetăţean care înţelegea cât de cât ce se petrece în ţară şi în afara ei. După schimbările de regim de la sfârşitul anilor '80, în toate capitalele şi chiar în oraşele mici din regiune puteai găsi cu mare uşurinţă pe stradă, în mijloacele de transport în comun, în piaţă sau la cafenea oameni gata să explice cum a fost înlăturată dictatura comunistă, care e calea de urmat în politică şi în economie, care sunt mijloacele de acţiune pentru o reformă rapidă, cine are şi cine nu are dreptul de a guverna, care sunt drepturile fundamentale ale omului şi cum pot fi ele apărate etc.[20]

Politica postcomunistă a trecut succesiv prin mai multe stări şi „demnităţi" în ochii opiniei publice. Iniţial, ea a fost reconfortată de o responsabilitate generală, pe care o resimţeau aproape toţi cetăţenii în noul context al democraţiei; treptat însă, angajarea a pierdut din forţă, rămânând în jocul politic de zi cu zi doar persoanele interesate de apărarea unor interese private (urcate ilicit la rangul de interese comunitare). Când s-a constatat că foarte mulţi indivizi profită de poziţiile de decizie pentru a se îmbogăţi sau pentru a-şi crea o reţea clientelară (aducătoare, în ultimă instanţă, tot de avantaje materiale), politica a căpătat o imagine negativă, de activitate dezonorantă. De la consensul impresionant şi de la angajarea spontană a majorităţii societăţii în opera schimbării regimului politic, s-a ajuns curând la o demonizare a acţiunii politice. A face politică a devenit un lucru condamnabil şi ruşinos; suverana detaşare „apolitică" s-a transformat într-o nouă virtute socială, într-un certificat de bună purtare. Desigur, politica la nivel înalt nu era la fel de incriminată. Dar simplul fapt al problematizării sensului şi necesităţii politicii avea să aibă consecinţe asupra modului în care cetăţenii percepeau instituţiile postcomuniste, le acceptau legitimitatea şi le proiectau funcţiile dezirabile. Într-o asemenea situaţie – de produs al politicii postcomuniste – aveau să se afle şi instituţiile de tip *Ombudsman*.[21]

[20]Vladimir Pasti,*România în tranziţie. Căderea în viitor*, Editura Nemira, Bucureşti, 1995.
[21]Christian Bidegaray,*Réflexions sur la notion de transition démocratique en Europe centrale etorientale*, în: "Pouvoirs", nr. 65 ("Morale et politique"), P.U.F., Paris, 1993.

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Demnitatea politicii (ca specie a acţiunii sociale preocupate de organizarea comunitară) constituia în primii ani ai tranziţiei postcomuniste o piatră de încercare pentru procesul de democratizare şi pentru imaginea ulterioară a vieţii publice, în condiţiile în care angajarea politică evolua rapid de la sublim la condamnabil (iar în cel mai bun caz, la ridicol). În România, cel puţin (dacă nu şi prin statele vecine), stilul consensului, imprimat de noua putere atât gestionării curente a treburilor publice, cât şi procesului de legiferare, tindea să transforme politica într-o activitate pur administrativă, supusă raţionalităţii organizaţionale şi nicidecum jocului intereselor şi pasiunilor ideologice. Pentru a-şi conserva şi întări prerogativele, puterea (reprezentată cel mai adesea de foşti nomenklaturişti din linia a doua a partidelor comuniste, defuncte sau reformate) acredita ideea că politica nu înseamnă decât aprobarea cu o largă majoritate (sau chiar în unanimitate) a strategiilor pe care o administraţie neutră ideologic şi raţionalizată tehnic le concepe în folosul întregii societăţi. A face politică trebuia să însemne, aşadar, intrarea în angrenajul competenţelor administrative; iar acest angrenaj nu putea suporta niciun fel de opoziţie, dacă dorea să funcţioneze eficient. Astfel prezentată în discursul oficial (ca activitate administrativă de utilitate generală şi invariabil „corectă"), politica de tip consensual proiecta o imagine contrastantă a principalilor actori ai scenei politice: *puterea* şi *opoziţia*. Această imagine, structurată după o logică maniheistă, se preta la două lecturi diferite, în funcţie de „hermeneut". O primă lectură, cea a puterii, dezvolta motivele infailibilităţii Guvernului şi ale „impurităţii" opoziţiei. Cealaltă lectură, a opoziţiei şi a noilor disidenţi, nu făcea decât să inverseze termenii.

În regimurile democratice stabile şi mature, opoziţia are un rol benefic recunoscut de toată lumea. Rând pe rând, partidele şi coaliţiile se află la guvernare sau în opoziţie, după cum este judecată acţiunea lor de către electorat. Câtă vreme sunt la putere, caută să obţină diverse pârghii suplimentare de exercitare a autorităţii, explicând că doar aşa îşi pot duce la îndeplinire politicile publice. Odată trecute în opoziţie, partidele intră în jocul contestării autorităţii, în jocul criticii şi al limitării prerogativelor guvernanţilor. Pe acest fundal, se poate analiza rolul atribuit instituţiilor de tip *Ombudsman* şi al ONG-urilor care activează în sfera protecţiei drepturilor omului. De regulă, opoziţia sprijină necondiţionat Ombudsman-ul, cere creşterea prerogativelor lui şi critică guvernul pentru încercările de influenţare a acestei instituţii. Puterea, dimpotrivă, aşează *Ombudsman*-ul în banca spectatorilor jocului politic, oferindu-i un rol decorativ.

Instituţia Avocatul Poporului nu are de suferit, în noile democraţii, doar pentru că este asociată cu politicul, în general, despre care lumea nu are cea mai bună părere. O barieră

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importantă o constituie şi imaginea pe care statul o are în mentalul colectiv – o imagine de autoritate absolută, împotriva căreia nu are sens să formulezi nici măcar o plângere la vreun organism internaţional sau la *Ombudsman*: „Un monstru sacru, dominând reprezentările politice, statul se confundă, în opinia publică, cu însăşi politica. Chiar dacă acţiunile partidelor, ale administraţiei locale, ale disidenţilor ş.a.m.d. sunt şi ele politice, numai statului i se atribuie calitatea politică cea mai înaltă. De la demnitarii din vârful ierarhiei guvernamentale sau parlamentare şi până la cetăţenii din cele mai izolate colţuri ale ţării, vom găsi una şi aceeaşi reprezentare: politica şi statul se înscriu într-o sinonimie perfectă; statul este chintesenţa politicii, iar politica nu e altceva decât o «secreţie» a statului. Într-o societate care a cunoscut jumătate de secol autoritatea absolută a statului, nimic nu pare mai firesc decât omnipotenţa acestuia, decât implicarea lui directă în orice tip de acţiune socială – de la cea cu rezonanţă individuală sau de microgrup, până la marile proiecte comunitare. Statul trebuie să controleze, să sprijine, să dea, să intervină, să apere, să organizeze, să conducă etc."[22]

Statul totalitar, parazitat de partidul unic, a reuşit să suprime orice formă de iniţiativă privată, să anihileze societatea civilă şi să ţină sub control întreg sistemul de instituţii, relaţii şi acţiuni sociale. La prima vedere, acesta ar fi fost un stat puternic, ultra-raţionalizat, infailibil. Şi totuşi el n-a reuşit să împiedice revolta populară, n-a putut opri fermentul nemulţumirii faţă de regimul comunist şi colapsul acestuia. Deşi a controlat în totalitate economia, nu a putut preveni sau măcar corija criza ei profundă şi nici nu a putut stopa circuitele economiei subterane, paralele. Statul „omnipotent şi omniscient" al perioadei comuniste, confruntat cu criza economică şi cu declinul ideologiei care îl întemeiase, a cedat rapid în faţa unei mişcări populare în mare parte spontane, dovedind că este în realitate slab şi incapabil de a gestiona complexitatea socială; cu cât a încercat să îşi extindă mai mult autoritatea, cu atât şi-a diminuat mai mult puterea de dominaţie. Din demonstraţiile de forţă din primele decenii ale regimului comunist, nu a mai rămas, la sfârşitul anilor '80, decât un mit al statului total. Dar acest mit domină încă reprezentările politice în societatea românească post-totalitară.

Consecinţele lui în planul funcţionării Avocatului Poporului sunt uşor identificabile: întrucât statul nu poate fi tras eficient la răspundere, întrucât el controlează totul – inclusiv mecanismele instituţionale de protecţie a drepturilor –, a intra într-o logică de tip conflictual în raport cu statul este un gest inutil; cetăţeanul dominat de ideea atotputerniciei statului crede că mai degrabă poate obţine respectarea unui drept dacă se bazează pe „bunăvoinţa" funcţionarilor decât dacă face o reclamaţie. În plus, faptul că Avocatul Poporului este o

[22] Cristian Bocancea, *Meandrele democraţiei. Tranziţia politică la români*, Polirom, Iaşi, 2002, p. 269.

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instituţie din sistemul etatic îi scade credibilitatea, în ochii omului simplu; acesta are dificultăţi în a-şi imagina „apetenţa" unei instituţii a statului de a se război cu alte instituţii, doar de dragul drepturilor omului. Cunoscutul proverb „Corb la corb nu-şi scoate ochii" este relevant pentru percepţia pe care Avocatul Poporului o are încă, în masele largi.[23]

În rândul barierelor sistemice din sfera culturii politice, putem include şi înţelegerea de către populaţia Europei Est-Centrale a democraţiei însăşi, ca sistem politic. Termenul de „democraţie" a avut o istorie controversată în ultimul secol, fiind utilizat în contexte politice contradictorii şi ajungând să primească cu resemnare o sumă întreagă de determinative, unele compatibile, iar altele total opuse. S-a vorbit, astfel, despre democraţie burgheză şi democraţie populară, despre democraţie directă şi indirectă sau reprezentativă, despre democraţie politică şi democraţie socială etc. Aproape toată lumea se reclamă, într-un fel sau altul, adeptă a democraţiei, chiar dacă interpretările conceptului în cauză pot ajunge la construcţii extrem de „originale", rupte de semnificaţia iniţială a termenului lansat de vechii greci. Majoritatea indivizilor reproşează însă câte ceva democraţiei: aşa cum există un curent de opinie, vădit ipocrit, care stigmatizează politica, o demonizează, o depreciază, o face vinovată de toate relele societăţii, tot aşa există şi o multitudine de voci care fac din democraţie principalul vinovat pentru dificultăţile tranziţiei. Astfel, dacă iniţial imaginea democraţiei a fost adorată, dacă s-a crezut că simpla declaraţie cu privire la adoptarea ei necondiţionată va aduce bunăstarea şi libertatea deplină a tuturor cetăţenilor, odată cu semnele crizei economice, democraţia a început să fie făcută vinovată de mărirea preţurilor, de apariţia şomajului şi de îmbogăţirea ilicită a unor persoane; astfel s-a profilat treptat un fel de refuz al democraţiei, întrebarea retorică „Ne trebuie democraţie?!" sau constatarea acră şi dojenitoare „Ne-a trebuit democraţie…" însoţind judecăţile critice la adresa proceselor şi mecanismelor tranziţiei. Nu indivizii care încalcă legile, nu lipsa generală de responsabilitate şi nu comportamentele noastre dominate de modelele comuniste sunt vinovate de criza în care ne aflăm, ci democraţia: numai ea împiedică guvernul să lucreze, ea tergiversează legiferarea; democraţia este vinovată de dezordinea şi indisciplina manifestate în toate domeniile de activitate etc. Vehicularea acestor imagini şi interpretări ale democraţiei s-a produs pe fondul unei precare culturi politice a populaţiei, care nu era obişnuită să analizeze şi să compare ideologii, programe şi discursuri politice.[24]

După cum aprecia sociologul Dumitru Sandu, „este foarte probabil că, într-o epocă în care comunicarea a devenit globală, reprezentările asupra democraţiei tind să aibă o importanţă

[23]Ioan Muraru,*Avocatul poporului– instituţie de tip ombudsman*,Editura ALL BECK, Bucureşti, 2004, pp. 34.
[24]Vladimir Pasti,*România în tranziţie. Căderea în viitor*, Editura Nemira, Bucureşti, 1995, pp. 12-19.

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comparabilă cu cea a instituţiilor în determinarea comportamentelor democratice. Dincolo de o anume masă critică, aceste reprezentări ajung să constituie ele însele un factor de influenţare a comportamentelor democratice, a presiunii sociale pentru realizarea unor instituiri democratice"[25]. Într-adevăr, derivele autoritariste sunt posibile atunci când democraţia nu reuşeşte să-şi construiască o imagine cel puţin corectă, dacă nu chiar favorabilă, în opinia publică, atunci când ea nu se instituţionalizează durabil în tradiţia comportamentelor politice. Avocatul Poporului nu poate opera eficient într-un mediu social în care deficitul de cultură democratică reprezintă o constantă structurală. Într-un asemenea mediu, orice instituţie din sfera drepturilor omului este privită cu suspiciune, ca o aparenţă comandată din exterior sau ca o „capcană" pentru creduli. Despre ONG-urile de profil, ca şi despre *Ombudsman*, se crede că ar promova interese ascunse, că ar fi nişte forme fără conţinut, care consumă inutil banul public. În România, o asemenea judecată provine din fondul cultural naţional, care exclude *ab initio* posibilitatea ca cineva să facă un lucru în mod dezinteresat, pentru cauze nobile etc. Iar dacă există oameni sau instituţii care clamează astfel de implicări civice, eticheta ataşată nu e deloc măgulitoare.

Ideea că nimeni nu face un lucru bun şi nobil (ca protecţia drepturilor omului) pur şi simplu „pe degeaba" este semnul clar al unui tip de societate lipsită de „încredere generalizată"[26]. Lipsa de încredere generalizată (ca element al capitalului social) este explicabilă prin inexistenţa reţelelor asociative informale în timpul comunismului, sau – în cazul existenţei lor firave – prin plasarea lor cvasi-oficială în zona suspiciunii, a subversivului. Potrivit lui Gabriel Bădescu, performanţele dezamăgitoare în materie de guvernare şi democratizare din unele state foste comuniste se explică prin deficitul de capital social. În pofida unui nivel acceptabil de capital material şi uman (concretizat în infrastructură şi în calitatea formării profesionale), unele naţiuni au evoluat supărător de lent în planul societăţii civile şi implicit al democratizării; organizaţiile acesteia sunt încă privite cu neîncredere, ba chiar cu ostilitate, ca şi cum ar atenta la ordinea socială. În cazul naţiunilor cu deficit de capital social, atitudinile politice pro-active sunt excepţii; iar acolo unde se manifestă, sunt bănuite de camuflarea unor interese private sau de clan. Faţă de lumea occidentală, în care societatea civilă este fundamentul democraţiei, în ţările tranziţiei postcomuniste democraţia rămâne exagerat de mult o afacere de stat, iar reţelele asociative civile rămân simple elemente de decor pentru „democraţia de stat".

[25] Dumitru Sandu, *Statul ca reprezentare socială*, în: "Sfera Politicii", nr. 36/1996, pp. 5-6.
[26] Cf. Gabriel Bădescu, *Încredere şi democraţie în ţările în tranziţie*, în Revista: *Sociologie Românească* I, 1-2, 2003.

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În strânsă relaţie cu deficitul de încredere generalizată este şi modul în care naţiunile foste comuniste s-au raportat la normele sociale şi, într-un sens mai restrâns, la lege. Astfel, în efortul lor de „europenizare" şi democratizare, aceste naţiuni s-au lovit de obişnuinţa de a personaliza legea, de a o relativiza. În România post-decembristă, se observă la tot pasul atitudini şi reacţii în spatele cărora tronează convingerea că legea nu are un caracter formal-obiectiv, că ea nu este impersonală, contractuală şi failibilă, modificabilă prin proceduri cunoscute. Comportamentul administrativ, faţă de instituţiile statului şi faţă de lege, este puternic personalizat. Sfera publică şi cea privată sunt vag delimitate, iar cultura procedurilor este profund subminată de cultura grupurilor de status.

Pe lângă elementele de mai sus, merită să aducem în discuţie – ca barieră sistemică deloc neglijabilă în calea eficientizării funcţionării *Ombudsman*-ului din noile democraţii – principiul accesului gratuit la serviciile unei asemenea instituţii. Aparent, acest principiu ar trebui să determine un plus de credibilitate şi de atractivitate pentru publicul beneficiar. Totuşi, într-o societate care a descifrat deja mecanismele capitalismului primitiv şi care are în bagajul de socializare politică o convingere veche că „totul se plăteşte", orice ofertă de servicii gratuite poartă în ea următoarea interogaţie: „Gratuit – gratuit! Dar, până la urmă, cât mă costă?".

Dacă serviciul prestat de *Ombudsman* (audienţa, primirea de petiţii, ancheta, formularea de recomandări, de puncte de vedere etc.) este gratuit pentru cetăţean, fiind finanţat din bugetul public (de către stat, mai exact), nu se poate bănui oare o anumită „complicitate" între finanţator şi „prestator", având drept obiectiv inducerea în eroare a petiţionarului? Cu alte cuvinte, Avocatul Poporului poate fi bănuit de o parte a societăţii că nu face altceva decât să-i orienteze pe piste false pe cei care se află în căutarea unei căi de atac împotriva proastei administraţii sau împotriva lezării drepturilor şi libertăţilor de către autorităţile statului. Într-o asemenea situaţie, *Ombudsman*-ul nu mai are aura unui „cavaler al dreptăţii", ci poartă stigmatul de „forţă de descurajare", de filtru pervers al revendicărilor democratice.

6. Concluzii

Fenomenul democratizării are o istorie îndelungată, debutul său modern putând fi plasat pe la mijlocul secolului al XIX-lea și constând în câteva elemente precum: adoptarea constituțiilor de inspirație liberală, lărgirea permanentă a bazei sociale a puterii politice (prin crearea partidelor și extinderea dreptului de vot), activitatea organizațiilor societății civile (în special a sindicatelor – ca factor de presiune socială), libertatea presei etc. În contrast cu toate acestea, istoria modernă și contemporană a consemnat, însă, și o serie de fenomene deloc

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îmbucurătoare pentru statutul cetățeanului în cadrul statului de drept: creșterea puterii rețelelor birocratice; consolidarea elitelor politico-economice, pentru care democrația înseamnă doar rotația la putere a oligarhiilor, pe baza votului universal; sporirea capacităților tehnice de control ale statului asupra cetățeanului și implicit fragilizarea autonomiei vieții private; dezvoltarea mijloacelor de manipulare a opiniei publice. În aceste condiții, s-a ajuns la un adevărat paradox al democrației: aparenta ei dezvoltare a fost contrabalansată de slăbirea ei reală în viața cotidiană.

Slăbiciunile reale ale democrației trebuiau compensate de niște mecanisme prin care cetățeanul și societatea civilă să-și conserve, să-și protejeze libertățile obținute cu mari sacrificii în epoca modernă. Unele dintre aceste mecanisme au fost generate de spiritul asociativ-civic, propriu comunităților în care au funcționat schemele de tip poliarhic. Altele au fost chiar rezultatul voinței politice a guvernanților de a „îmblânzi" statul dominator, astfel încât el să nu fie un instrument de opresiune, ci unul de echilibru societal. *Ombudsman*-ul face parte din grupul instituțiilor și al mecanismelor etatice de protecție efectivă a drepturilor omului în democrație. Apariția lui în lumea scandinavă – prin voința monarhiei de a limita puterile executivului – a avut un efect benefic pentru evoluția modernă a regimurilor constituționale, demonstrând că statul însuși trebuie „cenzurat" în acțiunea sa, astfel încât administrația să nu fie opresivă în raport cu cetățeanul.

Experiența suedeză a fost preluată, după cel de-al doilea Război mondial, în primul rând de către regimurile politice occidentale, aflate în căutarea unor instrumente pentru sporirea calității vieții democratice și pentru controlul eficient al mecanismelor birocratice. Instituția *Ombudsman*-ului a primit consacrare de ordin constituțional și s-a structurat potrivit caracteristicilor politice naționale, existând în prezent adevărate „modele" de funcționare: scandinav, anglo-saxon, francez, german, meridional.

Un pas important în extinderea ariei de funcționare a *Ombudsman*-ului a fost făcut odată cu dezintegrarea imperiului sovietic și înlăturarea regimurilor comuniste din Europa Est-Centrală. În acest spațiu, însă, noua instituție de apărare a drepturilor omului a fost marcată de următoarele particularități:

a) constituirea ei mai ales în virtutea mimetismului politic (prezent ca atitudine generală a autorităților post-comuniste, dornice de recunoaștere din partea Occidentului), fără existența unei reale voințe de limitare a comportamentului discreționar al statului;

b) „rezistența" aparatelor birocratice de tradiție autoritară în fața exigențelor vieții democratice de tip pluralist;

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c) nepopularizarea atribuțiilor *Ombudsman*-ului și păstrarea lui într-un con de umbră, în raport cu celelalte instituții ale statului de drept;

d) frica cetățenilor de a apela la instituții care să le protejeze drepturile și libertățile fundamentale, pe fondul precarei culturi politice și a neîncrederii justificate în reprezentanții statului.

În aceste condiții, țările din fostul lagăr socialist au adoptat (cu puține excepții, de genul Belarusului) instituția *Ombudsman*-ului, sub diverse titulaturi, au consacrat-o constituțional, dar au avut grijă să-i rezerve mai mult un rol decorativ decât unul activ. Acelașii lucru se întâmplă, de altfel, și în statele africane sau în unele țări asiatice rezultate în urma procesului de decolonizare. Limitele funcționale și de autoritate ale *Ombudsman*-ului în noile democrații sunt reale și importante, însă existența acestei instituții în țările cu o slabă tradiție democratică trebuie încurajată și susținută, întrucât reprezintă un mijloc de dizlocare a autoritarismului și de creare a unei culturi politice democratice.

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THE ROLE OF MARKETING IN THE PROMOTION OF TOURISM THROUGH TRADITIONAL PRODUCT „MITITEI"

Case Study.

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Abstract:This case study presents a traditional Romanian "brand product", so well known and popular with Romanians "Mititei-mici", in Debrecen (Hungary) market and attract more customers as well as creating a positive impact on the traditional product about "Mititei-mici".

In order to launch this product on Hungarian market, was put together a marketing plan and conducted a survey among the population of Debrecen (Hungary), referring to a target on a sample group of 100 people, most of them students, in the city of Debrecen witch is a strong University Centre.

As a result of the survey conducted it was found that the population of the target market is consuming meat at the rate of 58%, constituting an advantage for the proposed project, just that it needs to launch an intensive promotion, taking into account the fact that the product is almost entirely unknown in the prospected.

Keywords: mititei, product, marketing, promotion, public opinion poll

JEL Classification: L83, M10

1. INTRODUCTION

In the condition of contemporary economy in contemporary highly globalized economic affairs it requires strategic thinking, a marketing and strategic management.

Any company that wants to launch a new product or to launch an "old" product on a new market needs to bear in mind, prospecting the market, development of marketing strategies for

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product knowledge by the potential customer, of a policy of promoting adequate and well targeted to attract the consumer.

Reasons for organizations to engage in international business (*Puiu, 2003*) can be grouped into two categories: reactive and proactive.

Reactive motivations represent a response of the organization to the impulses and pressures originating in the competitive environment of economic affairs.

These include:

◙ competition - in the contemporary economy, organizations are continually under pressure from both local organizations and foreign organizations, and the manifest passivity and looking for new markets, including outside sooner or later fall into decline;

◙ reduction of sales on the domestic market or the prospect of reducing them due to various factors: the new market entrants, the advent of placeholders of its own products, oversized capacity in relation to the carrying capacity of the internal market;

◙ geographical proximity to customers from neighboring countries so that sometimes the distance between them is much lower than for domestic buyers.

Proactive motivations involve certain requirements such as the endowment with factors of production and use of comparative advantages.

◙ the supply of raw materials, materials, modern technology, access to financial resources easier compared to the country of origin.

◙ the use of comparative advantages for business expansion and increasing mass of profit, resulting from the capitalization of advantages with regard to technology, the level of wages, the endowment with natural resources, know-how, trade mark for commercial prestige.

„The infrastructure for the transportation services, telecommunication, electricity, water, gas and waste management are very important for the initiation and development of businesses" (*Milin A., et all, 2009*).

Like all businesses, and those made at the international level generates certain risks:

◙ dealing with political, economic environments and different national cultural;

◙ the increase in the number of competitors and increasing difficulties in obtaining information about them thanks to: distance between countries, language differences and different national attitudes that emphasizes these difficulties;

Legend sais that „mititei- mici" (*www.wikipedia.org*) were invented in the 19th century in a night at the La Iordachi in Bucharest, well-known for its sausages, when the kitchen remained without sausages skin.

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The mititei or mici are a Romanian product, a sort of grilled sausages', usually cylindrical, whose composition consists of equal amounts of pork, beef and mutton, plus garlic and black pepper.

2. MATERIALS AND METHODS

Involvement of the organization in its international business brings a number of benefits:

◙ reduce operational costs due to: purchasing raw materials from other countries or producing goods to countries where labor is cheaper than in their home country;

◙ increase sales and profits through economies of scale;

◙ protect the internal market organization by organizations in other countries.

Involvement of the organization in its international business brings a number of benefits:

◙ competitive minimize risk by choosing a less competitive market.

Like any business conducted internationally and creates some risks:

◙ facing political, economic and cultural conditions at national level;

◙ increase the number of competitors and consequently increasing difficulties in obtaining information about their due: the distance between countries, linguistic differences and different national attitudes that emphasize these difficulties;

◙ different monetary systems that contribute to complicated accounting;

◙ increasing political risk (political risk means the potential loss of control over company property or benefits due to actions taken by foreign governments.

The importance is how the collected financial resources are managed. If these resources are not used efficiently, the population will feel the tax burden more difficult, it will feel more burdened than in reality (*Remeş, Boiţă and Costi, 2014*).

The product is a generic concept (*Florescu, Mâlcomete and Pop, 2003*) designating all that is offered by nature or by the market, so it can be noted, purchased or consumed in order to meet a need. By product means anything that can be offered on the market that can attract the interest of purchase for consumption. Any product aims to satisfy a desire or a need. It is characterized by two types of components (*Popescu, 2003*):

◙ body components, merchandising, data material substance of the product and its packaging: size, shape, structure, color, basis weight, strength, content etc.

◙ disembodied components that have a direct material support: price, user instructions, the warranty, brand name, etc. manufacturing license

Alongside these elements, the characterization of the product may occur:

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◙ Communications of the product, which means all information submitted by the manufacturer, distributor or seller final buyer. Product image is the result of mental perception, among the buyers of the product (*Popescu, 2003*). It contains subjective cognitive, affective, social and personal elements.

Sales **promotion** is the set of techniques, actions and means which can cause rapid growth, but provisional and temporary local sales, based on the assumption of a specific strength and punctual potential buyers interested in your product / service.

Sales promotion (*Florescu, Mâlcomete and Pop, 2003*) use specific equipment and advertising support "to the point of sale" designed separately for each sale separately, such as display cabinets, shelves for display, dummies, posters, sticker's strips, bright strips etc. Interior design, decor and animation techniques feast general atmosphere in the store or at the point of sale are other forms of sales promotion.

Sales promotion tools (*Kotler, Armstrong, 2014*) are used by most organizations. Today, for companies producing consumer goods packaged for sales promotion expenses were accounted on average for 74% of total marketing expenses.

2.1. CASE STUDY. *Presentation of the company – Cina Carmangerie S.R.L.*

Cina Carmangerie S.R.L. (https://cluj-napoca.cylex.ro/firma/sc+cina+carmangeriei+srl+cluj-napoca-799946.html) is a company with Romanian private capital, founded in 1991, the main activity of the company is retail and wholesale of meat and meat products. The main activity carried out by Cina Carmangerie SRL is the wholesale and retail trade, consisting in buying from suppliers of pork and beef carcasses, disassembling them and selling them on for profit. In carrying out the activity, the company may enter into contracts of collaboration and cooperation with individuals or legal entities, Romanian or foreign.

2.2. Target market analysis

If part of the corporations in the world have passed the international phase to market orientation, when they need to address each different foreign markets in the industry, much of the companies, acting on the business environment (*Blaga, 2013*).

The "mititei" or the "mici" dishes are a specialty, made from pork, beef and lamb. They are well known in Romania, being found in the menu Greeks, Serbs, Croats, Turks and Bulgarians. It would be gratifying if this product would appear in the Hungarian market.

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The primary objective of this study case is to launch this product on the market in Debrecen (Hungary) and attract more customers by creating a positive impact. This marketing plan was designed and implemented during the period August 2014 - March 2015.

The target market of our product is "meat lovers".

Under existing segmentation meat market in Hungary, SC Cina Carmangerie SRL aims to attract more and more consumers and target market segment concerned is the people consuming meat grilled.

Using the questionnaire below, we segmented target market of Debrecen. Segmentation used by SC Cina Carmangerie SRL is that segmentation where all people are the same and where it takes a special marketing for each person.

Because Debrecen has around 208,000 inhabitants, the number of potential consumers of meat should be about 90%. Since 9 out of 10 people eat meat, we can say that the actual number of potential consumers of the product would be 187,200 people.

Because a large number of buyers are diverse and different in terms of their need, it can be expected that the percentage of occasional or constant consumer of the product would be 35% of meat eaters.

It would therefore be around 64,000 people who would be consistently lower consumer.

If we consider a small package is consumed 4 people per year, it is estimated that sales volumes for the first year would be 11,000 packages. In table nr.1 we can see the trend of consumption estimated target market.

Table 1

The trends of consumption estimated on target market

Name	**Year 2014**
1) The number of consumers (individuals)	64,000
2) Consumption (package /person)	0.4
3) Anticipated sales (package/kg)	11,000

Source: processing author

2.3. Marketing objectives

A first objective would be intense marketing product promotion to increase more customer interest. The company envisages attracting as many customers as part of special offers, discounts, tastings, and lotteries to form a relationship as close to the customers.

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In my opinion, it is an opportunity to launch this product in Debrecen because the existence of this tiny market town is still unknown, massive promotion of the product in the first two quarters leading to gradual growth in sales.

To increase the popularity of the product in Hungary, we need a strong and innovative marketing strategy, which should be as efficient and ingenious advertising effect.

Initially, I rely on the use of billboards, newspapers, advertisements, magazines and other sources of advertising.

For starters, if we introduce this product in Tesco we may rely on a screen using more advertising and advertising posters.

Sales targets are summarized in the table below:

Table 2

Sales target

Month	„Mititei" packages
08.2014	1400
09.2014	1200
10.2014	1000
11.2014	1000
12.2014	1100
01.2015	1500
02.2015	2000
03.2015	1800
The annual amount	11000

Source: processing author

The objectives of the company:

Customer satisfaction by providing them a high quality product.

Educating and informing customers in order to differentiate the product "mititei" with remarkable taste, unique and tasty.

Stepping in advertising campaigns qualitative difference of "mititei" to other similar products of competitors from the market in Debrecen

And not finally, switching to profit even in the first year.

Cina Carmangerie SRL seeks to achieve the following strategic objectives for the period August 2014 - March 2015.

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Table 3

Strategic targets

Activity symbol	**Targets**	**Period of time**
A	Increase of turnover	August 2014 – march 2015
B	Intense promotion	August 2014
C	Attracting a large number of consumers	October 2014
D	Increase the sale	November 2014
E	Consumer satisfaction	December 2014
F	Achieving breakeven in the investments made with the promotion	February 2015
G	Increasing product awareness	March 2015

Source: processing author

2.4. SWOT Analysis

To accomplish this study of marketing we used SWOT analysis

Table 4

SWOT Analysis

Strength	**Weakness**
Original and remarkable Taste	The product's reputation is unknown in Hungary
High quality product	Lack of experience studying product launch or a similar product on the Hungarian market
Relatively low price compared to the competition	Do not consume this type of product on your target market
Within walking distance of the market outlets of Debrecen	Consumer habit with similar products marketed our product to potential competitors
The high probability that the "Mititei" to be accepted on the market in Hungary	Consumer perception of product quality
Opportunities	**Threats**
Having regard to its low price (HUF 950) and the standard of living in	Inability to increase reputation

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Hungary, people will be able to purchase this product	
We will build a massive advertising campaign using billboards, newspapers, magazines, advertisements and other advertising sources to increase the product's reputation and popularity	The habit of people to not try and buy new products, in particular elderly people
There are many feasts, festivals and concerts in Hungary, therefore, this is an opportunity for consumption of this type of food	People are skeptical about this new product
Taking into account the "meat lovers" from Hungary, will be huge sales "Mititei" over the long term, especially among students, who are in large numbers and who are always willing to try something new	The possible lack of confidence in the consumption of products exported from Romania to Hungary
Original and remarkable taste	The product's reputation is unknown in Hungary

Source: processing author

2.5. Action plan

To determine the approximate budget for investment promotion, I used an action plan by analyzing over one year of monthly costs in order to have a successful promotion of the product:

Table 5

Action plan

Date	Place	Action	The person responsible for	Cost (HUF)
08.2014	Debrecen	Newspaper advertising: ½ page Environmental Panel 5000 Folding	The marketing department	1000000 170 000 50,000

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09.2014	Debrecen	Small panel 5000 Folding	The marketing department	170 000 50,000
10.2014	Debrecen	Small panel 5000 folding	The marketing department	170 000 50,000
11.2014	Debrecen	5000 folding	The marketing department	50,000
12.2014	Debrecen	Small panel 5000 folding	The marketing department	68,000 50,000
01.2015	Debrecen	Small panel 5000 folding	The marketing department	68,000 50,000
02.2015	Debrecen	Small panel 5000 folding	The marketing department	68,000 50,000
03.2015	Debrecen	Small panel 5000 folding	The marketing department	68,000 50,000
				1400000 (with VAT)

Source: processing author

◙ **Summary of action plan:**

■ Total Cost (with VAT): **1400000 HUF (~28000 RON ~ 8,600 euro)**

■ Total Cost (without VAT): 112000 HUF (~25000 RON)

◙ Folding:

■ Size: A4

■ Type: 130GSM Gloss

■ Pages: Color

■ Quantity: 5000 pieces

■ Price: £143.75 = 49,192 HUF ~ 50 000 HUF

■ **Source:** http://www.utharaprint.com/flyers/5000flyers.aspx

◙ Medium panel: between $750 - $2,000/panel for 4 weeks

■ The Panel chose for this project is US $ 750 = 169 491,525 HUF ~ 170 000 HUF

◙Small panel: between $300 - $750/panel for 4 weeks

■ The Panel chose for this project is US $ 300 = 67 796, 6102 HUF ~ 68 000 HUF

■ **Source**: http://www.bluelinemedia.com/billboard-advertising

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2.6. Research assumptions

◙ the main point of purchase of the products is directly on the shelves of supermarkets.

◙ Weekly consumption of meat is ¾ times per week.

◙ Vegetarians are people who should not consume this product.

A very small part of the population of Debrecen knows this traditional Romanian product "mititei".

The main element that influences the consumption of meat is the price.

2.7. Opinion survey processing

2.7.1 Identification of the problem and determining the scope of the investigation

On the basis of this strategy have drawn up a survey in Debrecen on a sample of 100 people. Survey was designed for knowledge of consumer behavior in Debrecen.

2.7.2 The pole

For the pole it was used a questionnaire with closed questions.

3. DISCUSIONS

Specific marketing provider of universal service in the new economic context must be the constitutive component of business tourism policy, which to steer the strategy and operational programmers towards the market economy.

As a result of the survey, we see a remarkable result, 100% of respondents said that this product has a very affordable price, has listed several pictures with our product, we will make them look nice and I noticed that a ratio of 98% of those polled would not hesitate in the tasting of this product.

A total of 98 people were potential buyers for this product due to its low price and package you receive, but hopes at the same time as the taste to be as expected.

From the data of this study it can be concluded that private operators have experience in market economies, they developed through the promotion of economic policies based on marketing strategies and targets only profitable services.

CONCLUSIONS

Achieving this study aimed to launch on the external market in the town of Debrecen in Hungary the traditional "Mititei" where the product is non-existent and have successfully

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according to research. It was chosen Cina Carmangerie company from Cluj, because, at Cluj Napoca is the biggest producer and distributor of "mititei".

In achieving this study we used an economic analysis of the production company, then we made a plan and a marketing strategy in which I included a SWOT analysis of the product, with all the peculiarities of such an analysis, and in order to promote product market, we developed the action plan determined the approximate budget needed to pass. What is known by any company that wishes competitive without effective promotion can not win in the current economic context, the offer is often too high and too demanding customer. Any business that wants to launch a new product or launch a product "old" in a new market, it needs to consider, market research, development of marketing strategies and product knowledge to potential client, a proper promotion policy and better targeted to attract the consumer.

After drawing up marketing strategy we conducted a survey in Debrecen, target market, on a sample of 100 people, to know consumer behavior with regard to the new product that we would like to launch it and also to promote. The questionnaire included in the sample 44% women and 56% men, and the age of respondents was between 20-30 years.

Following the questionnaire and then interpreting the results we can draw the following conclusions:

- population of Debrecen prefer and consume meat regularly (3-4 times / wk.) 58% of respondents
- that Romanian product "Mititei" is unknown in the market Debrecen in 82%;
- a 98% of those surveyed would not hesitate in tasting the product;
- 100% of respondents said that this product has a very affordable price;
- 98 people can be potential buyers for this product due to low price and gram mage that they receive, but hopes at the same time as the taste to expectations;
- 78% of respondents opted for the answer "probably" thus, noting that the target market population is consuming 58% meat; this is an advantage for the project, only that the launch is needed intensive promotion, given that the product is almost completely unknown prospected market.

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ABOUT THE VIRTUES AND VICES RELATED TO THE FISCAL POLICY

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Abstract: The paper aims to identify and evaluate the fiscal policy in terms of its virtues and possible vices. Generically, the virtues of the fiscal policy could be defined as the morality of enforcement, the positive effects on the society and on the formation and shaping of taxpayer behaviour, while the vices might target several negative aspects such as informal economy, tax evasion and fiscal fraud. The expected results highlight the virtues of the fiscal policy, the need to stress and disseminate them, in contrast with highlighting the vices of the fiscal policy and the need to control and curb them.

Keywords: fiscal policy, virtues, vices, fiscal regulations, behaviour

Introduction

The analysis of the virtues and vices manifesting in relation with the fiscal policy must start with the presentation of the two terms and with the arguments for transposing these traits, specific to the human being, at the level of the fiscal policy.

The issue of virtue gets different shades in the philosophic literature, either as a label of the man who has special qualities (intellectual, moral, etc.) or as *a priori* assignment, by descendance, of merit to a person, either as educational goal, as science, with religious or lay meaning, or as attribute of acknowledgement of excellence professional attributes.

Synthesizing, we appreciate virtue, in agreement with the above, as being a cumulation of positive traits displayed by the individual, by dominant moral values, by trend/concern towards improving one's morality and by spreading these positive values within his/her group and, consequently, within the society.

In contrast with the virtue, the vice is a cumulation of negative traits displayed by an individual, i.e. lack and/or deviation from moral values, performing acts/actions which are bad for him/her and perpetuating them within his/her group and, consequently, within the society.

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Having these landmarks on virtue and vice, synthesized by the existence of higher moral values or by their absence, I consider that the fiscal policy can be personalized with these traits. The arguments in favour of this personalization are:

The objectives of the fiscal policy (ensure the financing for the supply of public goods and services to the citizens, such as redistribution of incomes among the members of the society) correspond to moral values which are perpetuated within the society, to the benefit of its members;

The regulation and implementation of the fiscal policy, actually of the fiscal system, are the most sensitive elements of the fiscal system, elements which are sometimes accompanied by different interpretations, by the lack of full coverage of the nature of the economic activities, or are exposed to the phenomenon of corruption, tax evasion and fiscal fraud, which establish the grounds for adverse acts/facts, by deviation from the moral values, and their perpetuation within the society.

The paper will further develop these aspects regarding the virtues and vices of the fiscal policy, mentioning and discussing fiscal issues that describe these two situations.

Virtues of the fiscal policy

Our approach in this section of the paper will relate particular elements and objectives of the fiscality, as well as taxpayer behaviour, to the concept of fiscal morality, as vector of the virtue. The concept of fiscal morality, in our opinion, must be approached from two perspectives, i.e. at the level of taxation by the sovereign state and at the level of payment by the taxpayer.

Regarding the levying of taxes by the sovereign state, we consider that this is a moral action, as shown by the functions of the taxes:

Function of financing – the morality of this function resides in the fact that the levied taxes form the public financial resources needed for the supply of public goods and services which are distributed through the public authorities. This function/action is a virtue of the fiscal policy because the public authorities provide public goods and services which meet, at an adequate qualitative and quantitative level, the cultural, educational and justice necessities for the entire society, as well as the national defence.

Function of distribution – the morality of this function resides in the fact that the levied taxes and the expenditure from the budget made by the public authorities meet social needs, by the distribution and redistribution of incomes and wealth between natural and legal persons, when the natural distribution and/or the manner of assignation of the production factors and forms of

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property don't converge with the necessities and with the social equity. This function/action is a virtue of the fiscal policy because the public authorities provide mechanisms of distribution and redistribution of incomes among the members of the society, trying to ensure permanently the distributive equity;

Function of stabilization – the morality of this function resides in the fact that through the taxes and the expenditure from the budget, the public authorities aim to ensure the macroeconomic stability and growth, by providing a high employment rate of the labour force, by price stability, by a solid state of the foreign payment balance and by ensuring a sustainable economic growth. This function/action is a virtue of the fiscal policy because the actions of the public authorities, besides ensuring the macroeconomic stability, also support the quality of life of the citizens.

We have thus shown and analysed the functions of the tax in terms of their virtues. Each of the three functions displays elements and traits characteristic to the virtue: provision and supply of public goods and services for all the members of the society; the philanthropic character given by the distribution and redistribution of incomes among the members of the society; concern for a better standard of living for the citizens. Thus, these evaluations of the three function of the tax show that the very fiscal policy, in its whole, is a virtue issued forth by the state, by constraint, with the purpose of ensuring the welfare of the society it represents.

Our analysis, in terms of associating the levy of taxes with elements and traits characteristic to the virtues, done so far at the level of tax functions, must expand to include the taxpayer behaviour following the constraint to pay taxes.

We will therefore have a dualism between the morality of the tax levied by the fiscal authorities and taxpayer behaviour regarding tax payment. A reputed sociologist[1], was highlighting in one of his books that the accomplishment of positive objectives for the society, compatible with virtues, is sometimes conditioned by the use of morally-doubtful instruments, which may arise adverse side effects which, within the context of our paper, can be associated to vices.

Taxpayer constraint to pay taxes generates both reactions of voluntary compliance, and reactions of voluntary non-compliance. Within the national and international fiscal practice, the efficacy of a fiscal system is not measured in terms of amount of the revenues from taxes and dues to the consolidated budget, but by the rate of accepting this constraint, of voluntary compliance to pay taxes and dues.

We will now analyse taxpayer perception of the taxes and dues levied by the sovereign state and their evaluations of the moral character of the tax, therefore associated to a fiscal virtue.

[1] Max Weber, in *Politics, vocation and profession.*

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Most taxpayers display a behaviour of tax compliance, of voluntary payment of taxes, which is regarded as a civic responsibility[2] of each citizen, of contributing financially to the development of the society and to a higher level of civilisation, during their active period; thus they have both the quality of contributor, supporting the supply of public goods and services, and of beneficiary, both before being able to work, during the active years and after losing the capacity to work.

The fiscal morality outlined at taxpayer level represents, in our opinion, that side of taxpayer behaviour which aims the philanthropic character, particularly, and the society, generally. Hence, we consider that the fiscal morality displayed by the taxpayers can be influenced (preserved, altered, consolidated) by several institutional factors, such as the level of fiscal pressure or the predominant nature of the property. Thus, if most taxpayers with a high level of fiscal morality perceive the increase of the taxation rate, the increase of the fiscal pressure, without feeling that this increase was to the benefit of the society, that increase of the taxation rate might be evaluated by the taxpayers as immoral. Also, the fiscal morality among the taxpayers oscillates depending on the nature of the property; thus, in the companies with predominant private property which represents an ideal for the society members, morality tends to acquire shades of contestation, being seen as an excessive constraint of the liberty, while in the companies where the private property is not predominant, being owned by the state, the taxation morality is neutral due to the flattened feeling of property for private goods and due to some difficulty of evaluating the advantages of the collective goods and of the private goods.

The analysis of the taxpayer perception of the moral character of the taxes and in terms of perceiving it as a fiscal virtue showed that most taxpayers have a behaviour which confirms/accepts that fact that taxation is a moral action, the payment of the taxes being associated to a fiscal virtue.

Vices of the fiscal policy

Our approach in this section of the paper will connect several elements and consequences of the fiscality and of the fiscal behaviour of the taxpayers, with the concept of fiscal immorality, as vector of vices. The concept of fiscal immorality, in our opinion, must be approached from two perspectives, i.e. at the level of the regulatory framework for taxation and at the level of taxpayer fiscal non-compliance behaviour.

[2]Meaning that the people are not motivated only by a better welfare for themselves, but also by feelings of responsibility and solidarity towards the state and nation.

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Starting from the traits of the vice, as shown in the introduction, we will try to identify the negative elements and consequences of the fiscal policy that impact on the taxpayers and on the society.

It is a known fact, unanimously accepted, that fiscal legislation stability is an important element that ensures and contributes to taxpayer education and to a stable economic environment. The fiscal legislation suggests the necessity of simplicity and stability of the Fiscal Code and of the Code for Fiscal Procedures, in agreement with the basic principles of taxation (certitude, efficiency, etc.), which highlight the fact that the fiscal regulations must be applicable on the long-term so as not to disturb the behaviour and activity of the taxpayers, while their language must be clear, non-redundant, easy to understand, in agreement with Montesquieu's[3] recommendations "*the laws must not be subtle; they are made for people with average understanding; they are not the expression of the art of logic, rather of a simple judgement of a family father"*.

The practice reality, however, contradicts the theoretical recommendations, at least in Romania, where the dynamics of the changes in the fiscal legislation is rather high, as shown that over 100 modifications have been made to the Fiscal Code over ten years (2004 – 2014) of existence, the number of words increasing three-fold and reaching 190,000; there are 100 new articles, and just 25 of the initial 298 articles remained unchanged.

Regarding the language of the fiscal norms, one can detect apparent or real contradictions between particular fiscal legislative norms, which generate difficulties, both in terms of understanding and of observing them, and the inspection of their observance (semantics of the fiscal norms). Also, the complexity of the fiscal normative papers, which may come in several forms, i.e. in terms of methodology of calculating the taxation level, in terms of procedural and bureaucratic aspects regarding the fiscal compliance, or in terms of the general fiscal norm, by the lengthy phrases, by the high level of abstraction (syntax of the fiscal norms), add to the difficulties of readily understanding the fiscal legislation.

The abundant changes in the fiscal regulations, the complexity of the fiscal normative papers, as well as the procedural and bureaucratic aspects of the process of filling the return of income forms and of tax payment are, within the context of our approach, vices of the fiscal policy. Our arguments for classifying the mentioned aspects as vices of the fiscal policy regrade the fact that these impediments of the fiscal legislation are in conflict with the desire of most taxpayers to be

[3]Montesquieu, (1964, 1970). „On the spirit of laws", vols. 1 and 2, Scientific Press

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respected, both as members of the society in which they live, and as contributors to the development and progress of the society; they can also be used by a minority of taxpayers as opportunities to decrease and/or avoid their fiscal duties.

At the taxpayer level, the materialization of fiscal vices is generated by the reluctance to pay taxes, displayed by the behaviour of fiscal non-compliance. Failing to pay taxes is the most complex conceptualization of the vicious behaviour of fiscal non-compliance, irrespective whether it is intended or not.

The nonpayment behaviour, or the fiscal fraud, are deliberate acts of non complying with the fiscal duties, which thus decrease the due taxes compared to their actual obligations. The vicious effects of this fiscal phenomenon impact directly on the level of collecting the public financial resources; they create distortions within the market mechanisms; they can fuel the social/contributive inequity between the honest taxpayers and the dodging ones and they dilute the effects of the fiscal education.

The combination of the vicious fiscal elements displayed at the level of the authorities and at taxpayer level, gives birth to a broad phenomenon, with deeply immoral features, with the nature of a vice, i.e. corruption. It appears, as mentioned before, due to the vicious dualism between the two sides and it represents the manner of asking, offering, giving or accepting, directly or indirectly, an illicit fee or another undue advantage, or the promise of getting one, which affects the normal exercise of a fiscal norm or of taxpayer behaviour.

The literature provides many classification criteria for corruption, the most important ones being the active or passive character of participating in the accomplishment of corruption acts and the size of the value. Both classifications are found in our approach, because the promise and offer mix with the demand or receipt, while the big corruption is associated to the major decision-making factors that play an important role in the adoption of fiscal, financial and administrative measures, being specific to the central public administration and tightly related to the money laundering phenomenon, favouring fiscal evasion, the poor management of the public funds, the deficient collection of taxes and dues, etc.

Conclusions

The purpose of the paper was to analyse and evaluate the manifestation of virtues and vices related to the fiscal policy and in the fiscal behaviour of the taxpayer. The results led us to the following conclusions:

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The fiscal policy, through its functions/objectives, is a cumulation of moral acts which aim the quality of life of the citizens and of the society as a whole, acts which can be associated to the so-called virtues of fiscal policy;

Most taxpayers accept the taxes and dues, on grounds of morality and civic responsibility, which relates to the predominant individual virtues about fiscality, perpetuated within the society;

Deficient aspects exist, unavoidably, both in terms of applying the fiscal policy, the fiscal norms, and in terms of the fiscal behaviour of the taxpayers, manifested as tax evasion and fiscal fraud;

The dualism of these vicious aspects manifesting both at the level of designing and implementing the fiscal policy, and at the level of the fiscal behaviour of the taxpayers, condense within a noxious phenomenon – corruption – which affects the fiscal policy and tends to alter the fiscal behaviour of voluntary compliance displayed by most taxpayers.

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FACTORS DETERMINING SOCIAL VULNERABILITY OF ROMANI PEOPLE

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The study of Roma's history, origins and lifestyle represented the concern of Romanian and foreign researchers. At the beginning the Roma in Romania were mostly under the attention of foreign personalities, thereafter Romanian researchers came up with interesting studies on the lifestyle of Roma. Presently, a great part of the members of this ethnicity are exposed to marginalization and social exclusion.

The present study intends to analyze the lifestyle of the Roma population living in the Maramureş contry. The subjects were handed a questionnaire containing questions on discrimination, financial situation, bringing up and educating children, health, migration, employment, citizen rights, etc. The total population on which the research was carried out is of 1486 persons from the Craica and Ponorâta community. A number of 150 questionnaires were handed over within this communitis. The questioned subjects are men and women over the age of 18. The method employed was face-to-face inquiry at home. The results obtained highlight the causes with most frequently lead to social marginalization and exclusion of the Roma ethnicity.

Keywords: roma, marginalization, integration, vulnerability.

A brief history of Roma origin

Studying history, origin and the way of living of the Roma people has been the concern of researchers from abroad and from our country. The most popular works are those of Paul Bataillard which have a wide European coverage "Bohemiens ou Tsiganes" and F. Miklosich's who was, in the opinion of Paul Bataillard, the most competent Indologyst, philologist and gypsy specialist"*ţiganologul*".[1]

At the beginning, the issue of Roma people was taken into consideration especially by foreginers who have visited Romania. At the beginning of our century, Dr. Eugene Pittard leads a band of researchers in Dobrogea, who conducted anthropological research on Roma and other populations. In Romania there have been and there are Roma persons, but not more than in other

[1] Potra G., *Contribuţiuni la istoricul ţiganilor din România*, Fundaţia Regele Carol, Bucureşti 1939, p. 5.

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European countries (Bulgaria, Greece, Italy, Yugoslavia).[2] Over the years, researchers have conducted interesting studies regarding the way of living of the Roma people in Romania. Şerboianu Popp made an ethnographic study with greater scope about Roma nomads[3],Mihail Kogălniceanudescribed, especially the life of Roma in Moldavia[4] - their liberation-, and Professor Barbu Constantinescu studied the Romany language. Michael Barner, born in 1881 in the city Agnita, bank clerk, in his desire to know the habits and life of nomadic Roma people, accepted their nomadic life, learning their language and customs and assembling them into a collection of gypsy folklore.

Dan Demetrius, a priest from Bucovina, conducted a small but interesting study including ethnographical data about the "Tiganii din Bucovina".

Ion Chelcea, an outstanding researcher and an expert in the Roma language, published in 1944 a study entitled "Ţiganii din România ", ethnographic monography that includes very interesting information on the history of Roma people, their origins, their occupations, port, customs and beliefs. The paper also includes a large number of maps, charts, photographs, authentic documents for today's ethnographers who are studying the lifestyle of the Roma people.

Popp Şerboianu admits Paul Bataillard hypothesis that Roma are Thracians[5]. This means that P. Bataillard is looking for Roma`s origin not in India, but in Turkey, Asia Minor and the Caucasus. Recently, journalist Vasile Ionescu, based on historical data: Greek sources of information, the findings of archaeological research in Romania (tablets from Tărtăraia, Hunedoara county), Romanian mythology, legends and data- concludes that Pontus territories were under the pressure of nomadic people coming through north and south of the Black Sea, the place of birth of a strange, terrible and damaging nation. This people considered property as a sin, the essence of man is evil, preaching nonviolence, a world without borders. These messengers of archaic times, excessive in vitality were called by Europeans Roma (Gypsies).[6]

German teacher H. M. Grellmann, taking into consideration the historical data, states that no people migration was done over large areas of water or on a smoothly land and tried to prove the Hindu origin of Roma people. The comparison drawn between Hindu and Roma words leads him to the conclusion that there is a perfect likeness[7].

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[2] Potra G., *Contribuţiuni la istoricul ţiganilor din România*, Fundaţia Regele Carol, Bucureşti 1939, p.12
[3] Şerbănoiu P., *Les Tsiganes. Historie-Etnografphie Linguestique-Grammaire*-Dictionnaire, Pazot, Paris 1930, p. 312.
[4] Kogălnieanu M., *Scrieri literare, sociale şi istorice; Dezrobirea ţiganilor,* cap.18, Editura Litera, Bucureşti, 1975, p. 68
[5] Şerbănoiu P., *op. cit.*, p.315.
[6]. Ionescu V., *Prolegomene la o istorie a ţiganilor*, Aven Amentya, anul I, nr. 1, 24 mai 1990, p. 5.
[7]*Idem*, p. 6.

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A. Poissonnier[8] (Les tsiganes en Moldovie et Valachie), and P. Bataillard, Ascoli, Miklosch, Mihail Kogălniceanu şi Barbu Constantinescu also agree with this theory. Dr. George Potra writes that in India exists even today a nation far below others, called "Cengar"[9].

Poissonnier notes that Roma claim to be native of Egypt. Probably that is why Englishmen call them Gypsy. Poissonnier met in England a group of Roma and tried to talk to them in the Romani language spoken on the European land. They did not understand each other because they were speaking other language than that spoken by gypsy from Romania, Hungary, Bulgaria, France and other EU countries. He encountered another similar situation in Spain. The Spanish call Roma "Gitano" but Roma from over there call themselves "Mauri", rejecting the idea that they have the same origin as Roma from Barcelona and Andalusia.

In Romania, by the way that organize their lives, they act or by their occupations, Roma have several names:"carturari", "laiesi", "netot"(homeless, nomad, uncut, uncombed, disheveled, eats what he can stole). There is another category of Roma who deal with crafts and live on what they do: "rudari", "baiesi", "aurari", "ursari".

Moral duality of Roma people

The private life of Gypsies is conducted very differently than their public life. Firstly, the Gypsy's solidarity is to be taken into account. Although sometimes they quarrel and fight, they do not steal or cheat one each other. A gypsy, regardless of the group to which it belongs, is a Roma or "kalo", and an individual belonging to any other nation is a "Gajo" or "Parno".[10]

One of the great oddities of Gypsy behavior is his way of behaving differently to those who are called Roma and those who are called Gajo. No matter how loud are Gypsies and any cause would be among them, are much more correct than in relationships with other nations. A Gajo is always an individual from whom a gypsy has not got moral obligations. In this manner, a misunderstanding between Gypsies is seen as something serious, something in which all members of the community take part in solving that, where as a misunderstanding with a Gajo is seen as something very natural and does not draw their particular attention. This moral duality of Gypsy persons is perhaps responding to the indignities and prejudices that those who call themselves Gajo treated them for a long time.[11]

[8] Poissonnier A., *Les tsiganes en Moldovie et Valachie*, Paris, PUF, 1855, p. 126.
[9] Potra G., *op. cit.*, pp. 37-38
[10] *Idem*, p. 45.
[11] Merfea M., *op. cit.*, p. 46.

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Marginalisation and Integration

Aberrant equalization policy - or better standardization - of individuals promoted by the communist regimes in Eastern Europe had the effect of avoiding social exclusion. Prior to 1989, due to mitigation policies and social differentiation there were no obvious processes of marginalization of Roma people by public institutions, although the existence of prejudices, stereotypes or discriminatory attitudes among non-Roma population can not be denied. One of the reasons that hindered these discriminatory events was the feeling of solidarity existing among the population because beyond ethnic differences, all individuals had a common identity - that of oppressed citizens. This sense of solidarity is manifested sometimes by developing survival common strategies. However, after 1989, "rapid and intensive social change, which raised serious and unexpected problems in the process of institutionalization and democratic consolidation in society"[12] but, above all, "the collapse of the planned economy and social patterns of communism"[13] and the transition to a market economy have generated a process of social polarization and marginalization. In this way appeared two "classes": the "very few, but rich" and "very much, but poor"[14]. Starting with 1989, the actors of a social development scene, were ethnic minorities, in particular Romani minority whose members were experiencing - the vast majority - an acute marginalization process. With the democratic changes that occurred after 1989, there was a phenomenon of liberalization and social relationships. As a result of this, liberalization equalizers coercive forces disappeared, the social field is thus open for expressions of group identity and prejudice, stereotypes and discrimination dormant until then.

The vast majority of Roma was one of the most vulnerable social costs of transition as already stood high risk positions: being poorly qualified, Roma were severely affected by unemployment, those who earn a living from complementary economy remained without the work object.

On the other hand, the erosion of wages and the state allowance for children (the main source of income for many Roma families before 1989) led to a dramatic drop in living standards for a significant proportion of the Roma population.

Before 1989 Roma were not a discriminated ethnic minority, one of the reasons being so is the fact that they were not given "the right to represent an ethnic minority, free to promote their own

[12]Neculau A şi Ferreol G., "Democratizarea şi marginalizarea în societăţile est-europene (cazul Bulgariei)" – în vol. *"Minoritari, Marginali, Excluşi*", Editura Polirom, Iaşi, 1996, p. 217.
[13]*Idem.*
[14]*Ibidem.*

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cultural traditions"[15] because "tacit principle of socialist policy towards the Roma was assimilation."[16]

After 1989, with globalization and democratization of society, there was a process of emancipation of various minorities - ethnic, religious, sexual, etc. - and shaping their identity but at the same time occurred a process of marginalization by the majority in its desire to maintain and perpetuate the regulatory balance. It is important to mention that the reaction of society is universally, not specific to Romania.

After 1989, the conclusion that emerges is that, Roma population has undergone a process of marginalization. But it is extremely difficult to distinguish the ethnic dimension of economic marginalization or the age or sex related. In fact, we are dealing with a plurality of marginalization (accumulation of "dirt" by Pierre Bourdieu), however, the main role is represented by the economic component of marginalization.

The consequences of marginalization

Like the causes of marginalization, the consequences are multiple and interrelated. Since it is difficult to establish a hierarchy depending on the importance and gravity, we will try to make a ranking according to the causal relationships between them.

One of the worst consequences of marginalization is the situation of marginalized people on a lower position as second-class citizens, deprived of rights and responsibilities deriving from citizenship.[17] Unfortunately, after 20 years of democratic experience, in Romania there is still a lack of culture of civil rights or public services specializing in monitoring compliance with these rights and providing advice and support for people whose civil rights were violated (advocacy). A large number of Roma communities are not only socially marginalized, but also spatially, being located on the outskirts of towns or in isolated areas. This marginalization is not ethnic but economic and territorial. One of the consequences of this spatial isolation is the reduced access to community services. In addition to their citizenship rights violations, often marginalized people are placed outside the scope of human rights.

Research methodology

[15]Zamfir C. şi Zamfir E., coord. – "*Ţiganii între ignorare şi îngrijorare*", Editura Alternative, Bucureşti, 1993., p .157.
[16]*Idem.*
[17]Neculau A. şi Ferreol G. (coord.), "*O reconsiderare a sărăciei: autonomizarea şi drepturile cetăţenilor*" *în vol. "Minoritari, Marginali, Excluşi*", Editura Polirom, Iaşi, 1996, p. 256.

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In this study we considered necessary to achieve a sociological investigation among the Romani population of Craica and Ponorata (Maramureş country). The investigation was accomplished by implementing a questionnaire to subjects in the aforementioned communities.

The total population on which investigations were made is 1486 people, out of which 1080 people are from Craica community and 406 people are from Ponorata community, namely the urban and rural area.

Questionnaires were administered to 150 people out of which 93 people from Craica and 57 from Ponorata. The applied method was the social home inquiry, using „the face to face technique". The subjects interviewed were men and women who have reached the age of 18 at the moment when the questionnaire was administered. The questionnaire consisted of a total of 62 questions which captures aspects of age, gender, educational level, financial situation, issues that capture discrimination, raising children, health, migration, finding a job. Questionnaires were administered by a team of 10 field operators.

Hypotheses:

The existence of discrimination, unreported by authorities, communities and individuals.

The lack of assurance their own autonomy and financial independence of the Roma.

The training and qualification are reduced to elementary level.

The existence of social benefits (social provisions) whose financial dimensions are insufficient in ensuring a decent living.

Continental migration phenomenon (in Europe) is present in these communities

The migration is driven by economic reasons, health and cultural ones;

The migration is a seasonal pendulum type (resident-foreign country-residence).

The results of the study

The replies of the subjects confirm the perception of ethnic discrimination, manifested not in the rules and legislation but in the behavior of authorities and community towards them. The process of discrimination is the result of a historical mindset, an idea found in the separate development of Roma communities from the Romanian ones. Do not forget that Roma are located in distinct areas delineated on the outskirts of towns in the communities studied.

The studied Roma communities have not owned means of production, with only able to engage in various organizations and companies. During the communist period, Roma community from Ponorâta used to practice agriculture in the agricultural cooperatives. After the fall of

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communism the ex landers were reassigned with land, leaving the Romes with no land to work. The Craica community from the urban area has not got either any means of production, more than that, even their homes are not legally owned by them. Consequently the degree of maneuver, the autonomy and independence of the members of these communities is limited to solutions that includes migration.

Income members of these communities is between 200-500 lei (50-120 euros) and is mostly made up of social benefits provided by the state or mayors (minimum income support, child benefit, compensation disadvantage in etc.). The statistical data presented in the study, show that these revenues are insufficient to provide a decent standard of living. It is worth specifying that Romania will, in a short time, adopt a law that will reduce the number of social benefits and their magnitude. As specific information, Ponorâta community is the poorest Roma community in Romania, which can be observed in the graphs presented. The birth rate in these communities is much higher than the national average, the average number of children / family being 4 children. There are families with 10 children and one of them has 20 children. This financial difficulties multiply for maintenance the children, they do not attend educational institutions, the massive dropout and school level at which this children stop is 4 classes. Many of them remain in the household help "taking care" of little brothers perpetuating the existing condition. Consequently their training and access to higher statuses is seriously diminished.

The adult population of the two communities, is in terms of qualifying a largely unskilled population, which narrow their chances to get a job in various companies and organizations.

Most adults in the Roma community are not engaged. From the data presented in the study, they do not receive unemployment benefits, because they are long out of the period of unemployment aid. Many of them are long-term unemployed. Recall that in Romania the maximum period of granting unemployment is 12 months.

There is an opening for people from these communities to training courses but jams occur due to regulations in force in Romania according to which you must have completed 8th grade to attend such courses. In the areas studied in Baia Mare, there is enough potential for development, that allows absorption of the labor force in the coming years. There are companies that employ a significant proportion of Roma, citizens of Baia Mare. In contrast, the Coroieni common and its surrounding areas (Roma community of Ponorâta), the economic situation and prospects for economic development are reduced, without the possibility of hiring Roma. Note that this area is mainly agricultural, practicing subsistence farming by smallholders, who are not interested in hiring even as a day laborer person of Roma origin.

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We encounter with a mentality that is not necessarily specific to Roma, but to a large part of Romania's population that manifests in relationships with national and local state. The state is seen as a kind of "parent" who has to provide its citizens good conditions without making any effort to this. From the data presented, subjects expect the state or municipalities to provide them housing and jobs, especially in SOEs. Consequently, the communities studied, do not have a culture of initiative so their efforts to ensure a desired standard of living fails.

The migration phenomenon is confirmed in these communities. Migration is perceived by community members as an alternative solution to the difficulties encountered in Romania. The direction of migration is towards the European Union and developed Western European countries like Italy, Spain, France. Migration is seasonal. In our investigations we met Romans who were in Western Europe and now have returned home after a period, following that, them and others in the community, to join the migration paths.

Because of their cultural specific, migration or migration intention is conceived by respondents as being made with the entire family (husband / wife, children and even other relatives) which cause specific problems in the countries where they migrate.

The main cause of migration of the respondents is economic- finding a job that will provide enough income for themselves and their family- plus family reunification and related causes. We note that this case is correlated with the difficulty of finding a job in Romania, in their residence area.

Migration is perceived by people from studied Roma communities, as a right that they have as members of the European Union. They know their rights resulting from this quality but are less aware of the obligations resulting from this status. In fact there is a cultural and historical ground regarding the freedom of movement (including migration) resulting from the history of Roma ethnicity characterized by a permanent tendency to travel and by the refusal to stay in one place. The idea of freedom is understood as a lack of constraint and the freedom is understood as a lack of coercion and as a refusal of rules imposed from outside communities.

Conclusions and proposals

It's a common given that the European Union is not heterogeneous in terms of economic development, financial opportunities, cultural standard of living and so on; there are economically developed countries with high standard of living and countries in which the living standard is at a lower level. EU policies are aware of the situation and aims at achieving a level of development, similar to all those EU member countries, with all its consequences. But currently,

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it is the existence of these differences in reasons, which cause the migration from less developed countries to more developed countries, particularly for Roma communities. As long as these differences exist, and considering the principle of free movement, migration will be presented as an inexorable phenomenon. In order to reduce migration, we propose to establish an EU committee with responsibilities in managing the Roma issues from all over the Europe. This structure should develop uniform policies for social integration of the Roma, the resources allocated to offer social support, social service types should be identical in all countries including the financial benefits. In our opinion, these measures would substantially reduce the migration phenomenon. Specifically, if we compare the welfare in France and Romania, we notice that they are similar, but different by their size (amount of money). It can be also developed an employment workforce policy with features identical throughout the European Union for Roma people- the companies that hire Roma people to enjoy a range of facilities-. We suggest adopting a similar policy to the EU Common Agricultural Policy.

Locally, in Romania, we suggest that the government and parliament should pass a law according to which local or national authorities can buy land from the owners and give it to Roma population, especially from rural areas. In this way, a good deal of social benefits would reduce, if not eliminate; resulting from our calculations that in a period of 10-15 years, the costs of land acquisition would equal social benefits costs granted in this period.

At local level, we propose the establishment of a structure in which to be part local economic organizations, on the one hand and local authorities on the other hand, in order to develop an action system in hiring Roma persons. We believe that the reduction of local taxes and the elimination of enterprises duties to authorities, would be the perfect trade for labor absorption of Roma.

Regardless of the Roma issue, regardless of the particular way in which it appears in various European countries, regardless of search states' efforts to find solutions to national or local level, we believe that if we want a united Europe, a kindred level of development and living in all countries, if we want to integrate the Roma, this can be achieved only in a unified view, the European Union's global organizational structure to be competent across the current European Union. As a final conclusion we can say that any solutions we adopt will not solve the problems, always existing the danger that the Roma issue to burst again.

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"IN THE END THERE IS NO END...': REFLECTIONS ON SEVERAL RECENT CULTURAL EXCHANGES BETWEEN ROMANIA AND THE UNITED KINGDOM

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Abstract:Under the auspices of the New Millennium and the new realities that encourage the dissipation of borders and backgrounds, lifestyles and aesthetics, personal logicality asserts the importance of non-exclusive subjectivity. These times of increasingly urgent self-communication and demandingly positive mutual understanding are posing the ultimate challenge of the world in the 21st century: to experience difference in equality. As the art of high emotions sublimated into perfect language, poetry is summoned to solve the crisis of self-representation by exploring symbolic paradigms of existence and creating a sense of universal identity that still favours the expression of singular particularities. The daring enterprise of translation facilitates the understanding of the multifarious contemporary spirit and spirituality by uniting languages whose structures are often unrivalled in unconventionality. The act and art of translation lies in the transplantation of creative sensibilities from their original realm into another, sometimes even divergent, cultural context, creating a bridge between distances and differences, cultures and civilisations, collective and individual histories. Contrary to general prejudice, poetry is translatable if the new version is honest and respectful, avoids the trap of interpretive abuse and stays true to the author's intention. This paper aims to emphasise the importance of translation as a paramount aesthetic factor by presenting the dynamics of the English-Romanian cultural exchanges as illustrated by the poetry anthologies and individual collections published, and the poetry readings, workshops and projects organised over the last few years. Based mostly on the author's direct experience, the events and publications referred to in the paper – such as the bilingual anthologies published in Romania and the UK, the translation project developed at the English Department of the Bucharest University, the Romanian-UK Tour, the British-Romanian Week – arise as successful acts of cultural inclusion, reflecting an effervescent ongoing process that creates open spaces for ample and complex self-expression within the European dialogue of cultures.

Key words: dialogue of cultures, globalisation, lyrical discourse, poetry, translation

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Under the auspices of the 21st century and the new realities that encourage the dissipation of borders and backgrounds, lifestyles and aesthetics, personal logicality asserts the importance of non-exclusive subjectivity. These times of increasingly urgent (self-)communication and demandingly positive mutual understanding are *posing the ultimate challenge of the world in the 21st century:* to experience difference in equality.The key to bridging abrupt splits and to unifying apparently irreconciliable divisions is to bring together separate fragments of thought, feeling and consciousness into a coherent whole, a unique and unifying human experience.

This is the role of the arts: to explore the symbolic paradigms of existence and to create a sense of universal identity that still favours the expression of singular particularities. However, if music and dance, drawing, painting and sculpting convey universal messages by appealing to the senses, poetry is the art of high emotions sublimated into perfect language and as such it resides on sound and silence to encode the entire human experience. An exercise of the mind and soul, and a superior way of apprehending reality, the pure act of individual imagination encapsulates a universe that clarifies, intensifies and enlarges existence, activating extremely personal histories and thus creating a sense of solidarity and belonging in a complex and accurate understanding of sameness and difference. Authentic identity is taboo-breaking: by transgressing personal boundaries, the otherness within connects with the sameness outside. Spatial empathy leads to the discovery of an interior other and, at the same time, an external self – a different sameness and a familiar strangeness as a condition of absolute freedom, as the French thinker Tzvetan Todorov says in his seminal analysis *The Conquest of America. The Question of the Other* (1982): 'We can discover the other in ourselves, realize we are not a homogeneous substance, radically alien to whatever is not us: as Rimbaud said, *Je est un autre*. But *others* are also "I"s: subjects just as I am, whom only my point of view – according to which all of them are *out there* and I alone am *in here* – separates and authentically distinguishes from myself.' (Todorov 3)

Reading poetry is a process inconceivable without the freedom of being self and other as an integrated whole. Self, in the sense of not being subject to norms and stereotypes, and thus escaping narrow classification and achieving uniqueness. Other – a familiar alien, a different sameness, an alter inside in complete harmony with the self, as a condition of absolute freedom: the freedom to go outside and beyond the boundaries of the self as an affirmation of the other. The art of fluid syntagms and variable paradigms constantly construes identity in motion: there is always someone else, another, the other, as the self is defined in opposition to other entities – the other in relation to oneself and to another. Thus, identity emerges as a different mosaic of

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impressions further conveyed through forms of discourse that revalue otherness within the self and celebrate its outward opening.

The externalisation of identity and the appropriation of alterity are advanced by the daring enterprise of translation. Originating in the Latin word 'translatio' (a carrying across, removal, transporting), the act of verbal conversion lies in the transplantation of creative sensibilities from their original realm into another, sometimes even divergent, cultural context, creating a bridge between distances and differences, cultures and civilisations, collective and individual histories. Performed with good faith and noble-mindedness, translation advances an esthetics of contingency justified by unlimited inner and outer expansion which allows identity to become a continuum, with the culture of origin at one extreme and the host culture at the other. And, contrary to general prejudice, poetry is translatable if the new version is honest and respectful, avoids the trap of abusve transliteration and stays true to the author's intention.

The dawn of the New Millennium has brought the awareness that we are culturally incomplete without translation. Particularly in Europe, the changing circumstances of conjoined structures trigger the need to reinterpret cultural self-sufficiency against a cosmopolitan background and advocate the artistic and aesthetic crossing of frontiers in order to discover a sense of compatibility with the collective identities existing on the old continent. The power of words and the power of imagination give power to the self who thus becomes able to discard seclusion and to (re)shape the personal cultural code by absorbing outside influences.

That translation is a paramount aesthetic factor is reflected in the dynamics of the English-Romanian cultural exchanges illustrated by the poetry anthologies and individual collections published, and the poetry readings, workshops and projects organised over the last few years. They arise as successful acts of cultural inclusion, reflecting an ongoing process that creates open spaces for ample and complex self-expression within the European dialogue of cultures, as perfect instances of what Tzvetan Todorov named 'the dialogue of cultures', i.e. 'a dialogue in which no one has the last word, in which neither voice is reduced to the status of a simple object, and in which we gain advantage from our externality to the other.' (Todorov 250)

Some contemporary British poets have developed a specific interest in particular Romanian poets and have attempted to understand several specificities of the Romanian language and culture. Among them, Fleur Adcock whose English versions of poems by Grete Tartler (*Orient Express*, 1989) and Daniela Crăsnaru (*Letters from Darkness*, 1991), both published by Oxford University Press, introduced the British poetry-lovers to two of the finest Romanian women poets of the end of the 20th century. Both Tartler's and Crăsnaru's poems had been written during the last years of

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Communism, some of the most difficult times ever encountered by Romania, and the richly allusive language concealing subtle denunciations of Ceausescu's totalitarian regime must have posed a real challenge to the New Zealand-born poet.

Public interest in Romanian poetry increased after December 1989 and numerous literary journals in the United Kingdom hosted English versions of Romanian poetry in their pages. In 2002, the two volumes of *Orient Express*, a literary journal for EU enlargement countries edited by the poet and literary critic Fiona Sampson in 2002, featured three Romanian women poets representative of their generation: Magda Cârneci, Ioana Ieronim and Diana Manole. Two years later, one of the best-known poetry publishing houses, Arc Publication, issued an anthology of Eastern European poetry, *A Fine Line: New Poetry from East and Central Europe*, edited by Jean Boase-Beier, Alexandra Buchler and Fiona Sampson; the collection included poets from Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, and the young poet Ioana Nicolaie was among the poets who represented the 'dazzling snapshots of contemporary poetic practices.' (Sampson 13)

As the 'snapshots' generated creative effervescence, these ventures were neither singular nor one way. The London-born poet Fiona Sampson's interplay of sameness and otherness, and philosophical questions displayed in two of her collections, *Folding the Real* (Seren, 2001) and *The Distance Between Us* (Seren, 2006), appealed to the Romanian poetry readers in the versions published by Paralela 45 Publishing House, *Pliind realitatea* (translated by Milijana Vukadinovic and Laura Cristiana) and *Distanţa dintre noi (t*ranslated by Ioana Ieronim and Brândușa Prepeliță-Răileanu).

Professor Lidia Vianu, from the English Department of the Faculty of Foreign Languages and Literatures in Bucharest, is one of the contemporary academics who has promoted the ontological mission of translation in crossing the divide between cultures and peoples. In translating a selection of poems by Ruth Fainlight(*Author! Author!/Autorul la rampă*), Mimi Khalvati (*The Poet in the Wall/Poeta din zid)*, George Szirtes(*The Ache of Your Otherness/Fiorul că eşti altfel*), Alan Brownjohn (*Gasping for Love/Tânjesc după iubire*) and Peter Ackroyd (*The Diversions of Purley/Bucurii din Purley*),Lidia Vianu – winner of the 2005 London Poetry Society biennial Prize for Poetry Translation Corneliu M. Popescu – succeeds in resisting the temptation to divert from the original text either by simple paraphrase or excessive personal interpretation. Although she filters the original poems through her translator's empathy, she rejects the distortion of the word – and, implicitly, the manipulation of the reader. It is a bold attempt that equals 'walking the high-wire', as the translator once confessed.

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The need to extend the expressive level beyond strict localisation and cultural arbitrariness has also resulted in the establishment of the Centre for the Translation and Interpretation of the Contemporary Text (CTITC), and the Master Programme for the Translation of the Contemporary Literary Text (MTTLC), both run by Lidia Vianu within the English Department of the Bucharest University. Among the enterprises that focus on the transposition of meaning into an equally significant substance, the most notable is the translation project developed as *poetry pRO*. Started in 2008 as acollaboration between *poetry p f*, administered by the London-based poet and literary agent Anne Stewart, and Lidia Vianu, the project initially involved over 100 contemporary British poets translated into Romanian by 80 MA and PhD students. In time, the joint efforts of the participants have resulted in online publications (Translation Café - http://www.e-scoala.ro/ctitc/translation_cafe.html that later has become http://revista.mttlc.ro/), radio shows broadcast by Radio Romania Cultural and collaborations with literary journals such as *Timpul* (*The Time*), *Diagonale* (*Diagonals*), *Constelații diamantine* (*Diamond Constellations*), *Nord Literar* (*Literary North*), *Pro Saeculum*, *Regatul Cuvântului* (*The Realm of the Word*), *Orizont literar contemporan* (*Contemporary Literary Horizon*).

To celebrate the first year of successful joint efforts, Anne Stewart organised a Romanian UK Tour (20 March-2 April 2009) and the launch of the bilingual anthology *And The Story Isn't Over...*, together with the CD *And the Story So Far...*which included private recordings by the poets themselves and excerpts from *Poezie universală* (*World's Poetry*), the radio shows edited by Dan Verona. With the generous support of Arc Publications and the Romanian Cultural Institute in London, the Tour included readings from over 20 poets participating in the *poetry pRO* project, as well as a translation workshop at the University of Middlesex. Lavinia Zainea (MA student) and Elena Nistor (PhD student) were the Romanian representatives of their fellow translators of the Bucharest University. Two weeks, over 1,000 mile travels across the UK and seven events in Camden, York, Cambridge, Teddington, Southsea and the Romanian Cultural Institute in London provided an experience of close communion with poetry and a sense of compatibility with essential European values (http://www.poetrypf.co.uk/poetrypro09tour.html).

In 2009, the project was extended as *RoPRO* to include the translation and publication of Romanian poetry and in 2011, Contemporary Literature Press has been created to publish online bilingual collections. Several texts were published, including a bilingual collection, *Dan Verona: Selected Poems/Poeme alese* (2011), translated from Romanian by MTTLC members and polished by *poetry p f* poets. It was followed by *It might take me years.../Mi-ar trebui un șir de*

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ani (2013), 'a collection of simple, transparent and unsophisticated poems' (Abăluță 10) by Adrian Alui Gheorghe, Magda Cârneci, Dumitru Chioaru, Denisa Comănescu, Nichita Danilov, Simona-Grazia Dima, Mircea Dinescu, Gellu Dorian, Horia Gârbea, Bogdan Ghiu, Adela Greceanu, Ioana Ieronim, Vasile Ignat, Nora Iuga, Mircea Ivănescu, Cassian Maria Spiridon, Grete Tartler, Doina Uricariu, Ioan Vieru, Claudia Voiculescu, Horia Zilieru (to name only a few), translated by MA students and polished by 21 English poets.

The latest anthology, *My Cup of Light. An Anthology of Romanian Poetry. Parallel Texts* (2014), translated by Lidia Vianu and polished by Anne Stewart, includes poets born between 1941 and 1983, from Angela Marinescu and Ioana Ieronim to Ion Zubașcu and Liviu Ioan Stoiciu, from Nichita Danilov and Andrei Zanca to Traian T. Coșovei and Marta Petreu, from Matei Vișniec and Carmen Firan to Robert Șerban and Dan Mircea Cipariu, and from Alexandru Mușina and Domnica Drumea to Elena Vlădăreanu and Claudiu Komartin. It is 'a book of two generations, divided by the fall of the Iron Curtain' and united by 'the awareness that they are all speakers of a small language' (http://editura.mttlc.ro/my-cup-of-light-vianu.html).

However, even small languages and cultures deserve attention in the new context created by the European Union. Romania has been successfully represented at international book fairs and literary festivals along the past few years. Editors and translators have gathered together past and present poets in quasi-exhaustive anthologies, with the ambitious aim to offer an acurate image of the Romanian lyrical discourse. The bilingual edition *Testament: Anthology of Modern Romanian Verse* (Minerva, 2012; revised in 2015) is a comprehensive anthology of Romanian poetry from 1850 to 2012, in which editor Daniel Ioniță, together with Eva Foster, Daniel Reynaud and Rochelle Bews, brings forward representative Romanian poets:Vasile Alecsandri, Mihai Eminescu, George Coșbuc, Tudor Arghezi, Octavian Goga, Ion Minulescu, George Bacovia, Ion Pillat, Ion Barbu, Lucian Blaga, Radu Gyr, Magda Isanos, Ștefan Augustin Doinaș, Nichita Stănescu, Nicolae Labiș, Grigore Vieru, Marin Sorescu, Ileana Mălăncioiu, Ana Blandiana, Adrian Păunescu, George Țărnea, Mircea Cărtărescu, etc. The selected poems have been popular since their first publication and have become emblematic, owing to their suggestive metaphors, real-life topoi and unpretentious language that appeal to common readers.

Thus, socialisation of poetry has come naturally, as proof that 'the romance of reading has not faded entirely, even today.' (Hartman 248) Popularising poetry and poets does not pertain to consumerism; it is rather a matter of making culture accessible to the general public. Public readings are one of the most direct forms of creating a synergy between the poet and his/her audience: to provide an immediate and unmediated response is to experience sameness in

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otherness, i.e. to enter the world of the poet and participate in the creative act, since 'the real value of the poem lies in what it means to the reader.' (Copus 66) Public events are aimed to allow the readers to assign their own meaning to poetry. 'Poet in the City' is a poetry organisation founded in 1998 by the Poetry Society; it became an independent charity in 2006 and currently runs major poetry events, mainly in central London, where renowned British and international poets, writers and artists present poetry in innovative ways. As part of its work, in 2011 the charity joined the Romanian Cultural Institute in London in developing the *Contemporary Romanian Poets* series with the specific purpose of exploring Romanian culture through the eyes of some of its most accomplished poets: Andrei Bodiu, Denisa Comănescu, Vasile Gârneţ, Bogdan Ghiu, Claudiu Komartin and Miruna Vlada were invited to present their creation to the insular public. Their most acclaimed poems were translated by Christopher Bakken, Florin Bican, Adam J. Sorkin and Virgil Stanciu, and compiled in the bilingual anthology *Contemporary Romanian Poets* (http://www.icr-london.co.uk/article/romanians-at-poet-in-the-city-the-anthology.html).

In November 2015, poet Maggie Sawkins – winner of the 2014 Ted Hughes Award for New Work in Poetry – had the initiative of organising another Romanian evening at Tongues&Grooves, one of the most popular poetry organisations in southern England. Devised under the generous *Poetry in Translation* series as a follow-up to the Southsea event in March 2009, the reading 'From Romania With Love' was held at the Square Tower, a historical building in Portsmouth, and featured the poets Denise Bennett, Mark Cassidy, Pauline Hawkesworth, Richard Peirce, Maggie Sawkins, Gareth Toms and Richard Williams. The reading intertwined the poets' original work with the Romanian versions provided by Elena Nistor and the music by the local band The Polite Mechanicals (https://tonguesandgrooves.com/2015/10/30/from-romania-with-love/). The large audience evinced a genuinely enthusiastic interest not only in the Romanian language and poetry but also in the process of translation, which turned the reading into a dialogue with the Romanian translator (https://www.youtube.com/watch?v=cGZRAbG6WME).

Most recently, between 18 and 23 April 2016, the Romanian Cultural Institute hosted the British-Romanian Week, organised together with the Bucharest University, the National Museum of Romanian Literature and the Headsome Communication Association, in partnership with the British Council Bucharest, the English Department of the Faculty of Foreign Languages and Literatures, the *Contemporary Literature Press* Publishing House, the Research Centre for the Translation and Interpretation of the Contemporary Text (CTITC), the National Book Centre, the

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Romanian Writers' Union. To mark the 10th anniversary of the Master Programme for the Translation of the Contemporary Literary Text (MTTLC), Lidia Vianu invited the poets Maggie Butt, Katherine Gallagher, Alwyn Marriage, Jeremy Page, Peter Phillips and Anne Stewart to run literary translation workshops. Each poet worked with 12 graduate MTTLC students, translating and polishing contemporary poets such as Ana Blandiana, Nora Iuga, Angela Marinescu, Emil Brumaru, Mircea Cărtărescu, Robert Şerban and Radu Vancu.Coincidentally (or not), the week ended on 23 April with a panel and reading at the British Council, where the poets talked about Shakespeare and his influence upon contemporary British poetry, and read a selection of the Bard of Avon's best-known Sonnets, as well as their own work.

As seen from these few examples, the challenges of the 21st century impose a remarkably intense desire to establish a well-defined space for the articulation of sameness and difference altogether. One such space should be Europe since, in an optimistic view, the new European identity acquisition will retrieve and renew the essentialist notion of nationalism, not in the sense of conservatism and traditionalism but as more active and participatory engagement. In this complex process of identity re-formation on a pan-European basis, there is need to apprehend and comprehend the specific local and regional identities in terms of cultural expression. The act – and art – of translation transcends all matters of cultural alienation through access to language which thus becomes a medium through which creativity can travel without restrictions, constraints and inhibitions. In this imaginary journey from one country to another, from one nation to another, from one individual to another, the real concern should be to identify the universal nature and intrinsic differences in the collective identities existing in Europe, which should give a strong sense of communion on grounds of absolute equality and perfect congruence. Verbal and spiritual transposition plays a paramount part in situating the subject within the community and facilitating the connection between the inside and the outside: there is mutual dependence of the physical environment on the self and the knowledge existing inside, with poetic imagination in-between creating an alternative reality that externalises knowledge. It is a fluid process of mutual deconstruction and reconstruction that yields renewed meanings and significances both to the Self and the Other – a process in progress which indicates that

In the end there is only beginning.
The petals of light scattered
On the dark inflame new fires
We blow to torch us with our dying breath.
Lit by our own stars we burn and in the end there is no end.

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(Duffy 11-5)

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EUROPEAN AND ROMANIAN JURISPRUDENCE IN THE FIELD OF DATABASE SECURITY

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Abstract : The distinction between database security and database integrity starts with the intention of access the databases, so the databases security is associated with malevolent access to the data of a database (reading and / or unauthorized data modification, or destruction of data),while data integrity refers to consistency accidental loss of data entered into database, respectively incidents that occurred during the execution of transactions or operations data and databases, database logic error in the user program, or abnormal results from concurrent access at the database on a network. Database security is associated with fraudulent access to data, whether on its own, or to cause some damage to the holder of database, loss of data confidentiality or loss of data privacy, loss of data integrity and loss of data availability. Also, frauds on data from a database belonging to an organization, are a risk factor for the entire organization, such the organization profile can influence the level of seriousness of the fraudulent facts. Starting from the European and national legislation on ensuring database security and the criminalization of computer fraud, we intend to conduct a study about the practice of the courts on the protection of sui generis rights of the manufacturer / author of the database,and the time evolution of case law that distinguishes between the effort for generation of data and individual information and the effort to achieve a database with pre-existing data, today Courts are saying that legal protection is provided about the database, and not to the data or their processing, individually.

Keywords: database, security, integrity, the sui generis right, Court of Justice of the European Union.

Rolul și importanța în societatea actuală a bazelor de date

În societatea actuală, bazele de date reprezintă cele mai importante componente ale sistemului informatic, indiferent de mărimea operatorului economic și/sau instituției/autorității care folosește acel sistem pentru arhivarea și/sau prelucrarea diverselor date, informații necesare

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propriei activități. În unele cazuri folosirea anumitor baze de date și a programelor de gestiune a bazelor respective este impusă operatorilor economici și instituțiilor statului pentru desfășurarea propriei activități, fie de legislația fiscală, fie de cea din domeniul dreptului muncii pentru stocare de informații și evidențe necesare propriei activități, spre exemplu programe de gestiune a documentelor și evidenței contabile, respectiv programul REVISAL privind registrul de evidență al salariaților. Sunt situații când tot pentru desfășurarea activității operatorului economic acesta își constituie anumite baze de date tehnice sau de evidență, în funcție de obiectul de activitate, și aferent lor folosește sistemele de gestiune a proceselor tehnologice de producție sau a gestiunii bunurilor din patrimoniu, spre exemplu, dar și situații în care chiar obiectul de activitate al operatorului economic este realizarea unor baze de date și actualizarea lor, ca produs oferit beneficiarilor care folosesc pentru susținerea activității proprii aceste baze de date configurate, și ca exemplu sunt firmele de produse informatice cu softwear-uri de baze legislative.

Sunt domenii și instituții ale statului cărora legislația le impune, pentru asigurarea transparenței procedurilor derulate, obligativitatea creării și actualizării în vederea accesului public a anumitor baze de date de interes general, iar ca exemplu imediat avem portalul instanțelor de judecată (http://portal.just.ro), o bază de date cu evidența tuturor dosarelor de pe rolul instanțelor judecătorești din România (cu acces public la date privind derularea procedurilor judiciare în cadrul litigiilor, respectiv soluția pronunțată de către instanță pe scurt și în timp real), baza de date fiind administrată de către fiecare instanță de judecată, pentru ca la nivel național să fie incluse toate informațiile în baza de date națională privind instanțele judecătorești, cu excepția datelor privind dosarele aflate pe rolul Înaltei Curți de Casație și Justiție, instanță care își administrează separat pe propriul site partea de jurisprudență proprie. Tot în domeniul juridic, și nu în scop lucrativ, este creat, după model canadian și australian, un instrument informatic al cărui scop declarat este unificarea practicii judiciare, atât pentru uzul cetățenilor – destinatari principali ai proiectului – cât și în vederea exploatării de către personal juridic de specialitate, un portal cu întreaga jurisprudență a tuturor instanțelor judecătorești și publicarea lor în spațiul virtual, integral și anonimizate (http://www.rolii.ro), România fiind, astfel, printre primele țări din Uniunea Europeana în care cetățenii și profesioniștii în drept pot accesa gratuit hotărârile pronunțate de instanțele naționale.

Și pentru a ne forma o imagine de ansamblu asupra extinderii utilizării actuale a bazelor de date în domenii diferite de activitate, amintim de folosirea lor în sistemul de sănătate public și privat – de la bazele de date ale bolnavilor arondați unui medic, respectiv ale bolnavilor dintr-o anumită unitate de sănătate, la bazele de date naționale ale persoanelor asigurate în sistemul de asigurări

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public/privat de sănătate – respectiv în sistemul asigurărilor sociale (bazele de date cu persoane ce beneficiază de ajutor financiar de la bugetul de stat, respectiv bazele de date ale beneficiarilor drepturilor de pensie sau a indemnizațiilor de șomaj), a serviciilor din sectorul bancar (bazele de date ale clienților care folosesc serviciile unei anumite instituții financiar-bancare), dar și în sistemul de învățământ (de la registrele matricole naționale în învățământul preuniversitar și universitar, la bazele de date cu evaluări și examene naționale – gestionate la nivel național dar și la nivelul inspectoratelor școlare, respectiv la bazele de date privind numărul de studenți, regimul de finanțare și programele de studii universitare și titlurile științifice dobândite).

Și pentru a-și facilita activitatea, anumiți operatori economici își creează proprii baze de date cu informații specifice domeniului de activitate, baze de date pe care apoi le exploatează, le aduc la cunoștința publicului și/sau clienților, le actualizează în timp și le arhivează, dobândind calitatea de fabricanți de baze de date, astfel cum îi denumește legiuitorul național în Legea nr.8/1996 privind drepturile de autor și drepturile conexe (art.122^1-art.122^4), și fiind titularii unor drepturi speciale recunoscute și protejate de lege. Astfel de situații regăsim în domeniul agențiilor de turism care își creează și exploatează baze de date privind bilete de avion sau pachete de servicii turistice la anumiți operatori de turism, regăsim în domeniul comerțului on-line, caz în care operatorii economici își creează propriile baze de date cu produsele oferite și condițiile proprii de tranzacționare, regăsim în domeniul imobiliar – baze de date locale sau naționale privind imobile propuse pentru tranzacții – dar și în domeniul serviciilor bancare, menționat anterior, al serviciilor de transport, al serviciilor de asigurări sau al companiilor de comunicație.

Constatăm că dezvoltarea tehnologiilor IT permit creare unor baze de date diferite, cu grade de complexitate de la mediu la maxim în privința informațiilor, și oferite spre acces public sau restricționat, în funcție de domeniul de activitate sau de interesul public/privat, în funcție de domeniul de activitate operatorul economic, care a creat baza de date, devine dependent de funcționarea corectă și neîntreruptă a sistemelor de baze de date.

Securitatea bazelor de date vs. integritatea bazelor de date

Definind baza de date, vom spune că este un ansamblu structurat de date, după anumite criterii, creat şi menţinut computerizat şi înregistrat pe suporturi accesibile calculatorului pentru a satisface simultan cerinţele mai multor utilizatori într-un mod selectiv şi în timp util. Fiind interesat de informaţiile din baza de date astfel creată, utilizatorul va interacţiona cu baza de date prin intermediul sistemului de gestiune a bazelor de date, sistem care va asocia diverşilor utilizatori/categorii de utilizatori drepturi de acces specifice la obiectele bazei de date,

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asigurându-se în acest fel, pe de o parte confidenţialitatea informaţiilor, pe de altă parte minimizarea riscului distrugerii accidentale a datelor prin operaţii necorespunzătoare. Totodată, sistemul de gestiune a bazei de date dispune de mecanisme prin care se minimizează timpul de răspuns, în raport invers proporţional cu complexitatea bazei de date, mecanisme bazate în special pe indecşi şi modalităţi specifice de organizare fizică a informaţiei.

Constatăm, astfel, că finalitatea constituirii unei baze de date este prelucrarea informaţiilor astfel grupate prin intermediul unei aplicaţii care să permită operaţii de introducere, ştergere, actualizare şi interogare a datelor (introducerea unei chei-criteriu pentru regăsirea şi gruparea informaţiilor conform cheii). Astfel, simple colecţii de fişe, în format scriptic, sau fişiere de date care conţin date structurate pe anumite criterii (o situaţie tabelară în format Microsoft Excel sau un editor de texte ce memorează anumite documente gen Microsoft word), dar care nu permit interogarea datelor nu este considerată şi nici asimilată unei baze de date, din punct de vedere al protecţiei tehnice şi juridice.

Bazele de date conțin, astfel, informații valoroase despre companie, clienți actuali și potențiali, activitate financiară sau informații bancare, flux de producție, etc., devenind astfel un factor critic în structura organizațională din punct de vedere al asigurării securității, necesitând cerințe specifice de acces și prelucrare, respectiv condiții sporite de confidențialitate și integritate.

Din perspectiva bazelor de date create de anumiți operatori și oferite spre acces publicului în scop de informare, fără posibilitatea de a interveni asupra datelor conținute, problema tehnică care se pune este cea a securității bazei respective de date din perspectiva celor care o accesează pe bază de încredere, astfel încât baza de date să nu devină, prin atașare de viruși sau malware de către hackeri, instrumentul prin care se pătrunde în propriul sistem de operare/calculatorul utilizatorului bazei de date și accesarea datelor personale din acest sistem. Din această perspectivă, grija și răspunderea autorului bazei de date pentru asigurarea integrității acesteia este dublată de nevoia asigurării securității bazei de date.

Integritatea bazelor de date se referă la corectitudinea informaţiilor şi presupune detectarea, corectarea şi prevenirea diferitelor erori care pot afecta datele introduse în bazele de date. Când facem referire la integritatea datelor, înţelegem că datele sunt consistente relativ la toate restricţiile formulate anterior (care se aplică datelor respective) şi ca urmare a acestui fapt, datele sunt considerate valide. Asigurarea integrităţii datelor dintr-o bază se face prin stabilirea unor reguli sau restricţii de integritate (aserţiuni care trebuie să fie respectate, sau verificate, de către date în anumite momente determinate) pe care datele trebuie să le verifice şi să nu se permită introducerea în baza de date a unor date aberante, ceea ce tehnic se numesc constrângeri de

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integritate. În cazul în care o anumită operaţie are ca rezultat o încălcare a unei restricţii de integritate este automat rejectată fără a ajunge să afecteze în vreun fel informaţiile din baza de date. O bază de date este coerentă dacă datele pe care le conţine respectă ansamblul restricţiilor de integritate implicită sau explicită ce au fost definite în contextul definirii bazei de date. Având în vedere şi operaţiunile care se fac asupra unei baze de date, asocierea restricţiilor de integritate cu momentele în care datele sunt manipulate creşte gradul de integritate.

Securitatea informaţiei, cuprinzând, pe de o parte, securitatea conţinutului multimedia (protejarea proprietăţii intelectuale şi tehnici de securizarea informaţiei digitale audio-video: criptare, marcare transparentă, inserarea mesajelor secrete etc.), şi pe de altă parte securitatea calculatorului personal şi a reţelelor de calculatoare (analiza vulnerabilităţii, detectarea şi prevenirea atacurilor informatice, soluţii de securitate locale şi la nivel de reţea, baze de date şi tehnologii de programare specifice ş.a.), este asociată în general cu următoarele situaţii : acces fraudulos la date, pierderea confidențialității (secretului) datelor, pierderea caracterului privat al datelor, pierderea integrității datelor, pierderea disponibilității datelor.

Protejarea datelor dintr-o bază împotriva accesului răuvoitor intenționat, manifestat prin acțiuni de citire/modificare neautorizate de date în interes propriu, precum și distrugere intenționată de date, este dificilă, măsurile de securitate fiind eficiente, dar nu se garantează o protecție absolut sigură deoarece odată măsurile de securitate dezvoltate, sunt identificate alte vulnerabilități asupra datelor și sistemului informatic.

Pornind de la definiția tehnică a prof.univ.dr. Daniela Elena Popescu care menționează în vederea asigurării securității datelor atât măsuri procedurale și fizice, cât și măsuri logice și juridice (Popescu, Popescu, 2000), suntem de acord cu aserțiunea că securitatea informatică se asigură pe trei nivele (Șerb, Baron, s.a., 2013) :

Securitatea fizică – nivel exterior al securității, constând în prevenirea, detectarea și limitarea accesului direct asupra bunurilor, valorilor și informațiilor;

Securitatea logică – reprezintă totalitatea metodelor prin care se asigură controlul accesului la resursele și serviciile sistemului;

Securitatea juridică – nivel alcătuit din normele legale naționale și internaționale care reglementează actul de violare a nivelelor de securitatea fizică și logică, stabilindu-se măsuri de protecție a drepturilor de proprietate intelectuală și sancțiuni penale pentru actele incriminate drept delicte informatice.

Și dacă abordarea tehnică a datelor dintr-o bază, ne arată diferența dintre integritate și securitate, în sensul că noțiunii de integritate i se circumscriu pierderile accidentale de consistență a datelor,

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iar noțiunii de securitate i se circumscriu accesările intenționate și răuvoitoare, putem spune că cele două – securitatea și integritatea – sunt elemente componente ce asigură protecția bazelor de date.

Protecția juridică a bazelor de date la nivelul Uniunii Europene și a legislației naționale

Deși la nivel european se acordă o atenție deosebită protecției datelor cu caracter personal, respectiv dreptului de protecţie împotriva colectării şi utilizării datelor cu caracter personal, drept ce ține de sfera protecției vieții private a persoanelor fizice și este inclus în dreptul la respectarea vieţii private şi de familie, a domiciliului şi a corespondenţei conform art.8 al Convenției Europene a Drepturilor Omului, distingem norme prin care se garantează și protecția juridică a bazelor de date în general, ca drept derivat din dreptul de autor.

În Uniunea Europeană există o preocupare serioasă legată de actualizarea legislației la noile nevoi generate de utilizarea intensivă a calculatoarelor, astfel încât prin normele adoptate la nivel comunitar și național să fie protejate atât persoana fizică, cât și persoana juridică din punct de vedere al acelor date cu caracter privat cuprinse în baze de date care să nu fie accesibile publicului larg, respectiv cu accesabilitate restrânsă, dar în același timp interesul protecției se extinde și asupra acelor tipuri de baze de date constituite ca o creație intelectuală a autorului, fără a se extinde reglementare și la conținutul acestor baze de date, respectiv fără a se aduce atingere drepturilor ce au incidență asupra conținutului informației.

Argumentat juridic ca un drept *sui generis* al autorilor bazelor de date, protecția juridică a bazelor de date pornește de la aspectul creativ și financiar al activității de realizare al bazei de date (colectarea, sortarea și gruparea pe criterii a datelor într-o bază de date), și nu de la actul propriu-zis de creare al datelor, informațiilor respective cuprinse în baza de date, acesta din urmă fiind circumscris dreptului de autor. Astfel, dacă un operator consimte să investească timp și resurse proprii (atât umane, cât și financiare) pentru obținerea, verificarea sau prezentarea conținutului unei baze de date, originalitatea lucrării finale constând în modul de realizare (criteriile folosite) și prezentare a unei baze de date, mai ales în condițiile în care realizarea acelei baze de date este necesară derulării propriei activități și este adusă, chiar la cunoștința clienților (acces public restricționat), respectiv la cunoștința publicului general, se justifică ca demersul său tehnic în crearea, verificarea sau prezentarea unei baze de date să fie protejat, asemenea unui drept de autor asupra unei opere individuale, de prelucrările/extragerile parțiale și/sau totale realizate fără acordul său și folosite în interes propriu de alți operatori.

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Având o bază legislativă solidă în privința protecției juridice a invenţiilor, mărcilor şi drepturilor de autor (Directiva 89//104/CEE din 21 decembrie 1988, de apropiere a legislaţiilor statelor membre privind mărcile, publicată în Jurnalul Oficial nr. L 40/11.02.1989; Directiva Consiliului 89/104/CEE din 14 mai 1991, respectiv Directiva Consiliului 91/250/CEE din 14 mai 1991 privind protecţia juridică a programelor pentru calculator, publicată în Jurnalul Oficial nr. L 122/17.05.1991; Directiva Consiliului 92/100/CEE din 19 noiembrie 1992, privind dreptul de închiriere şi de împrumut şi anumite drepturi conexe dreptului de autor în domeniul proprietăţii intelectuale, publicată în Jurnalul Oficial nr. L 346/24.11.1992; Directiva Consiliului 93/83/CEE din 27 septembrie 1993, privind armonizarea anumitor dispoziţii referitoare la dreptul de autor şi drepturile conexe aplicabile difuzării de programe prin satelit şi retransmisiei prin cablu, publicată în Jurnalul Oficial nr. L 248/06.10.1993; respectiv Directiva Consiliului 93/98/CEE din 29 octombrie 1993, privind armonizarea duratei de protecţie a dreptului de autor şi a anumitor drepturi conexe, publicată în Jurnalul Oficial nr. L 290/24.11.1993) în anul 1993 este adoptată Directiva Parlamentului European şi a Consiliului 96/9/CE din 11 martie 1996, privind protecţia juridică a bazelor de date, publicată în Jurnalul Oficial nr. L 077/27.03.1996, fiind actul normativ care definește și garantează dreptul sui-generis al autorilor de baze de date, unificând și armonizând legislațiile statelor membre care până la momentul respectiv fie nu recunoșteau acest drept distinct ca și specie a dreptului de autor, plasându-se în sfera dreptului concurenței, fie asimilau protecția bazelor de date drepturilor de autor.

Directiva 96/9/CCE a avut ca dată limită de implementare 01.01.1998, iar legislația română, deși României nu îi incumba obligația transpunerii/ legislației comunitare la acel moment, a preluat definițiile și spiritul normei comunitare prin adoptarea Legii nr.8/1996 privind dreptul de autor și drepturile conexe, deși până în anul 2004 textul din Legea nr.8/1996 nu distingea dreptul sui-generis al autorilor de baze de date, protecția fiind asimilată dreptului de autor în general. Prin Legea nr.285/2004 privind modificarea și completarea Legii nr.8/1996 a fost introdus actualul Capitol VI intitulat *Drepturile sui-generis ale fabricanţilor bazelor de date*.

Pe fondul dezvoltării societății informaționale, în vederea actualizării reglementărilor naționale privind drepturile de autor a fost adoptată și Directiva 2001/29/CE din 22 mai 2001 privind armonizarea anumitor aspecte ale dreptului de autor și drepturilor conexe în contextul societății informaționale, prin care protecția juridică a drepturilor de autor, drepturilor conexe și drepturilor sui-generis trebuie extinsă și la operele generat sau distribuite în format digital.

Jurisprudența europeană în domeniul protecției bazelor de date

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Conform art.3 din Directiva 96/9/CCE, bazele de date care, prin alegerea sau dispunerea elementelor ca și originalitate creativă, constituie o creație intelectuală proprie a autorului sunt protejate ca atare de dreptul de autor, fără ca acest drept să se extindă și asupra conținutului informațiilor din acea bază de date. Mergând pe același raționament, art.4 din Directivă stabilește calitatea de autor al unei baze de date, fie pentru persoane fizice, fie pentru persoane juridice, prin raportare la activitatea de creare a bazei de date propriu-zise.

Fiind protejat prin dreptul sui-generis pentru o perioadă de 15 ani de la data de 1 ianuarie a anului care urmează finalizării bazei de date, fără a fi necesară constatarea acestei protecții de către o autoritate anume, producătorul bazei de date are dreptul de a interzice terților extragerea și reutilizarea ansamblului sau ale unei părți substanțiale, evaluată calitativ sau cantitativ, a conținutului acesteia, atunci când obținerea, verificarea sau prezentarea acestui conținut atestă o investiție substanțială din punct de vedere calitativ sau cantitativ (art.7 alin.1 Directiva 96/9/CCE), iar dacă constată că un terț încalcă interdicția și folosește baza sa de date reprezintă temeiul pentru a se adresa instanței judecătorești în vederea obligării de către aceasta a respectării dreptului său sui-generis și obligarea la eventuale daune-interese dovedite, conform principiului răspunderii juridice patrimoniale delictuale.

Dreptul sui-generis al autorului bazei de date se naște la data finalizării bazei de date, în timp ce asigurarea protecției acoperă atât perioada de 15 ani calculată conform art.10 alin.1 Directivă, cât și perioada de la data finalizării efective a bazei de date și sfârșitul anului respectiv

Dacă textul de lege la prima citire pare clar în privința limitelor constatării dreptului sui-generis asupra bazei de date, aplicarea protecției autorilor de baze de data a generat soluții ale instanțelor diferite până în anul 2004, când s-a uniformizat practica judiciară ca urmare a unor sentințe din perioada noiembrie 2004 - ianuarie 2005 ale Curții Europene de Justiție (în spețele *British Horseracing Board ("BHB") v. William Hill ("WH")* respectiv *Fixtures Marketing Ltd v. Oy Veikkaus AB* (C-46/02); *Fixtures Marketing Ltd v. Svenska Spel AB* (C-338/02); *Fixtures Marketing Ltd v. Organismos Prognostikon Agonon Podosfairou* (C-444/02)), prin care s-a stabilit ca și principiu unitar de aplicare a prevederilor Directivei 96/9/CCE faptul că protecția prin dreptul sui-generis al autorului unei baze de date se referă la obținerea, verificarea și prezentarea conținutului bazei de date, respectiv adunarea și ordonarea după anumite criterii proprii a datelor în baza respectivă, activitatea ce diferă și nu se confundă cu crearea sau generarea de date, inclusiv verificarea datelor înaintea introducerii în baza de date.

În prima speță menționată, *British Horseracing Board ("BHB") v. William Hill ("WH"),* BHB realizase o bază de date privind cursele de cai, bază de date în care se regăseau cursele

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desfășurate, numele cailor, numele proprietarilor, antrenorilor și ale jocheilor, grupate ca *liste de prindere*, pentru ca o firmă concurentă WH să preia, să rearanjeze baza de date și să difuzeze pe site-ul propriu de pariuri aceste liste, preluarea fiind considerată de către BHB încălcarea a drepturilor sale asupra bazei de date create de aceasta. În cel de-al doilea caz Fixtures Marketing Ltd este compania care acorda, în numele organizatorilor meciurilor, licență de preluare în afara Marii Britanii a listelor meciurilor din Premier League, iar înainte de fiecare campionat realiza o listă cu echipele participante, în ordinea cronologică a meciurilor, și rezultatele obținute, pentru ca trei operatori de pariuri sportive din Suedia, Grecia și Finlanda să preia și să folosească aceste liste, ca și baze de date (*British Horseracing Board,* 2005*).*

De asemenea, conform art.7 alin.1 din Directivă, investiția substanțială pentru obținerea, verificarea și prezentarea conținutului bazei de date trebuie să fie independentă față de cea pentru generarea datelor, și consistentă proporțional la volumul bazei de date.

Astfel, protecția juridică se acordă bazei de date însăși, și nu datelor conținute în aceasta, obținute prin efortul de realiza baza de date cu date **pre-existente** (efort primordial dirijat spre baza de date, nu spre datele în sine, care pot fi protejate individual prin alte instrumente legale).

Totodată , Curtea de Justiție Europeană, în vederea aplicării unitare a textului Directivei, a definit *"parte substanțială, evaluată calitativ, din conținutul bazei de date"* – prin aplicarea criteriului : investiția în resurse umane, tehnice sau financiare în vederea obținerii, verificării sau prezentării acelei părți a bazei de date care este subiect al extragerii și/sau reutilizării **nu** se referă la valoarea intrinsecă a conținutului extras și/sau reutilizat, în timp ce pentru aprecierea drept*"parte substanțială, evaluată cantitativ, din conținutul bazei de date"* – criteriul care diferențiază protecția bazei de date de alte acțiuni de prelucrare este volumul de date extrase și/sau reutilizate, raportat la volumul total de date din baza de date, prin stabilirea unei relații direct proporționale (Popescu, 2007).

Practica instanțelor naționale privind protecția autorilor bazelor de date

Analizândpractica instanțelor române în materiei de protecție a drepturilor sui-generis a autorilor de baze de date, constatăm că înainte de anul 2004 nu au existat acțiuni în instanță prin care să fie invocate încălcări ale drepturilor sui-generis de către producătorii de baze de date care le folosesc în activitatea proprie, fiind de notorietate a speță ce a fost pe rolul Tribunalului București în anul 2007, înregistrată ca având obiect încălcare drept de autor, prin acțiunea introductivă de instanță reclamantul arătând că este inițiatorul și administratorului site-ului de Internet ghj.ro, care are drept obiect publicarea de creații din domeniul fotografiei artistice, i-a fost încălcat dreptul de

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autor de către pârâtă, care administrând la rândul ei un site, a extras şi reutilizat, fără autorizaţia reclamantului, una din fotografiile publicate pe ghj.ro, în cadrul unui articol despre localitatea C. fiind întemeiată pe dispoziţiile art.122^1 şi art.139 din Legea nr.8/1997, prin acţiune s-au solicitat şi daune în cuantum de 2000 lei, reclamantul arătând că acestea urmăresc acoperirea prejudiciului moral ce i-a fost cauzat prin fapta ilicită a pârâtei. Tribunalul Bucureşti a respins acţiunea ca neîntemeiată, reţinându-se în motivare, pornindu-se de la practica Curţii de Justiţie Europeană, prin aplicarea criteriilor de apreciere în sensul art.7 alin.1 Directiva 96/9/CCE faptul că partea extrasă din baza de date nu are caracter substanţial, nici din punct de vedere cantitativ, nici din punct de vedere calitativ (era vorba de folosirea individuală a unei poze, prin extragere dintr-o bază de date ce conţinea aproximativ 2000 de fotografii, rezultând astfel un procent de 1/2000, apreciat drept nesemnificativ pentru a se invoca în încălcare a dreptului sui-generis. De asemenea, instanţa de judecată a reţinut că extragerea fiind unică, nu se poate încadra nici în prevederile art. 122^2 alin. 5 din Legea nr.8/1996, respectiv extragere şi reutilizare repetată şi sistematică de părţi nesubstanţiale.

Apreciem soluţia Tribunalului Bucureşti ca fiind în acord cu textul Legii nr.8/1996 privind protecţia drepturilor sui-generis ale autorilor bazelor de date (nu s-a negat calitatea reclamantului din speţă ca şi autor al bazei de date realizate de acesta, argumentul instanţei raportându-se la modul de protecţie al drepturilor sui-generis în privinţa reutilizării bazei sale de date de către terţi), şi dea asemenea, ca fiind în acord cu practica instanţelor Curţii Europene, la speţa căreia s-a şi făcut trimitere în motivarea soluţiei date.

Concluzii

Trecerea de la securitatea şi integritatea sistemului informatic propriu, individual la securizarea spaţiului cibernetic s-a făcut pe fondul globalizării actuale, care odată cu avantajele şi beneficiile pozitive aduse individului şi naţiunilor, a ridicat nu de puţine ori probleme şi motive de îngrijorare. De aproximativ 20 de ani, infrastructurile de comunicaţii s-au extins de la nivelul intern al organizaţiei (Intranet) către conectarea globală la nivelul Internet-ului. În acest context al interconexiunilor şi globalizării, noţiunea de securitate informatică poate fi definită ca fiind un complex de măsuri procedurale, fizice, logice şi juridice destinate prevenirii, detectării şi corectării diferitelor categorii de "accidente", fie că ele provin din cauze naturale, fie că apar ca urmare a unor acte premeditate de sabotaj (Popescu, Popescu, 2000).

Securitatea informaţiei este, în prezent, un concept larg care se referă la asigurarea integrităţii, confidenţialităţii şi disponibilităţii informaţiei (Popa, 2007). Deşi dezvoltarea tehnologiei

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informaţiei a fost acompaniată de soluţii de securitate şi aplicaţii care includ metode tehnice de protecţie performante, totuşi, asigurarea securităţii informaţiilor nu se poate realiza exclusiv prin măsuri tehnice, fiind în principal o problemă umană (Mihai, 2012).

Securitatea informaţiei este de asemenea o cerinţă fundamentală a societăţii moderne; atât protejarea proprietăţii intelectuale pentru conţinutul multimedia, cât şi securitatea reţelelor de calculatoare, sunt în prezent parte integrată a domeniului tehnologiei informaţiei.

Şi dacă legislaţia la nivel european şi naţional incriminează faptele de accesare sau interceptare neautorizată a unei baze de date şi/sau a unui sistem informatic, precum şi falsificarea informaţiilor transmise sau utilizarea clandestină a anumitor servicii destinate unei categorii specifice de utilizatori ai reţelelor, din punct de vedere al protecţiei juridice a bazelor de date şi a autorilor lor constatăm că problema protecţiei bazelor de date este dezbătută de practica şi doctrina europeană (există controverse privind gradul de protecţie juridică a bazei de date şi elementele de protejat dintr-o bază de date), legislaţia din România privind drepturile autorilor unei baze de date la protecţie juridică reglementează dreptul sui-generis al fabricanţilor de baze de date (art.122^1-art.122^4 din Legea nr.8/1996), drept care protejează atât bazele de date accesibile prin mijloace electronice, cât şi prin alte modalităţi, menţionate la modul generic. În litera legislaţiei naţionale (art.122^1 alin.3 din Legea nr.8/1996), protecţia juridică nu acoperă programele de calculator utilizate la fabricarea sau funcţionarea bazelor de date accesibile prin mijloace electronice.

Prin mijloace penale, legislaţia naţională sancţionează orice punere la dispoziţia publicului, inclusiv prin internet ori prin alte rețele de calculatoare, fără drept, a produselor purtătoare de drepturi sui-generis ale fabricanților de baze de date sau a copiilor acestora, indiferent de suport, astfel încât publicul să le poată accesa în orice loc sau în orice moment ales în mod individual.

Constatăm că începând din anul 2004, atât interpretarea instanţelor europene, cât şi a instanţelor naţionale (deşi numărul dosarelor având ca obiect protecţia drepturilor sui-generis ale autorilor bazelor de date este relativ redus) s-a uniformizat raportat la cuprinsul conceptului *investiţie substanţială în obţinerea, verificarea sau prezentarea conţinutului bazei de date* (noţiune regăsită şi în textul art.122^1 alin.4 din Legea nr.8/1996), interpretarea instanţelor folosind criterii concrete la cazul dedus judecăţii privind interpretarea noţiunii *parte substanţială, cantitativ* (volumul de date extrase din baza de date) *sau calitativ* (mărimea investiţiei efectuate de deţinătorul bazei de date).

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GENERAL RULES REGARDING THE SIGNING OF TREATIES

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Criminal law is a set of rules of conduct, rules of law whose observation and observance is ensured by legal sanctions, by force of coercion by the State. It has an existence and limits of application in relation to space and time.

Time is one of the relationship factor that are natural inevitably imposing its existence and some limits of the application of criminal law, emphasizing its action.

Thus, determination, setting limits for the application of criminal law in relation to time is a necessity that was required and justified by the temporary, passing character. In light of the foregoing, transience, impermanence character of criminal law required and justifies its limited action regulation in relation to time that caused its appearance by itself.

However, law enforcement is conditioned by committing criminal acts that violate its provisions, of crimes. These acts are done in a certain time at a certain date, placing them, in their turn, in time. Placing in time the acts under criminal law, those that represent offenses, it enforce the determination in relation to this factor of applicable legal norm.

If the existence of the criminal law makes essential its action because you can't accept the idea of the action without pre-existence of the law, it does not mean that its two determination in relation to time overlap, merge.

The action of criminal law- its raison d'être (its reason of self belonging)-implies its exitence, but it's more than this. However, if the appearance of the criminal law does not interfere and there is no overlap with the action, its entry into force, not the same it can be said about the time of its end.

Lapsing of criminal law meaning it self, the end of its existence, the two measurements overlap, but only in this case.

Criminal law, time, space, facts, people

Aplicarea legii penale se realizează prin: îndeplinirea prevederilor normelor de drept penal, conformarea subiectelor pasive ale raporturilor penale de cooperare, constrângerea subiectelor pasive ale raportului penal de conflict, respectiv subiecţi activi ai infracţiunii.

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Aplicarea legilor penale reprezintă unul dintre cele mai importante momente ale existenţei acestora, fiind o activitate situată din punct de vedere cronologic ulterior activităţii de interpretare. Astfel, orice eşec pe planul aplicării dreptului penal înseamnă nerezolvarea corectă a unor conflicte sau interese sociale.[1]

Aplicarea legii penale[2] demarează odată cu intrarea sa în vigoare, întrucât din acest moment ea este obligatorie şi, în ceea ce-i priveşte pe destinatarii care s-au conformat, ea are eficienţă activă, iar privitor la celelalte subiecte de drept, care nu s-au conformat, persoanele care săvârşesc infracţiuni, eficienţa este reactivă.

Situaţia de dorit este aceea ca normele juridice penale să se realizeze prin executarea de bunăvoie a obligaţiilor ce rezultă din acestea sau prin existenţa unor încălcări nesemnificative. În acelaşi context, realitatea demonstrează că, în ciuda preocupărilor meritorii din materia mijloacelor de combatere a fenomenului infracţional, respectiv criminologia, acest fenomen este din ce în ce mai greu de contracarat. Din această cauză, opera de înfăptuire a legii penale trebuie pusă în practică cu multă rigoare profesională şi totodată cu promptitudine rezonabilă. Astfel, rolul determinant în acest demers aparţine subiectelor implicate în activitatea de aplicare a legii penale, respectiv organelor judiciare. Pentru eficienţa dreptului penal trebuiesc îndeplinite două condiţii *sine qua non,* respectiv: existenţa unei legi penale care să acopere toate problemele ridicate de infracţionalitate şi existenţa unei activităţi profesioniste din partea factorilor implicaţi în actul de justiţie, respectiv judecători, procurori, organe de poliţie judiciară, avocaţi, interpreţi, experţi.

Aplicarea legii penale înseamnă atât realizarea dispoziţiilor pe care aceasta le cuprinde, cât şi corecta lor folosire. Aplicarea legii penale are loc, şi este reglementată în raport cu anumite elemente de care sunt legate fenomenele juridice penale şi care determină sfera de incidenţă sau limitele ei de aplicare. În acest context, nu se poate vorbi de aplicarea legii penale fără a face referi la elementele care îi fixează limitele şi anume: spaţiul (teritoriul), persoanele, faptele şi timpul. Aplicarea legii cu privire la persoane şi fapte nu este reglementată în mod deosebit întrucât se subordonează aplicării legii penale în spaţiu şi timp.

Pentru sistematizarea materiei privind acţiunea legii penale în timp şi spaţiu, în Noul Cod penal sunt prevăzute norme care indică legea aplicabilă. Respectivele norme sunt cuprinse în Titlul I al Codului penal intitulat *Legea penală şi limitele ei de aplicare.*

Spaţiul este un element de referinţă obligatoriu în determinarea limitelor aplicării legii penale. Acesta, constituie o coordonată comensurabilă şi prezintă interes pentru aplicarea legii penale, deoarece, în primul rând legea penală ca expresie a voinţei de stat suverane are forţă obligatorie

[1] Paşca, V., *Măsurile de siguranţă şi aplicarea legii penale în timp*, în Rev. RDP nr. 1/1997, p.37.
[2] Hotca, Adrian, Mihai, *Drept penal.Partea generală*, Ed. C. H. Beck, Bucureşti, 2007, p.95.

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pe teritoriul în care statul îşi exercită suveranitatea, iar în al doilea rând pentru că relaţiile sociale reglementate de dreptul penal ca şi conduita oamenilor în cadrul acestor relaţii se desfăşoară pe un anumit teritoriu.

Astfel, pentru aplicarea legii penale trebuie să se stabilească aşadar o anumită corespondenţă între ea şi raporturile pe care le reglementează în ceea ce priveşte teritoriul. Din punctul de vedere al aplicării legii penale în spaţiu, o infracţiune poate fi săvârşită pe teritoriul ţării, în străinătate, ori o parte pe teritorii ţării şi altă parte în străinătate. Cel care a săvârşit infracţiunea poate fi cetăţean al statului unde s-a comis infracţiunea sau poate fi străin, persoană fără cetăţenie ori cu dublă cetăţenie. În aceste cazuri se pune problema de a şti dacă eficienţa legii penale a unui stat se întinde pretutindeni unde întâlnim o activitate incriminată de aceasta sau are anumite limite. De asemenea, se mai pune problema existenţei unor anumite limite cu privire la aplicarea legii penale chiar pe teritoriul statului de la care emană şi a stabilirii măsurii în care acţiunea sa, este limitată de legile penale străine.

Persoanele. Deoarece, legea penală reglementează relaţiile dintre oameni, ea se adresează oamenilor care sunt destinatarii şi totodată beneficiarii reglementărilor sale. Din această cauză, studiul aplicării legii penale nu se poate face fără a lua în considerare persoanele cărora legea li se adresează sau ale căror interese le ocroteşte. Limitele aplicării legii penale sunt determinate, aşadar, şi de sfera persoanelor care pot fi subiecte ale raporturilor juridice reglementate prin normele de drept penal. Astfel, din punctul de vedere al aplicării legii penale, o mare importanţă o are calitatea făptuitorului în momentul săvârşirii infracţiunilor (minor, militar, gestionar), în ceea ce priveşte calificarea infracţiunii şi aplicarea pedepselor. Totodată, trebuie avută în vedere vârsta făptuitorului şi forma vinovăţiei pentru stabilirea dispoziţiilor penale aplicabile în cauză.

Faptele. Reglementând raporturi juridice, legea penală descrie explicit şi concret faptele sub forma acţiunii sau omisiunii şi interzice faptele periculoase pentru valorile sociale ocrotite. Din această cauză, aplicarea legii penale se raportează şi la fapte. În cazul relaţiilor de conformare, raportarea se face la faptele prevăzute de legea penală şi interzise sau impuse sub sancţiunea penală, iar în cazul raporturilor de conflict născute ca urmare a săvârşirii unor infracţiuni, raportarea se face la fapta concretă comisă.

Astfel, nu orice faptă sârvârşită cade sub incidenţa legii penale, ci doar aceea care este incriminată. Fapta trebuie să aducă atingere, să vătămeze sau să încerce vătămarea uneia din valorile ocrotite prin normele dreptului penal. Valoarea prezintă importanţă deoarece nu poate exista infracţiunea atâta timp cât acţiunea (inacţiunea) nu a atins vreuna din valorile apărate de legea penală.

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Timpul este una dintre dimensiunile fundamentale în care se desfăşoară orice activitate umană. Per ansamblu, orice act înfăptuit de om, indiferent de semnificaţia lui individuală sau socială se desfăşoară în timp, implică o anumită durată de exercitare.

Astfel, în timp se fixează momentul începerii acţiunii, precum şi sfârşitul acesteia şi tot timpul este cel care măsoară fiecare etapă în desfăşurarea actului. În acelaşi context, timpul are şi rolul lui de judecată de valoare a acţiunilor omeneşti. Nu există acţiune, care să scape criticii necruţătoare a vremii.

Timpul este cel care confirmă valoarea unei acţiuni omeneşti, după cum poate infirma total sau parţial valoarea atribuită de predecesori. Privind partea morală, respectiv cea fizică a suferinţelor oamenilor, timpul este cel care vindecă aceste suferinţe, uneori însoţit şi de unele tratamente medicale. Timpul este cel care face să dispară antagonismele dintre oameni, după cum poate contribui la îmbunătăţirea sau agravarea relaţiilor dintre indivizi, ca şi între state.

Infracţiunea, ca orice acţiune, respectiv inacţiune umană, este supusă acţiunii timpului. De aemenea, politica represivă penală suferă, la rândul ei, în mod hotărâtor, efectele trecerii timpului. Timpul infracţiunii, fixează momentul începerii, consumării ori epuizării unei fapte ilicite, respectiv momentele determinante în stabilirea legii penale aplicabile: activitatea, retroactivitatea sau ultraactivitatea legii penale.

Legea penală are şi o durată de timp, astfel, fixându-se intrarea în vigoare a legii şi momentul ieşirii din vigoare a acesteia. De asemenea, cu ajutorul timpului se stabileşte capacitatea psihofizică a făptuitorului pentru a verifica dacă era sau nu capabil în momentul săvârşirii infracţiunii.

Timpul este cel care măsoară sancţiunea privativă de libertate. De asemenea, vocaţia la liberare condiţionată depinde, de trecerea unei durate de timp de executare a pedepsei. Timpul, în conţinutul incriminării poate avea rolul de element constitutiv, de exemplu: infracţiunea de trădare prin ajutarea inamicului, conform art. 396 Noul Cod Penal, se comite în timp de război; infracţiunea de folosire a emblemei Crucii Roşii. Deasemenea poate avea rolul de element circumstanţial: furtul în timpul nopţii, art. 229, lit.b.

Timpul este un element important în stabilirea calităţii de subiect activ al infracţiunii: dacă este minor sub 14 ani, nu răspunde penal; ori are vârsta între 14-16 sau 16-18 ani; sau de subiect pasiv al infracţiunii, de exemplu dacă are vârsta sub 18 ani în infracţiunea de seducţie, ori sub 14 ani în cazul infracţiunii de raport sexual cu o minoră, condiţie temporală legată de subiect.

Timpul apare exprimat în conţinutul incriminării sub forma unei durate determinate: fapta de a nu preda în termen de 10 zile un bun găsit autorităţilor, conform art. 243, Noul Cod Penal; ori sub

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forma unei durate nedeterminate: de exemplu, de îndată în cazul infracţiunii de ucidere ori vatamarea noului născut săvârşită de către mamă, art.200 Noul Cod Penal.

În alt context, timpul este exprimat prin anumite evenimente care, în mod obligatoriu, ar trebui să se petreacă în durata respectivă, evenimente care ar atrage anumite consecinţe penale: stare de război, în timpul nopţii, în timpul unei calamităţi.

Respectivele moduri sub care legiuitorul a înţeles să exprime timpul, în conţinutul incriminării, ar putea fi sistematizate, după cum se are în vedere aspectul cantitativ al timpului, adică durata, sau cerinţele temporale de desfăşurare ale acţiunii sau inacţiuni incriminate, sau se referă la aspectul calitativ al timpului, adică la un anumit eveniment temporal de care sunt condiţionate existenţa unor consecinţe penale.

Astfel, sub aspectul cantitativ, se are în vedere situaţia când legea pretinde ca, fapta incriminată să se desfăşoare într-o anumită durată determinată: nepredării bunului găsit, absenţa nejustificată de la serviciu, dezertarea, neplata pensiei de întreţinere peste 2 luni; acelaşi caracter îl au şi condiţiile legate de subiect, ele referindu-se tot la aspectul cantitativ determinat al timpului.

În ceea ce priveşte, condiţia temporală cantitativă, cât şi cea calitativă, acestea se împart în: condiţie temporală constitutivă cantitativă sau calitativă şi în condiţie temporală circumstanţială cantitativă sau calitativă: de exemplu, durata absenţei nejustificate de la unitate sau serviciu are atât conţinut constitutiv cât şi cantitativ, dar condiţia temporală cantitativă poate fi şi circumstanţială, exemplu: absenţa nejustificată a militarului pe o durată mai mare de 4 ore.

La rândul ei, condiţia temporală calitativă poate să fie împărţită în condiţie temporală constitutivă calitativă: infracţiunea de trădare prin ajutarea inamicului, art. 396 Cod Penal. Astfel, în acest caz cerinţa ca fapta să fie comisă în timp de război constituie o cerinţă temporală calitativă constitutivă.

Reiterând cele afirmate se poate concluziona faptul că, timpul se manifestă ca o realitate pasivă ori de câte ori oferă numai fundalul temporal, limitele în cadrul cărora se desfăşoară o activitate cu implicaţii penale. Astfel, timpul nu exercită o influenţă nemijlocită asupra răspunderii penale şi asupra executării pedepsei, ci eventual indirect, în măsura în care nu sunt respectate condiţiile temporale constitutive, cantitativă sau calitativă. Odată ce infracţiunii, îi lipseşte un element constitutiv, fapta nu va constitui infracţiune şi, nu va determina tragerea la răspundere penală a autorului. Totodată se va influenţa şi pedeapsa, deoarece lipsind infracţiunea şi răspunderea penală, implicit, nu va fi posibilă nici aplicarea unei pedepse şi nici executarea acesteia.

În majoritatea cazurilor, timpul se manifestă ca o entitate pasivă, oferind dimensiunile în care s-a înscris activitatea făptuitorului, fie sub forma unei durate, fie forma unui element de calificare a

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duratei temporale. Exemplele sus-menţionate a prezentat timpul ca, cel care nu şi-a manifestat însuşirile active de înlăturare a răspunderii penale şi a executării pedepsei, în condiţiile în care existând infracţiunea, ar fi operat prezumţia că există atât răspunderea penală cât şi pedeapsa.

Respectivele însuşiri încep să se manifeste din momentul când trecerea timpului îşi propune să evidenţieze că, deşi există infracţiune, prin intervenţia sa activă, a duratei timpului, este înlăturată răspunderea penală ori posibilitatea executări pedepsei. Ca o concluzie, se afirmă: când durata de timp vrea să sublinieze că între infracţiune şi răspunderea penală s-a interpus o altă realitate de natură să paralizeze existenţa răspunderii penale sau executarea pedepsei.

Funcţia activă a timpului care se manifestă în modul sus-menţionat, este valorificată, de instituţia prescripţiei răspunderii penale şi a prescripţiei executării pedepsei. Astfel, schimbarea legislaţiei penale cu legi noi, dă naştere în practica judiciară, la numeroase probleme.

Cu toate acestea, această funcţie activă a timpului, se manifestă alături ori în continuarea funcţiei sale pasive. Astfel, în măsura în care după constatarea existenţei infracţiunii (care se desfăşoară, pasiv, în timp) apar elemente temporale (adică aparţinând de timp) care tind să împiedice, să înlăture posibilitatea răspunderii penale şi a executării pedepsei ca urmări fireşti ale existenţei infracţiunii, substituind acestora o altă realitate determinată de acţiunea activă a timpului asupra factorilor care ar fi justificat poate tragerea la răspundere penală a făptuitorului şi executarea pedepsei, înseamnă că elementelor pasive ale timpului li s-au adăugat cele active care au devenit decisive, stând la baza prescripţiei penale.

În contextul celor afirmate, acţionând activ asupra memoriei oamenilor (prin ştergerea unei infracţiuni determinate sau a pedepsei din memoria acestora), timpul înlătură orice justificare a tragerii la răspundere penală a făptuitorului după trecerea unei durate îndelungate ori a executării pedepsei aplicate cu mult timp înainte.

Cu toate acestea, timpul acţionează activ, benefic şi asupra conştiinţei făptuitorului, lăsând să apară prezumţia că, dacă nu mai săvârşeşte nici o faptă penală o lungă perioadă, înseamnă că a deprins învăţămintele necesare chiar fără a fi fost tras la răspundere penală sau supus executării pedepsei. Respectivele consecinţe penale care se desprind din poziţia activă a factorului timp au fost subliniate şi în doctrina penală română.

Profesorul Vintilă Dongoroz, afirmă că, factorul timp interesează în mai multe privinţe legea penală, constituind un termen al infracţiunii.[3]

Astfel, "timpul interesează nu numai în privinţa determinării legii penale aplicabile în cazul succesiunii de legi penale în timp, nu numai pentru a stabili capacitatea psihofizică a infractorului

[3]Dorina N. Rusu, *Membrii Academiei Române. 1866-1999. Dicţionar*", Editura Academiei Române, Bucureşti, 1999

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şi anume dacă avea sau nu vârsta necesară pentru a putea fi tras la răspundere penală, dar şi pentru a determina punctul de plecare al prescripţiei răspunderii penale."

Profesorul Constantin Bulai subliniază faptul că, prescripţia constituie o expresie a rolului pe care îl are factorul timp în realizarea incidenţei penale, în vederea restabilirii ordinii de drept încălcate prin săvârşirea unei infracţiuni.[4]

Profesorul Traian Pop arăta, de asemenea, că în sens juridic general, prescripţia înseamnă stingerea unui raport juridic prin trecerea unui timp prevăzut de lege. Per a contrario, în sens general comun, această noţiune se identifică cu însăşi trecerea timpului, a unei anumite perioade de timp.

În concluzia celor enunţate se poate afirma că, legea penală are o aplicare limitată în timp şi depinde de natura, structura şi evoluţia relaţiilor sociale reglementate. Modificarea şi stingerea oricărui raport juridic penal depinde în mod nemijlocit, de durata activităţii de incriminare a normei penale, aceasta având uneori legătură succesivă cu două legi penale (dintre care amândouă sunt în vigoare sau doar una este în vigoare, însă va trebui să se aplice pentru o faptă săvârşită anterior).

Delimitarea principiilor de aplicare a legii penale în timp se face tot prin puterea unei legi penale, astfel încât să se evite perioada de vacuum legis (lipsa legilor, vid de legi), specifică trecerii în timp de la legea veche, abrogată, la legea nouă, adoptată de acelaşi organ; sau de un alt organ legiuitor (abilitat cu funcţii de legiuire). Deşi principiile adoptate, de legiuitor cu privire la retroactivitatea sau ultraactivitatea legii penale sunt în mod constant oscilante prin modul de reglementare al abrogării, de stabilire a modalităţilor de ieşire din vigoare a legii sau de admitere a unor derogări de la aplicarea legii, totuşi din forma şi conţinutul legii va trebui să rezulte cu claritate modalitatea de intrare şi de ieşire din vigoare.

Astfel, enunţul legii penale va trebui să determine: după data săvârşirii infracţiunii legea penală aplicabilă; dacă fapta nu era considerată înfracţiune de legea existentă nu va fi considerată infracţiune de o lege apărută ulterior; dacă fapta considerată infracţiune în momentul producerii nu va mai fi considerată infracţiune, până în momentul executării de o altă lege penală; dacă o faptă considerată infracţiune în momentul judecăţii (pentru care s-au stabilit anumite limite de pedeapsă) poate să beneficieze de o favoare în perioada executării efective prin adoptarea unei legi noi care prevede limite de pedeapsă mai mici faţă de limitele legii vechi; dacă fapta este săvârşită în perioada de activitate a unei legi penale temporare, dar fiind descoperită după ieşirea din vigoare a acesteia se vor putea aplica dispoziţiile legii penale ordinare.

[4] Constantin Bulai, Bogdan Bulai, "*Manual de drept penal",* Editura Universul Juridic, Bucuresti, 2006

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Concluzionând cele afirmate, *timpul* este un element determinant al limitelor incidenţei legilor penale şi alături de spaţiu (teritoriu) constituie cadrul spaţial şi temporal al fenomenelor juridice. Totodată, noţiunea de timp nu trebuie înţeleasă în accepţiunea sa filosofică de măsură a mişcării, ci în sensul de timp juridic, complex şi individualizat prin note distincte, de natură obiectivă şi apt să subsumeze, în forme relativ standardizate, comportamentele umane şi normele de drept penal.

Timpul, în sens juridic se caracterizează prin identitatea însuşirilor sale pe toată durata ipostazelor avute în vedere, adică în trecut, prezent sau viitor, dar pentru fiecare din aceste etape se disociază prin caracteristici proprii.

Pentru aplicarea legii penale timpul juridic interesează în accepţiunea sa mai restrânsă, adică cantonat numai la raporturile legii cu prezentul, trecutul şi viitorul, din perspectiva raporturilor de drept penal pe care le reglementează. Astfel, în acest context o lege nouă capătă aplicare imediată şi obligatorie de îndată ce a intrat în vigoare pe toată durata de timp în care este în vigoare (activitatea legii penale) sau poate retroactiva (legile prin care o faptă este dezincriminată) ori ultraactiva (legile penale temporare), iar alteori dintre mai multe legi care s-au succedat pe durata de timp a existenţei raportului penal se aplică cea care este mai favorabilă.

Totodată, între fapta săvârşită şi legea penală care urmează să fie aplicată, există întotdeauna a corelaţie. Orice fapt generator de consecinţe juridice penale se comite la un anumit moment sau într-o durată de timp, iar pe de altă parte raporturile juridice pe care legea le reglementează au şi ele o durată determinată în timp, astfel încât trebuie să se stabilească legea penală aplicabilă.

Stabilirea legii penale care se aplică raportului de drept penal se face potrivit principiilor înscrise în Codul Penal (art. 1-2). Prin urmare, aplicarea legii penale în timp înseamnă stabilirea, pe baza normelor speciale prevăzute în Codul Penal, legii penale care se aplică în vederea soluţionării raportului penal născut prin săvârşirea unei infracţiuni, în funcţie de durata acestuia în timp şi legea în vigoare sau legile care s-au succedat în toată această perioadă.

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FREEDOM OF EXPRESSION AND PROFESSIONAL SECRECY IN THE LAWYER PROFESSION

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Rezumat: Reglementările naționale, europene și internaționale consacră două principii fundamentale ale exercitării profesiei de avocat, anume libertatea și independența în exercitarea acestei profesii, inclusiv cât privește apărarea și consilierea clientului său. Însă, aceleași reglementări impun avocatului a respecta secretul profesional și confidențialitatea cauzelor care i-au fost încredințate. Așadar libertatea de exprimare a avocatului, ca dimensiune a principiului libertății ce guvernează exercitarea acestei profesii, nu este una absolută, existând limite, restricții impuse prin reglementări legale și care trebuie respectate de acesta. Întrebarea esențială la care vom încerca să răspundem, prin această lucrare, privește întinderea libertății de exprimare a avocatului în exercitarea profesiei sale, respectiv a limitelor, restricțiilor acesteia.

Cuvinte cheie: avocat, libertate de exprimare, secret profesional, jurisprudență, CEDO.

Abstract: Romanian, European and international regulations establish two fundamental principles of the profession of lawyer, namelyfreedom and independence in practicing of this profession, including as concerns the defending and advising of his client. But the same regulations require to lawyers to respect professional secrecy and confidentiality of cases that have been entrusted to them. Therefore the freedom of expression of lawyers, as one aspect of freedom principle which is governing this profession, is not absolute, there are limits and restrictions imposed by legal regulations to be respected by lawyer. In this paper we'll try to answer to an essential question that regards the extent of lawyer's freedom of expression, and also the boundaries, restrictions in practicing this profession.
Key-words: lawyer, freedom of expression, professional secrecy, jurisprudence, ECHR.

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Legea nr. 51/1995 pentru organizarea şi exercitarea profesiei de avocat, republicată[1], cu modificările şi completările ulterioare, şi, implicit Statutul din 3 decembrie 2011 al profesiei de avocat, adoptat de Consiliul Uniunii Naţionale a Barourilor din România, prin Hotărârea nr. 64 din 3 decembrie 2011[2], consacră două principii fundamentale ale exercitării profesiei de avocat, anume cel al libertăţii şi cel al independenţei, specificând că „profesia de avocat este liberă şi independentă".

De altfel aceste principii sunt recunoscute inclusiv prin documente internaţionale şi europene. Am putea aminti, astfel, Principiile de Bază ale Rolului Avocatului, adoptate la Congresul al Optulea al Naţiunilor Unite despre Prevenirea Crimei şi a Tratamentul Delincvenţilor, Havana (Cuba), 27 august-7 septembrie 1990[3], care recunoaşte caracterul independent al acestei profesii încă din preambulul său, pentru ca prin art.23 să recunoască şi avocaţilor, ca şi oricăror altor cetăţeni, inclusiv libertatea de exprimare[4].

De asemenea, libertatea de exprimare este recunoscută la nivelul Uniunii Europene, art.11 din Carta Drepturilor Fundamentale ale Uniunii Europene[5], alin. (1) al acestui articol prevăzând că orice persoană are dreptul la libertatea de exprimare, libertate ce cuprinde libertatea de opinie şi libertatea de a primi sau de a transmite informaţii sau idei fără amestecul autorităţilor publice şi fără a ţine seama de frontiere.

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[1] Această lege a fost republicată în Monitorul Oficial al României, Partea I, nr. 98 din 17 februarie 2011.

[2] Atât Statutul profesiei de avocat cât şi Hotărârea prin care acesta a fost adoptat au fost publicate în Monitorul Oficial al României, Partea I, nr. 898 din 19 decembrie 2011.

[3] A se vedea, în acest sens, http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx, accesat la data de 09.11.2015.

[4] Apreciem necesar a menţiona faptul că recunoaşterea libertăţii de exprimare avocaţilor, prin acest document, a fost posibilă urmare a consacrării prin însăşi Declaraţia Universală a Drepturilor Omului, precum şi prin Pactul Internaţional cu privire la drepturile civile şi politice. Astfel, potrivit art.19 din Declaraţia Universală a Drepturilor Omului, orice om are dreptul la libertatea opiniilor şi exprimării; acest drept include libertatea de a avea opinii fără imixtiune din afară, precum şi libertatea de a căuta, de a primi şi de a răspândi informaţii şi idei prin orice mijloace şi independent de frontierele de stat, art.19 alin. (1) şi (2) din Pactul menţionat, prevăzând că nimeni nu trebuie să aibă de suferit din cauza opiniilor sale, sens în care i se recunoaşte oricărei persoane dreptul la libertatea de exprimare; drept ce cuprinde libertatea de a căuta, de a primi şi de a răspândi informaţii şi idei de orice fel, indiferent de frontiere, sub formă orală, scrisă, tipărită ori artistică, sau prin orice alt mijloc, la alegerea sa. Declaraţia Universala a Drepturilor Omului a fost adoptată de Adunarea Generală a Organizaţiei Naţiunilor Unite, din 10 decembrie 1948, fiind cuprinsă în Rezoluţia 217 A/III. România a semnat Declaraţia la 14 decembrie 1955 când prin R 955 (X) a Adunării generale a ONU, a fost admisă în rândurile statelor membre. Iar Pactul amintit a fost adoptat şi deschis spre semnare de Adunarea generală a Națiunilor Unite la 16 decembrie 1966, a intrat în vigoare în martie 1976. România a ratificat Pactul Internațional cu privire la drepturile civile şi politice la 31 octombrie 1974, prin Decretul nr. 212, ce a fost publicat în B. Of. al României, Partea I, nr. 146 din 20 noiembrie 1974.

[5] A se vedea, Carta Drepturilor Fundamentale a Uniunii Europene care este, conform prevederilor art. 51 din Tratatul privind Uniunea Europeană (unul dintre cele două tratate componente ale Tratatului de la Lisabona), parte integrantă a Tratatului de la Lisabona din 13 decembrie 2007 de modificare a Tratatului privind Uniunea Europeană şi a Tratatului de Instituire a Comunităţii Europene, semnat, aşadar, la 13 decembrie 2007, dar intrat în vigoare la 01 decembrie 2009, şi ratificat de România prin Legea nr. 13/2008, publicată în M. Of., Partea I, nr. 107 din 12 februarie 2008, varianta publicată în JO C 326, 26.10.2012, p. 391-407, accesată la: http://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:12012P/TXT&from=RO, la data de 09.11.2015.

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Consiliul Barourilor şi al Societăţilor de Drept din Europa a adoptat, la rândul său, două documente relevante în domeniu, anume Carta principiilor fundamentale ale avocatului european şi Codul deontologic al avocatului european[6], documente care recunosc atât independenţa şi libertatea de a asigura apărarea şi consilierea clientului său, cât şi respectarea secretului profesional şi a confidenţialităţii cauzelor ce i-au fost încredinţate[7].

Nu în ultimul rând, este necesar a aminti şi faptul că şi avocatul se bucură de toate drepturile consacrate prin Convenţia Europeană a Drepturilor Omului[8] (CEDO, s.n.), în condiţiile şi limitele prevăzute în respectiva Convenţie. Astfel, conform prevederilor art.10 paragr. (1) din CEDO, orice persoană, cu atât mai mult avocatul în virtutea rolului pe care acesta îl are în societate, are dreptul la libertatea de opinie şi libertatea de a primi sau comunica informaţii sau idei fără amestecul autorităţilor publice şi fără a ţine seama de frontiere. Cu toate acestea însăşi Convenţia prevede, în cuprinsul paragr. (2) al aceluiaşi articol, limitele în care acest drept esenţial poate fi exercitat, şi anume faptul că exercitarea acestor libertăţi ce comportă îndatoriri şi responsabilităţi poate fi supusă unor formalităţi, condiţii, restrângeri sau sancţiuni prevăzute de lege care, într-o societate democratică, constituie măsuri necesare pentru securitatea naţională, integritatea

[6] Consiliul Barourilor şi al Societăţilor de Drept din Europa (CCBE) are drept scop primordial reprezentarea barourilor membre şi societăţilor juridice, indiferent dacă acestea sunt membri deplini, membru-asociat sau observator, în orice problemă de interes comun legată de exercitarea profesiei de avocat, dezvoltarea legii şi a practicii judiciare referitoare la supremaţia legii şi administrarea justiţiei, modificările substanţiale ale legii însăşi la nivel european şi internaţional, conform art. III 1 a. al Statutului CCBE. Codul deontologic a fost adoptat ca şi Cod deontologic al avocaţilor români de către Comisia Permanentă a Uniunii Naţionale a Barourilor din România, în 27 octombrie 2007 şi a intrat în vigoare la 01 ianuarie 2008. Cele două documente au fost consultate la: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf, accesat la data de 09.11.2015.

[7] Astfel, potrivit *Principiului a)* din Carta menţionată coroborat cu prevederile pct.2.1.1 si 2.1.2. din Codul deontologic, multitudinea îndatoririlor care îi revin avocatului impune o independenţă absolută a acestuia, scutită de orice presiune, îndeosebi de presiunea derivată din propriile sale interese sau datorată influenţelor din afară, independenţă ce este, de asemenea, necesară atât pentru încrederea în justiţie, cât şi pentru încrederea în imparţialitatea judecătorului, avocatul trebuind să evite orice prejudiciere a independenţei sale şi să vegheze la a nu neglija etica sa profesională pentru a-i mulţumi pe clienţii săi, pe judecător sau pe terţi. Această independenţă este necesară şi în activitatea juridică, şi în cea judiciară, sfatul dat de avocat clientului său neavând nici o valoare atunci dacă acest lucru a fost făcut din complezenţă, din interes personal sau sub efectul unei presiuni din afară. De asemenea, potrivit *Principiului b)* din Cartă şi a prevederilor pct.2.3. din Cod, prin însăşi natura misiunii sale, avocatul este depozitarul secretelor clientului său şi destinatarul comunicărilor de natură confidenţială, fără garanţia confidenţialităţii, încrederea neputând exista. Prin urmare, secretul profesional este recunoscut ca fiind deopotrivă un drept şi o îndatorire fundamentală şi primordială a avocatului, iar obligaţia avocatului cu privire la secretul profesional serveşte atât intereselor administrării justiţiei, cât şi intereselor clientului. În consecinţă, aceasta trebuie să beneficieze de o protecţie specială din partea statului. Avocatul trebuie să respecte secretul oricărei informaţii confidenţiale de care ia cunoştinţă în cadrul activităţii sale profesionale, această obligaţie nefiind limitată în timp, avocatul impunând-o angajaţilor săi şi oricărei persoane care colaborează cu el în activitatea sa profesională.

[8] Convenția pentru apărarea drepturilor omului și a libertăților fundamentale, cunoscută sub denumirea de Convenția europeană a drepturilor omului, a fost semnată la Roma la 04 noiembrie 1950 și a intrat în vigoare la 03 septembrie 1953, fiind adoptată sub egida Consiliului Europei. România a ratificat această Convenție, prin Legea nr. 30/1994, publicată în M. Of., Partea I, nr. 135 din 31 mai 1994. Textul acestei Convenții a fost amendat, ultima dată, în conformitate cu prevederile Protocolului nr. 14, protocol pe care România l-a ratificat prin Legea nr. 39/2005, publicată în M. Of., Partea I, nr. 238 din 22 martie 2005, protocol intrat în vigoare la data de 01 iunie 2010.

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teritorială sau siguranţa publică, apărarea ordinii şi prevenirea infracţiunilor, protecţia sănătăţii, a moralei, a reputaţiei sau a drepturilor altora, pentru a împiedica divulgarea informaţiilor confidenţiale sau pentru a garanta autoritatea şi imparţialitatea puterii judecătoreşti[9].

De asemenea, la nivel naţional[10], Statutul profesiei de avocat subliniind, prin art. 6 alin. (1) si (2), ca in baza acestor principii ce definesc statutul profesional al avocatului şi garantează activitatea sa profesională, anume libertatea şi independenţa profesiei de avocat, avocatul promovează şi apără drepturile, libertăţile şi interesele legitime ale clienţilor potrivit legii si statutului, fiind liber să îşi aleagă, să schimbe şi să dispună în tot sau în parte de forma de exercitare a profesiei. De asemenea, având în vedere că libertatea şi independenţa avocatului sunt garantate de lege, conform art.7 alin. (3) din acelaşi Statut, în exercitarea profesiei, avocatul nu poate fi supus niciunei restricţii, presiuni, constrângeri sau intimidări din partea autorităţilor sau instituţiilor publice ori a altor persoane fizice sau persoane juridice.

Cât priveşte secretul profesional, în virtutea prevederilor art. 8 alin. (1) şi (2) coroborate cu cele ale art. 9 din Statut, acesta este considerat a fi de ordine publică, avocatul fiind dator a păstra secretul profesional privitor la orice aspect al cauzei care i-a fost încredinţată. Mai mult decât atât, avocatul nu poate fi obligat în nicio circumstanţă şi de către nicio persoană să divulge secretul profesional, neputând fi dezlegat de secretul profesional nici de către clientul său şi nici de către o altă autoritate sau persoană, excepţiile fiind consacrate prin alin. (3) al art.8. Potrivit art.9 alin. (1) din acelaşi Statut, obligaţia de a păstra secretul profesional este absolută şi nelimitată în timp si se întinde asupra tuturor activităţilor avocatului, ale asociaţilor săi, ale avocaţilor colaboratori, ale avocaţilor salarizaţi din cadrul formei de exercitare a profesiei, inclusiv asupra raporturilor cu alţi avocaţi. Alin. (2) si (3) ale aceluiaşi art. 9 extind această obligaţie de a păstra secretul profesional şi la persoanele cu care avocatul conlucrează în exercitarea profesiei, precum şi la salariaţii săi, dar şi la toate organele profesiei de avocat şi salariaţii acestora cu privire la informaţiile cunoscute în exercitarea funcţiilor şi atribuţiilor ce le revin.

Secretul profesional al avocatului a fost consacrat în legislaţia noastră în scopul de a proteja interesele clientului, de a limita la minim controlul din partea autorităţilor statului asupra datelor

[9] În acelaşi sens sunt şi prevederile alin. (3) al art. 19 din Pactul Internaţional cu privire la drepturile civile şi politice, prin care se prevede că exercitarea libertăţii de exprimare, sub toate componentele sale, comportă obligaţii şi răspunderi speciale, motiv pentru care poate fi supusă anumitor limitări care trebuie, însă, stabilite în mod expres prin lege şi care sunt necesare fie pentru respectarea drepturilor sau reputaţiei altora, fie pentru apărarea securităţii naţionale, ordinii publice, sănătăţii sau moralităţii publice.

[10] A se vedea în acest, av.dr. Gh. Florea, *Aspecte privind actualitatea apărării valorilor promovate prin Legea de organizare si exercitare a profesiei de avocat (I),* articol publicat pe site-ul juridice.ro, http://www.juridice.ro/319398/aspecte-privind-actualitatea-apararii-valorilor-promovate-prin-legea-de-organizare-si-exercitare-a-profesiei-de-avocat-i.html, accesat la 06.11.2015.

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şi informaţiilor schimbate între client şi avocatul acestuia în scopul asigurării unui cadru în care avocatul să-şi poată îndeplini în mod efectiv rolul său principal, şi anume apărarea drepturilor şi intereselor clientului. Legiuitorul a considerat, pe bună dreptate, că nu se pot crea premisele unei apărări efective de către avocat în lipsa unui cadru legal care să protejeze confidenţialitatea relaţiei avocat-client, relaţie care trebuie să se manifeste într-un climat de deplină încredere între cele doua părţi. Secretul profesional are astfel un caracter mixt, el fiind în acelaşi timp atât o obligaţie a avocatului faţă de clientul său cât şi un drept al acestuia faţă de orice altă persoană, organ sau autoritate a statului.

Aşadar, reglementările legale în vigoare, consacră atât libertatea avocatului în exercitarea profesiei, inclusiv sub dimensiunea libertăţii de exprimare, cât şi obligaţia acestuia de a păstra secretul profesional, evident exercitarea acestei libertăţi, respectiv respectarea obligaţiei menţionate fiind supuse unor limitări şi condiţionări, prevăzute, de asemenea, de reglementările legale în vigoare.

Respectarea şi, implicit, păstrarea secretului profesional presupun, în principiu, astfel precum am specificat şi în cele ce preced că „avocatul este dator să păstreze secretul profesional privitor la orice aspect al cauzei ce i-a fost încredinţată, cu excepţia cazurilor prevăzute expres de lege”. Cu alte cuvinte atât Legea nr.51/1995, republicată, cu modificările şi completările ulterioare cât şi Statutul profesiei de avocat, odată cu consacrarea dreptului la libertate al avocatului instituie şi această limită specială de exercitare a acestui drept prin punerea pe primul plan a interesului superior al clientului.

Se pune, însă, întrebarea, în mod just, în ce mod afectează această obligaţie de păstrare a secretului profesional libertatea de exprimare a avocatului şi dacă nu cumva autorităţi sau instituţii ale statului ar putea ca, sub pretextul impunerii cu orice preţ a acestei obligaţii în sarcina avocatului, să cenzureze şi să limiteze folosirea de către acesta a celor mai potrivite metode prin care avocatul ar putea apăra drepturile şi interesele clientului său. Având în vedere că, în raport cu relaţia avocat-client, obligaţia păstrării secretului profesional este instituită în principal pentru protejarea interesului particular al clientului, în virtutea libertăţii acestuia de a dispune de drepturile pe care legea i le conferă, putem afirma, fără nici o urmă de îndoială că acesta, clientul, este cel care are inclusiv dreptul de a-l „elibera” pe avocat de această obligaţie.

Aceasta obligaţie ce incumbă avocatului şi nu numai s-a apreciat, în doctrină, că „se situează între garantarea demnităţii persoanei şi a confidenţialităţii informaţiilor, pe de o parte, şi garantarea de manieră colectivistă a intereselor sociale, pe de altă parte”[11].

[11] L. Dănilă, *Organizarea şi exercitarea profesiei de avocat*, Editura C.H. Beck, Bucureşti, 2007, p. 64.

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În literatura de specialitate s-a mai arătat ca „prin însăşi natura misiunii sale, avocatul este depozitarul secretelor clientului şi destinatarul comunicărilor de natură confidenţială [...] prin urmare, secretul profesional este recunoscut ca fiind deopotrivă un drept şi o îndatorire fundamentală şi primordială a avocatului”[12], subliniindu-se astfel reglementările ce se regăsesc atât la nivel naţional cât şi european.

Doctrina califică această îndatorire de natură deontologică, drept „o limitare a independenţei avocatului”[13], dar care nu se poate a nu fi consacrată chiar la nivel primar, prin legea de organizare a profesiei de avocat.

Pe de altă parte, avocatul trebuie să dispună de o independenţă totală faţă de puteri şi să fie la adăpost de ameninţări întrucât exercitarea liberă a drepturilor apărării este o garanţie majoră a libertăţii individuale, motiv pentru care protejarea corespondenţei şi cabinetului acestuia este de o importanţă capitală[14]. Astfel, în doctrina şi jurisprudenţa europeană se subliniază că atât cât priveşte corespondenţa este asigurată o protecţie globală ce priveşte nu doar scrisorile care fac obiectul secretului profesional, dar şi corespondenţa prin mijloace moderne de comunicare[15], pentru ca în ceea ce priveşte cabinetul avocatului, deşi nu mai este considerat inviolabil, o percheziţie efectuată în cabinetul unui avocat poate constitui o încălcare a art. 8 din CEDO, măsura neputând impieta secretul profesional într-un grad care ar releva o disproporţie incompatibilă cu Convenţia[16].

Cât priveşte libertatea de exprimare, aceasta este „una dintre cele mai vechi libertăţi cetăţeneşti, o libertate de tradiţie”[17] şi reprezintă, astfel precum este reglementat prin art. 30 din Constituţia României, republicată, „posibilitatea omului de a-şi exprima prin viu grai, prin scris, prin imagini, prin sunete sau prin alte mijloace de comunicare în public, gândurile, opiniile, credinţele religioase şi creaţiile spirituale de orice fel”[18]. Dar, ne permitem a ne întreba, oare un avocat se poate bucura pe deplin de această libertate, mai ales atunci când este constrâns să respecte obligaţia ce-i incumbă de a păstra secretul profesional?

Dintre toate drepturile şi libertăţile garantate de Convenţia europeană a drepturilor omului şi de Protocoalele sale adiţionale, numai cu privire la libertatea de exprimare, art.10 paragr. (1) dispune că exercitarea ei comportă îndatoriri şi responsabilităţi, însă nu trebuie a se pierde din

[12] E. Poenaru, C. Murzea, *Reprezentarea în dreptul privat*, Editura C.H. Beck, Bucureşti, 2007, p. 207.
[13] I. Leş, *Organizarea sistemului judiciar, a avocaturii şi activităţii notariale*, Editura Lumina Lex, Bucureşti, 1997, p. 239.
[14] J.-F. Renucci, *Tratat de drept european al drepturilor omului*, Editura Hamangiu, Bucureşti, 2009, p.289.
[15] Idem, p. 290.
[16] Idem, p. 290-291.
[17] I. Muraru, E. S. Tănăsescu, coordonatori, *Constituţia României. Comentariu pe articole*, Editura C.H. Beck, Bucureşti, 2008, p. 291.
[18] Ibidem

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vedere că orice asemenea limitare trebuie să îndeplinească exigenţele prevăzute în al doilea paragraf al acestui text[19]. În consecinţă, aceste limitări ale libertăţii de exprimare nu se justifică prin ele însele, având menirea de a contribui la aprecierea necesităţii eventualei ingerinţe a autorităţii publice în exerciţiul ei[20]. Astfel, CEDO a apreciat că atunci când un avocat face declaraţii publice, mai ales în presă[21], are obligaţii şi responsabilităţi specifice, putându-se vorbi despre o veritabilă obligaţie de rezervă[22].

La nivel european, libertatea de informare – componentă a libertăţii de exprimare – nu se defineşte prin conţinutul, calitatea sau importanţa informaţiei, ci prin modalitatea de formulare a acesteia, intrând în joc de îndată ce informaţia, indiferent de natura ei – economică, profesională sau artistică, împrumută un suport destinat să o facă publică[23]. Se apreciază, de asemenea, având în vedere nu doar prevederile art. 10 din CEDO, ci şi reglementările internaţionale, că libertatea de informare este singurul drept proclamat ca trebuind să fie exercitat „fără a se ţine seama de frontiere”[24], ceea ce presupune că statele au nu doar obligaţia de a nu îngrădi libertatea de a primi şi de a comunica informaţii, ci şi obligaţia de a asigura libertatea de circulaţie a informaţiei[25]. În consecinţă, art.10 din CEDO creează în sarcina statului o obligaţie pozitivă de a proteja libertatea de expresie împotriva atingerilor aduse acestuia chiar de către persoane private[26].

Rezerva generală de ordine publică, prevăzută de art.10 din CEDO, dar şi de art.19 din Pactul Internaţional cu privire la drepturile civile şi politice, organizează regimul de principiu al restricţiilor aduse libertăţii de expresie, fiind recunoscute trei categorii de restrângeri ale exerciţiului acestei libertăţi: pentru a proteja interesul general, pentru a proteja alte drepturi individuale, dar şi pentru a garanta autoritatea şi imparţialitatea puterii judecătoreşti[27]. Fiind vorba despre excepţii acestea sunt, evident, de strictă interpretare şi aplicare, trebuind să fie clară şi posibil a fi dovedită necesitatea acestor măsuri restrictive şi respectarea principiului proporţionalităţii.

Sintetizând din practica acestei Curţi, se poate aprecia că „libertatea de exprimare nu poate fi exercitată dincolo de orice limite”[28], limitele acestei libertăţi presupunând: exerciţiul acestei

[19] C. Bârsan, *Convenţia europeană a drepturilor omului. Comentariu pe articole, Vol.I. Drepturi şi libertăţi*, Editura C.H. Beck, Bucureşti, 2005, p. 764-765.
[20] Idem, p. 765.
[21] Comis. EDH, 1 octombrie 1984, nr. 10414/1983, R.S. et Z c/Suisse, DR nr. 40, p.214, citată în C. Bârsan, *op. cit.*, p. 766.
[22] C. Bârsan, op. cit., p. 766.
[23] F. Sudre, *Drept european şi internaţional al drepturilor omului*, Editura Polirom, Iaşi, 2006, p. 353.
[24] Idem, p. 354.
[25] Ibidem
[26] F. Sudre, *op. cit.*, p. 355.
[27] F. Sudre, *op. cit.*, p. 356.
[28] Idem, p. 763.

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libertăţi luându-se în considerare existenţa unor îndatoriri şi libertăţi; acest exerciţiu poate fi supus unor formalităţi, condiţii, restricţii sau sancţiuni, recunoscându-se, astfel, statelor posibilitatea a exercita anumite ingerinţe în exerciţiul acestei libertăţi; însă aceste ingerinţe trebuie să îndeplinească anumite condiţii prevăzute de textul Convenţiei, anume: să fie prevăzute de lege, să urmărească un scop legitim, să fie necesare într-o societate democratică, să fie proporţionale cu scopul urmărit prin producerea acestora[29].

Prin organele sale, CEDO a apreciat că prin informaţie se înţeleg faptele şi ştirile brute sau chestiunile de interes general care generează dezbatere publică prin intermediul presei, dar şi informaţiile „produse" în mod deliberat, precum sunt programele de radio şi televiziune, sau muzică uşoară şi mesajele publicitare, sau discursul comercial destinat promovării unui produs sau serviciu, acoperind şi exercitarea dreptului la apărare de către avocat sau sfera învăţământului[30].

Pe de altă parte, vorbind despre libertatea presei ca dimensiune a libertăţii de exprimare, aceasta este atât de importantă într-o societate democratică încât poate justifica, într-o oarecare măsură, punerea în discuţie a autorităţii şi imparţialităţii justiţiei pe un ton polemic, chiar agresiv[31], totul rezumându-se la o problemă de echilibru, statul neputând limita toate formele dezbaterii publice asupra chestiunilor aflate pe rolul instanţelor[32].

Deşi avocaţii au un rol la fel de important în cadrul unei democraţii ca şi jurnaliştii, forţa libertăţii de exprimare a celor dintâi contrastează cu cea a celor din urmă care nu dispun decât de o libertate de „gradul al doilea", CEDO dând o atenţie deosebită limitelor libertăţii de exprimare a apărătorilor[33], sens în care au apreciat că libertatea de exprimare trebuie să fie compatibilă cu contribuţia adusă de avocaţi încrederii în serviciul public al justiţiei[34].

În ceea ce priveşte garantarea dreptului la libertate de exprimare a avocatului în România putem remarca prevederile art. 7 alin. (5) din Statutul profesiei, care prevede că avocatul nu răspunde penal pentru susţinerile făcute oral sau în scris în faţa instanţelor de judecată, a altor organe de jurisdicţie, a organelor de urmărire penală ori a altor autorităţi, dacă aceste susţineri sunt în legătură cu apărarea şi sunt necesare stabilirii adevărului. Din acest punct de vedere putem afirma că situaţia avocatului român este poate chiar mai bună decât cea a avocaţilor din alte state

[29] Idem, p. 764 şi următoarele.
[30] Idem, p. 353.
[31] CEDO, 24 februarie 1997, De Haes şi Gijsels c. Belgia, pct. 37 şi următoarele, *Hotărâri ale Curţii Europene a Drepturilor Omului. Culegere selectivă*, Editura Polirom, Iaşi, 2000, pp. 537-540.
[32] J.-F. Renucci, *op. cit.*, p. 201.
[33] Ibidem
[34] CEDO, 20 mai 1998, Schöpfer c. Elvetia, pct. 33 si 34, consultată la http://hudoc.echr.coe.int/eng#{"fulltext":["Schopfer"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-58167"]}, la data de 09.11.2015.

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europene, dacă avem în vedere cazurile soluţionate în defavoarea acestora de către CEDO în cauze precum: Fuchs contra Germaniei – Decizia din 27 ianuarie 2015 sau Kincses contra Ungariei – Decizia din 27 ianuarie 2015.

În calitatea lor de auxiliari ai justiţiei, avocaţii trebuie, în mod natural, să contribuie la buna funcţionare a justiţiei şi la încrederea pe care aceasta trebuie să o inspire[35], fără ca libertatea lor de exprimare să fie afectată sau, mai grav, suprimată. Aşadar, un echilibru trebuie asigurat inclusiv între dreptul publicului de a fi informat asupra chestiunilor care privesc funcţionarea puterii judecătoreşti, imperativele bunei administrări a justiţiei şi demnitatea profesiei de om al legii[36], CEDO statuând că numai în mod excepţional o limită adusă libertăţii de exprimare a avocatului apărării poate apărea ca necesară într-o societate democratică, fie şi prin intermediul unei sancţiuni penale uşoare[37].

Spre deosebire, în cauza Fuchs contra Germaniei[38], CEDO a statuat că sancţionarea penală şi administrativă a unui avocat sub acuzaţia că ar fi defăimat un expert numit de procuratură, în timp ce reprezenta un client, nu încalcă drepturile sau libertăţile consacrate de Convenţie sau de Protocoalele acesteia[39].

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[35] J.-F. Renucci, op. cit., p. 202.

[36] Ibidem

[37] CEDO, 21 martie 2002, Nikula c. Finlanda, pct. 55, consultată la http://hudoc.echr.coe.int/eng?i=00164902#{"display":["0"],"languageisocode":["ENG"],"appno":["31611/96"],"itemid":["001-60333"]}, la data de 09.11.2015. Prin aceasta hotărâre, CEDO a constatat încălcarea art.10 urmare a condamnării unui avocat pentru calomnie pentru motivul de a fi criticat, în calitate de apărător, decizia procurorului de a inculpa o anumita persoană, fapt ce l-a împiedicat pe clientul său a-l cita pe acesta ca martor, şi de a nu inculpa o altă persoană, care a putut, astfel, a depune mărturie împotriva clientului său.

[38] CEDO, 27 ianuarie 2015, Fuchs c. Germania, pct. 33-43, consultată la http://hudoc.echr.coe.int/eng?i=001-152442#{"itemid":["001-152442"]}, la data de 09.11.2015.

[39] În speţă, domnul avocat Fuchs a afirmat că un expert privat, mandatat de către procuror pentru a decripta fişiere de date ridicate în urma unei percheziţii informatice de pe computerul unei persoane acuzate că ar fi descărcat pornografie infantilă, ar fi manipulat înregistrările pentru a obţine rezultatele vizate de procurori, şi, mai mult decât atât, că firma a cărui angajat era expertul avea un interes personal în obţinerea unor anumite rezultate. În motivarea susţinerilor sale domnul avocat Fuchs a susţinut că metodele pe care expertul le foloseşte în realizarea lucrării ar trebui să fie transparente şi stabilite înaintea demarării expertizei, în caz contrar neputând accepta respectiva lucrare ca fiind o expertiză independentă. Concluzia domnului Fuchs asupra expertizei în cauză a fost următoarea: „Compania privată de expertiză are un interes personal considerabil în rezultate de succes, indiferent dacă rezultatele sunt corecte sau sunt constatări după obiect de investigaţie, care conţine rezultatul dorit" [CEDO, 27 ianuarie 2015, Fuchs c. Germania, pct. 42, consultată la http://hudoc.echr.coe.int/eng?i=001-152442#{"itemid":["001-152442"]}, la data de 09.11.2015]. Ca urmare a acestor susţineri expertul în cauză a formulat plângere contra domnului avocat Fuchs şi, drept urmare, instanţele penale germane l-au condamnat definitiv la plata unei amenzi penale pentru săvârşirea infracţiunii de defăimare, iar pe cale administrativă comisia disciplinară a avocaţilor l-a sancţionat cu mustrare şi amendă pentru încălcarea obligaţiei de a-şi exercita profesia în mod conştiincios şi încălcarea statului profesiei. După epuizarea tuturor căilor de atac prevăzute în dreptul intern, rămase fără un rezultat pozitiv pentru domnul avocat Fuchs, acesta s-a adresat cu o plângere la CEDO, în temeiul articolului 10 din Convenţie privind libertatea de exprimare. Curtea, însă, a decis că apărarea intereselor clientului nu dă dreptul avocatului să sugereze că expertul a falsificat elemente de probă, iar declaraţiile avocatului nu vizau o critică obiectivă a activităţii expertului în cazul său, ci o remarcă generală potrivit căreia concluziile prezentate în lucrarea acestuia sunt inutilizabile. În cealaltă cauză amintită anterior, şi anume cauza Kincses contra Ungariei CEDO, avem de-a face cu o nouă situaţie în care este identificată o limitare a dreptului la liberă exprimare a unui avocat. În speţă s-a reţinut că printr-o cerere de apel împotriva unei hotărâri pronunţate în prima instanţă împotriva clientului său, avocatul a inclus şi o solicitare de

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Cu toate acestea jurisprudenţa mai recentă a CEDO, prin Decizia pronunţată la data de 23 aprilie 2015 de către Marea Cameră a Curţii Europene a Drepturilor Omului în cauza Morice contra Franţei[40] a confirmat dreptul avocatului la liberă exprimare în presă pentru apărarea clientului său. În acest caz, avocatul Olivier Morice a sesizat CEDO ca urmare a faptului că a fost condamnat de către justiţia franceză pentru afirmaţii făcute în presă cu privire la doi magistraţi, afirmaţii prin care avocatul a pus la îndoială imparţialitatea acestora. Cazul care a fost pus în discuţie în presă era cel al morţii judecătorului francez Bernard Borrel, petrecută în Djibouti.

În legătură cu acest caz, pornind de la deciziile celor doi judecători de instrucţie în cursul procedurilor judiciare din Franţa, domnul avocat Morice i-a acuzat pe aceştia de complicitate cu justiţia djiboutiană pentru a favoriza teoria sinuciderii judecătorului Borrel, teorie sustinută de procurorul general din Djibouti. Acuzaţiile s-au bazat pe faptul că acei doi magistraţi francezi au refuzat în mod constant să desfăşoare activităţile solicitate de avocatul Morice, în calitatea acestuia de apărător al văduvei victimei. În final, după ce cercetările în cazul Borrel au fost preluate de către alţi magistraţi, teza asasinatului a fost probată, confirmând astfel susţinerile avocatului Morice.

Însă, domnul Morice a fost sancţionat, iniţial, de Tribunalul de mare instanţă de la Nanterre, printr-o sentinţă din 4 iunie 2002, prin care, cu privire la sancţiune, a fost luată în considerare profesia de avocat a reclamantului, dar şi faptul că, drept urmare, acesta nu putea să „nu cunoască semnificaţia şi gravitatea unor comentarii complet imprudente", considerând adecvată „sancţionarea unei asemenea abateri de natură penală printr-o amendă în cuantum suficient de mare". Instanţa l-a condamnat pe reclamant la o amendă de 4.000 de euro (EUR) şi la plata în solidar cu ceilalţi pârâţi, fiecăruia din cei doi judecători în cauză, a sumei de 7.500 EUR cu titlu de daune-interese, plus plata a 3.000 EUR cheltuieli de judecată. De asemenea, instanţa a dispus

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sesizare a autorităţii responsabile de iniţierea procedurilor de examinare a competenţei profesionale a judecătorului care a oferit soluţia atacată, considerându-l pe acesta incompetent profesional şi că îl detestă pe pârât. Ca rezultat al acestui demers, instanţa de apel s-a adresat Baroului din care făcea parte avocatul respectiv şi a solicitat punerea în mişcare a acţiunii disciplinare împotriva acestuia, acţiune ce a dus la sancţionarea avocatului de către comisia de disciplină care a considerat că limbajul folosit la adresa instanţei este inacceptabil şi că prejudiciază reputaţia profesiei de avocat. După epuizarea tuturor căilor de atac, atât pe cale administrativă cât şi judiciară potrivit dreptului maghiar, domnul avocat Kincses s-a adresat cu plângere la CEDO, susţinând că i-a fost încălcat dreptul la liberă exprimare consacrat în art. 10 din Convenţie. Decizia luată de Curte în această cauză a fost de a respinge plângerea, considerându-se că, pe de o parte, motivele invocate de Colegiul disciplinar şi de instanţele maghiare au fost suficiente şi pertinente pentru a justifica limitarea dreptului la liberă exprimare în condiţiile paragr. (2) al art. 10, iar, pe de altă parte, sancţiunea aplicată (într-un cuantum care nu a fost excesiv) nu a fost disproporţionată în raport cu scopul legitim urmărit. Concluzia CEDO a fost că, în acest caz, interferenţa autorităţilor poate fi considerată necesară într-o societate democratică pentru a proteja sistemul judiciar, în sensul prevăzut de art. 10 paragr. 2 al Convenţiei. Kincses c. Ungaria, 01 iunie 2015, pct.39-43, precum şi pct.6, consultată la http://hudoc.echr.coe.int/eng?i=001-150673#{"itemid":["001-150673"]}, la data de 09.11.2015.

[40] CEDO, Morice c. Franţa, 23 aprilie 2015, consultată la http://hudoc.echr.coe.int/eng?i=001-154265#{"itemid":["001-154265"]}, la data de 09.11.2015.

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şi publicarea unui anunţ în ziarul Le Monde, costul căruia urma să fie suportat de către pârâţi. Reclamantul, copârâţii, cei doi judecători având calitate de parte civilă şi procurorul au atacat sentinţa în apel, iar, în urma şedinţei publice din 30 aprilie 2008, Curtea de Apel Rouen, printr-o sentinţă din 16 iulie 2008, a menţinut respingerea tribunalului de mare instanţă din Nanterre cu privire la obiecţia de imunitate. De asemenea, în cazul reclamantului, au fost menţinute şi condamnările pârâţilor pentru complicitate la calomnia publică a funcţionarilor publici, instanţa dispunând plata unei amenzi de 4.000 EUR şi a menţinut daunele-interese în cuantum de 7.500 EUR acordate fiecărui judecător, care să fie plătite în solidar de către pârâţi, precum şi publicarea unei note în cotidianul Le Monde. Cât priveşte cheltuielile de judecată, instanţa a dispus celor trei pârâţi să plătească 4.000 EUR judecătorului L.L., iar reclamantul să plătească singur 1.000 EUR d-nei Judecător M. În decizia din 10 noiembrie 2009, Curtea de Casaţie, în cele din urmă reunită cu un complet de zece judecători, a respins recursurile pe chestiuni de drept, după ce reclamantul, cei doi copârâţi şi d-na Judecător M. au atacat sentinţa Curţii de Apel cu recurs invocând anumite aspecte legate de interpretarea legii[41].

Prin Decizia pronunţată în cauza Morice contra Franţei, relativ la drepturile invocate de avocatul francez în susţinerea cauzei sale, Curtea a statuat următoarele[42] că în ceea ce priveşte dreptul avocaţilor de a-şi apăra clienţii prin intermediul presei, jurisprudenţa Curţii rămâne constantă în sensul în care trebuie făcută o distincţie între afirmaţiile făcute de avocat în instanţă, caz în care se justifică un grad ridicat de toleranţă la critică, şi afirmaţiile făcute în orice alt context, caz în care avocaţii trebuie să evite comentariile care ar putea reprezenta un atac personal gratuit, fără legătură cu realitatea cazului. Pe de altă parte în ceea ce priveşte dreptul avocaţilor de a contribui la o dezbatere privind un subiect de interes public, Curtea a decis că remarcile domnului avocat Morice care privesc modul de funcţionare al sistemului judiciar şi manipularea cazului Borrel reprezintă dezbateri de interes public, astfel existând un interes legitim de a informa publicul în legătură cu procedurile penale.

Curtea a recunoscut de asemenea poziţia specială a avocatului în administrarea justiţiei, acesta fiind primul care poate observa eventualele deficienţe de funcţionare al acesteia, dar neputând fi echivalaţi jurnaliştilor care, în calitate de martori externi ai sistemului, au sarcina de a informa publicul.

Probabil cel mai important aspect relevat de CEDO în această ultimă decizie, raportat la subiectul la care ne referim în această lucrare, este cel în sensul în care, chiar dacă declaraţiile domnului

[41] Idem, pct. 37, 38, 41, 46, 51 şi 53.
[42] Idem, a se vedea pct. 124-178.

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avocat Morice reflectă un anumit grad de ostilitate faţă de magistraţii în cauză, acestea privesc deficienţe ale unei anchete judiciare asupra cărora Curtea a stabilit că un avocat ar trebui să poată atrage atenţia publicului, atât în scopul apărării clientului său cât şi în scopul de a ajuta la îmbunătăţirea calităţii actului de justiţie în general, fără ca acest declaraţii să poată fi considerate ca fiind o încălcare a secretului profesional al avocatului. În mod evident însă nu trebuie abuzat de acest drept la libera exprimare şi, chiar şi atunci când avocaţii aduc critici în presă în legătură cu proceduri judiciare la care au luat parte, ei nu trebuie, în nici un caz, să facă acest lucru în lipsa unui acord din partea clientului – respectând astfel normele de protecţie ale secretului profesional – şi nici să se lase purtaţi de val şi să se lanseze în atacuri gratuite împotriva membrilor corpului magistraţilor.

Aşadar şi avocaţii se bucură de libertatea de exprimare în exercitarea profesiei lor, dar atât legislaţia internaţională, europeană şi naţională, cât şi jurisprudenţa CEDO recunosc şi impun limite, restricţionări ale exerciţiului acesteia. Pe de altă parte, fiind considerat a fi de ordine publică, secretul profesional nu poate fi afectat în vreun fel de avocat, prin exercitarea libertăţii de exprimare, în condiţiile mai sus menţionate.

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http://hudoc.echr.coe.int/eng?i=001-152442#{"itemid":["001-152442"]}.

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GLOBALIZATION OF THE RIGHTS OF CHILDRENINTERCULTURAL DIALOGUE – AT A NEW LEVELPARTICIPATION OF CHILDREN THROUGH THE NATIONAL IDENTITY

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ABSTRACT:International laws on children's rights are in many ways breaking state authority over the ideology of childhood, establishing complicated and clear standards that all states should adopt. The international authorities are making sure that each member state who signed the international agreement will respect and apply it.

After the wars worldwide, the international communities are trying to see children as rights – holders and are trying to give power to children over the national boundaries and legislation in an attempt to consolidate human rights, especially for children who suffer the most because of the wars.

In this paper, I plead for the idea that a globalized model of childhood that emerged after wars all around the world was important to the development of the international system, serving to consolidate power and legitimize international institutions and order.

The growth of this model of childhood, which is a globalized model of childhood, is codified today in international law. It is developed primarily in Europe and the United States in the last centuries and diffused from these points of origin throughout the world. We can say that the Convention on the Rights of the Child was a start in the international law, it was signed by a large number of states, basically transforming this act in the most approved document worldwide. It is impressive to see that most of the states worldwide can come together, united in a specific goal, which is the protection of children.

Kwywords: globalization, children's rights, participation of children, development of rights, intercultural dialogue, children on war.

Introduction

When we come up and discuss about children in the field of international relations and the global context, we tend to see and talk about them as war victims, child soldiers and child laborers. They have been also the beneficiaries and casualties of the changing of the international order. They are casualties of war because the society they live in is facing extinction, and as a result the rights of children are vanishing before their eyes. They are beneficiaries because in time of war, the

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international community is gathering to give a helping hand, empowering them to enact more strongly in protecting children.

Children are perceived in a specific way in the global society. Their image is invoking ideas of innocence, vulnerability, sensitivity and also the need for protection. As a result, in the last few decades, children became the symbol of many international institutions who are devoted to promote human rights and democracy around the world. This means that there are international agencies and institutions that are changing the mentality of the society, unifying and homogenizing the international ideas to the national identity of the states where they plead for human and children's rights.

In this article I try to see children as a relevant part of history because they lead to the consolidation of states and to the establishing of the international order. Children are worthy recipients of great attention in the field of social studies, globalization, global citizenship, human right and international relations.

The research in the field of globalizing children

In my research I have examined the development of international law forbidding all sorts of penalty for children. The research lead me and the other researchers to the widespread process of state consolidation that took place in the late 19th century and throughout the 20th century — a process whereby the state began to regulate large swaths of civil and private life, including children's lives. It was aided by the development of the 'global child,' a figure that required steadily increasing levels of protection by the state and by the international community.

The protection of children's rights extended to all children even those who are the least sympathetic. Unifying the view and the legislation about how children should be protected created authority over children into more centralized international institutions, such as the United Nations Children's Fund (UNICEF).

In search of the development of a global / universal model of childhood, I found out that a certain concept is presented to the world / the society as ifit were universal. It is applied to all, regardless of the local context. I must underline that the model is not always found everywhere, but it is presented as such.

I suggest that we should not underestimate the social promotion of childhood in the last century, especially in the last years. Children were reimagined, redesignedand redefined from the *legal property* of their family to *internationally protected* citizens and even seen as members of the

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international community. Their position enshrined indozens of international legal documents, such as The Convention of Children's Rights, and in national law. [1]

This perspective of thinking of children, first as non – legal entities (legal property of their family) and now as a distinct and highly protected class (child as right holder) was remarkable and challenging. It changed a number of considerable precepts of law and social organizations in societies around the world. As a result of the promotion of childhood, profound changes were made in the family structure and the state organization, all until the end of the 21th century.

Legal distinctions between children were discarded in favor of a universal model of children's rights. This means that age, race, gender and other types of discrimination or differences between children are no longer allowed.

Literature in the field of globalizing children

Although children are absent from the vast literature of the field of sociology, we can still find the themes of children in conflict, child labor and more recentlychild citizenship. The children in these literaturesare most of the time victims of poverty, abuse / violence, negligence or suffering from war. Perhaps some things were said about the children's condition, but the impact was never felt like it belongs to recent times.

Just a few things have beensaid about children as rights - holders and about the role that children and childhoodhave played in the shaping of international order.[2] Some international projects have truly focused on giving voice to the children, taking seriously their thoughts on certain matters and promoting their results to a new and international level.

Valuable research and devotion to the case of childhood has begun to clarify this exclusion, especially research identifying a link between social and moral normsand law about childhood and power in the international system.[3]

This article seeks to underline the importance of the construction of children and childhoodto the development of the international system. The impact of children as rights - holders on the process of state consolidation andon international institutions is remarkable. European and international institutions are focusing more on children, giving and protecting their natural rights. Also enables states to discuss other international problems that the world is facing nowadays, giving them a common ground.

[1]CUNNINGHAM, Hugh; *Children and Childhood in Western Society since 1500*. New York: Longman, 1995;
[2]VAN BUEREN Geraldine; Multigenerational citizenship: The importance of recognizing children as national and international citizens. *Annals of the American Academy of Political and Social Science* 633: 30–51, 2011;
[3]PUPAVAC Vanessa; Misanthropy without borders: The international children's rights regime. *Disasters* 25(2): 95–112, 2001;

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On a larger scale the topic of children is argued by the sociologists, thatchildhood is a social construction, one that has been built and still continues to be built ona global scale. Therefore the context of international debate is the globalization of children's rights. This perspective is consistent with the opinions of sociologists[4] and international legal theorists[5] who support that citizensand legal subjects are constructed over time. The meaning of childhood has been understooddifferently from time and place, and history proves that in so many ways. The result of the research is that the institution of childhood is a social construction. Above those, attitudes or moral positionsabout the nature and the capabilities of the child have varied considerably.

The international law has developed a detailed scheme model of childhood. This structure has some guidelines which are ideal for the experiences of children, including the delineation of children's needs and the requirements for a healthy, productive, and successful life as global citizens.

This model has included: the immaturity of the child, the vulnerability which we must protect, the reduced culpability of children regarding the biologically, psychologically, intellectually aspects of their identities; the relationship between the state and the child in which the state assumes responsibility for the child's welfare along the ages until he turns 18 years old. Although differences remain *in practice*, the position of children *in law* is similar around the world.

Globalized childhood

The globalized model of childhood based on the facts that children are vulnerable, that they have limited culpability, and also that they are in need of care, in several areas of their lives, has become over the years even more complex.

The first sign of complexity was given by the global community of child advocacy and by the set of norms protecting children that emerged from the United Nations, especially within UNICEF. It (UNICEF) was the single most important actor in the promulgation of Western norms and ideology about children and childhood throughout the world, especially in developing countries. UNICEF expanded its mission to include campaigns focusing on health, sanitation, education, and child care, eventually adopting a comprehensive child approach that looked at multiple areas of child development. UNICEF and other organizations were central to the internationalization of childhood, promoting Western norms and ideologies of child welfare through their development efforts.

[4]BARNETT Michael; Social constructivism. In: Baylis J and Smith S (eds) *The Globalization of World Politics* (3rd edn). New York: Oxford University Press; 2005;
[5]ZIMRING Franklin E; *The Changing Legal World of Adolescence*. New York: Free Press; Collier Macmillan, 1982.

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The second sign of complexity were the world conferences, meetings, special sessions, and summits, some sponsored by the United Nations, which was also a key to diffusing a global model of childhood to states. These prestigious and influential events 'display world culture under construction'.[6]

These meetings and events have taken on a more symbolic, prominent, and global role, offering an authoritative stance on a wide range of issues relevant to international institutions.[7] Through the mobilization, organization, assessment, and follow-up that they entail, United Nations meetings have become a type of 'secular ritual,' expressing a global consensus on global matters.[8]

The most important meeting on children's rights was the 1990 World Summit on Children, corresponding with the 1990 Convention on the Rights of the Child (CRC). At this summit, the largest assembly of world leaders ever convened participated in what was heralded by UNICEF as a 'dramatic affirmation of the centrality of children to our common future' (UNICEF, 2002).[9]

The last sign of complexity was the growth of the international law which gradually produced a continuing expansion and ever more detailed model of childhood, one that is in fact *globalized*. Three declarations and one convention about children were drafted during the 20th century:

1924 Geneva Declaration,

1948 Declaration on the Rights of the Child,

1959 Declaration on the Rights of the Child,

1990 Convention on the Rights of the Child.

Each of these legal documents offers a view of the model of childhood as it existed back then and reflects contemporary ideas about children and the role of the state and of the parents (and, in the case of the 1990 CRC, of the international community) in ensuring children's welfare. These documents provide a window onto the shifting boundaries and growing substance of a global model of childhood. The model of childhood advanced by the Convention on the Rights of the Child was also significantly more detailed, complex, and wider in scope than previous attempts to enumerate rights and protections for children.

The 1990 CRC began a period of intense international consolidation of authority over childhood, as international law and the institutions established to monitor it came to be viewed by the states

[6]LECHNER Frank J. and BOLI John (2005) *World Culture: Origin and Consequences*. Malden, MA: Blackwell Publishing, p.84, 2005.
[7] Ibidem
[8]Ibidem
[9]UNICEF (2002) United Nations Special Session on Children: The World Summit for Children. Available at: http://www.unicef.org/specialsession/about/world-summit.htm.

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as the definitive authority on the treatment of children. Almost all states in the international system have ratified the Convention on the Rights of the Child. The convention's nearly universal ratification indicates global acknowledgment of a model of childhood that all states should adopt.

It should be remembered that international law itself concerning children's rights now often serves as the sole justification for bringing states into compliance with the global model of childhood and standards of child welfare.

As international efforts expanded, the child was increasingly linked to the development of the nation and to the ushering of states into the international community as economic partners. With the growth of the international children's rights there is no need for further justification to protect children. Children are rights - holders and international law alone serves to justify attention and assistance.

Conclusion

International law on children's rights usurps state authority over the ideology of childhood, establishing complicated standards that all states should adopt. Although international law concerning children lacks an enforcement mechanism, it serves as a mean of confronting states about their child policies and forces them to address these norms as they participate in international institutions.

The international community's enshrinement of children as rights - holders and consolidation of power over the boundaries and standards of childhood mirrors international consolidation of human rights. The development of rights and protections for children in international law meant that states no longer had total control over the way children were treated. Childhood became an international idea. The power over childhood is ideological. By articulating standards of childhood, the international community assumes the power to define childhood trough the means of identifying areas in need for protection, setting the scope of protections, identifying possible issues regarding the protection of children's rights, and establishing ways to protect childhood and rights.

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THE ISSUANCE AND TRANSMISSION OF THE EUROPEAN INVESTIGATION ORDER IN THE EUROPEAN UNION

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Abstract: In this paper we have examined the Directive 2014/41 / EU of the European Parliament and of the Council concerning the European investigation order in criminal matters, with direct reference to the adopted definitions, the scope, procedure types, content and form and the conditions to be fulfilled for issuing and transmitting a European investigation order. We have also considered the formulation of critical opinions, which in our opinion could cause numerous malfunctions in the practice of the authorities involved in issuing and transmission process of such legal instrument for judicial cooperation in criminal matters. Given that up to May 22, 2017 the European legal instrument must be transposed into the national law, we proceeded in formulating some opinions meant to be brought into the attention of the Romanian legislator. The innovations that we bring to this study refer to the conducted examination and the formulated critical opinions and the proposals of de lege ferenda. Through this work we continue previous research conducted in the field of judicial cooperation in criminal matters. The work can be useful to academics and practitioners in the field of criminal and European law.
Keywords: Judicial decision; types of procedures; content and form.

1. Introduction

As it was pointed out recently in the doctrine, throughout time, the cooperation of the states was achieved under bilateral or multilateral legal instruments, resulting in agreements, conventions, treaties, etc.

These legal instruments have a zonal, regional or global character, related to the interests of the signatories and the magnitude and importance of the addressed domain (1).

In the bilateral or multilateral international relations, the world states have conducted cooperation activities in a variety of areas, focusing on the economic, cultural, environmental, political, military and legal domains (2).

On the other hand, the scientific and technical progress in recent years and the expansion of the democratization process across several states of the world, created the possibility of movement

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easily of people and goods from one State to another or from one continent to another. The unquestionable beneficial effect for the whole world has created some advantages in terms of crime proliferation at global level (3).

In this context particularly complex, crime, particularly the organized one, has exceeded the boundaries of a single state, manifesting itself in an increasingly complex form and difficult to prevent in several states.

Against this background, the increased danger determined by increased transnational crime, the need to prevent and combat more effectively in a worldwide organized framework have led to the adoption of several international, zonal, regional or global legal instruments, to unify the efforts of states of the world (4).

In the recent doctrine it was emphasized that the most important and dangerous manifestation of the organized crime is represented at the moment, but also in perspective, by terrorism.

In the current international context, we can say that the most serious threat to human existence is the resurgence of international terrorism, which has reached to an unprecedented scale, often affecting the safety of states, destabilizing national economies, organizations and institutions, its effects affecting implicitly the civilian population, panicked, scared and outraged by the cruel and despicable means used by terrorists (1).

The recent terrorist acts in the month of March 2016 in Brussels that have left more than 30 dead people and over 300 injured confirm the severity of such acts, specific to the recent years.

Against this background, the European Union in the recent years have been adopted numerous legal instruments aimed at the improvement of judicial cooperation in criminal matters, the ultimate aim being to reduce crime of all kinds and ensure an area of freedom, security and justice.

As time passes, the new mutations occurred in the crime structure and mode of action of Member States have led to the need to improve the existing legislation.

Thus, in the judicial practice it was found that some legal instruments previously issued, respectively Framework Decision 2003/577 / JHA (5) and Council Framework Decision 2008/978 / JHA (6) no longer correspond to the requirements imposed by the developments in transnational crime, for which it was imposed the adoption of a new law respectively Council Directive 2014/41 / JHA of April 3, 2014 on the European investigation order in criminal matters (7).

Given the importance of this European legal instrument in terms of judicial cooperation between Member States, we proceed to examine its preliminary provisions with some critical comments.

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2. The European investigation order; the obligation to execute and definitions

According to the European legislator, *the European investigation order* represents a *judicial decision issued or validated by a judicial authority of a Member State to implement one or more investigation measures specific in another Member State in order to obtain certain evidence*.

According to the depositions of the European framework legislative act, a European investigation order may be issued for obtaining evidence that is already available to the competent judicial authorities of the executing State.

In the case of executing the order of investigation in criminal matters, the Member States shall take into account the principle of mutual recognition of judgments and documents issued by a competent authority of another Member State.

Also issuing the European investigation order can be requested by a suspect or accused person or by a lawyer on behalf of the suspect or accused person whom he defends in accordance with the national law of the requesting State.

We note that in the view of the European legislator, the European investigation order is a judicial decision, which means that it can be issued only by a judicial authority.

On the other hand, we note that a European investigation order may be issued for obtaining evidence that is already in the possession of a judicial authority of the executing State, which implies that the judicial authority concerned will hand in that evidence to the issuing judicial authority, subject to certain conditions including the interest of both judicial authorities involved in solving a criminal case.

Another element that needs to be considered is that of the compulsory execution of the European investigation order, subject to certain requirements, on the basis of recognition and enforcement of judgments and foreign judicial acts.

Lastly we note that the European investigation order may be issued by a competent judicial authority and at the request of the suspect or accused person or his lawyer. No doubt that the suspect or accused person will make use of this possibility only in the defense.

We note, however, that the European legislative act does not require for the judicial authorities to issue such an order at the request of the suspect or accused person or his lawyer nor the proper appeal.

In order to avoid some interpretations which are not in accordance with the will of the European legislator, in the examined legislative act there has been defined a series of phrases, as follows:

the issuing State - the Member State which has issued a European Investigation Order in criminal matters;

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the executing State - the Member State which executes the European Investigation Order in criminal matters, in the state where it is implemented (executed) the investigation measure;
the issuing authority may be:
A judge, a court, a judge or a public prosecutor competent in the case concerned; or
Any other competent authority, as defined by the issuing State, acting in the case, as investigative authority in criminal proceedings which has the competence to order the gathering of evidence in accordance with the national law.

Also, according to the examined European legislative act, the European investigation order will be confirmed after examining its compliance with the conditions for issuing a European investigation order under the legal European framework instrument, by a judge, a court, an instruction judge or public prosecutor in the issuing State; the examination will take into account the particular conditions of art. 6, par. (1) from the European legal instrument.

In the event that, under the law of the issuing State, the European investigation order has been validated by a judicial authority, that authority may be considered as being the issuing authority for the purposes of transmitting a European investigation order.

- *The executing authority* means an authority having competence to recognize a European investigation order and ensure its compliance with the current Directive and the procedures applicable in a similar national case. Such procedures may require authorization from a court in the executing State, in the case where its national law provides so (art. 1 and art. 2 of European legal instrument).

Transposing the provisions of the European legal act into the Romanian law will involve and establish the competent authority to issue a European investigation order and the authority which will validate this document.

Having regard to the Romanian law, we appreciate that the European investigation order can be issued only by a judicial authority, both in the prosecution and trial stage.

We appreciate that in the prosecution stage it can only be issued at the request of the prosecutor by the judge of rights and freedoms from the competent court to judge at first instance and during the trial by the court before which the case is pending.

Regarding the recognition and enforcement of such an order, we specify that for transposing the European legislative act within the national law, the Romanian legislator should consider that the recognition and enforcement are two distinct steps, which are executed by various judicial bodies. Thus, most often the recognition shall be the attribute of the court, whereas the execution will belong to the public prosecutor or judicial police.

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3. The Scope. Types of procedures for which a European investigation order can be issued

The European investigation order includes any investigation other than the imposition of a joint investigation team and the gathering of evidence within a Joint Investigation Team established pursuant to art. 13 of the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union [8] and Council Framework Decision 2002/465 / JHA of 13 July 2002 on joint investigation teams [9] unless the goal is the application of art. 13, par. (8) of the Convention, and that of art. 1, par. (8) of the Framework Decision.

The exception mentioned in article 1, par. (8) of Council Framework Decision 2002/465 / JHA arise where the joint investigation team needs assistance from a Member State other than the one that founded it or from a third country, in which case the request for assistance may be addressed by the competent authorities of the State in which it is conducted the investigation of their counterparts in the other State concerned, according to the legal instruments in force.

In accordance with the depositions of the European legal instrument, the criminal investigation order may be issued:

a) in criminal proceedings initiated by a judicial authority or which may be brought before a judicial authority with respect to an offense under the national law of the issuing State;

b) in the proceedings initiated by the administrative bodies or judicial authorities in relation to the act in breach of rules of law which are punishable under the national law of the issuing State and where the decision may give rise to proceedings before a competent court especially in criminal matters;

c) in the proceedings brought by judicial authorities in respect of acts which constitute violations of the law and that are punishable under the national law of the issuing State and where the decision may give rise to proceedings before a competent court especially in criminal matters; and

d) in relation to the aforementioned procedures relating to offenses or violations that may engage the liability of legal persons or that may lead to the application of punishment of a legal person in the issuing State.

So if we refer only to the possibilities of the Romanian judicial authorities to issue an European investigation order in criminal matters, we can say that in relation to the subject matter of a criminal case, its importance and damage, it can be issued according to the provisions of the European legislative act without requiring compliance with other provisions of the domestic Romanian law.

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It has no relevance whether the active subject of the crime is a legal or a physical entity, being important only the compliance of the provisions of the European legal instrument that we have mentioned above.

4. The Content and form of the European investigation order

In order to avoid the possibility of dysfunctions in terms of content and form of the European investigation order, the European legislator in Annex A to Directive 2014/41 / EU of 3 April 2014, a form that must be completed and signed by the issuing authority.

Mainly the European investigation order contains the following information:

- data concerning the issuing authority and, where appropriate, the validating authority;
- object and reasons of the European investigation order;
- necessary information available on the person or persons concerned;
- a description of the offense under investigation or proceedings, as well as the provisions of criminal law applicable in the issuing State;
- a description of the required investigative measure or measures and evidence that will be obtained.

Each Member State shall specify the language (s) which may be used for completing or translating the European investigation order; it will take into account both official language of the State concerned and the official languages of the European Union.

The competent authority of the issuing State will translate the European investigation order into an official language of the executing State or any language indicated by the executing State.

If we refer to the provisions of the Romanian law, we mention that with the implementation of this European legislative act in the national law, it is required to be provided some derogatory rules of criminal procedure, without which a European investigation order cannot be executed.

First it is necessary to specify in the law that it is the document issued by the Romanian issuing judicial authority ordering the issuance and transmission of such an order (completion, sentence, etc.).

Also, the law should provide which is the judicial body which based on the adopted decision is obliged to complete the form set out in European legal instrument.

5. Conditions for issuing and transmitting a European investigation order

5.1. Issuing the European investigation order

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The European Investigation Order in criminal matters can be issued only if the following conditions are met:

- The issue is necessary and proportionate to the purpose of the above mentioned procedures (art. 4 of European legal instrument), taking into account the rights of the suspected or accused person; and
- Investigative measure or measures indicated in the European investigation order would be ordered under the same conditions in a similar national case.

The cumulative fulfillment of the above conditions is examined every time, in each case, by the issuing authority.

Assuming that the executing authority has reasons to believe that the issuing authority has not considered the cumulative fulfillment of the conditions listed above, it may consult the issuing authority on the importance of the execution of the European investigation order. After consultation in relation to the result, the issuing authority may withdraw the European investigation order.

5.2. Transmission of the European investigation order

After completion, the European Investigation Order in criminal matters will be transmitted by the issuing authority to the executing authority by any means which leaves a written record under the conditions of allowing the executing State to establish its authenticity.

If it is required to do so, all subsequent official communication will take place directly between the issuing and executing authority.

Under the European legislative act, each Member State may designate a central authority or, where its legal system so provides, more central authorities to assist the competent authorities.

Meanwhile, a Member State may, if it is required by the organization of its internal judicial system, entrust its central authority or authorities responsible for sending and receiving administrative European investigation order, as well as any other official correspondence relating thereto.

If the identity is not known to the executing authority, the issuing judicial authority will carry out all necessary inquiries, including via the contact points of the European Judicial Network.

Where necessary, the issuing judicial authority may transmit the European investigation order via the communication system of the European Judicial Network created by the Council Joint Action 98/428 / JHA (10).

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If after the receipt of the European investigation order, the executing State authority finds that it has no jurisdiction to recognize it and to put it into execution, the order will be forwarded ex officio to the competent authority, and the issuing authority will be informed about this procedure.

In the event that within the process of transmitting and executing a European investigation order difficulties arise, they will be solved through direct contacts between the two (issuing and executing) authorities or the involvement of the central authorities.

If the issuing authority issues a European investigation order which supplements an order earlier issued, this authority will specify this in European investigation order Section D of the form set out in Annex A.

In the case of assisting in the execution of the European investigation order in the executing state, the issuing authority may address an European investigation order which supplements an earlier European investigation order directly to the executing authority, during its presence on the territory of the state concerned.

6. Conclusions and Critical Opinions

Intensifying the complex work of judicial cooperation in criminal matters in the European Union requires in addition to the improvement of the organizational framework of the institutions responsible in the field and improving the legal system, amending and supplementing it in relation to the changes occurred in the structure of cross-border crime and especially terrorism.

Thus, due to these mutations, as well as some imperfections occurred in practice it was imposed the completion of both documents to which we referred in the introduction, by adopting a new European legal instrument.

No doubt that the adoption of the examined European legal instrument was imposed by necessity, which is expected to prove its effectiveness over time, with the implementation of the national laws of all Member States.

The preliminary examination of the provisions of this important European legal instrument allows us to formulate critical opinions aimed at improving the legislation on judicial cooperation in criminal matters in the European Union.

A first critical remark which we formulate regards the possibility for the suspect or accused person or his lawyer to request the issuing of a European Investigation Order in criminal matters.

No doubt that this provision is very good in terms of ensuring the rights of defense of the suspected or accused person, but the European legislator remained only in the phase of the

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possibility for requesting the issuance of such an order without giving the possibility of appealing a decision for rejecting the application in the issuing State. We appreciate that in terms of transposition into the national law, the Romanian state must provide an appeal against the rejection of such a request; also we consider that the European legislative act must be amended in this regard.

Another critical opinion addresses the need for, besides the two mandatory conditions laid down for issuing the European investigation order, adding another mandatory condition, i.e. the issuance of an European investigation order to be imposed by the impossibility of taking another decision and by the importance of the case.

Also, in terms of transposition into the national law of the examined instruments, the Romanian legislator will have to establish some rules derogating from the general procedure.

As a general conclusion we consider that the adoption of such a European legal instrument represents an important means of combating cross-border organized crime with particular emphasis on terrorism.

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THE FRANCHISE AGREEMENT, AT THE CROSSROADS BETWEEN CONTRACT LAW AND COMPETITION LAW

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Abstract: Regulated by the provisions of G.O. no. 52/1997, the franchise agreement provides a trading system based on continuous collaboration between natural or juridical persons, independent from a financial standpoint, in which one of the parties, called the franchiser, grants to another, called the beneficiary, the right to make use of or develop a business, product, technology or service.

Some of the clauses that may be encountered in franchise agreements (for instance, those through which beneficiaries are obliged to practise certain prices, purchase merchandise only from designated suppliers, refrain from competing against each other, or act solely within a certain area of territorial exclusiveness) may collide with the whole national and European normative ensemble in the area of competition (art. 5 par. 1 of Law no. 21/1996, with subsequent amendments, and art. 101 par. 1 of TFEU), as the principle of prohibiting agreements that distort competition is regulated in the two judicial orders in fairly close terms.

The franchise is therefore one of the juridical and economic instruments which are most commonly targeted by bodies dealing with competition and the control of anti-competitive practices, from the viewpoint of both freedom of competition and consumer protection.
Key-words: franchise, know-how, contract law, competition, restriction.

Reglementată de O.G. nr. 52/1997[1], franciza este conturată ca un sistem de comercializare bazat pe o colaborare continuă între persoane fizice sau juridice, independente din punct de vedere financiar, prin care o persoana, denumită francizor, acordă unei alte persoane, denumită beneficiar, dreptul de a exploata sau de a dezvolta o afacere, un produs, o tehnologie sau un serviciu (art. 1 lit.a) din ordonanţă), în schimbul plăţii unei redevenţe.

[1] Republicată în Monitorul Oficial nr. 180/14 mai 1998.

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Tehnica francizei presupune existenţa a doi parteneri comerciali independenţi din punct de vedere juridic, francizorul şi unul sau mai mulţi beneficiari[2]. Francizorul este aşadar un comerciant care, prin intermediul contractului de franciză, dezvoltă procedee sau chiar un sistem de exploatare a unei întreprinderi comerciale sau industriale. Francizorul nu doar conferă beneficiarului dreptul de a exploata ori de a dezvolta o afacere, un produs, o tehnologie sau un serviciu, dar îi şi asigură o pregătire iniţială pentru exploatarea mărcii înregistrate. Contractul de franciză este fondat aşadar pe transferul de cunoştinţe tehnice şi procedee comerciale care constituie ingredientele unei „reţete de succes".

Elementele caracteristice ale francizei sunt aşadar următoarele: deţinerea de către francizor de drepturi asupra unei mărci înregistrate, importanţa know-how-ului şi asistenţa tehnică/comercială.

Pornind de la premisa că franciza respectă independenţa (din punct de vedere juridic) beneficiarului care acţionează în nume şi pe cont propriu, în mod evident trebui eliminată orice similitudine cu alte contracte care nu oferă o astfel de independenţă „distribuitorului", bunăoară contractele de agent, comision, intermediere, etc.

Astfel, agentul, deşi „este un intermediar independent, care acţionează cu titlu profesional" (art. 2072 alin.2 Cod civil), este împuternicit exclusiv pentru a negocia afaceri sau a negocia sau încheia afaceri, în numele şi pe seama comitentului. În cazul contractului de comision, comisionarul se obligă pe baza împuternicirii comitentului, să încheie anumite acte juridice privind achiziţionarea sau vânzarea unor bunuri ori prestarea de servicii, în nume propriu, dar pe seama comitentului, în schimbul unei remuneraţii, numită comision (art. 2043 Cod civil). Remarcăm aşadar că deşi comisionarul acţionează cu titlu profesional, fiind un veritabil profesionist, el acţionează strict la ordinele comitentului şi pe seama acestuia din urmă.

Cu atât mai mult intermediarul nu ar putea fi confundat cu francizatul, căci contractul de intermediere are ca obiect punerea în legătură a unor persoane (clientul şi terţul) în vederea încheierii de către acestea a unui act juridic, intermediarul fiind aşadar mandatat să efectueze exclusiv acte materiale.

Fiind un contract sinalagmatic, franciza presupune asumarea de obligaţii de către ambele părţi contractante. În timp ce în sarcina francizorului incumbă obligaţia de a transmite know-how-ul şi dreptul de utilizare a semnelor distinctive, asistenţa tehnică şi/sau comercială, aprovizionarea

[2] Lipsa independenţei juridice ar conduce la transformarea beneficiarului în sucursală, iar când acesta este persoană fizică, într-un simplu prepus al francizorului. A se vedea în acest sens, L. Stănciulescu, V. Nemeş, *Dreptul contractelor civile şi comerciale în reglementarea noului Cod civil*, Ed. Hamangiu, Bucureşti, 2013, p. 593.

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beneficiarului şi garanţia exclusivităţii teritoriale[3], beneficiarul are obligaţia păstrării secretului know-how-ului, a plăţii taxelor şi redevenţelor, precum şi obligaţiile de neconcurenţă şi confidenţialitate, în măsura în care astfel de clauze au fost impuse de francizor. Spre pildă, părţile pot insera o clauză contractulă ce stipulează obligaţia de non-concurenţă a beneficiarului, sub rezerva ca aceasta obligaţie să fie limitată temporal (pe durata contractului de exclusivitate) şi necesară pentru protejarea drepturilor de proprietate intelectuală sau pentru a menţine identitatea mărcii ori reputaţia reţelei de franciză.

Contractul de franciză, chiar dacă nu este în sine o înţelegere restrictivă de concurenţă, poate avea efecte anti-concurenţiale, în măsura în care unele dintre clauzele sale (spre pildă, cele prin care beneficiarii sunt obligaţi să practice anumite preţuri de vânzare ori să nu se aprovizioneze cu marfă decât de la furnizori agreaţi de francizor şi doar în limita unui procent stabilit în contractul de franciză; clauze prin care francizorul se obligă să nu aprovizioneze niciun alt comerciant pe teritoriul din contract; clauze prin care beneficiarii reţelei de franciză se obligă să nu concureze între ei ori să acţioneze doar într-o anumită zonă de exclusivitate teritorială) pot intra în coliziune cu ansamblul normativ naţional şi european din materia concurenţei (art. 5 alin.1 din Legea nr. 21/1996, republicată[4], cu modificările ulterioare şi art. 101 alin.1 TFUE).

Este de observat că principiul interzicerii înţelegerilor anticoncurenţiale este reglementat în cele două ordini juridice în termeni destul de apropiaţi. Potrivit art. 5 alin.1 din Legea nr. 21/1996, republicată, cu modificările ulterioare, sunt interzise orice înţelegeri între întreprinderi, decizii ale asociaţiilor de întreprinderi şi practici concertate, care au ca obiect sau au ca efect împiedicarea, restrângerea ori denaturarea concurenţei pe piaţa românească sau pe o parte a acesteia, în special cele care: a) stabilesc, direct sau indirect, preţuri de cumpărare sau de vânzare sau orice alte condiţii de tranzacţionare; b) limitează sau controlează producţia, comercializarea, dezvoltarea tehnică sau investiţiile; c) împart pieţele sau sursele de aprovizionare; d) aplică, în raporturile cu partenerii comerciali, condiţii inegale la prestaţii echivalente, creând astfel acestora un dezavantaj

[3] Potrivit art. 9 din ordonanţă, în cazul în care francizorul propune semnarea unui contract de exclusivitate, vor fi respectate următoarele reguli: dacă este încasată o taxă de intrare în reţeaua de franciză, la semnarea contractului de franciză, suma privind drepturile de exclusivitate, prevăzută în contract, este proporţională cu taxa de intrare şi se adaugă acesteia; în lipsa taxei de intrare, modalităţile de rambursare a taxei de exclusivitate sunt precizate în cazul rezilierii contractului de franciză; taxa de exclusivitate poate fi destinată pentru a acoperi o parte a cheltuielilor necesare implementării francizei şi/sau pentru a delimita zona şi/sau pentru know-how-ul transmis; contractul de exclusivitate trebuie să prevadă o clauză de reziliere, convenabilă ambelor părţi; durata este determinată în funcţie de caracteristicile proprii fiecărei francize. În jurisprudenţa franceză s-a decis că francizorul nu a încălcat obligaţia de a asigura exclusivitatea teritorială a francizatului, comercializând pe internet produse şi servicii identice cu cele ce fac obiect al contractului de franciză. Pentru a adopta această soluţie, Curtea de Casaţie a reţinut că "crearea unui site internet nu poate fi asimilată implantării unui punct de vânzare în sectorul protejat". A se vedea, Com.14 mars 2006, Bull.civ. IV, n. 65, citată în François Collart Dutilleul, Philippe Delebecque, *Contrats civils et contrats comerciaux*, Dalloz, Paris, 2011, p. 978, nota de subsol 3.

[4] Republicată în Monitorul Oficial nr. 973 din 29 decembrie 2015.

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concurenţial; e) condiţionează încheierea contractelor de acceptarea de către parteneri a unor prestaţii suplimentare care, prin natura lor sau în conformitate cu uzanţele comerciale, nu au legătură cu obiectul acestor contracte.

O reglementare relativ identică vom regăsi şi în dreptul european, dispoziţiile art. 101 alineatul (1) din Tratatul privind funcţionarea Uniunii Europene (TFUE)-fostul articol 81 alineatul (1) din Tratatul privind instituirea Comunităţii Europene (TCE)) interzicând toate acordurile între întreprinderi, toate deciziile asociaţiilor de întreprinderi şi toate practicile concertate care pot aduce atingere comerţului dintre ţările Uniunii Europene şi care au drept obiect sau efect împiedicarea, restrângerea sau denaturarea concurenţei. Prin derogare de la această regulă, articolul 101 alineatul (3) din TFUE (fostul articol 81 alineatul (3) din TCE) prevede că interdicţia menţionată la articolul 101 alineatul (1) poate fi declarată inaplicabilă pentru toate acordurile care contribuie la îmbunătăţirea producţiei sau distribuţiei de mărfuri sau la promovarea progresului tehnic sau economic, asigurând totodată consumatorilor o parte echitabilă din beneficiul obţinut, şi care nu impun întreprinderilor în cauză restricţii care nu sunt indispensabile pentru atingerea acestor obiective şi nu oferă întreprinderilor posibilitatea de a elimina concurenţa pe o parte semnificativă a pieţei produselor în cauză[5].

Hotărârea CJCE din 28 ianuarie 1986, în cauza Pronuptia de Paris GmbH vs. Pronuptia de Paris Irmgard Schillgalis a constituit o etapă esenţială în aplicarea dreptului european al concurenţei în materia contractului de franciză[6].

Astfel, CJCE a fost sesizată în cadrul unei proceduri preliminare cu mai multe întrebări privind interpretarea articolului 85 din Tratatul CEE (actualul 101 TFUE) şi a Regulamentului nr. 67/67 al Comisiei din 22 martie 1967 privind aplicarea articolului 85 alineatul (3) din Tratatul CEE (actualul art. 101 alin.3 TFUE) anumitor categorii de acorduri de exclusivitate, pentru a se stabili dacă dispoziţiile respective se aplică contractelor de franciză[7].

Pentru a evita plata redevenţelor datorate la cifra de afaceri pentru anii 1978-1980, francizatul a susţinut că cele trei contracte de franciză (identice sub aspectul conţinutului) încheiate cu francizorul pentru trei zone distincte Hamburg, Oldenburg şi Hanovra încălcau dispoziţiile art. 85 alin.1 din tratat (actualul art. 101 TFUE) şi nu beneficiau de exceptarea acordată anumitor categorii de contracte de exclusivitate în temeiul Regulamentului nr. 67/67 al

[5] O reglementare identică se regăseşte şi în art. 5 alin.2 din Legea nr. 21/1996.
[6]Hotărârea poate fi consultată pe http://ier.ro/sites/default/files/traduceri/61984J0161.pdf (04.05.2016)
[7] Aceste întrebări au fost adresate în cadrul unui litigiu între societatea Pronuptia de Paris GmbH din Frankfurt am Main (francizor), filială a unei societăţi franceze cu aceeaşi denumire, şi doamna Schillgalis din Hamburg care deţinea o societate comercială cu denumirea de Pronuptia de Paris (francizat), litigiu privind obligaţia francizatului de a-i plăti francizorului redevenţele datorate la cifra de afaceri pentru anii 1978-1980.

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Comisiei, menţionat anterior. Potrivit susţinerilor francizatului, obligaţiile reciproce de exclusivitate constituiau restricţii ale concurenţei în cadrul pieţei comune, francizorul neputând aproviziona niciun alt comerciant pe teritoriul din contract, iar francizatul neputând achiziţiona sau vinde cu amănuntul alte mărfuri provenite din alte state membre, decât într-o măsură limitată.

Curtea a reţinut cu just temei că sistemul contractului de franciză nu duce prin sine la restricţii notabile ale concurenţei, câtă vreme acestea nu conţin restricţii ale libertăţii părţilor contractante care să le depăşească pe cele care decurg din natura unui sistem de franciză. Obligaţiile exclusive de livrare şi de aprovizionare, în măsura în care acestea urmăresc să asigure selecţii standard ale mărfurilor, obligaţiile de publicitate şi de amenajare uniformă a spaţiilor comerciale şi interdicţia de vânzare în alte magazine a mărfurilor livrate în temeiul contractului sunt inerente prin însăşi natura contractului de franciză şi nu intră în sfera de aplicare a articolului 85 alineatul 1 (consid. 9).

Se impune remarcat faptul că până la acel moment, Curtea nu fusese investită să analizeze legalitatea contractelor de franciză din perspectiva tratatelor comunitare, motiv pentru care, pentru prima data în jurisprudenţa sa, instanţa europeană a procedat la definirea şi clasificarea acestui tip de contract (franciza de servicii, producţie şi distribuţie). În accepţiunea Curţii, într-un sistem de franciză, "*o întreprindere care s-a impus pe piaţă ca distribuitor şi care, prin urmare, a pus la punct un ansamblu de metode comerciale, le acordă unor comercianţi independenţi posibilitatea de a se impune pe alte pieţe utilizând denumirea şi metodele comerciale care au contribuit la succesul său*". Relevând importanţa know-how-ului, se subliniază că "*mai mult decât un mod de distribuţie, este vorba de un mod de a exploata din punct de vedere financiar, fără a angaja capitaluri proprii, un ansamblu de cunoştinţe*".

Pornind de la aceste premisă, este evident că nu constituie restricţii ale concurenţei, acele clauze care protejează know-how-ul francizorului, prevenind riscul transmiterii acestuia concurenţilor, bunăoară clauza de neconcurenţă prin care francizatului îi este interzis să deschidă, pe durata contractului sau în cursul unei perioade rezonabile ulterioare expirării acestuia, un magazin cu un obiect de activitate identic sau similar, într-o zonă în care ar putea intra în concurenţă cu unul din membrii reţelei ori stipulaţia contractuală privind obligaţia impusă francizatului de a nu ceda respectivul magazin fără acordul prealabil al francizorului.

Se poate aşadar concluziona că nu poate fi exclusă compatibilitatea contractelor de franciză cu art. 5 alin.1 din Legea nr. 21/1996, respective art. 101 TFUE, după cum incompatibilitatea unui astfel de contract poate fi determinată de conţinutul clauzelor contractuale şi contextul economic. În acest sens se impune a se face o netă distincţie între, pe de o parte,

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clauzele indispensabile pentru asigurarea riscului transmiterii neautorizate a know-how-ul oferit de francizor şi cele care garantează păstrarea identităţii şi prestigiului reţelei, iar pe de altă parte, acele clauze care distorsionează concurenţa prin partajarea pieţelor ori impunerea unor preţuri de revânzare (cele indicative fiind permise, mai puţin atunci când suntem în prezenţa unor practici concertate).

Cât priveşte incidenţa Regulamentului nr. 67/67 al Comisiei din 22 martie 1967 în materia contractelor de franciză, aceasta nu a putut fi reţinută întrucât acest izvor de drept derivat era de strictă aplicare, vizând doar acordurile de distribuţie exclusivă şi de aprovizionare exclusivă, în privinţa cărora derogarea era acordată într-o manieră generală şi fără cerinţa notificării.

Pentru definirea regimului exceptărilor pe categorii aplicabil contractului de franciză, Comisia a adoptat Regulamentul 4087/88 din 30 noiembrie 1988[8], care defineşte franchisingul ca fiind un ansamblu de drepturi de proprietate industrială sau intelectuală privind mărci, firme, desene şi modele industriale, drepturi de autor, know-how sau brevete de invenţii sau inovaţii destinate a fi exploatate pentru vânzarea de produse şi prestarea de servicii utilizatorilor finali. Pentru a intra sub incidenţa exceptării, acordul de franciză trebuia pe de o parte, să nu conţină clauze interzise (spre pildă, stabilirea preţurilor de revânzare, interdicţia francizatului de a utiliza know-how-ului după expirarea contractului, chiar dacă acest know-how este general cunoscut sau accesibil într-o manieră facilă; interdicţia francizatului de a vinde, în interiorul pieţei comune, produse sau servicii care fac obiect al contractului de franciză, către anumiţi utilizatori finali, în funcţie de locul lor de rezidenţă), iar pe de altă parte să îndeplinească, în mod cumulativ, următoarele cerinţe: utilizarea unui nume sau a unei firme comune şi o prezentare uniformă a localurilor şi/sau a mijloacelor de transport vizate în contract; comunicarea de către francizor francizatului său a *savoir-faire-ului*; furnizarea continuă de către francizor francizatului a unei asistenţe comerciale sau tehnice pe durata acordului.

Regulamentul Comisiei nr. 2790/1999 din 22 decembrie 1999 privind aplicarea articolului 81 (3) din Tratat la categoriile de acorduri verticale şi practice concertate[9], a unificat regimul restricţiilor verticale de concurenţă, în obiectul său de reglementare fiind incluse atât acordurile de distribuţie exclusivă, cât şi acordurile de franciză, prin înlocuirea Regulamentelor nr. 1983/83[10], nr. 1984/83[11] şi 4087/88.

[8] Regulamentul poate fi consultat pe http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A31988R4087 (04.05.2016)
[9] Publicat în Jurnalul Oficial nr. 336 din 29.12.1999.
[10]Regulamentul 1983/83, privind aplicarea art. 85 alin.3 din Tratatul CE, categoriilor de acorduri de distribuţie exclusivă, publicat în Jurnalul Oficial nr. 173 din 30.06.1983

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În fine, succesiunea actelor normative europene cuprinde Regulamentul nr. 330/2010 din 20 aprilie 2010 privind aplicarea art. 101 alin.3 din TFUE, categoriilor de acorduri verticale şi practici concertate[12], regulament care a intrat în vigoare la 1 ianuarie 2010 şi care a înlocuit Regulamentul Comisiei nr. 2790/1999. Acest ultim regulament din 2010 este însoţit de Orientările privind restricţiile verticale stabilite prin Comunicarea Comisiei din 19 mai 2010[13].

Lecturând Regulamentul nr. 330/2010 se poate observa generalitatea acestuia, în sensul că nu cuprinde prevederi exprese privind un anumit tip de contract, contractul de franciză nefiind menţionat decât în mod indirect, prin referirile la know-how, obligaţia de neconcurenţă, drepturile de proprietate intelectuală, motiv pentru care este necesară o analiză coroborată a Regulamentului cu orientările privind restricţiile verticale.

Se impune însă menţionat că acordurile care conţin restricţii verticale de concurenţă[14] sunt scoase de sub incidenţa art. 101 alin.1 TFUE, în funcţie de cota de piaţă pe care o deţin părţile implicate pe piaţa relevantă, limita fiind fixată de articolul 3 din Regulament la 30%, atât pentru furnizor, cât şi pentru cumpărător. Sub această cotă de piaţă, se arată în preambulul Regulamentului (pct.8), „*se poate prezuma că ... acordurile verticale ... conduc la îmbunătăţirea producţiei sau a distribuţiei şi asigură consumatorilor o parte echitabilă din beneficiile rezultate*", iar peste această limită, „*nu se poate presupune că acordurile verticale care intră sub incidența articolului 101 alineatul (1) din tratat vor da naștere în general unor avantaje obiective de o asemenea natură și dimensiune încât să compenseze prejudiciile pe care le creează concurenței. În același timp, nu există nicio prezumție că aceste acorduri verticale intră sub incidența articolului 101 alineatul (1) din tratat sau nu îndeplinesc condițiile prevăzute la articolul 101 alineatul (3) din tratat*". Se precizează însă în continuare că nu trebuie exceptate acorduri verticale ce conțin restricții care sunt susceptibile să restrângă concurența și să aducă prejudicii consumatorilor sau care nu sunt indispensabile pentru atingerea efectelor de creștere a eficienței. În special acordurile verticale care conțin anumite tipuri de restrângeri grave ale concurenței, precum prețurile de revânzare minime și fixe, precum și anumite tipuri de protecție

[11] Regulamentul 1984/83, privind aplicarea art. 85 alin.3 din Tratatul CE, categoriilor de acorduri de cumpărare exclusivă, publicat în Jurnalul Oficial nr. 173 din 30.06.1983.
[12] Publicat în Jurnalul Oficial nr. 102 din 23.04. 2010
[13] Publicată în Jurnalul oficial nr. 130 din 19.05.2010, http://www.justice.gov.md/file/Centrul%20de%20armonizare%20a%20legislatiei/Baza%20de%20date/Materiale%202011/Legislatie/52010XC0519_04.PDF (04.05.2016)
[14] În funcţie de gradul de restricţie comercială a acordului, se impune a se face distincţie între acordurile de distribuţie exclusivă, când furnizorul se angajează să aprovizioneze un singur distribuitor, pe un teritoriu dat, în schimbul avantajului exclusivităţii, distribuitorul acceptând clauze restrictive şi acordurile de cumpărare exclusivă când distribuitorul convine să se aprovizioneze de la un singur furnizor care, în schimbul exclusivităţii, îi acordă avantaje comerciale şi/sau financiare. Pe larg despre acordurile verticale, a se vedea, A. I. Duşcă, *Dreptul Uniunii privind afacerile*, Editura Universul Juridic, Bucureşti, 2010, p.155-159.

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teritorială trebuie să fie excluse de la beneficiul exceptării pe categorii, indiferent de cota de piață a întreprinderilor în cauză.

Revenind la contractul de franciză, pentru a vedea în ce măsură ar conţine o restricţie verticală de concurenţă, respectiv dacă intră sub incidenţa exceptărilor prevăzute de Regulamentul nr. 330/2010, se impun a fi avute în vedere două aspecte: cota de piaţă deţinută de părţile contractante şi evaluarea conţinutului contractului, pentru a verifica în ce măsură conţine clauze care, în sine, sau coroborate cu altele, ori cu alţi factori aflaţi sub controlul părţilor, pot genera restricţii severe de concurenţă care exclud beneficiul exceptării de grup.

Primul pas din cadrul evaluării concurențiale vizează aşadar stabilirea cotei de piaţă. Aceasta nu poate exista însă în abstract, fiind necesară delimitarea pieței relevante pe care are loc comportamentul de afaceri considerat a fi la o primă vedere restrictiv de concurenţă. În Comunicarea nr. 97-C372-03 decembrie 1997[15], Comisia a expus regulile aplicabile pentru definirea pieţei relevante. În accepţiunea Comisiei, o piaţă relevantă a produsului cuprinde toate produsele şi/sau serviciile pe care care consumatorul le consider interschimbabile sau substituibile, datorită caracteristicilor, preţurilor şi utilizării căreia acestea îi sunt adresate (pct. 7 din comunicare). Piaţa geografică relevantă cuprinde zona în care întreprinderile respective sunt implicate în cererea şi oferta de produse sau servicii în cauză, în care condiţiile de concurenţă sunt suficient de omogene şi care poate fi deosebită de zonele geografice învecinate, deoarece condiţiile de concurenţă diferă în mod apreciabil în respectivele zone (pct. 8 din comunicare).

Raportat la dispoziţiile art. 3 din Regulament, sub 30% cota de piaţă, contractul de franciză beneficiază de exceptare, sub rezerva de a nu conţine restricţii severe de concurenţă, respectiv restrângerea dreptului francizatului de a-şi stabili preţul de vânzare ori protecţie teritorială absolută[16]. Dacă pragul de 30% este depăşit, beneficiul exceptării de grup nu este disponibil[17].

Cât priveşte clauzele referitoare la preţul de revânzare, raportat la dispoziţiile art. 4 lit.a) din Regulamentul nr. 330/2010, exceptarea de grup nu se aplică în cazul contractului de franciză

[15]http://eur-lex.europa.eu/legal-content/RO/ TXT/?uri= celex: 31997Y1209 % 2801 % 29, consultat la 27.10.2014.
[16] Un contract de franciză care ar conţine o clauză ce ar impune preţul de revânzare nu va putea beneficia nici de exceptarea individuală întemeiată pe art. 101 alin.3 TFUE, nici de exceptarea pe categorii, art. 4 lit.a) din Regulamentul nr. 330/2010 calificând restricţia ca fiind una gravă. A se vedea, Louis Vogel, *Droit européen des affaires*, Dalloz, Paris, 2013, p.608. În acelaşi sens, Louis Dubouis, Claude Bluman, *Droit matériel de l'Union européenne,* Montchrestien, Paris, 2012, p. 575.
[17]Gavril Daniel Olar, Restricţiile verticale de concurenţă, http://www.freedomhouse.ro/old/images/Daniel_Olar_RESTRICIILE_VERTICALE_DE_CONCUREN.pdf (04.05.2016).

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care, direct sau indirect[18], separat sau în combinație cu alți factori aflați sub controlul părților, restrâng libertatea francizatului de a-și stabili prețul de vânzare, fără a aduce atingere posibilității francizorului de a impune un preț de vânzare maxim sau de a recomanda un preț de vânzare, cu condiția ca acestea din urmă să nu echivaleze cu un preț de vânzare fix sau minim stabilit ca rezultat al presiunii exercitate ori al stimulentelor oferite de francizor, fiind în prezenţa unei restricţii grave. Prin urmare, preţurile indicative sunt licite, cu condiţia însă ca acestea să nu disimuleze preţuri impuse, în special în urma presiunilor exercitate de către francizor.

Legiuitorul european instituie o prezumţie refragabilă a existenţei unei restricţii de concurenţă în cazul contractului de franciză care include o clauză privind impunerea preţurilor de revânzare, întreprinderile implicate având posibilitatea să răstoarne prezumţia, invocând o apărare pe bază de argumente de eficienţă în conformitate cu articolul 101 alineatul 3 TFUE. [19]

Bunăoară, impunerea preţurilor de revânzare poate să conducă la creşteri de eficienţă, când preţurile de revânzare fixe şi nu numai preţurile de revânzare maxime sunt necesare în cazul organizării, în cadrul unui sistem de franciză sau de distribuţie similar, a unei campanii coordonate de preţuri mici pe termen scurt (în cele mai multe cazuri între 2 şi 6 săptămâni), care va aduce beneficii consumatorilor[20].

Remarcăm aşadar că în ipoteza stabilirii în sarcina francizatului a practicării unor preţuri maxime de vânzare, precum şi în cazul campaniilor coordonate de preţuri mici pe termen scurt, interesul consumatorului este prezervat.

[18] Impunerea preţului de revânzare se poate realiza nu doar direct, când suntem în prezenţa unei restricţii flagrante, dar şi indirect, bunăoară, prin inserarea în contractul de franciză a unor clauze care prevăd nivelul maxim al reducerilor pe care le poate acorda un francizat, faţă de un nivel predefinit al preţului ; acordurile care condiționează acordarea de rabaturi sau rambursarea cheltuielilor promoționale de către francizor, de respectarea unui anumit nivel de preț; acordurile care condiționează prețul de vânzare prevăzut de prețul de revânzare ale concurenților, precum și amenințările, intimidările, avertizările, penalizările, întârzierea sau suspendarea livrărilor ori rezilierea acordului în cazul nerespectării unui anumit nivel de preț (pct. 48 din Orientările privind restricțiile verticale). În mod similar, modalitățile de stabilire a prețului de revânzare devin mai eficiente atunci când sunt însoțite de măsuri care reduc interesul beneficiarului francizat de a micșora prețul de revânzare, cum ar fi imprimarea pe produs, de către francizor, a prețului de comercializare la clientul final. A se vedea, Consiliul Concurenței, Decizia nr. 65 din 31.10.2012 de acceptare a angajamentelor asumate de către FORNETTI ROMÂNIA SRL în cadrul investigației declanșate prin Ordinul Președintelui Consiliului Concurenței nr. 291/31.05.2010 și extinsă prin Ordinul Președintelui Consiliului Concurenței nr. 351/05.07.2010, http://www.consiliulconcurentei.ro/uploads/docs/items/id8105/decizia_fornetti-publicare_site.pdf (consultat 09.05.2016).

[19] Potrivit pct. 190 lit.a) din orientările privind restricțiile verticale, cu cât transferul de know-how este mai important, cu atât este mai posibil ca restricțiile să creeze câștiguri de eficiență și/sau să fie indispensabile pentru protejarea know-how-ului, și ca restricțiile verticale să îndeplinească condițiile prevăzute la articolul 101 alineatul 3 TFUE.

[20] A se vedea şi Louis Vogel, *Droit européen des affaires*, Dalloz, Paris, 2013, p.628.

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Apoi, raportat la dispoziţiile art. 5 alin.1 lit.a) din Regulament, clauza de neconcurenţă[21], indiferent de beneficiarul acesteia, francizorul ori francizatul, intră sub incidenţa exceptării doar dacă partea de piaţă deţinută de fiecare din cele două părţi contractante nu depăşeşte 30%, sub condiţia ca durata clauzei să nu depăşească 5 ani. Apreciem că în cazul unui contract de franciză încheiat pe o durată mai mare de 5 ani, în care părţile au inserat o clauză de neconcurenţă, se impune stipulat în mod expres că valabilitatea acesteia expiră la momentul împlinirii termenului de 5 ani şi că ea nu poate fi prelungită decât prin acordul părţilor. Prin excepţie, limitarea temporală de cinci ani nu se aplică atunci când bunurile sau serviciile contractuale sunt vândute de francizat din spații sau terenuri aflate în proprietatea francizorului sau închiriate de francizor de la terți care nu au legătură cu francizatul, cu condiția ca durata obligației de neconcurență să nu depășească perioada de ocupare a spațiilor sau a terenurilor de către francizat (art. 5 alin.2 din Regulament).

Cât priveşte clauza de neconcurenţă post-contractuală, în conformitate cu art. 5 alin.3 din Regulament, aceasta intră sub incidenţa exceptării doar dacă sunt îndeplinite următoarele condiţii: obligaţia priveşte bunuri sau servicii care sunt în concurenţă cu produsele sau bunurile ori serviciile contractului; obligaţia este limitată la spaţiile şi teritoriile unde cumpărătorul şi-a desfăşurat activitatea pe parcursul executării contractului; obligaţia este indispensabilă pentru protejarea know-how-ului transferat de către furnizor cumpărătorului; durata clauzei este limitată la un an de la data încetării contractului.

Referitor la clauza de exclusivitate teritorială, aceasta este de natură a-l proteja de francizat, care, cu certitudine, îşi doreşte amortizarea investiţiei făcute, demers ce poate fi sortit eşecului dacă francizorul va desfăşura el franciza în raza teritorială pentru care a acordat exclusivitate beneficiarului ori dacă ar transmite dreptul de a exploata afacerea în regim de franciză altui beneficiar. Cu alte cuvinte, prin instituirea unei clauze de exclusivitate teritorială, francizatul se vede pus la adăpost în faţa concurenţei interne ce există în sânul reţelei de franciză. În acelaşi timp, şi francizorul poate dori organizarea reţelei de franciză atribuind diverse „teritorii” francizaţilor săi, şi implicit, partajând piaţa. Atribuirea unei exclusivităţi teritoriale unui francizat antrenează în mod necesar restricţii pentru ceilalţi francizaţi aparţinând reţelei. Dispoziţiile art. 4 lit.b) din Regulament exclud aplicarea beneficiului exceptării în cazul contractelor de franciză ce conţin clauze având ca obiect restrângerea teritoriului în care, ori a

[21] Obligaţia de neconcurenţă este “orice obligaţie directă sau indirectă care interzice cumpărătorului să producă, să cumpere, să vândă sau să revândă bunuri ori servicii care concurează cu bunurile sau serviciile contractuale (art. 1 lit.ddin regulament).

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clienţilor cărora, un francizat le poate vinde bunurile ori serviciile contractuale fără a aduce atingere unei restricţii asupra locului în care este stabilit. Această restricţie gravă este legată de împărţirea pieţei pe teritorii sau pe clienţi.

Prin excepţie, clauzele ce antrenează o exclusivitate teritorială de vânzare sunt admise în 4 situaţii: restrângerea vânzărilor active în teritoriul exclusiv sau către un grup de clienţi rezervat furnizorului sau alocat de furnizor altui cumpărător, atunci când o asemenea restricţie nu limitează vânzările efectuate de clienţii cumpărătorului[22]; restrângerea vânzărilor către utilizatorii finali de către un cumpărător care acţionează pe piaţă în calitate de comerciant cu ridicata; restrângerea vânzărilor de către membrii unui sistem de distribuţie selectivă către distribuitori neagreaţi pe teritoriul rezervat de către furnizor pentru aplicarea acestui sistem; restrângerea capacităţii cumpărătorului de a vinde componente, furnizate cu scopul de a fi asamblate, către clienţii care le-ar utiliza la producerea aceloraşi tipuri de bunuri ca şi cele produse de furnizor.

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4. F. C. Dutilleul, Ph. Delebecque, *Contrats civils et contrats comerciaux*, Dalloz, Paris, 2011

[22] Este licită aşadar clauza contractuală prin care furnizorul combină alocarea unui teritoriu exclusiv şi a unui grup de clienţi exclusiv, de exemplu prin desemnarea unui distribuitor exclusiv pentru un grup de clienţi determinat dintr-un anumit teritoriu. Dacă prin vânzări „active" se înţelege abordarea activă a clienţilor individuali prin intermediul marketingului direct prin corespondenţă, inclusiv trimiterea de email-uri nesolicitate sau vizite propriu-zise; sau abordarea activă a unui anumit grup de clienţi sau a anumitor clienţi dintr-un teritoriu determinat, prin publicitate în mass media, pe internet sau prin alte acţiuni de promovare adresate în mod special acestui grup de clienţi sau clienţilor din acest teritoriu, vânzarea „pasivă" înseamnă a răspunde la cereri nesolicitate de la clienţi individuali, inclusiv livrarea de bunuri sau servicii unor astfel de clienţi; orice publicitate sau acţiune de promovare generală care intră în atenţia clienţilor din teritoriile exclusive ale altor distribuitori sau din grupurile de clienţi ale altor distribuitori, care este însă un mod rezonabil de a aborda clienţii situaţi în afara acestor teritorii sau a grupurilor de clienţi, de exemplu pentru a aborda clienţi situaţi pe teritoriul propriu (pct. 51 din Orientările privind înţelegerile verticale)
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5. L. Stănciulescu, V. Nemeş, *Dreptul contractelor civile şi comerciale în reglementarea noului Cod civil*, Ed. Hamangiu, Bucureşti, 2013

6. L. Vogel, *Droit européen des affaires*, Dalloz, Paris, 2013

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10.http://eur-lex.europa.eu/legal-content/RO/ TXT/?uri= celex: 31997Y1209 % 2801 % 29, consultat la 27.10.2014.

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THE NEW REGIME OF THE INTEGRATED AUTHORISATION REGULATED BY LAW NO. 278/2013 ON INDUSTRIAL EMISSIONS

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Environmental permits represent a category of regulation acts typical to environmental law, having an important role in preventing or restricting the damage caused to environment. One of their sub-category – the integrated environmental permit – acts in the field of prevention and of the integrated control of the pollution resulting from industrial activities, having a typical legal regime, acknowledged both within the European Union and internal law. This legal regime has been improved with the emergence of new regulations, which shall be analysed in the current study.

Keywords: regulation acts, environmental permit, integrated environmental permit, the best available techniques, industrial emissions.

Introducere

Una din sursele cele mai nocive de poluare atmosferică o reprezintă emisiile industriale. Preocupată îndeaproape de a menține sub control emisiile industriale, Uniunea Europeană a elaborat un cadru general bazat pe autorizarea integrată. Prin aceasta se înțelege că autorizațiile trebuie să țină cont de performanțele totale de mediu ale unei instalații pentru a evita transferul poluării de la o componentă a mediului, precum apa, aerul sau solul, la alta. În acest sens, se impune a se acorda prioritate prevenirii poluării prin intervenții la sursă și prin garantarea utilizării și a gestionării prudente a resurselor naturale. Aceste obiective ce sunt în acord atât cu principiile fundamentale ale dreptului mediului cât și cu principiile generale ale dreptului european al mediului[1], au condus astfel la reformarea a șapte acte legislative anterioare privind emisiile industriale adoptate la nivelul Uniunii Europene. Meritul în acest sens aparține Directivei 2010/75/UE a Parlamentului European și a Consiliului privind emisiile industriale(prevenirea și controlul integrat al poluării) (reformare)[2], adoptată la Strasbourg, la 24 noiembrie 2010. Statele membre au avut la dispoziţie 2 ani pentru a transpune Directiva care a intrat în vigoare la data de 6 ianuarie 2011, și a început să producă efecte odată cu data de 7 ianuarie 2014. În consecinţă,

[1]Pe larg, asupra principiilor dreptului mediului, a se vedea Mircea Duțu, Andrei Duțu, *Dreptul mediului*, Ediția 4, Editura C.H.Beck, București, 2014, pp. 106 - 110.
[2]Publicată în Jurnalul Oficial al Uniunii Europene (JOUE) seria L,nr. 334din 17 decembrie 2010.

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atenţia noastră s-a îndreptat spre a surprinde noutatea reglementării elaborate la nivelul Uniunii Europene precum şi cele mai relevante dispoziţii din legea de transpunere în dreptul intern.

2. Consideraţii privind Directiva 2010/75/CE a Parlamentului European şi a Consiliului emisiile industriale

Cunoscută după abrevierea engleză IED – *industrial emissions directive,* Directiva 2010/75/CE acoperă ca zonă de reglementare șapte directive anterioare ale căror norme au făcut obiectul unei reevaluări integrale în urma căreia a luat naștere noul act normativ. A rezultat astfel un singur instrument legislativ clar și coerent, cuprinzând un set de norme comune pentru autorizarea și controlul instalațiilor industriale, simplificând procedurile administrative atât pentru statele membre, cât și pentru operatorii privați. Directiva privind emisiile industriale are ca scop îmbunătățirea sănătății și a protecției mediului, într-un raport de continuitate cu regimul consacrat prin Directiva 2001/80/CE privind limitarea emisiilor în atmosferă a anumitor poluanți provenind de la instalațiile de ardere de dimensiuni mari (Directiva LCP)[3], și prinDirectiva 2008/1/CE privind controlul integrat al poluării (Directiva IPPC)[4], cea din urmă acoperind cca. 52.000 de instalații agricole și industriale cu un mare potențial de poluare.

Ca document de reformare a reglementărilor anterioare emise la nivelul Uniunii Europene, Directiva 2010/75/CE cuprinde norme pentru prevenirea și combaterea poluării aerului, a apei și a solului și pentru evitarea generării de deșeuri de la instalațiile industriale mari. Astfel, actul normativ acoperă o sferă largă de activități industriale și agricole, generatoare de poluare, urmărind prevenirea și reducerea integrată a acesteia în scopul atingerii unui nivel ridicat de protecție a mediului[5]. Pentru realizarea acestui obiectiv, toate instalațiile care intră sub incidența directivei trebuie să prevină și să reducă poluarea aplicând cele mai bune tehnici disponibile (*best available techniques* - BAT), utilizarea eficientă a energiei, prevenirea și gestionarea deșeurilor și măsuri de prevenire a accidentelor și de limitare a consecințelor acestora. Un element esențial aldirectivei este tocmai cerința aplicării „celor mai bune tehnici disponibile" în cadrul tuturor instalațiilor noi, și cel târziu începând cu anul 2007, și în cadrul instalațiilor existente. Astfel, conform art. 1 parag. 5 din Directivă, devine imposibil, pentru statele membre, să

[3]Publicată în JOCE seria L,nr. 309din 27 noiembrie 2001și transpusă în România prin H.G. nr. 440/2010 privind stabilirea unor măsuri pentru limitarea emisiilor în aer ale anumitor poluanți proveniți de la instalațiile mari de ardere, publicată în M.Of. nr. 352 din 27 mai 2010.

[4]Publicată în JOCE seria L,nr. 24din 29 ianuarie 2008și transpusă în România prin O.U.G.nr. 152/2005 privind prevenirea și controlul integrat al poluării, publicată în M.Of. nr. 1078 din 30 noiembrie 2005, aprobată cu modificări și completări prin Legea nr. 84/2006, cu modificările și completările ulterioare.

[5]Este vorba de următoarele activități industriale energia, producția și prelucrarea metalelor, mineralelor, substanțelor chimice, gestionarea deșeurilor dar și alte sectoare, cum ar fi producția de celuloză și de hârtie, abatoarele și creșterea intensivă a păsărilor de curte și a porcilor.

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reglementezecondițiile de autorizare a instalațiilor industriale avute în vedere de actul normativ, pe alte considerente în afară de BAT.

Un alt aspect cheie al Directivei constă în faptul că instalațiile pot funcționa numai dacă dețin o autorizație și trebuie să respecte condițiile prevăzute în aceasta. În acest sens, concluziile adoptate de către Comisie privind BAT servesc drept referință pentru stabilirea cerințelor de autorizare. Valorile-limită de emisie trebuie stabilite la un nivel care să garanteze că emisiile de poluanți nu depășesc nivelurile asociate utilizării BAT. Cu toate acestea, valorile-limită pot depăși aceste niveluri dacă se demonstrează că acest lucru ar conduce la costuri disproporționate în comparativ cu beneficiile pentru mediu.În ceea ce privește aducerea la starea inițială a siturilor, Directiva aduce un alt element de noutate prin reglementarea obligativității întocmirii raportului privind situația de referință care va expune starea solurilor și a apelor subterane, așa cum se prezentau acestea la începutul activității. Mai mult decât atât, se introduce și obligativitatea reexaminării periodice a condițiilor de autorizare. De asemenea, Directiva instituie obligația autorităților competente de a efectua verificări periodice ale instalațiilor, precum și de a oferi din timp publicului posibilitatea de a participa la procesul de autorizare.Potrivit pct. 10 din Preambul, Directiva nu împiedică statele membre să mențină sau să introducă măsuri de protecție mai stricte, cum ar fi cerințe legate de emisiile de gaze cu efect de seră, cu condiția ca aceste măsuri să fie compatibile cu tratatele și să fie notificate Comisiei Europene.

Directiva nu se aplică activității de cercetare și dezvoltare sau testării de noi produse și procese [art. 2 alin. (2)].

3. Reglementarea din dreptul intern aplicabilă activităților industriale

România a transpus în legislația națională Directiva 2010/75/UE, prin Legea nr. 278/2013 privind emisiile industriale[6]. În acord cu obiectivele Directivei, legea interzice expres operarea fără autorizație integrată de mediu/autorizație de mediu a oricărei instalații sau instalații de ardere, instalații de incinerare a deșeurilor sau instalații de coincinerare [art. 4 alin. (1)]. Autorizațiile se emit pentru una sau mai multe instalații sau părți ale instalațiilor exploatate de către același operator pe același amplasament. În situația în care vizează două sau mai multe instalații, autorizațiile prevăd condiții care să asigure că fiecare instalație îndeplinește cerințele prevăzute de lege. În raport de prevederile legale, putem defini autorizația integrată de mediu ca fiind actul administrativ emis de autoritatea competentă pentru protecția mediului, cu informarea prealabilă a Agenției Naționale pentru Protecția Mediului, care acordă dreptul de a exploata în totalitate sau

[6] Publicată în M.Of. nr. 671 din 01 noiembrie 2013.

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în parte o instalație, în anumite condiții, care să garanteze că instalația corespunde prevederilor privind prevenirea și controlul integrat al poluării. Lista activităților care intră sub incidența Directivei 2010/75/UE și pentru funcționarea cărora este necesară obținerea autorizației integrate de mediu este dată în Anexa 1 a Legii nr. 278/2013 privind emisiile industriale.

Specific actualei reglementări este că introduce o serie de prevederi generale aplicabile tuturor activităților ce necesită o autorizație integrată de mediu (AIM), precum și condiții specifice pentru exploatarea anumitor tipuri de instalații, precum: instalații de ardere, instalații de incinerare/coincinerare a deșeurilor, instalații și activități care utilizează solvenți organici etc.).

În ceea ce privește condițiile generale, acestea sunt aplicabile categoriilor de activități prevăzute în Anexa 1, anexă care include activitățile stabilite în Anexa 1 a OUG nr. 152/2005[7], dar cu anumite diferențe constând în aducerea anumitor clarificări sau includerea de activități noi ce necesită autorizație integrată de mediu.În toate cazurile, condițiile de autorizare impuse de autoritatea de mediu competentă cu emiterea autorizației integrate de mediu, pot fi mai stricte decât cele rezultate din utilizarea celor mai bune tehnici disponibile (BAT). Preluând într-o formulare foarte apropiatădefiniția dată de Directivă, legea română definește*cele mai bune tehnici disponibile* ca fiind stadiul de dezvoltare cel mai eficient și avansat înregistrat în dezvoltarea unei activități și a modurilor de exploatare, care demonstrează posibilitatea practică a tehnicilor specifice de a constitui referința pentru stabilirea valorilor-limită de emisie și a altor condiții de autorizare, în scopul prevenirii poluării, iar, în cazul în care nu este posibil, pentru a reduce, emisiile și impactul asupra mediului în ansamblul său [art. 3 lit. j)]. Textul legal explică cele trei elemente componente ale noțiunii astfel:

Prin *tehnici* se înțelege atât tehnologia utilizată, cât și modul în care instalația este proiectată, construită, întreținută, exploatată ori scoasă din funcțiune. De asemenea, noțiunea privește, după caz, și remedierea amplasamentului;

- *Tehnicile disponibile* sunt definite ca fiind „acele tehnici care au]nregistrat un stadiu de dezvoltare ce permite aplicarea lor în sectorul industrial respectiv, în condiții economice și tehnice viabile, luându-se în considerare costurile și beneficiile, indiferent dacă aceste tehnici sunt sau nu realizate ori utilizate la nivel național, cu condiția ca acestea să fie accesibile operatorului în condiții acceptabile”. Aici legiuitorul are în vedere ca operatorii ce funcționează într-un anumitor sector industrial sau agricol să aibă posibilitatea să procure tehnice tehnica respectivă, să o poată utiliza în mod efectiv iar costurile sale, atât de cumpărare, dar și de

[7]O.U.G. nr. 152/2005 privind prevenirea și controlul integrat al poluării a fost abrogată prin Legea nr. 278/2013.

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exploatare sau întreținere, să fie acceptabile raportat la specificul sectorului respectiv de activitate;

- Sintagma *cele mai bune tehnici* vizează „ cele mai eficiente tehnici pentru atingerea în ansamblu a unui nivel ridicat de protecție a mediului în întregul său".

Conform Directivei, cele mai bune tehnici disponibile se vor determina pe calea unui schimb de informații între statele membre, reprezentanții sectoarelor industriale avute în vedere de textul legal, organizațiile neguvernamentale de protecție a mediului și Comisia Europeană, informațiile urmând a fi sintetizate în documente de referință privind cele mai bune tehnici disponibile, numite pe scurt BREF (*best available techniques reference documents*), și în cadrul „concluziilor privind cele mai bune tehnici disponibile", elaborate de către Biroul European privind prevenirea și controlul integrat al poluării (EIPPCB). În acest mod, documentele de referință dobândesc recunoaștere juridică, ceea ce reprezintă un progres față de reglementarea Directivei IPPC, care definea numai cele mai bune tehnici disponibile. Sub acest aspect, legea română definește documentul de referință BAT, introducând în paralel, denumirea BREF, ca fiind un document rezultat în urma schimbului de informații organizat de Comisia Europeană, elaborat pentru anumite activități, care descrie, în special, tehnicile aplicate, nivelurile actuale ale emisiilor și consumului, tehnicile luate în considerare pentru determinarea celor mai bune tehnici disponibile, precum și concluziile BAT[8] și orice tehnici emergente, cu acordarea unei atenții speciale criteriilor prevăzute în Anexa 3 [art. 3 lit. k)]. În esență, un document de referință BAT cuprinde următoarele: date privind starea tehnico-economică a amplasamentelor industriale; un inventar al instalațiilor funcționale în sectorul industrial respectiv la momentul redactării documentului; un inventar al consumurilor și emisiilor adiacente; o prezentare a tehnicilor propuse ca fiind cele mai bune disponibile; preferința exprimată pentru cele determinate ca fiind cele mai bune disponibile și care trebuie să includă: descrierea acestora, informațiile necesare pentru evaluarea aplicabilității lor, nivelurile de emisii asociate acestora (BATAELs)[9], măsurile de supraveghere, nivelurile de consum și, dacă este cazul, măsurile de aducere la starea inițială a amplasamentului precum și o prezentare a tehnicilor emergente[10].

[8]Prin concluzii BAT se înțelege „ un document care conține părți ale unui document de referință BAT, prin care se stabilesc concluziile privind cele mai bune tehnici disponibile, descrierea acestora, informații pentru evaluarea aplicabilității lor, nivelurile de emisie asociate celor mai bune tehnici disponibile, monitorizarea asociată, nivelurile de consum asociate și, după caz, măsurile relevante de remediere a maplasamentului" [art. 3 lit. l)].

[9]Conform legii, nivelurile de emisie asociate celor mai bune tehnici disponibile, denumite BATAELs, reprezintă „nivelurile de emisie obținute în condiții normale de funcționare cu ajutorul uneia dintre cele mai bune tehnici disponibile sau al unei asocieri de astfel de tehnici, astfel cum sunt descrise în concluziile BAT, și exprimate ca o medie pentru o anumită perioadă de timp, în condiții de referință prestabilite" [art. 3 lit. m)].

[10]Prin tehnică emergentă se înțelege „ o tehnică nouă pentru o activitate industrială care, în situația în care s-ar dezvolta la scară comercială, ar putea asigura fie un nivel general mai ridicat de protecție a mediului, fie cel puțin

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În consecință, pentru determinarea celor mai bune tehnici disponibile pe baza cărora se vor elabora cerințele de autorizare, astfel cum au fost impuse de emitenții actelor de reglementare, autoritățile competente trebuie să aibă în vedere concluziile privind cele mai bune tehnici disponibile sau, în lipsa acestora, documentele de referință. Valorile limită de emisie (VLE), definite în art. 3 lit. e) din Legea nr. 278/2013 ca reprezentând „masa, exprimată prin anumiți parametri specifici, concentrația și/sau nivelul unei emisii care nu trebuie depășite în cursul uneia sau mai multor perioade de timp", trebuie să garanteze că emisiile unei instalații industriale sau agricole nu depășesc, în condiții normale de fucnționare, niveluri de emisie asociate celor mai bune tehnici disponibile, astfel cum sunt acestea definite în concluziile BAT. O astfel de obligație nu se aplică dacă nu există concluzii în acest sens iar documentele BREF reprezintă singurele referințe disponibile. Legea prevede și derogări, aplicabile în situații speciale, la solicitarea unui operator[11], atunci când creșterea costurilor determinată de valorile limită de emisie, care nu depășesc acest nivel de emisii, ar putea fi disproporționată în raport cu beneficiile pentru mediu, ținând cont de situarea geografică, condițiile locale de mediu sau caracteristicile tehnice ale instalației supuse acestui regim juridic.În acest caz, operatorul are obligația să efectueze o evaluare tehnico-economică pentru a demonstra că acest cost suplimentar determinat de respectarea valorii limită de emisie, care nu depășește nivelul de emisie asociat celor mai bune tehnici disponibile, ar avea ca efect o creștere a costurilor disproporționată în raport cu beneficiile pentru mediu.

Noua reglementare produce efecte importante și în ceea ce privește conținutul studiului de impact[12], care va trebui să cuprindă, descriereamăsurilor avute în vedere pentru aplicarea celor mai bune tehnici disponibile. Aceasta se referă practic, la descrierea măsurilor avute în vedere atunci când se aplică tehnicile BAT, în completarea descrierii măsurilor de reducere și de compensare din cuprinsul studiului de impact, prin realizarea unei comparații între funcționarea instalațiilor utilizând tehnicile optime prezentate fie în concluziile BAT, sau în cadrul BREF.

Corespunzător cerinței instuite prin art. 20 din Directivă, legea română prevede obligația operatorului de a informa autoritatea competentă pentru protecția mediului responsabilă cu

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același nivel de protecție a mediului și economii de costuri mai mari decât cele asigurate de cele mai bune tehnici disponibile existente" [art. 3 lit. n)].

[11]Prin operator se înțelege „orice persoană fizică sau juridică, care exploatează ori deține controlul total sau parțial asupra instalației ori a instalației de ardere sau a instalației de incinerare a deșeurilor ori a instalației de coincinerare a deșeurilor sau, așa cum este prevăzut în legislația națională, căreia i s-a delegat puterea economică decisivă asupra funcționării tehnice a instalației" [art. 3 lit. o)].

[12]Studiul de impact asupra mediului (SIM), este un instrument procedural de prevenire a poluării mediului, prealabil și indispensabil emiterii autorizațiilor, care s-a generalizat în toate drepturile naționale, după apariția sa în SUA prin *National Environmental Policy Act* (NEPA), în anul 1969. Pe larg, a se vedea, Mircea Duțu, Andrei Duțu, *op.cit.*, pp. 191 – 194.

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emiterea autorizației integrate de mediu, cu privire la orice modificări planificate în ceea ce privește caracteristicile, funcționarea sau extinderea instalației, care pot avea consecințe asupra mediului, precum și în ceea ce privește datele cuprinse în documentația pentru solicitarea autorizației integrate de mediu (art. 20). În astfel de situații, autoritatea competentă pentru protecția mediului va actualiza, după caz, autorizația integrată de mediu sau condițiile prevăzute în aceasta, cu mențiunea că, nici-o modificare substanțială planificată a unei instalații nu se poate realiza fără obținerea prealabilă a actelor de reglementare corespunzătoare etapelor de dezvoltare a unor astfel de modificări. Conform legii, realizarea unor modificări substanțiale în ceea ce privește operarea instalației fără acordul autorității de mediu, se sancționează contravențional.

De asemenea, art. 21 din Directivă prevede cerința conform căreia, condițiile de autorizare a instalațiilor avute în vedere de textul legal, trebuie să fie reexaminate la intervale de timp regulate și, dacă este cazul, se poate solicita reactualizarea lor. Legea nr. 278/2013 conține dispoziții similare în cuprinsul art. 21 conform căruia actualizarea autorizației integrate de mediu și verificarea conformității instalațiilor cu prevederile sale trebuie să se realizeze în termen de 4 ani, începând cu publicarea concluziilor BAT corespunzătoare activității principale a operatorului. Astfel, în procesul de reexaminare a autorizației integrate de mediu se iau în considerare toate concluziile BAT, noi sau actualizate, aplicabile instalației, publicate după data acordării autorizației integrate de mediu sau după data ultimei reexaminări a acesteia [art. 21 alin. (5)]. În cazul în care pentru o instalație nu sunt elaborate concluzii BAT, condițiile de autorizare sunt reexaminate și, în cazul în care este necesar, actualizate, dacă evoluția celor mai bune tehnici disponibile permite o reducere semnificativă a emisiilor. Conform legii, o reexaminare se poate realiza și în alte situații, precum: dacă poluarea produsă de instalație este semnificativă, astfel încât determină modificarea valorilor limită de emisie; dacă siguranța unei instalații determină utilizarea altor tehnici sau respectarea unui standard nou sau revizuit de calitate a mediului. Reexaminarea condițiilor de autorizare are la bază documentația de reexaminare pe care operatorul o pune la dispoziția autorității emitente, și care trebuie realizată într-un termen general de un an începând cu publicarea concluziilor BAT relative la activitatea principală, în termen de 24 de luni, pentru activitățile de creștere a animalelor sau, în alte situații, în termenul stabilit de autoritatea competentă. Conform art. 21 alin. (8) din Legea nr. 278/2013, autoritatea emitentă reexaminează și, dacă este cazul, actualizează condițiile de autorizare în oricare alte situații considerate, în mod obiectiv și justificat, necesare, în acord însă cu prevederile legale în vigoare.

Atât Directiva cât și legea românească cuprind reglementări privind închiderea amplasamentului, instituind obligativitatea efectuării de către operator a unui „raport privind situația de

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referință"care, conform definiției legale, constă în informații privind starea de contaminare a solului și a apelor subterane cu substanțe periculoase relevante, astfel încât să se poată face o comparație cuantificată cu starea acestora, la data încetării definitive a activității. Sediul materiei îl reprezintă art. 22 din Legea nr. 278/2013 (art. 22 din Directivă), actul normativ stabilind și un conținut minimal al raportului privind situația de referință care, în concret, descrie starea solului și a apelor subterane, evaluată înainte de punerea în funcțiune a instalației sau înainte de prima actualizare a autorizației realizate după intrarea în vigoare a legii.Raportul privind situația de referință trebuie elaborat pentru situațiile în care activitatea industrială autorizată implică utilizarea, producția sau emisia de substanțe sau amestecuri ce fac obiectul art. 3 al Regulamentului (CE) nr. 1272/2008 din 16 decembrie 2008[13] privind etichetarea și ambalarea susbtanțelor sau amestecurilor (CLP), existând astfel un risc de contaminare a apelor subterane și a solurilor. Conform art. 22 alin. (6) din lege [art. 22 alin. (3) din Directivă], odată cu încetarea activității, operatorul trebuie să asigure o evaluare a stării poluării solului și apelor subterane, raportată la starea expusă în raportul privind situația de referință iar în cazul unei poluări semnificative pentru sănătatea umană sau pentru mediu, prin substanțele deja înscrise în raportul inițial, operatorul este obligat să aducă amplasamentul într-o stare cel puțin similară celei descrise în raportul de bază. Dacă la momentul autorizării, operatorul nu avea obligația să întocmească raportul privind situația de referință, la data încetării definitive a activității, el are obligația de a lua toate măsurile necesare în vederea îndepărtării, controlului, limitării sau reducerii substanțelor periculoase relevante, astfel încât amplasamentul, ținând seama de utilizările sale actuale sau de cele viitoare aprobate, să nu prezinte nici-un risc semnificativ pentru sănătatea omului sau pentru mediu.

Cerințele de monitorizare ce vor fi prezentate în autorizația integrată de mediu vor avea la bază concluziile privind monitorizarea descrise de BAT. Un element de noutate îl reprezintă instituirea obligației de a monitoriza, cel puțin o dată la 5 ani, calitatea apelor subterane și cel puțin o dată la 10 ani calitatea solului.

Conform legii, Garda Națională de Mediu, împreună cu specialiști din domeniul sănătății, va elabora un sistem de inspecții de mediu, cu scopul de a evalua efectele produse de funcționarea instalațiilor prevăzute în Anexa 1, asupra mediului și sănătății umane. Intervalul de timp dintre două vizite succesive va fi determinat pe baza unei evaluări sistematice a riscurilor pentru mediu asociate instalațiilor respective și nu va fi mai mare de 1 an pentru instalațiile care prezintă riscuri majore și de 3 ani pentru instalațiile care prezintă riscuri minore. Această evaluare sistematică

[13]Publicat în JOCE, seria L,nr. 353din 16 decembrie 2008.

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presupune considerarea aspectelor legate de nivelul și tipul emisiilor, sensibilitatea mediului la nivel local, riscul de accidente, istoricul conformării cu cerințele din autorizația integrată de mediu și înregistrarea operatorului instalației la sistemul Uniunii Europene de management de mediu și audit (EMAS). Rapoartele de inspecție realizate de Garda Națională de Mediu vor fi comunicate operatorilor instalațiilor în termen de 2 luni de la data vizitei pe amplasament, și vor fi accesibile publicului în termen de 4 luni de la efectuarea acestor vizite.

În considerarea principiului accesului la informație și participării publicului la luarea deciziilor de mediu, legea conține prevederi ce instituie în sarcina autorităților emitente obligativitatea de a asigura cadrul necesar pentru participarea din timp și în mod efectiv a publicului interesat la următoarele proceduri: emiterea autorizațiilor integrate de mediu pentru instalații noi; emiterea unei autorizații integrate de mediu pentru orice modificare substanțială; emiterea sau actualizarea unei autorizații integrate de mediu pentru o instalație în cazul căreia s-au propus valori-limită de emisie mai puțin stricte; actualizarea unei autorizații integrate de mediu sau a condițiilor de autorizare pentru o instalație ce generează o poluare semnificativă.

Nerespectarea prevederilor Legii nr. 278/2013 atrage răspunderea contravențională, legea prevăzând în art. 73 alin. (1) o serie de contravenții sancționate cu amendă. Totodată, legea prevede și sancțiunea complemetară a suspendării activității operatorului economic în cazul în care acesta își desfășoară activitatea în lipsa autorizației integrate de mediu [art. 73 alin. (2)].

4. Concluzii

În conformitate cu principiul „poluatorul plătește” și cu principiul prevenirii poluării Directiva 2010/75/UE stabilește un cadru general pentru controlul principalelor activități industriale,având ca scop îmbunătățirea sănătății și a protecției mediului. Pentru aceasta, legiuitorul european se pronunță pentru o abordare integrată de prevenire și control al emisiilor în aer, apă și sol, asigurându-se că reducerea emisiilor într-un anumit mediu (ex. aerul sau apa) nu se transformă într-o poluare pentru alt mediu. În același timp, unificarea reglementărilor aplicabile în această materie la nivelul Uniunii Europenereprezintă un avantaj pentru operatorii economici, fără a pierde din vedere și fenomenul simplificării procedurilor administrative. În acord cu aceste exigențe, Legea nr. 278/2013 privind emisiile industriale consacră concepte cheie ale abordării integrate a protecției mediului, precum „cele mai bune tehnici disponibile”, explicând totodată rolul documentațiilor de referință în vederea stabilirii condițiilor de autorizare. Prin dispozițiile actualei reglementări este stimulată participarea celor interesați, cu precădere operatorii economici, la schimbul de informații coordonate de Biroul European IPPC, pentru îmbunătățirea

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proceselor de redactare a documentelor și concluziilor de referință, în vederea îndeplinirii cerințelor legate de performanțele de mediu ale instalațiilor industriale.

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EFFECTS OF ECONOMIC GLOBALIZATION ON THE ENVIRONMEMT

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Abstract: The paper aims to present the main stages for identifying and defining sources and targets financial flows needed for mitigation and if possible complete elimination of pollution generated by economic activities.

Also in the article are studied ways reconstruction mechanisms and financial instruments of environmental protection and achieve integrated financial architecture oriented institutionalization, with the participation of responsible actors in globalized economic space, to control, mitigate and eliminate the risks of pollution.

Transnational corporations, national companies operating in industry and agriculture, national authorities responsible for environmental protection can influence through their activities state environmental quality, degradation effects thereof on the evolution of ecosystems and the health of the population, the costs of externalities etc.

Keywords: globalization, pollution, environmental protection, environmental risks, sources and financial flows

Introduction

Economic activity is a distinct category of human activities through which man approaching natural resources offered by the environment in order to meet its needs. This appropriation has evolved in form and content to simply collect resources when resources needs substantially corresponded to the complicated transformation of resources, streamlined and instrumented transformation in this case substantially different needs, often total resources. In this evolution proceeds, produced by man needs, is natural resources extracted from the environment, the natural ecosystem and ecosystem transferred to human being for human consumption, regardless of its nature.

Generative economic activities and decisions is a dialogue between man and nature, constituting praxis, with the following meanings relational man and nature: depletion of natural resources,

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environmental damage, human artifacts expansion (artificial environment) and distortion existential substance property.

The negative effects of globalization on total pollution found in Earth. Of course, globalization has positive effects, such as transfer of information and the latest technology that contributes to a better understanding of the processes and mechanisms pollution.

Research activity is strong globally and is directed toward clean technologies, alternatives to finite natural resources, environmental remediation technologies affected by industrial and agricultural activities.

Also, the research - development is very intense level of transnational corporations, who obtain advantages in terms of efficiency, effectiveness, competitiveness and competition.

Man lives permanently in an environment that is exposed to a wide variety of situations more or less dangerous, generated by various factors. Extreme manifestations of natural phenomena such as storms, floods, droughts, landslides, earthquakes and more powerful, plus technological accidents and the conflicts can have direct influence on the lives of every person and of society as a whole.

Only precise knowledge of these phenomena, called disasters and / or disasters (called hazards), allows to take the most appropriate measures for both mitigation and reconstruction of the affected regions. Reducing these disasters involves studying environmental risks.

Environmental risks

Environmental risks are cumulative negative effects of globalization which are included in the overall pollution of the Earth. Of course, globalization has positive effects, such as transfer of information and the latest technology that contributes to a better understanding of the processes and mechanisms of pollution, resulting in less impact on the environment.

Risk is defined as the probability of human exposure and property created by the action of a particular hazard of a certain size risk is the likely casualties, the number of casualties, damage property and economic activities of some natural phenomenon or group of phenomena in a certain place and a certain time. Values at risk are the population, properties, roads, economic activities etc., at risk in a particular area.

It is said that an action is risky if there are a number of possible outcomes that can be derived therefrom, and if these results may be attached objectively known probabilities. The probability characterize the degree of possibility of the generation, by a certain human action, a result in conditions. The risk is therefore distinct from the uncertainty in the case that there are a plurality

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of results which can't be determined probability objective. The decision and action that supports human loss are at risk because there is more than one possible outcome and the odds can be calculated. In the event that the likelihood objective of obtaining a result can't be determined (not known), the decision shall be adopted in limbo, rather than a risk, even if the "form" possible outcome is known.

Environmental pollution embodied in effects and risks polluting affects natural ecosystems, destroying the natural support, human biological ecosystems.

In the process of environmental or ecological risk protection, can delineate five defining components: polluters, pollutants, decision makers, environmental policy and environmental funding.

Funding sources of insurance covers the financial resources to support environmental protection policies against risks.

Environmental hazards and their effects on the environment generates environmental costs; costs on different terms: very long, long, medium, short. Costs may be operating costs and capital costs, costs of prevention, recovery, consolidation, direct costs and indirect costs or costs associated autonomous, internal costs and external costs etc.

Achieving these costs presupposes the existence of financial resources to ensure the financing of environmental policies imposed by these costs.

In this sense can be defined five sources of financing: environmental funds that should be considered independently and be associated makers specializing in environmental issues (environmental organizations); state budget, local budget; voluntary contributions of the association at the various informal communities; financial contribution from polluting firms and polluted, for example contribution to technological conversion; philanthropic participation (sponsorship, donations etc.), private bank loans, European Funds, repayable funds.

Delimitation of funding sources is a crucial problem of funding policy, funding the construction of a matrix taking into consideration all the taxonomic can help clarify many mysteries of stray funds.

The whole strategy of environmental protection by reducing the risk materializes short term effects, distinguished by their reduction. If we consider that the total risk (Rt) is highlighted information to the decision makers in a total information volume (It), it can be assumed boundary:

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Rt=It

It is, however, at decision makers, only some of the possible information about the extent of environmental risk, being the risk that part called perceived risk

It can be estimated monetary value of all financial sources used, which means state budget, local budgets, private funds and bank loans, reimbursable funds), other foreign donor-repayable funds, foreign loans – refundable funds and other sources (contributions, participation). Whether this indicator FRt total funding so:

FRt = Σ SF = ΣFRtl + ΣFRts = ΣFRe where:

FRT = total financing indicator

SF = sources of funding

FRts = short-term funding risks

FRtl = short-term funding risks

FRe = financing risk effects

This indicator measures the level of awareness of decision makers, scale environmental risks in risk factors or sources of risk in the human ecosystem.

Financial coverage coefficient of environmental risks

Using matrix calculus will determine the coefficient of financial coverage of environmental risks detailed in risk factors and sources of funding.

The system of equations can be written in the form of restricted follows: ΣAij * Yj = ΣXi.

Where aij = coefficient source of funding and the hierarchical level j.

Xi = total financing sources at j

aij = xij / Yj where that xij = · Xi Aij

Writing matrix above relationship is obtained:

$$\begin{pmatrix} x_{11} & x_{12} & x_{13} & x_{14} \\ x_{21} & x_{22} & x_{23} & x_{24} \\ x_{31} & x_{32} & x_{33} & x_{34} \\ x_{41} & x_{42} & x_{43} & x_{44} \end{pmatrix} = \begin{pmatrix} a_{11} & a_{12} & a_{13} & a_{14} \\ a_{21} & a_{22} & a_{23} & a_{24} \\ a_{31} & a_{32} & a_{33} & a_{34} \\ a_{41} & a_{42} & a_{43} & a_{44} \end{pmatrix} \bullet \begin{pmatrix} Y_1 \\ Y_2 \\ Y_3 \\ Y_4 \end{pmatrix}$$

Xi = sources of risk; i = 1,2,3,4, 5.

For i = 1 - risk source is industry;

i = 2 - risk source is agriculture;

i = 3 - source of risk as transport;

i = 4 - source of risk are utilities;

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i = 5 - source of risk are households.

Y = needs financing sources; j = 1,2,3,4, 5.

j = 1 - source of funding is the state budget;

j = 2 - are the source of funding local budgets;

j = 3 - source of funding are private funds and bank loans;

j = 4 - the source of funding are European funds;

j = 5 - source of funding are funds and external borrowings.

Dynamic matrix may allow highlighting the evolving relationships, while providing the possibility of treating econometric correlations and interdependencies between factors, sources of risk and funding sources of these risks.

Conclusions

The poor state of the environment can't be separated from economic activity of transnational corporation's globalized economy. Global economic behavior of these entities can be shaped and influenced by the following factors: environmental regulations, awareness of environmental issues, increased environmental risks from industrial activity environmental NGOs.

Located in the EU pollution control carbon dioxide market was created Emissions and future aims to integrate its financial markets by replacing spot transactions of forward transactions that take place on a regulated market.

However, environmental policy's rate can have negative effects. By ratifying the new commitment from Paris the 195 participating countries have imposed limit global average temperature increase to less than 2 degrees Celsius; a fund of 100 billion dollars to fund developing states in 2020.

Also committed to reduce by 80% the emissions of carbon dioxide by 2050 could lead to increased production costs and competitive prices for some producers in the industrial. It can thus happen to occur so-called carbon leakage process that will lead to the loss of industrial producers in Europe by moving their business elsewhere, and which may have significant social effects.

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ECONOMIC CONCEPTUALIZATION OF ECOLOGICAL RISKS

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Abstract: The present paper conceptualized from an economic perspective the ecological risk, the definition of their scope, and the foregrounding of the ecological risk in a threefold: activities – risks – effects.

From this perspective the paper intertwines the theories and experiences in the field, and economic analisis, stresssing, for obvious resons, the way in wich the evolutions and intrepretations of the general phenomena have been reflected by the strategies implemented so far in Romania.

Keywords: globalization, environmental risks, pollution, environment

Introduction

Information about the current state of the environment no longer meet the requirements of complete and accurate knowledge of all the requirements and environmental effects of an event.

As a direct consequence of this, in a decision no longer operate with absolute certainty, with precise estimates of the evolution of a particular item or phenomenon environmentally makers resorting increasingly to estimate probable, uncertain notions as risk and uncertainty.

Most decisions are taken under risk and / or uncertainty, incomplete knowledge of one or more "variable" is a constant economic environment and a cause that explains to some extent the differences between the various environmental projects profitability.

Environmental risk is viewed as a phenomenon that arises from circumstances for which the decision-maker is unable to identify developments / events possible environmental and even probability (materialize) them, without being able to specify exactly which of these events will occur effective. It can be said that the environmental risk comes from the inability to accurately assess a particular event that is environmentally friendly way, identified as such by the decision-maker who will actually materialize and cause a certain level of risk.

Even if the estimated probability for effective materialization of a particular driver of ecological risk is high, the decision maker can't be sure if the event will occur is uncertain and not another;

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it is even possible to produce a phenomenon whose probability be assessed at a low level or even an unforeseen event.

Scoping factorial ERA

Environmental risk can be regarded in terms of ecological danger of an accident it creates a wrong decision in opposition to another decision that would have been better.

The social implications of environmental risks are taken into account in risk management, which, together with the environmental risk assessment, risk analysis forms. For example, relatively safe use of products in different ways and contexts unsafe own use logic of industrial development, generate and produce major risk. It is the extreme case of nuclear energy.

Interdependence between structures diverging perception of environmental risk is vital to the evolution of society, in which innovators play a fundamental role in opening up significant alternatives for development, but causes a "loss" of resources, given for a process societal, cognitive and pragmatic, deleted probably over 95% of innovative ideas, users innovations, be they investors and manufacturers, whose very purpose of disseminating, to choose innovations relevant to development and to give them meaningful social, narrowing but often dangerous scope of knowledge in for the promotion of profitability and efficiency.

Risks related to use products sometimes causes the elimination of these products by manufacturers, while risks of pollution so-called goods "free" as air and water have become grounds for criminal responsibility. As economic theory is about to abandon the concept of goods "free" accepting the introduction of the concept of inferred values to be accounted for, risk free should be accepted as risks caused by humans, which must respond generator thereof, in particular, the producer dangerous goods.

If in the event of natural hazards generated by metabolism of nature such as a flood or earthquake, there is often a mental preparation and acceptance of possible disaster and its consequences for the risks from praxis economic inadequacy of human acceptance may be entails risks, mental preparation entities must directly accountable entities that generated risk.

Avoidance of environmental risk by giving up certain activities generating risk appears to be an option wise trader, but it comes often at odds both with the ground maximize profits, gain and with the excitement that the economic entity, the managers, the politicians' live "thanks to economic success.

Risk diversification

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Risk diversification is one way to reduce the impact of uncertainty, hazard, such as for example the use of complementary alternatives for the production of agricultural goods. But maximizing economies of scale inherent in technological progress induced by industrialization, it is often incompatible with risk diversification.

Cultural context plays a crucial role in environmental risk perception. For example, the consequences of earthly disasters, earthquakes that can kill thousands of people annually, are more strongly felt than hundreds of thousands, millions of people die annually due to poverty or pollution. Obviously deaths due to poverty or pollution are not perceived so acutely that deaths caused by an earthquake.

Another dimension of environmental risk can be given considering that the basis of a decision, especially in matters relating to the cost and financing of the investment to diminish or eliminate environmental risks, own resources from future profits of particular importance both in terms their use and sizing the need for funding from other sources.

Realization of future profits lower than the average, considered as the reference level may lead to the emergence of crisis and adversely affect the activity of the economic subject.

In the sense that the environmental risk is only in terms of loss of balance environment, it needs to be addressed in opposition to the possibility of a win for the environment. Financial result following a decision may result in a gain or a loss. In the first case it is the "chance" while in the second case it is the "risk".

Following a decision will set goals to be considered. After knowing these objectives are to characterize the extent (boundaries) them.

If the first stage decision by choosing a wrong objective environmental risk can occur. In the case of the second stage by choosing an erroneous limits may also manifest environmental risk. On the third step, even if correct decisions, manifest circumstantial factors can cause loss of balance environmental and ecological risk manifestation conclusion.

In these circumstances, area of ecological risk is relatively extended to the opportunity, in other words to "safety".

To reduce this ecological risk area special attention should be paid to the hierarchy of objectives. One can observe an oscillation between two objectives: the income and safety legislation.

The choice between the two objectives differ according to each economic subject. Thus the objective of promoting economic gain some subjects (maximum) while others adopt a cautious attitude that promotes safety objective (maximum).

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Safety is usually associated with certainty, and forecast worsening of a given situation, risk or uncertainty of a change.

The relationship between risk and uncertainty farming is a complex relationship. Unlike risk, uncertainty is described as a situation of possible environmental events to occur and the less you can predict the likelihood of their occurrence, with significance defined incomplete mathematical variable.

Uncertainty requires very vague anticipation of some items so you can't make any prediction about what will happen. Arguably the defining uncertainty one thing is certain: "nothing is certain or predictable".

The situation is uncertain where the decision should be but do not know enough or any subsequent developments related ecological and probabilities.

Regarding the concept of ecological risk, they can make certain anticipations of events that may occur and the associated probability of their occurrence. Potential profit to be pursued following a challenge made by the economic agent must be proportionate to the environmental risk assumed.

Organic uncertainty has two components: one objective - an objective ecological uncertainty (often identified with the concept of ecological risk), and a subjective component - ecological uncertainty subjective.

The subjective character of uncertainty in that estimate must be assessed on a certain occasion generating risk assessments and perceptions are based on our own decision based on the information available at the time and the experience it has in that area.

Uncertainty objective may be equated to the situation in which all possible outcomes are known and the majority of those involved in the decision making process are unanimous in predicting the same probability of occurrence of each of the identified environmental effects based on data from previous developments.

With certainty economic issue is not subject to any environmental risk, the known effects of an event environment and their impact on future business results. Environmental uncertainty and risk, once introduced into the equation decision affects the quality and accuracy of estimates on future developments of the subject of economic activity.

Conclusions

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The vulnerability can be modeled mathematically future profits under uncertainty ecological objective as a function of the particular nature of the event itself, and subjective conditions of uncertainty is a function of ecological two variables listed.

However, managers' assessments of the conditions of conducting future actions are mainly subjective. For a better justification of the decision and reduce the number of unknowns must be operated with an improvement in the quantity and quality of information, to achieve a "conversion" of uncertainty in environmental risk.

The essence of environmental risk decision-maker is given the inability to accurately predict future results to be obtained as a result of action taken. In other words, the environmental risk factor is that probability may be associated with a possible result when the decision maker knows all the possible future effects of the decision.

Organic uncertainty arises when the decision maker knows all the possible future effects but they may be associated, for various reasons, no possible outcome probability factor. The uncertainty comes in most cases the absence of information from its poor quality or because of certain failures decision maker's information system.

One thing is certain: regardless of the method used, the environmental risk can't be eliminated entirely, remaining always a degree of irreducible uncertainty.

Uncertainty of an action is given to those environmental risks which can't be identified at a time, while the degree of environmental risk is identified given the environmental risks.

In an economic environment, as the share of varying environmental risk is higher, the purpose of the actions undertaken is uncertain. Even if the decision maker can know most of the environmental risks posed by his actions, uncertainty may not disappear entirely.

Environmental risk is a multidimensional concept whose level can't be reduced to one item at a figure. It is important to determine an acceptable level of environmental risk that the decision maker is willing to and take.

The acceptable level of environmental risk refers to the risk "high" that the decision maker is willing to and take. There is no single acceptable level, but this is different depending on the concrete conditions of each economic activity or decision maker's attitude towards environmental risk.

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THE LIMITS OF ACCEPTABLE CRITICISM OF JUDGES AND PROSECUTORS ACCORDING TO ART. 10 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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Abstract: This paper aims to describe the guidelines in respect of establishing the limits of acceptable criticism of judges and prosecutors, with a view to freedom of expression and the right to reputation, as enshrined in Art. 10 and Art. 8 of the European Convention on Human Rights. The introductive part focuses on defining the terms of <freedom of expression> and <right to reputation>, according to the Romanian Constitution and the European Convention on Human Rights. The second part of the paper sets, with the help of jurisprudential examples, the Conventional standard in respect of legitimate criticism of magistrates. To this aim, the study focuses on the perspective of lawyers and journalists, as authors of the alleged defamatory comments.

KEYWORDS: freedom of expression, right to reputation, magistrates, value judgements, facts

1. INTRODUCERE

Cu titlu preliminar, trebuie amintit că **libertatea de exprimare** îşi găseşte reglementarea expresă la nivel constituţional, aceasta înscriindu-se în categoria drepturilor şi libertăţilor fundamentale – art. 30, Titlul II, Capitolul II din Constituţie. Tradiţia acestui text şi importanţa pe care i-a acordat-o legiuitorul constituant sunt lesne de înţeles, din perspectivă istorică post-decembristă : mai mult decat o libertate fundamentală, pentru poporul roman ea a reprezentat declararea unui principiu, o condiţie *sine qua non* a democraţiei şi a statului de drept, o garanţie formală că perioada istorică traversată nu s-ar putea reinstala decat prin modificarea Constituţiei.

Terminologia utilizată – „libertate de exprimare", iar nu „dreptul la liberă exprimare", nu poate duce nicidecum la concluzia conform căreia cele două concepte nu ar fi similare. Astfel cum s-a arătat în literatura de specialitate[1], **orice libertate reprezintă un veritabil drept**. Pe de altă parte, Curtea Constituţională a definit libertatea de exprimare, în Decizia nr. 756 din 1 iunie 2010 ca fiind „*posibilitatea omului de a-şi manifesta prin viu grai, prin scris, prin imagini, prin sunete*

[1] I. Muraru, E.S. Tănăsescu: *Drept constituţional şi instituţii politice*, vol. I, ed. a XI-a, Ed. All Beck, Bucureşti, 2003, p. 14;

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sau prin alte mijloace de comunicare în public, gândurile, opiniile, credinţele religioase şi creaţiile de orice fel", statuând că „*libertatea de exprimare are un conţinut complex, cuprinzând libertatea cuvântului sau libertatea presei*".

Trebuie remarcat, însă, că inclusiv în acea perioadă de tranzit, încărcată de incertitudine, legiuitorul constituant a manifestat preocuparea de a trasa limitele libertăţii de exprimare, conştient fiind că lipsa limitelor pentru exerciţiul unui drept conduce la o veritabilă anihilare a acestuia. Astfel cum afirma filosoful Robespierre, *„Legea tuturor e libertatea, care se sfârşeşte acolo unde începe libertatea altuia"*. Cu alte cuvinte, statul de drept nu poate tolera o libertate de exprimare absolută, fără restricţii; exercitarea unui drept trebuie să fie făcută cu responsabilitate, pentru a asigura respectarea altor drepturi aflate în strânsă legătură cu cel dintâi, fapt statuat expres de Curtea Constituţională în Decizia nr. 139 din 10 martie 2005. Astfel cum s-a arătat[2], în acest sens, Art. 10 din Convenţia Europeană a Drepturilor Omului (în continuare, CoEDO) apără dreptul de a primi informaţii de orice natură, precum şi de a exprima orice ideee, fără ca aceasta să capete o anumită stare de convingere, chiar şi pe cele care şochează, cu excepţia acelora care nu sun compatibile cu vaorile unei societăţi democratice.

Din acest punct de vedere, se impune precizarea că, cel mai adesea, libertatea de exprimare intră în conflict cu un alt drept fundamental, **dreptul la reputaţie**, care nu are o reglementare constituţională expresă. Totusi, consacrarea sa implicită rezultă din art. 30 alin. 6 din legea fundamentală, căci onoarea şi dreptul la imagine al persoanei sunt limite ale libertăţii de exprimare. Totodată, jurisprudenţa Curţii Constituţionale[3] subliniază în mod constant faptul că demnitatea umană reprezintă o valoare supremă, protejată de statul roman, consacrată de art. 1 pct. 3 din Constituţie, Titlul I – "Principii generale". De asemenea, în jurisprudenţa sa, Curtea Europeană a Drepturilor Omului (în continuare, CEDO sau Curtea) a stabilit că **dreptul la reputaţie este o componentă a „identităţii personale şi a integrităţii psihologice** şi **face, deci, parte din viaţa privată[4],** benefiicind de protecţie pe terenul Art. 8 CoEDO.

În acest sens, onoarea este o noţiune meta-juridică, cu o accepţiune variabilă în funcţie de timp, spaţiu, context social şi cultural. Există o concepţie obiectivă asupra onoarei, potrivit căreia aceasta se identifică cu o bună reputaţie, şi o concepţie subiectivă, conform căreia reprezintă o

[2] Corneliu Bîrsan : *Convenţia europeană a drepturilor omului. Comentariu pe articole,* Ediţia 2, Ed. C.H. Beck, Bucureşti, 2010, p.768;
[3] Decizia Curții Constituționale nr. 62 din 18 ianuarie 2007, disponibilă pe site-ul www.ccr.ro (consultat la 20.06.15);
[4] A se vedea, sub acest aspect, cauzele Petrina c. României, nr. 78060/01, 14 octombrie 2008, şi Karako c. Ungariei, nr. 39311/05, 28 aprilie 2009;

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aspiraţie individuală la stimă de sine.[5] De aceea, după cum s-a statuat în literatura de specialitate, **graniţa dintre onoare şi reputaţie este destul de greu de stabilit,** ele putând fi considerate două faţete ale dreptului la demnitate, decât două elemente distincte care compun acest drept. Potrivit unor opinii, onoarea este un sentiment complex, determinat de percepţia pe care fiecare persoană o are despre demnitatea sa, în timp ce reputaţia înseamnă felul în care o persoană este considerată în societate. De asemenea, reputaţia poate să varieze de la o persoană la alta. Reputaţia nu este înnăscută, ci este, de cele mai multe ori, dobândită, prin modul exemplar în care persoana se comportă în viaţa privată sau în cea socială.

2. STANDARD CONVENŢIONAL

Ca regulă generală, dintre toate autorităţile statului, **judecătorii si procurorii se bucură de cea mai mare protecţie a autorităţii lor**[6]**,** având în vedere necesitatea de a mentine încrederea publică în poziţia şi rolul acestora în societate. Protecţia care se acordă acestora este mai mare decât cea acordată politicienilor sau altor funcţionari ai statului, mai ales datorită obligaţiei de rezervă pe care o au şi care, după cum s-a apreciat, îi poate supune unei tăceri veşnice şi, ca atare, imposibilităţii de a se apăra în faţa unui atac la reputaţia acestora[7]. Totuşi, Curtea are în vedere, ca regulă generală, faptul că **limitele criticii adresate judecătorilor şi procurorilor sunt mai largi decât limitele criticii adresate cetăţenilor de rând,** prin raportare la calitatea acestora de reprezentanţi ai unor instituţii jundamentale ale statului de drept[8]**, strict în ceea ce priveşte criticile ce le revin în această calitate.**

De asemenea, dacă se invocă chestiuni de interes public şi de o anume gravitate, Curtea va avea în vedere miza dezbaterii pentru societate. Ceea ce rămâne esenţial este, însă, ca dezbaterea să vizeze un **interes public**. Totodată, dacă un judecător lansează el însuşi afirmaţii provocatoare, atunci trebuie să suporte şi o doză mai mare de critică.[9]

Trebuie spus, într-o notă de amuzament, ca nici judecătorii instanţei de la Strasbourg nu au fost „iertaţi" de critici – *„The vitriolic – and I am afraid to say - xenophobic – fury directed against the judges of my Court is unprecedented in my experience, as someone who*

[5] Alexandre H. Català I. Bas: *Libertad de expression e información. La jurisprudencia del TEDH y su recepción por el Tribunal Constitucional. Hacia un derecho europeo de los derechos humanos,* Guada Impresores S.L., Valencia, 2001, p. 378;
[6] Arai Yutaka în D.J.Harris, M.O.'Boyle, E.P. Bates, C.M. Buckley & C. Warbrick : *Law of the European Convention on Human Rights*, ediţia 2, Oxford University Press, New York, 2009, p.488 ;
[7] R. Ergec : *La liberté d'expression et l'autorité et l'impartialité du pouvoir judiciaire,* Revue Trimestrielle des Droits de l'Homme , 1993, p. 177;
[8]Morice c. Franţei [GC], nr. 29369/10, § 168, 23 aprilie 2015;
[9]Arbeiter c. Austriei, nr. 3138/04, § 25, nepublicată;

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has been involved with the Convention system for over 40 years".[10] De asemenea, Curtea a fost numită „*Europe's court jester*" într-un articol publicat de prestigioasa revistă The Times, datorită întârzierii sale în soluţionarea cauzei Othman Abu Qatada c. UK[11], care a condus la scăderea credibilităţii Curţii în Marea Britanie[12].

Din punct de vedere al standardului convenţional, după cum s-a afirmat[13],Curtea acordă protecţie criticilor la adresa judecătorilor atunci când autorii afimaţiilor pot identifica o bază factuală pentru afirmaţiile lor. **Cu cât e mai virulentă critica, cu atât este mai mare nevoia de a identifica o baza factuală,** pentru a nu se expune sistemul judiciar în sine riscului decredibilizării. Criticile generale la adresa sistemului de justiţie, a unor hotărâri judecătoreşti, iar nu împotriva unor judecători în concret, sunt mai uşor de justificat în faţa Curţii, având în vedere interesul public pronunţat al discursului. De asemenea, întocmai ca în cazul funcţionarilor publici, Curtea face o **distincţie importantă între critică şi insultă : dacă scopul unic este de a insulta magistraţii, atunci sancţiunea aplicată devine compatibilă cu Art. 10CoEDO[14].**

Totuşi, **dacă un judecător este şi un om politic, limitele criticii la adresa sa sunt mai mari** : de pildă, în cauza Hrico c. Slovaciei[15], Curtea a reţinut că afirmaţia conform căreia <*legăturile politice ale judecătorului i-au influenţat decizia*> nu poate fi sancţionată prin daune morale. De asemenea, dacă un judecător este activ militant politic, acesta se expune în mod voluntar unei critici mai pronunţate, pe care trebuie să şi-o asume – a sancţiona presa în acest caz ar scădea încrederea cetăţenilor în judecători, nu ar creşte-o. În acest sens, se are în vedere că însăşi activismul judecătorului a scăzut încrederea şi reprezintă o preocupare generală de interes major[16]. Totodată, în cazul unui judecător care a susţinut încălcarea Art. 10 de către o publicaţie care dezvăluia apartenenţa sa la francmasonerie, Curtea a reţinut că nu s-a dovedit niciun minim

[10] Sir Nicholas Bratza : *The relationship between the UK Courts and Strasbourg*, [2001] E.H.R.L.R., p. 505-506; (engl, trad: "Furia vitrolică – şi, îndrăznesc să afirm – xenofobă la adresa judecătorilor Curţii "mele" este fără precedent în toată experienţa mea, ca persoană care a fost implicată în acest sistem convenţional de mai mult de 40 de ani").
[11] Othman (Abu Qatada) c. UK, nr. 8139/09, 17 ianuarie 2012;
[12] După publicarea articolului cu pricina, trei judecători de la CJUE au reacţionat prompt şi au transmis o scrisoare către CEDO, în care îşi exprimau îngijorarea faţă de modul de formulare al articolului şi trivialitatea sa; au realizat împreună cu judecătorii instanţei de la Strasbourg un drept la replică, iar acesta a fost apoi publicat trunchiat în The Times, revista eliminând partea ce viza acuzaţiile de trivialitate la adresa ziarului. Judecătorul CEDO Egbert Myjer, autor al articolului „*About court jesters: Freedom of expression and duties and responsibilities of* journalists" (in *Essays in honour of Nicholas Bratza*, Wolf Legal Publishers, Oisterwijk, 2012) - se întreabă retoric, în articolul cu pricina, ce s-ar fi întâmplat dacă CEDO acţiona The Times în faţa instanţelor din U.K., dacă instanţele ar fi admis cererea, iar ulterior The Times introducea acţiune pe rolul Curţii, invocând violarea Art. 10. Apreciază că problema ar fi una majoră, sugerându-se că soluţia abţinerii în bloc ar fi necesară, pentru a se asigura imparţialitatea, potrivit jurisprudentei Curţii.
[13]Alastair Mowbray : *Cases and materials on the ECHR*, Oxford University Press, 2007, New York, p. 715;
[14]Skalka c. Poloniei, nr. 43425/98, § 34, nepublicată;
[15]Hrico c. Slovaciei, nr. 49418/99, §§ 41-50, nepublicată;
[16]Perna c. Italiei, nr. 48898/99, § 41, Reports of Judgments and Decisions 2003-V;

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prejudiciu prin divulgarea informaţiei presei, cu atât mai mult cu cât baza de date cu membri ai organizaţiei putea fi consultată online anterior acelei publicaţii[17].

Cât priveşte **afirmaţiile defăimătoare la adresa unui magistrat adresate într-un mediu privat**, se are în vedere, ca regulă, faptul că **încrederea publică nu este afectată în asemenea cazuri.** Totuşi, într-o cauză controversată[18], Curtea a reţinut că, deşi s-au adus acuzaţii unui procuror doar în corespondenţa privată desfăşurată între părţi, solutia de condamnare a persoanei nu a fost disproporţionată. Într-o opinie dizidentă, judecătorii Bratza şi Maruste au subliniat, însă, că s-a neglijat contextul privat în care au fost făcute acuzaţiile, precum si faptul că societatea democratica presupune ca principiu fundamental participarea activă a cetăţenilor prin exprimarea plângerilor la adresa instituţiilor statului. De asemenea, opinia dizidentă a reiterat faptul că se ridica o problemă de incredere publica si credibilitate a corpului magistraţilor, de vreme ce acuzaţiile lansate nu au fost făcute publice.

2.1. LIMITELE CRITICII ADRESATE MAGISTRAŢILOR DE CĂTRE AVOCAŢI

În ceea ce priveşte **critica ce poate fi lansată de avocaţi la adresa judecătorilor sau procurorilor**, Curtea porneşte de la principiul de bază, conform căruia, **în relatia cu magistraţii, avocatul are un statut special – respectiv de intermediar între aceştia şi justiţiabili**. Astfel, în îndeplinirea acestui rol, avocaţii au îndatorirea de a contribui la buna administrare a justiţiei şi de a se asigura că magistraţii se bucură de încrederea publică[19]. Ca regulă, Curtea subliniază că libertatea de exprimare este aplicabilă avocaţilor, care pot lansa critici la adresa sistemului de justiţie, dar cu respectarea anumitor limite, aceştia trebuind să afişeze un comportament demn şi să respecte rigorile de etică ale profesiei.

În consecinţă, exprimarea unor critici foarte agresive poate rezulta în depăşirea cadrului permis în temeiul Art. 10 CoEDO. De asemenea, se reţine că sistemul judiciar se impune a fi protejat de atacuri gratuite şi nefondate din partea avocaţilor, care poate avea la bază chiar o anumită strategie procesuală prin expunerea mediatică. Totodată, însă, Curtea are în vedere faptul că libertatea de exprimare este un apanaj al independenţei profesiei de avocat, iar sancţiunile aplicate în cazul exerciţiului libertăţii de exprimare de către avocaţi trebuie să aibă un caracter excepţional[20].

Din acest punct de vedere, Curtea analizează elemente precum *natura* termenilor utilizaţi de avocat, precum şi *contextul* în care a avut loc exprimarea – mai precis, dacă mesajul

[17]N.F. c. Italiei, nr. 37119/97, § 39, Reports of Judgments and Decisions 2001-IX;
[18]Lesnik c. Slovaciei, nr. 35640/97, §§ 54-65,Reports of Judgments and Decisions 2003-IV;
[19]Morice c. Franţei [GC], cit. ant., § 132;
[20]idem, § 135;

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este exprimat în cursul procedurilor judiciare sau în diferite mijloace media. În acest sens, Curtea trasează o **distincţie clară între critica adusă sistemului judiciar de către avocaţi în timpul procedurilor judiciar, în sala de judecată, sau în afara acesteia**.

i) Cât priveşte **protecţia acordată discursului avocaţilor în cadrul pledoariilor acestora**, în cauza Nikula c. Finlandei[21], Curtea a subliniat că aplicarea unei sancţiuni avocatului pentru depăşirea limitelor libertăţii de exprimare in cursul unui proces poate ridica anumite probleme inclusiv din perspectiva Art. 6 CoEDO, cât priveşte dreptul la apărare al clientului său, deoarece atitudinea judecătorilor faţă de avocaţi se poate dovedi iremediabil afectată. Ca regulă generală, Curtea a stabilit că nu poate fi considerată proporţională soluţia de condamnare a unui avocat pentru conţinutul pledoariei sale decât în cazuri absolut excepţionale. Aceasta deoarece avocatul are îndatorirea de a-şi apăra clientul chiar şi *în mod zelos*[22], schimbul de replici din sala de judecată putând fi adesea tăios, avocaţii fiind nevoiţi, prin prisma profesiei lor, să ridice de multe ori obiecţiuni cu privire la măsurile dispuse de instanţă.

Prin urmare, în ceea ce priveşte **exprimarea avocaţilor în sala de judecată, câtă vreme aceasta nu reprezintă un atac gratuit la adresa magistraţilor şi nu depăşeşte anumite limite ce ţin de demnitatea şi deontologia profesiei, se reţine că gradul de toleranţă este mai ridicat.**

ii) De asemenea, este foarte important a se verifica şi dacă avocatul a continuat sau a reiterat jignirile la adresa instanţei, **în afara sălii de judecată**. Dacă aceasta e situaţia, răspunderea sa va fi analizată mult mai critic. În special în ceea ce priveşte **procurorii**, Curtea subliniază că aceştia trebuie să arate o **toleranţă mai ridicată faţă de exprimarea avocaţilor din sala de judecată**, sub condiţia ca aceasta din urmă să **nu se constituie în atacuri gratuite pe plan profesional sau personal**[23].

Astfel, în cauzele Kyprianou c. Cipru, cât şi Casado Coca c. Spaniei[24], s-a reţinut că soluţia de condamnare a avocatului pentru ultraj judiciar prin prisma unor afirmaţii realizate în sala de judecată este excesivă din perspectiva Art. 10. Totodată, în cauza Mor c. Frantei[25], CEDO a stabilit încălcarea Art. 10 ca urmare a condamnarii unui avocat pentru violarea secretului profesional pentru devoalarea unor date dintr-o expertiza, cu motivarea că expertiza deja se afla in posesia presei. În acest caz, a prezentat o mare importanţă faptul că acele date nu

[21]Nikula c. Finlandei, nr. 31611/96, §§ 47-56, Reports of Judgments and Decisions 2002-II;
[22] idem, § 54;
[23]Foglia c. Elveţiei, nr. 35865/04, § 95, nepublicată; Roland Dumas c. Franţei, nr. 34805/07, § 48, 15 iulie 2010;
[24]Kyprianou c. Cipru [GC], nr. 73797/01, §§ 176-183, Reports of Judgments and Decisions 2005-XIII; Casado Coca c. Spaniei, nr. 15450/89, §§ 47-57, ECHR A 285-A;
[25]Mor c. Franţei, n. 28198/09, §§ 51-53, 60-64, 15 decembrie 2011;

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mai aveau un caracter confidenţial oricum, fiind devoalate publicităţii anterior. De asemenea, în cauza Schmidt c. Austriei[26]– în care un avocat a afirmat în cursul procesului că expertul „încearcă să îl înşele pe clientul său", Curtea a constatat că scopul exclusiv al afirmaţiei nu a fost de a insulta, dar afirmaţia era o acuzaţie factuală, fără nicio probă adusă în susţinerea sa, concluzionând, astfel, că sancţiunea mustrării scrise, de natură disciplinară, aplicată avocatului, a fost proporţională în sensul Art. 10 CoEDO.

Trebuie, totodată, menţionat că **inclusiv sancţiunile civile aplicate avocaţilor pentru critica la adresa instanţelor efectuată în afara sălii de judecată propriu-zise se pot dovedi disproporţionate.**Astfel, Curtea are în vedere şi faptul că apărarea unui client se poate realiza de către avocat în afara sălii de judecată, prin participarea la diverse emisiuni sau acordarea de interviuri mass-mediei, fapte care au aptitudinea de a influenţa desfăşurarea procesului. Curtea subliniază, ca regulă generală, că avocaţilor nu le pot fi interzise aceste manifestări, dar că aceştia sunt ţinuţi în continuare de obligaţiile profesionale, inclusiv de confidenţialitatea urmăririi penale. Totuşi, se reţine că avocaţii nu pot fi traşi la răspundere pentru acţiunile presei – cum ar fi, de pildă, prezentarea trunchiată a unor comentarii[27].

În acest sens, în cauzaAlfantakis c. Greciei[28], Curtea a reţinut că aplicarea unei sancţiuni avocatului constând în plata sumei de 11 700 euro, cu titlu de daune morale, pentru depăşirea limitelor libertăţii de exprimare în cadrul unui proces în curs, când s-a prezentat la o emisiune şi a criticat măsurile dispuse, a fost excesivă. În egală măsură, utilizarea de către un avocat a unui ton sarcastic, caustic, în realizarea unor afirmaţii la adresa unor judecători a fost considerată compatibilă cu Art. 10 CoEDO[29]. De asemenea, s-a stabilit că afirmaţiile unui avocat, realizate în cadrul unei scrisori trimise Ministrului Justiţiei, în care se susţinea existenţa unei conivenţe frauduloase între un judecător şi procuror în realizarea unei anchete, şi făcute publice în mass-media, nu pot fi de natură să atragă sancţiuni penale împotriva avocatului, cât timp s-a dovedit o bază factuală pentru afirmaţiile cu pricina[30]. S-a apreciat, totodată, în aceeaşi cauză, că nu poate fi utilizat argumentul profesiei avocatului tocmai pentru a i se agrava sancţiunea[31].

Totuşi, în măsura în care afirmaţiile realizate de avocaţi se transformă într-un **atac personal** la adresa judecătorului de caz sau a procurorului, **avocatul este pasibil de sancţiuni**, cu

[26] Schmidt c. Austriei, nr. 513/05, § 43, 17 iulie 2008;
[27] Morice c. Franţei, cit. ant., § 138;
[28]Alfantakis c. Greciei, nr. 49333/07, §§ 29-34, 11 februarie 2010;
[29]Gouveia Gomes Fernandes and Freitas e Costa c. Portugaliei , nr. 11868/07, § 48, 1 martie 2011;
[30]Morice c. Franţei [GC], cit. ant., §§ 175-176;
[31]idem, §176;

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respectarea, bineînţeles, a cerinţei proporţionalităţii. Astfel, în cauza Coutant c. Franţei[32], în careavocatul emisese un comunicat de presa în numele clientului său, în care lansa acuzaţii generale la adresa justiţiei („practicarea unor metode demne de Gestapo şi de miliţie"), Curtea a respins ca inadmisibilă cererea sa de a se constata încălcarea Art. 10 de către instanţele naţionale, apreciind că motivele furnizate de instanţe au fost pertinente şi suficiente.

Similar a procedat Curtea şi în cauza Wingerter c. Germaniei[33], pronunţând o decizie de inadmisibilitate : în speţa cu pricina, un avocat a afirmat in redactarea unui apel că toţi avocaţii, judecătorii şi procurorii din Mannheim sunt incompetenţi, la modul general. Critica a fost considerată excesivă de către Curte, iar sancţionarea avocatului a fost apreciată ca proporţională.

În acelaşi mod a procedat Curtea şi în deciziile Meister c. Germaniei[34] (cauză care viza afirmaţii jignitoare realizate la adresa unui judecător de catre un avocat), W.R. c. Austriei[35](în care un avocat a descris opinia unui judecător ca fiind "ridicolă"), Mahler c. Germaniei[36] (în care un avocat a afirmat ca procurorul l-a trimis in judecată pe inculpat "într-o stare de intoxicare totală"). Nu în ultimul rând, în cauza Schöpfer c. Elveţiei[37], reietrând principiile enunţate, Curtea a statuat că aplicarea unei sancţiuni disciplinare avocatului pe motiv că a criticat instanţa de fond în mod public, înainte de a formula apel în cauză a fost proporţională, respectând exigenţele exigenţele Art. 10 CoEDO.

2.2. LIMITELE CRITICII ADRESATE MAGISTRAŢILOR DE CĂTRE JURNALIŞTI

În privinţa **criticilor virulente adresate magistraţilor de către jurnalişti,** jurisprudenţa Curţii a fost considerată ca lipsită de coerenţă şi rigoare[38]. În cauzele Barfod c. Danemarcei[39], Prager and Oberschlick c. Austriei[40],de pildă,abordarea a fost considerată prea laxă în favoarea jurnaliştilor. Actualmente, însă, abordarea s-a schimbat, punându-se mai mult accent pe cicrumstanţele factuale concrete şi impresia generală pe care o creează declaraţiile pretins defăimătoare.

Spre exemplu, în cauza De Haes and Gijsels c. Belgiei[41], Curtea a reţinut că, în afara unei afirmaţii legate de membrii familiei judecătorului (respectiv, aceea că tatăl lui a fost colaborator

[32] Coutant c. Franţei (dec.), n. 17155/03, 24 ianuarie 2008;
[33] Wingerter c. Germaniei (dec.), nr. 43718/98, nepublicată;
[34] Meister c. Germaniei (dec.), nr. 25157/94, 30549/96, nepublicate;
[35] W.R. c. Austriei (dec.), nr. 26602/95, nepublicată;
[36] Mahler c. Germaniei (dec.), nr. 29045/95, nepublicată;
[37]Schöpfer c. Elveţiei, nr. 25405/94, §§ 28-34, ECHR 1998-III;
[38] Arai Yutaka în D.J.Harris, M.O.'Boyle, E.P. Bates, C.M. Buckley & C. Warbrick : *op.cit.*, p.488 ;
[39]Barfod c. Danemarcei, nr. 11508/85, ECHR A 149;
[40]Prager and Oberschlick c. Austriei, nr. 15974/90, ECHR A 313;
[41]De Haes and Gijsels c. Belgiei, nr. 19983/92, § 45, ECHR 1997-I;

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al securităţii - *"It is unacceptable that someone should be exposed to opprobrium because of matters concerning a member of his family"),* care era aptă sa atragă sancţionarea, acordarea de daune morale pentru restul criticii s-a dovedit disproporţionată. Totodată, în cauza Perna c. Italiei[42]**,** Curtea a stabilit ca acuzaţiile de corupţie aduse unui procuror sunt fapte, iar nu judecăţi de valoare, fiind, aşadar, susceptibile de probă.

De asemenea, în cauza Hrico c. Slovaciei[43], Curtea a reţinut că nu reprezintă o încălcare a Art. 8 CoEDO calificarea prestaţiei unui judecător ca fiind „o farsă legală", apreciind că aceasta este o judecată de valoare care se circumscrie dreptului presei de a exagera. Totodată, interzicerea exercitării profesiei unui jurnalist pentru acuzatii de fapt nedovedite la adresa unui judecător a fost considerată excesivă de către Curte[44]. De asemenea, în Kobenter şi Standard Verlagsgesellschaft G.m.b.H. c. Austriei[45], afirmaţia că o anumită hotărâre a unui judecător „nu diferă prea mult de tradiţiile proceselor vrăjitoarelor din epoca medievală" şi că judecătorul a dat un sprijin enorm „unei campanii veninoase de ură cu exemple strigătoare la cer din regatul animalelor" (după ce judecătorul a dispus achitarea unui iniţiator al protestului anti-gay pentru nişte injurii şi a reţinut în hotărâre că "într-adevăr, homosexualitatea include lesbianismul şi lumea animalelor", descriind practici sexuale specifice animalelor) au fost considerate judecăţi de valoare, ce se întemeiau în mod rezonabil pe o bază factuală – însăşi hotărârea judecătorului, precum şi faptul că judecătorul a decis ulterior să elimine singur acel pasaj din hotărâre şi a fost cercetat disciplinar.

3. CONCLUZII

Din motivele arătate, un algoritm universal valabil pentru stabilirea graniţelor libertăţii de exprimare în cazul criticii adresate magistraţilor nu există, abordarea Curţii fiind mai degrabă contextuală, cu reţinerea, însă, a unor principii fundamentale, astfel cum au fost expuse mai sus. Este important, însă, ca instanţele naţionale să cunoască aceste principii şi să le aplice atunci când sunt învestite cu soluţionarea unei cauze ce vizează anternarea răspunderii civile delictuale a unei persoane pentru critici aduse unui magistrat, mai ales că speţele de acest tip devin din ce în ce mai numeroase în jurisprudenţa internă. Bineînţeles, calificarea instanţei naţionale rămâne supusă întotdeauna riscului de reevaluare din partea Curţii, dar, cu cât judecătorul naţional cunoaşte mai bine principiile din jurisprudenţa Curţii, cu atât riscul unei reevaluări cu un rezultat diferit se micşorează.

[42]Perna c. Italiei, cit. ant., § 46;
[43]Hrico c. Slovaciei, cit. ant., § 46;
[44]Cumpănă şi Mazăre c. Romaniei [GC], §§ 111-119, Reports of Judgments and Decisions 2004-XI;
[45]Kobenter şi Standard Verlagsgesellschaft G.m.b.H. c. Austriei, n. 60899/00, § 30, nepublicată;

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Cumpănă şi Mazăre c. Romaniei [GC], Reports of Judgments and Decisions 2004-XI;

De Haes and Gijsels c. Belgiei, nr. 19983/92, ECHR 1997-I;

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Hrico c. Slovaciei, nr. 49418/99, nepublicată;

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Kobenter şi Standard Verlagsgesellschaft G.m.b.H. c. Austriei, n. 60899/00, nepublicată;

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THE LOCAL CHARACTER OF THE GATES OF GURA RÂULUI (VILLAGE IN THE REGION OF MĂRGINIMEA SIBIULUI)

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Gura Râului is a Romanian valley village in the region of Mărginimea Sibiului, situated along the Cibin River, with an obvious Saxon influence on the compact settlement of the houses. The article makes us discover the exterior of the houses of Gura Râului, the gate being the centre of interest. It separates the seen from the unseen, the known from the unknown. We also discover the utilitarian function (how many types of gates they are, when they are opened, what other practical elements the gates have, when the door is locked – the door can be part of the big gate or not), the aesthetical function (the models of the gates, the colors of the gates etc.) and the symbolic function of the gates of Gura Râului. These doors are in wood, but they have a support pole made either of bricks or stones.

They are the gates of the whispers, the gates of love, the gates witnesses to polmog *stories (stories told sitting on a bench in front of the house on holydays), gates of joys and sorrows, gates that hide secrets and express the character of the people of Gura Râului.*

Keywords: Gura Râului, Mărginimea Sibiului, Transylvania, traditional gates, Romanian village

Poarta este definită, în primul rând, ca o „deschidere”[1], dar sensul cuvântului este multiplu. Poarta „simbolizează locul de trecere dintre două stări, dintre două lumi, dintre cunoscut şi necunoscut, dintre lumină şi întuneric, dintre bogăţie şi sărăcie. Poarta se deschide spre un mister. […] Poarta este o invitaţie la călătorie spre un alt tărâm… […] Trecerea prin poartă este, cel mai adesea în sens simbolic, o trecere de la profan la sacru”[2], reprezintă un important simbol universal, este ca un „arc de triumf pe care sunt invitaţi să păşească spre nemurire eroii, geniile, oamenii exemplari ai unui spaţiu sacralizat”[3]. În credinţa ortodoxă, Domnului Hristos este poarta sau uşa pe care se ajunge în Împărăţia Cerurilor: „Eu sunt uşa: de va intra cineva prin Mine, se va mântui; şi va intra şi va ieşi şi păşune va afla (Ioan 10, 9)”[4]. Sfântul Clement al Alexandriei[5] scria

[1]https://dexonline.ro/definitie/poarta accesat în data de 11.05.2016.
[2] Jean Chevalier, Alain Gheerbrant, *Dicţionar de simboluri*, Volumul 3, Editura Artemis, Bucureşti, 2006, p. 113.
[3] Laurenţiu Florin Puicin, *Poarta şi pragul în tradiţia populară din Oltenia*, Editura Arves, Craiova, 2009, p. 11.
[4]*Noul Testament cu Psalmi*, Editura Institutului Biblic şi de Misiune al Bisericii Ortodoxe Române, Bucureşti, 2002, p. 240.

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că Hristos este poarta dreptăţii, amintind de Psalmul 117 (19-20): „Deschideţi-mi mie porţile dreptăţii şi intrând în ele voi lăuda pe Domnul. Aceasta este poarta Domnului, drepţii vor intra prin ea”[6].

Poarta, în sensul ei cel mai uzual, delimitează un spaţiu al familiei, un spaţiu intim, de protecţie, unic, ca un micro-cosmos. În România, întâlnim de la marile şi frumoasele porţi din Maramureş până la porţile mici din Oltenia, diferite porţi care, indiferent de mărime şi de zona ţării în care se află, sunt purtătoare de simboluri. Sunt multe studii care analizează aspectele arhitecturale, etnografice, filozofice ale porţii. Poarta este o realitate într-o permanentă dezvoltare. Aşezările omeneşti, în general, sunt produsul acţiunii unui mare număr de factori: economici, istorici, geografici, politico-administrativi, etnici („factorul uman”)[7].

Privind spre porţile tradiţionale din zona Mărginimii Sibiului, trebuie menţionat, în primul rând, faptul că ţăranii de aici au fost liberi, acest lucru privilegind dezvoltarea lor economică[8]. Ciobanii din Mărginimea Sibiului, în special cei din Jina şi Poiana (sate foarte apropiate de munte), mergeau, în trecut, în transhumanţă, pe perioade lungi de timp, chiar până în zona Mării Negre, uneori în afara ţinuturilor locuite de români. Astfel, situaţia materială bună „le-a permis să-şi ridice case frumoase, mari, solide”[9]. Acestea prezentau elemente comune cu case din alte regiuni ale României. „Elementele de împrumut, rezultat al influenţelor venite dinspre centrul Europei, devin importante în construcţiile cele mai recente. Acestea din urmă fac ca satele româneşti să se asemene cu cele săseşti vecine […]. Asemănările privesc exteriorul construcţiilor, decorul lor, aspectul străzilor.”[10]

Gospodăria, supranumită „suprastructura proximă a economiei”[11], trebuie să răspundă cerinţelor de viaţă socială şi culturală ale familiei, oglindind şi „o anumită concepţie, un mod de a gândi şi de a exprima plastic raporturile socio-culturale cu întreaga colectivitate umană din aşezare, precum şi cu mediul natural în totalitatea sa”[12]. Ea caracterizează gândirea colectivităţii „privind echilibrul şi armonia ansamblului gospodăresc în relaţie cu mediul ambiant”[13]. Iar din structura gospodăriei face parte şi poarta.

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[5] Jean Chevalier, Alain Gheerbrant, *op. cit.*, p. 115.
[6] *Noul Testament cu Psalmi*, *op. cit.*, p. 728.
[7] Cornel Irimie, Nicolae Dunăre, Paul Petrescu, *Mărginenii Sibiului, civilizaţie şi cultură populară românească*, Editura Ştiinţifică şi Enciclopedică, Bucureşti, 1985, p. 123.
[8] Paul H. Stahl, *Case şi acareturi din Mărginimea Sibiului 1953-1958*, Colecţia de studii şi eseuri – antropologie, nr. 17, Bucureşti, 2005, p. 6.
[9] *Idem*, p. 7.
[10] *Ibidem.*
[11] Cornel Irimie, Nicolae Dunăre, Paul Petrescu, *op. cit.*, p. 138.
[12] *Ibidem.*
[13] *Ibidem.*

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În zona Mărginimii Sibiului, „gospodăriile sunt alăturate, una lângă alta, pe spaţii relativ egale ca dimensiuni, într-o înşiruire neîntreruptă, pe de-o parte şi de alta a uliţei, formând un front construit continuu”[14], dând impresia de „unitate organică”. Astfel, gospodăriile sunt delimitate tranşant de uliţă dându-le „o notă specifică, ce aminteşte într-o anumită măsură tipul de gospodărie cu ocol închis”[15], forma gospodăriei fiind a unui patrulater rectangular. Acest tip de gospodării constituie „forma cea mai potrivită pentru apărarea vieţii şi avutului locuitorilor […]. Pentru a pătrunde în ocol intri prin uşi puternice şi numai de aici poţi pătrunde în casă sau în acareturi”[16]. De obicei, curţile sunt podite cu pietre, iar casa se află în apropierea străzii, una dintre laturi fiind spre stradă. „Se consideră că această trăsătură pe care o au satele din zonă s-ar datora unei influenţe a aşezărilor săseşti din partea se şes a Depresiunii Sibiului”[17]. În acelaşi studiu *Mărginenii Sibiului*, nu este negat faptul că „într-o etapă mai târzie, când în arhitectura mărginenilor au început să se folosească materiale durabile – cărămida şi ţigla – unele elemente ale modelului săsesc au fost folosite şi valorificate în construirea caselor şi a porţilor”[18].

Toate aceste lucruri sunt valabile şi pentru Gura Râului, un sat din Mărginimea Sibiului[19], situat la 20 de kilometri de Sibiu, atestat documentar în secolul al XIV-lea[20], având aproximativ 3600 de locuitori. Gura Râului are vatra satului la ieşirea râului Cibin din munţii Cindrel, de aici şi denumirea localităţii, dar şi avantajele oferite locuitorilor satului de apa râului, de munte şi de şes, care le asigurau existenţa. Prin urmare, ocupaţiile principale ale gurănilor erau, în trecut, jogăritul, pădurăritul, păstoritul şi agricultura. Din sat şi până în vârful muntelui, existau peste 50 de joagăre, existau apoi pe cursul râului peste 20 de pive de ulei şi de haine, 5 mori de apă, de aceea se spunea, legat de gurăni, că „banii le veneau pe apă”. Actualmente, lemnăritul, agricultura, creşterea animalelor sunt ocupaţii principale în sat, deşi tot mai mulţi tineri au un serviciu la oraş. Localitatea se învecinează cu Orlatul în nord, cu Cristianul (localitate ce a fost cu preponderenţă săsească) la nord-est, cu Poplaca la est şi cu Răşinariul la sud-est. Gura Râului este

[14] *Idem*, p. 139.
[15] *Ibidem.*
[16] Paul H. Stahl, *op. cit.*, p. 10.
[17] Cornel Irimie, Nicolae Dunăre, Paul Petrescu, *op. cit.*, p. 139.
[18] *Ibidem.*
[19] Din punct de vedere administrativ, Gura Râului este comună cu administraţie proprie, având ca reşedinţă satul Gura Râului.
[20] O inscripţie lapidară indică 1202 ca an în care a fost construită actuala „biserică mică”, cu hramul „Sfânta Paraschiva”. Însă evenimentul nu este confirmat ştiinţific, iar dovezile istorice infirmă o atestare atât de timpurie a localităţii pe locul şi în configuraţia actuală. Alte atestări sunt din secolul al XIV-lea privind unele conflicte cu localitatea Cristian pentru păşunile din munţi. Conform lui Dumitru Ioan Arsenie, autorul cărţii *Gura Rîului – Sat din Mărginime*, Sibiu, Ed. Universităţii Lucian Blaga Sibiu, 2000., p. 37, există o a treia variantă privind apariţia satului: fostul consilier regesc şi inspector şcolar de la sfârşitul secolului al XIX-lea, E.A. Bieltz, spunea că satul Gura Râului ar fi fost întemeiat de cristieni, pe pământul lor, în 1380, ca pază la graniţă, cu obligaţia de a apăra comuna-mamă de năvălirile duşmane de peste munţi. Totuşi, potrivit istoricilor, acest lucru era imposibil pentru că un sat săsesc nu putea întemeia o comună pur românească, toate denumirile munţilor, pădurilor, pâraielor fiind româneşti.

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un sat frumos numit şi „Gura Raiului", în care tradiţiile populare şi portul în alb şi negru încă se mai păstrează: „Gura Râului se dovedeşte a fi una dintre cele mai reprezentative localităţi ale Mărginimii Sibiului, prin puritatea cu care au fost păstrate portul şi tradiţiile populare"[21].

Preotul Ioachim Muntean, cel care a scris *Monografia economică-culturală a comunei Gura Rîului* în anul 1896, menţiona: „Trăind însă veacuri de-arîndul în amestec cu felurite seminţii străine, e lucru dela sine înţeles, că nu numai limba, ci şi celelalte deprinderi ale noastre au suferit anumite schimbări; fondul însĕ sau rădĕcina a rĕmas. Îndeosebi poporaţiunea comunelor de pe pămêntul aşa numit săsesc, între care se numĕră şi comuna noastră, a împrumutat multe apucături şi bune şi rele dela Saşi, cu care vrênd-nevrênd a avut multe daraveri"[22].

Privind exteriorul unei locuinţe din Gura Râului, cu evidentele ei influenţe săseşti, privirea se îndreaptă spre poartă, ea fiind centrul de interes. Este cea care desparte văzutul de nevăzut, cunoscutul de necunoscut.

Porţi vechi din Gura Râului, din prima jumătate a secolului XX

În prezentul articol, ne vom referi la porţile considerate la Gura Râului a fi tradiţionale, caracteristice pentru acest sat, porţile „de zid", mai corect spus „din lemn în zid" realizate în secolul XX. În a doua jumătate a secolului XX, au început să apară porţi din fier, iar în secolul XXI, cele din fier forjat cu capace de plastic, sau chiar porţi sculptate care vor să imite cumva porţile de di-nainte de secolul XX. Pentru porţile tradiţionale din Gura Râului, **materialul** principal de construcţie este bradul.

La Gura Râului, poarta se află chiar lângă casă. Porţile de zid au apărut odată cu casele de zid. În Mărginimea Sibiului, „cele mai vechi astfel de porţi apar în secolul al XIX-lea, dar răspândirea lor masivă are loc în secolul al XX-lea".[23] „Porţile de zid din Mărginime se încadrează printre

[21] Maria Nicoară, *Învăţătorul – păstrător al tradiţiilor satului românesc*, Lucrare metodico-ştiinţifică pentru obţinerea gradului didactic I, Colegiul Pedagogic „Andrei Şaguna" Sibiu, 1999, p.3.
[22] Ioachim Muntean, *Monografia economică-culturală a comunei Gura Rîului*, Sibiu, Tiparul Institutului Tipografic, 1896, p. 140-141, în capitolul *25. Deprinderi*, subcapitolul *e) Limbă, Moravuri, Obiceiuri*.
[23] Paul H. Stahl, *op. cit.*, p. 89.

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porţile obişnuite satelor adunate şi compacte transilvănene, adică acolo unde populaţia românească a fost în contact cu elemente culturale venite din centrul şi apusul Europei. Saşii, care trec mai de timpuriu la arhitectura în zid, foloseau şi ei curent porţile de zid."[24]

Porţile tradiţionale din Gura Râului pot fi mari sau mici. Porţi mari sunt numite cele care au zid şi un mic acoperiş deasupra lor (zidul de deasupra porţii poate fi în formă de boltă, drept, sau în formă de treflă). Cele mai des întâlnite **modele** de porţi în sat sunt: poarta în ploaie, poarta cu răsărit de soare, poarta cu brazi (legătura omului de la Gura Râului cu natura, cu muntele, e evidentă până şi în decorarea porţilor). Porţile mici nu au zid deasupra şi sunt mai ieftine

Porţi mari de la Gura Râului: poartă în ploaie, poartă cu răsărit de soare, poartă cu brazi

Zidul de deasupra porţii mari în formă de boltă, drept, sau în formă de treflă

Porţi mici – mai ieftine, fără boltă

Atât porţile mari, cât şi porţile mici pot avea uşa de intrare în curte - **„uşa curţî"** – inclusă în structura lor (aproape nu se sesizează că este acolo) sau aceasta poate fi separată. Dacă locul permitea, dacă curtea era largă, atunci omul îşi făcea poarta mare, din zid, cu uşa separată. Dacă terenul era mai mic, atunci şi poarta era mai mică, cu uşa inclusă, dar suficient de largă „cât să

[24] *Idem*, p. 92.

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intre caru' cu fân". Mărimea (înălţimea) standard a porţii tradiţionale din Gura Râului este de 3,5 – 4 m. Dimensiune uşii curţii este de aproximativ 1,80 x 1,20 m.

Putem vorbi despre patru **funcţii ale porţii: utilitară, socială, de comunicare, estetică**, dar, vom vedea că, de multe ori, aceste funcţii se întrepătrund.

Poarta săracului este mai simplă, mai mică. În trecut, omul sărac nu-şi permitea să facă nici casa mare, nici zidurile înalte şi nici poarta mare, astfel avea o poartă mai modestă, mai puţin întreţinută (adică nevopsită, eventual dată cu motorină, neîngrijită ca poarta de om bogat – mai scorojită, mai ruptă uneori). Poarta bogatului era o poartă mare, mai costisitoare, îngrijită, vopsită, arătând mereu ca o poartă nouă. Chiar şi acum, oamenii cu stare au case mari, cu porţi mari, cu câte 2 camere la uliţă, cu curtea largă.

Structura interioară a porţii. În partea de sus a porţii, se află o **grindă**, de obicei din stejar (este un lemn mai rezistent), şi tot din stejar sunt cele două **fuse** laterale, cu o grosime de 10-12 cm, aceste grinzi verticale care asigură stabilitatea porţii. Modul de prindere a părţii de jos a fusului de stâlpul casei este complex, realizându-se prin: **tigaia din fier** care fixează **bolţul** (ca un pilon) la un capăt, celălalt capăt al bolţului intrând în fus, fiind fixat de o furcă strânsă din fier, şi, pentru siguranţă, şi cu o **verigă** (a se vedea desenul privind *Modul de prindere a părţii de jos a fusului de stâlpul casei*). În partea de sus, fusul este prins cu un bolţ de grindă, ambele părţi unde este fixat bolţul sunt prevăzute cu verigi (ca lemnul să nu crape şi să scape bolţul, şi implicit fusul porţii). Când poarta este montată, fusul este prins mai întâi în partea de sus. Celelalte grinzi ale porţii se numesc **chingi**. Sistemul de închidere din fier se numeşte **rătează**. Poarta se deschide în două părţi. Pe cât este de mare poarta, pe atât de simplu este sistemul de închidere. Este uşor de manevrat încât chiar şi un copil poate să închidă şi să deschidă poarta. Unele porţi mai au ca o bară mare de fier numită „hieru porţii", care stă undeva după poartă, folosindu-se pentru „proptit"(să sprijine) poarta, atunci când vântul bate foarte tare, ca să nu „o umfle vântul" să o deschidă. La Gura Râului. vântul bate tare de două ori pe an: toamna şi primăvara. De aceea, multe porţi au „ochiuri" – găurelele sau modelele din partea de sus a porţii, care nu sunt doar estetice (cu modele alese, „chipăite", care pot reprezenta bradul sau alte modele împrumutate de la ţesături), ci au şi o funcţie utilitară pentru că atunci când bate vântul, să intre pe acolo, iar poarta să fie protejată.

Uşa curţii prezintă **balamale**, **lăcat şi cheiţă** (sistem de închidere şi încuiere) şi **vervăr** (clanţă). Mecanismul **clanţei** uşii este interesant. În interior, prezintă ca o cutiuţă de metal - sistemul de închidere destul de masiv montat înspre curte. Clanţa este din fier şi dă impresia că ar funcţiona foarte greu. Pe cât e de mare vervărul, pe atât de uşor se deschide şi face un clinchet mic, scurt,

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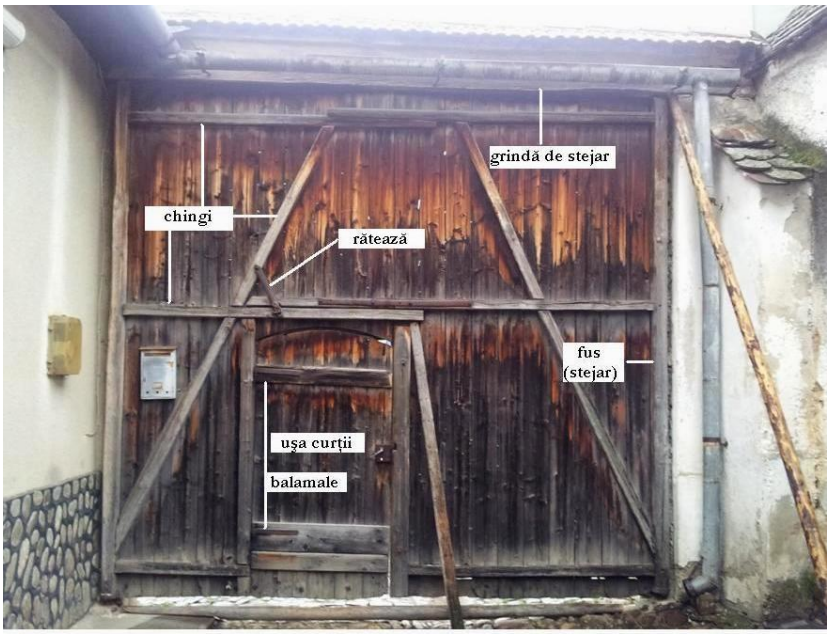
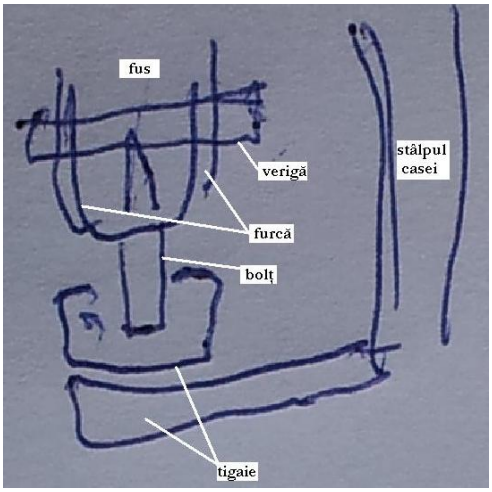
metalic, deschizând uşa. Fiecare încuietoare a porţii are sunetul ei, clinchetul ei, „muzica" ei. După sunetul acesta, membrii familiei se recunosc între ei. După felul cum este deschisă sau închisă uşa curţii, se spune: „uita o venit cutare, sau o venit cutare" sau „acum e un străin", „cine-o fi *tunat* pe poartă?" (intrat pe poartă), „cine-o fi, că nu e de-al casei?".



Poarta văzută din interior



Modul de prindere a părţii de jos a fusului de stâlpul casei[25] şi „lăcatul cu vervărul şi cheiţa"

Culoarea în care se vopseau şi încă se mai vopsesc porţile de la Gura Râului este, în special, verde – culoarea pădurii. „Guranul e omul de la munte care e frate cu pădurea. Pădurea e verde, verdele e simbolul vieţii, al optimismului" spune Maria Cătoiu. Alte culori caracteristice porţilor sunt: maro, maro-roşcat, culoarea pământului sau cea a lemnului (culori mai aproape de natură).

[25] Desenul original a fost realizat de Vasile Bischin, 48 ani, dulgher din Gura Râului.

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Oamenii din Gura Râului îşi îngrijesc porţile, nu numai că le vopsesc, dar le şi spală mai ales înainte de sărbătorile mari.

Ornamentele porţii. Atât pe poarta mare cât şi pe uşa curţii întâlnim următoarele modele (inspirate din natură): *soarele* (elementul vital simbolizând lumina, căldura), *bradul* (element de bază în viaţa oamenilor din sat care aveau ocupaţiile principale jogăritul şi pădurăritul; cu bradul erau asemănaţi ficiorii satului – înalţi, drepţi, frumoşi, „verzi", tineri), *ploaia* (apa-element vital), la poartă mai apar multe alte elemente, fie de decor, fie utilitare sau de comunicare. Observăm, deasupra porţii sau pe stâlpii porţii,*monograma* familiei (iniţialele stăpânului şi ale stăpânei casei) şi anul construcţiei casei. În spaţiul porţii, apare numărul casei, o mică tăietură orizontală pentru cutia poştală (în spatele porţii e montată cutia de poştă care poate să fie cu sticlă – o chestiune practică), uneori uşiţa de pus cheia (decupaj sau tăietură în poartă, cu balamale pe interior, la nivelul capului omului).

Monogramă la poartă Spărtura pentru cutia poştală şi uşiţa de pus cheia

Când uşa casei este în zid, deci când este separată de poartă, prezintă deasupra ei o „fereastă" oarbă în care se regăseşte o cruce de lemn sau o cruce pictată pe perete sau o icoană, şi un bec folosit eventual seara. Se mai pot regăsi *simbolurile virtuţilor creştine*: crucea pentru credinţă, ancora pentru nădejde, inima pentru iubire.

Uşi cu „fereastă"

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Simbolurile virtuţilor creştine

Unele porţi au, în partea de sus, mai la margine, în stânga sau în dreapta, o bucăţică de *laţ*, orizontală, de 10-15 cm, vopsită la fel ca restul porţii. După acest laţ, se pune, de Sfântul Gheorghe (mai ales de către cei care au pe cineva cu acest nume în familie), o crenguţă de fag[26]. Tot acolo îşi agăţa stăpânul casei, în trecut, un „şomoiog" (un mănunchi) de fân sau dacă avea ceva de vânzare, ceva ce îi prisosea (mai demult oamenii nu ştiau să scrie şi să citească, şi „citeau" în acest fel). În zilele noastre, cine are un surplus în ogradă, pune un bilet pe poartă (chiar unul scris la calculator, cu „Vând…tărâţe, cartofi, purcel, telemea, cereale, ouă etc."). Astfel, poarta poate fi şi **suport de afişaj**.Dacă e un eveniment în sat, un spectacol, pe porţile oamenilor, se pun afişele. Uneori chiar şi afişe electorale…

Laţul de la poartă

Unele porţi pot să aibă, de-o parte şi de alta (la baza lor, respectiv a stâlpilor porţii), câte o piatră (ca un contrafort al stâlpilor porţii) - un bolovan de râu sau doi stâlpişori de ciment – cu scopul de a proteja baza porţii de eventualele loviri când intra carul încărcat cu lemne, cu fân etc. („ca să nu rupă carul poarta"), carul fiind greu de manevrat.

Când se deschide poarta? Sunt patru momente importante ale familiei, când se deschide poarta. Cel mai des, poarta se deschide ca să iasă şi intre cu carul. Apoi, la nuntă când vin oaspeţii, la înmormântare şi când se face sfeştanie în curte. Atunci se vede de fapt vrednicia omului, ce are omul în curte. Cu ocazia nunţii, la porţile mirilor şi ale naşilor, se pun câte doi brazi. Aceştia anunţă că acolo are loc un eveniment fericit.

Poartă închisă – poartă deschisă – uşă între-deschisă

Ce ascunde poarta în spatele ei? O poveste întreagă. Primul lucru care se poate vedea când se deschide poarta curţii este poarta şurii, care este tot o poartă mare, cât să intre carul cu fân, o

[26] „Obiceiul de a pune crenguțe de fag și iarbă verde la porți are o dublă semnificație. Pe de o parte, simbolizează venirea primăverii, verdele reprezentând renașterea naturii și trezirea la viață a vegetației. Pe de altă parte, crenguțelor cu muguri le sunt asociate puteri nebănuite de ocrotire a păsunilor și fânețelor împotriva duhurilor rele." Conform articolului *Tradiții și superstiții de Sfântul Gheorghe* de la http://traditii-superstitii.ro/traditii-si-superstitii-de-sfantul-gheorghe/ accesat în data de 7.05.2016.

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poartă înaltă, totdeauna cu uşa inclusă în ea. Această poartă e mai simplă, de cele mai multe ori are găurele ornamentale în partea de sus, pentru curent (ca să se usuce bine nutreţul din „feldără" - podul şurii). Celelalte acareturi sunt: grajdul, „suşopul", casa mare (cu maxim două niveluri – demi-sol şi parter), cumna (bucătăria de vară), cuptorul de pâine, magazia, cămara, afumătoarea, cazanul de fiert la porci.

Când se lasă deschisă uşa curţii? Uşa mică nu se prea lasă deschisă. O uşă deschisă pe uliţă e ca un tunel în care apare o rază de lumină. Lumea se uită - este ca o supapă, este ceva nou, râvnit… „Cum au pe acolo?". Oamenii din sat care au ceva de vorbit cu stăpânii casei, fac doi paşi de la poartă şi strigă: „leliţă" („nu bab – nu e fonetic" spunea cineva din sat). „Nu te duci până în casă, că e obraznic". Uşa stă deschisă când moare cuiva - timp de trei zile, casa e primitoare, se intră şi se iese la orice oră din zi sau din noapte. Uşa mai stă deschisă: înainte de Bobotează, când e aşteptat părintele să binecuvinteze casa; când fuge câte o femeie până la o vecină care are telefon fix, fiindcă o sună acolo vreo rudă; când se scot vitele „în ciurdă".

De regulă, femeile stau „oţâră la poveşti **în uşa curţî**". Când se duc „să petreacă pe cineva", să conducă un musafir, mai stau vreo jumătate de oră de poveşti în uşa curţii, aşa cu uşa puţin întredeschisă şi şuşotesc. Mai este un obicei să „ieşi oţâr în uşa curţî, să te uiţi la deal, la vale să vezi cine mai trece, să mai afli vreo ştire, să vezi cine-o murit că traje la biserică, să vezi dacă vine popa cu Botezu', cam pe unde-i". Sunt femei care nu ies degeaba la poartă, ies „cu lucru'". Se uită în sus şi în jos, în stânga, în dreapta şi fac ceva cu mâinile – „ori croşetează nişte colţişori, ori desfac fusoi, sau fac ceva oţâră la poartă".

„Încuiatul porţii" reprezintă un amplu proces de comunicare în sat. „Cheia porţii", mai precis a uşii curţii, este una singură, o cheie mare, care are un loc „secret" la fiecare poartă, un loc special în care se pune. Pe cât este de secret locul acela, multă lume îl ştie de fapt. Cei ai casei ştiu unde se pune cheia, dar şi rudele sau vecinii. Ea se poate pune „la cui sub poartă" (într-un cui bătut în partea din interior a porţii), la uşiţa din poartă pentru cheie, după una dintre pietrele de la baza porţii, în partea interioară de sus a porţii mici unde este bătut un cui special pentru acest lucru. Cei ai casei, dacă lipseau pentru câteva minute - o jumătate de oră de acasă, sau mergeau undeva în vecini, închideau uşa curţii şi lăsau cheia în poartă ca semn că „mintenaş mă întorc", „îs pe aici pe undeva prin vecini şi viu minteni". Şi acum se mai practică acest lucru. Uneori, unul din stăpânii casei putea să plece „cu cheia în bozdănar", adică să nu lase cheia nici în uşa curţii, nici să n-o pună „la cui" – aceasta se întâmpla în special când lipsea toată ziua (pleca la Sibiu cu treabă), şi astfel nimeni nu avea acces în curte. Dacă uşa era încuiată din exterior şi cheia era la vecini, însemna că proprietarii erau plecaţi mai mult de o zi. Uşa curţii **se închide din interior**

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când stăpânii casei nu vor să primească pe cineva, când vor să se odihnească, sau seara, pe la orele 20:30-21. Tot la acea oră se închid şi obloanele casei. Din interior, uşa curţii se închide cu o „cheiţă" – o siguranţă, o piedică la ială, care se „traje" . Există expresiile: „Ai tras cheiţa?", „Du-te şi traje cheiţa!". Seara, când toţi ai casei sunt prezenţi şi nu mai trebuie să vină nimeni, se „traje" cheiţa ca să nu mai poată intra nimeni.

Polmogul. Unele case pot avea o bancă la poartă, care se numeşte „polmog". Se foloseşte duminica şi în zilele de sărbătoare din anotimpurile şi zilele călduroase. Pentru că oamenii nu lucrează atunci, ies după amiaza la poartă „în polmog", la poveşti. „Ieşi când îi soare, ieşi în polmog. Vecinu' ăsta şi cu ăsta ies pe vară că nu mai pot merge în câmp. Mie nu-mi place. Ies că mi-i urât, mai ales acum de când n-am mai prea putut lucra. Cine trece zâce ceva…Tatu zicea: *polmogu' îi scaun de foc, că faci păcate*. Aşa zâcea tatu, că faci păcate… Şi-i destul şi numai dacă te uiţi. În unele locuri şi-n zî de lucru îi polmogu' plin. De câte ori Ioana noastă să duce la boldă pi-icea, că zice *Mi-i urât cân' îi văz acolo în polmog şi numa': un te duci? Ce faci? Hai şi şezi*…zice *Mă duc pi-icea şi mă duc roată*." spunea Marina Ihora.

Poarta în folclorul local sau „poezia porţii"

„Ieşi, mândruţo, sara-n poartă
De vezi doru' cum mă poartă.
Mă poartă din sat în sat,
Ca pe-un mare vinovat
Mă poartă din loc în loc,
C pe-un om făr' de noroc.
Şi trec pe la poarta ta
Doar îmi pricepi dragostea […]. "[27]

***

„Ieşi, mândruţo, sara-n poartă
De vezi doru' cum mă poartă.
Mă poartă din poartă-n poartă,
Ca pe-un om bătut de soartă"
(Cântec de joc, aflat de la Maria Cătoiu)

***

„La bădiţu' meu la poartă
Două fete mari se ceartă.

[27] Maria Nicoară, *op. cit.*, p. 96-97. În capitolul 5 intitulat *Culegere de folclor din Gura Râului*, subcapitolul *Culegere de versuri populare*.

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Una-i hâdă d-ai bogată,

Una-i mândră şi săracă […].”[28]

***

„Pe la poarta cui mi-i drag

Cale n-am, da’ trabă-mi fac.

Pe la care mi-i urât,

Cale am, dar nu mă duc.”

(Strigătură şi învârtită, aflată de la Maria Cătoiu)

Influenţa săsească asupra caselor din Gura Râului şi caracterul oamenilor de la munte a dus la apariţia acestui tip de locuinţe şi implicit de porţi. Aceste porţi înalte, bine închise, nu neapărat încuiate aveau menirea de a nu lăsa nici măcar vecinul de peste drum să vadă ce e în casa celuilalt. La Gura Râului, spaţiul este respectat, cinstit. Intimitatea fiecărei familii este ocrotită. Se spune că tot ce face omul este o expresie a ceva mai adânc din interior. Cum este poarta este şi restul vieţii omului din Gura Râului. Ea exprimă spiritul ermetic, dar doar până când ai de-a face cu cei de dincolo de poartă. Căci acolo ai parte de o primire călduroasă.

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[28] *Idem*, p. 97.

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LISTĂ INFORMATORI: Vasile Bischin, 48 ani, Gura Râului; Mioara Cătoiu, 44 ani, Gura Râului – mulţumiri speciale pentru informaţiile date şi pentru fotografiile puse la dispoziţie; Marina Ihora, 77 ani, Gura Râului; Ioan Lăpădat, 32 ani, Gura Râului.

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MODEL OF ORGANIZATIONAL ANALYSIS FOR THE ASSESSMENT OF THE ECONOMIC AND ARTISTIC PERFORMANCE OF OPERA HOUSES

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Abstract:As competition for each market segment has become increasingly fierce in recent years, an increasingly critical role has been played by measures of economic performance which must be now addressed by all organizations wishing to increase their productivity. The current paper sets out to present a model of organisational analysis for the assessment of the economic and artistic performance of opera houses. The model allows for the fast reduction of economic vulnerabilities and the implementation of a set of performance tools designed to facilitate the identification, understanding and reducing of all deficiencies existing at the institutional management level

Keywords: analysis model, opera house, economic artistic performance

Formă complexă de manifestare artistică, opera este unică prin combinaţia armonioasă şi sinestezică a trei genuri artistice: teatrul, muzica şi literatura (Baker, 2013). În plan artistic, prin îmbinarea teatrului cu muzica şi literatura, Opera promovează cea mai înaltă formă de cultură şi satisface un palier complex al nevoii de cultură a omului, ceea ce face ca prestigiul, predilecţia pentru operă şi diseminarea ei în lume să continue să existe, în ciuda provocărilor financiare, manageriale, culturale şi de guvernare cu care se confruntă instituţiile de cultură. Aceste provocări se circumscriu de cele mai multe ori unei disfuncţionalitaţi a producţiilor culturale la parametri optimi ca urmare a unor variabile ce ţin de sfera de interferenţă a zonelor artistice cu cele economice (Baumol şi Bowen, 1966).

Într-un moment în care miza culturală şi stress-ul economic s-au manifestat la cote foarte ridicate în ultimii ani, existenţa teatrelor de operă din toată lumea este serios ameninţată de costurile ridicate de producţie pe care le implică fiecare reprezentaţie de operă, prin urmare opera este chemată acum să asigure tot mai mult un echilibru între *performanţă financiară* şi *creativitate,* chiar şi atunci când se află sub impactul unor factori specifici noii economii globale. Aceşti factori, liberalizarea economică, globalizarea, trecerea de la economia industrială la economia bazată pe cunoştinţe şi informaţii, provocările sociale şi cele structural-ecologice cauzate de

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necesităţile dezvoltării durabile, criza financiară resimţită la nivel mondial, au determinat modificarea cerinţelor îndreptate către Operă şi diversificarea responsabilităţilor ei atât faţă de categoriile de deţinători de interese cât şi faţă de societate în ansamblul său (Baker, 2013). Şansele de a supravieţui în această competiţie cresc semnificativ doar pentru acele organizaţii economice (instituţii culturale) care descoperă şi îşi reduc vulnerabilităţile foarte rapid şi care reuşesc să implementeze instrumente performante menite să le faciliteze identificarea, înţelegerea şi rezolvarea diverselor deficienţe ce ţin îndeosebi de managementul instituţional. Astfel, în vederea îmbunătăţirii relaţiei dintre operă ca *produs artistic* şi *publicul beneficiar* este imperios necesar ca instituţiile culturale de pretutindeni să aplice instrumente specifice din sfera managementului menite să abordeze pe paliere orizontale o serie de aspecte esenţiale legate de dezvoltarea artistică şi tehnică, spectacol, public şi diseminare , mecanisme financiare , structuri de conducere, performanţă, opţiuni şi perspective strategice din cadrul intituţiile de cultură constituite sub forma unui model specific de analiză organizaţională.

Prezenta lucrare îşi propune să prezinte un model eficient de analiză organizaţională rezultat în urma unui demers comparativ de cercetare a paradigmelor manageriale din cadrul teatrelor lirice întreprinse pe două studii de caz distincte (Opera de Stat din Viena şi Opera Naţională din Bucureşti). Modelul se bazează pe câteva elemente cheie de analiză organizaţională: parametrii economici şi administrativ-organizaţionali şi cei muzical-artistici ai instituţiei teatrului liric. Modelul reprezintă o schemă proprie de analiză şi optimizare care încearcă să ofere un diagnostic al instituţiei şi să eficientizeze o posibilă analiză a managementului operei la nivel instituţional. Procesul *de elaborare* a modelului a ţinut cont, în prima etapă, de complexitatea întregului sistem de organizare, funcţionare, dezvoltare şi promovare a activităţilor din cadrul teatrului liric (Auvinen, 2000), iar în faza a doua, cea *de funcţionalitate,* s-a bazat pe analiza mangementului instituţional de la Opera Naţională din Bucureşti şi Opera de Stat din Viena (Wiener Staatsoper).

Modelul de analiză examinează teatrele lirice/ instituţiile culturale pe baza unor indicatori-cheie: SPAŢIU, PERSONAL, PUBLIC, BUGET şi REPERTORIU care influenţează procesul de producţie al spectacolelor lirice şi dictează politica de conducere a instituţiei şi care sunt examinaţi pe următoarele paliere: Istorie organizaţională şi statut legal/ Arhitectura şi locaţia/ Organigrama; board de directori, structură decizională, structura personal/ Statistici vânzări bilete, public/Surse de finanţare; venituri şi grafice de cheltuieli/ Planificare financiară şi artistică., SWOT (Auvinen, 2000).

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Plecând de la însăşi definiţia bivalentă a *operei*, de *instituţie culturală* pe de o parte şi *produs artistic* pe de cealaltă, modelul acoperă selectiv câteva aspecte esenţiale şi particularităţi legate de dezvoltarea artistică şi tehnică, spectacol, public şi diseminare, mecanisme financiare, structuri de conducere, performanţă, opţiuni şi perspective strategice din cadrul celor două Opere.

Pentru început, considerăm că trebuie clarificat conceptul de *operă*. Acesta cuprinde ca sistem două dimensiuni distincte aflate în raport de interdependenţă, termenul referindu-se în accepţiune largă la: 1) *produsul artistic* rezultat în urma unui conglomerat de procese artistice şi de producţie din teatrul liric, şi 2) la *instituţia culturală* destinată exclusiv producţiei de spectacole lirice, adică opera în accepţiunea restrânsă a termenului (Figura 1).

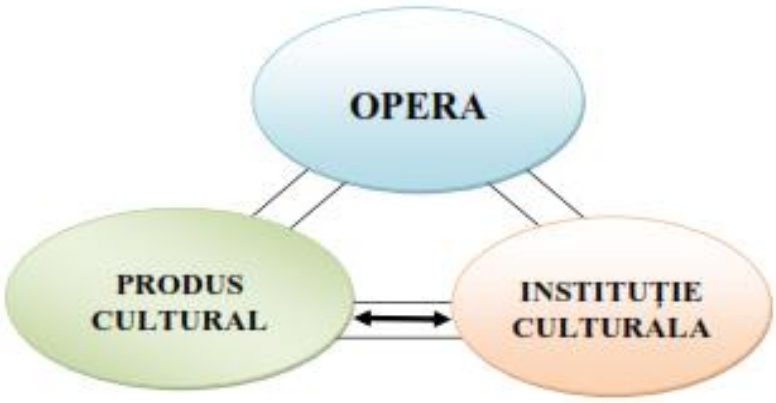

Figura 1. Încărcătura semantică a termenului de *operă*; reprezentare grafică

Văzută prin prisma obiectului de activitate, respectiv producţia de bunuri artistic-culturale, opera se evidenţiază printr-un element definitoriu al său, *repertoriul*, care reprezintă un factor determinant al calităţii şi autenticităţii produsului artistic. De cealaltă parte, opera, definită ca instituţie culturală, cuprinde o serie de variabile, aflate la rândul lor în relaţie de strictă interdependenţă cu indicatorul repertorial.

Astfel, *spaţiul* în care instituţia culturală îşi desfăşoară activitatea dictează la rândul său politica repertorială a teatrului liric prin variabile precum *statutul legal al instituţiei*, *istoria sa organizaţională*, *locaţia teatrului* şi *arhitectura clădirii*. Cât priveşte influenţa *statutului legal al instituţiei* asupra politicii repertoriale a teatrului, spre deosebire de casele de operă din spaţiul american, majoritatea operelor europene se află în proprietatea statului, ele fiind subordonate în

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general ministerelor de cultură, conducerea instituției fiind deci responsabilă cu derularea și planificarea proceselor artistice ale teatrului. Fiindcă operele americane sunt fondate prin inițiativele private ale donatorilor care dețin acțiuni ale companiei, aceștia își păstrează un anume drept decizional asupra politicilor financiare și artistice implementate în cadrul teatrului liric (Agide şi Tarondeau, 2010). De asemenea, *istoria organizațională* a instituției constituie un factor important şi pentru *calitatea produsului artistic* și mai ales, pentru specificitatea acestuia, prin componenta tradițională a operei ca teatru liric. Tradiția într-un teatru liric, evidențiată prin istoria sa organizațională, determină promovarea unui anumit specific repertorial care reflectă gustul artistic al publicului. Alte două elemente esențiale de menționat sunt *locația instituției* și *arhitectura clădirii*. Locaţia determină atât numărul spectatorilor care frecventează spectacolele de operă, cât și categoriile de public iubitor de operă.

Accesibilitatea produsului artistic pentru public este determinată direct de locația teatrului, teatrele din orașe mari și, mai ales, teatrele localizate în capitale, lăudându-se cu un public muzical elevat și exigent în ceea ce privește calitatea artistică a spectacolelor. *Arhitectura clădirii* joacă un rol decisiv în producția spectacolelor, în alegerea repertoriului, în planificarea artistică și în ceea ce privește numărul mediu de spectatori pe spectacol. Arhitectura teatrelor europene este condiționată istoric și nu permite, de cele mai multe ori, punerea în scenă a oricăror producții, în principal datorită formei și mărimii scenei, mărimii auditoriului, astfel încât politica repertorială trebuie adaptată la specificul arhitectonic al clădirii.

Produsul artistic al caselor de operă și mai ales *calitatea* acestuia depind în mare măsură de personalul instituției. Astfel, *structura de conducere* deține cea mai mare putere decizională și asigură, împreună cu artiștii și personalul auxiliar, producția propriu-zisă a operei.

Pe departe cel mai important element în analiza unui teatru liric îl reprezintă *bugetul* acestuia. Această categorie cuprinde o serie de elemente esențiale şi informaţii legate de sursele de finanțare, graficele de cheltuieli, veniturile obținute din activitatea de bază a instituției și, nu în ultimul rând, de procesul de planificare artistică și financiară a instituției în funcție de bugetul disponibil. Sursa cea mai directă de venit pentru procesul de producţie de operă ar fi, în mod natural, publicul care este totodată şi beneficiarul "produsului", adică a spectacolului propriu-zis. În acest caz, resursele necesare pentru spectacol ar trebui să fie furnizate de către public, sub formă de venituri din box-office sau o altă formă de contribuţie directă. Cu toate acestea, această abordare a veniturilor de către teatrele lirice nu este nici realistă şi nici potrivită. Casele de operă au nevoie de resurse suplimentare pentru a acoperi acest ’şec de piaţă’ în obţinerea de sprijin direct din partea publicului. Diferitele surse de venit pot fi împărţite astfel în două categorii care

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descriu dicotomiile legate de instituţiile care contribuie cu aceste finanţări. Astfel examinarea lor se poate face pe surse de venit şi pe surse private[1] şi instituţionale. Combinaţia acestor două dicotomii duce la patru categorii diferite de surse de venit: o sursă privată, mai multe surse private, o sursă instituţională şi surse instituţionale multiple. Analiza acestor categorii contribuie la etichetarea şi înţelegerea diferitelor surse de venit precum şi influenţa lor asupra operelor în cauză. De menţionat este faptul că aceste categorii identifică doar sursa de venit (în stare pură), fără a aborda chestiuni legate de valorile "ataşate" acestor surse, motiv pentru care modelul propus va aborda şi chestiunile legate de valorile sociale aferente acestor surse în societatea civilă şi economică.

Pentru o examinare instituțională completă s-a optat în demersul nostru şi pentru *analiza SWOT*. Această analiză ajută nu numai la proiectarea unei viziuni de ansamblu asupra instituției, ci evaluează în același timp și factorii de influență interni și externi care determină poziția acesteia pe piață sau în raport cu ceilalți competitori.

Având în vedere considerentele de mai sus, a fost identificat un număr de 5 (cinci) indicatori esenţiali care au conturat modelul nostru managerial pentru un teatru liric. Fiecărui indicator i se asociază o serie de parametri specifici. Mai jos, (în Figura 2) sunt prezentaţi indicatorii, parametrii asociaţi şi interdependenţa lor în cadrul modelului de analiză organizaţională propus.

1Termenul de “surse private” se referă aici la contribuţiile furnizate de către persoane particulare.

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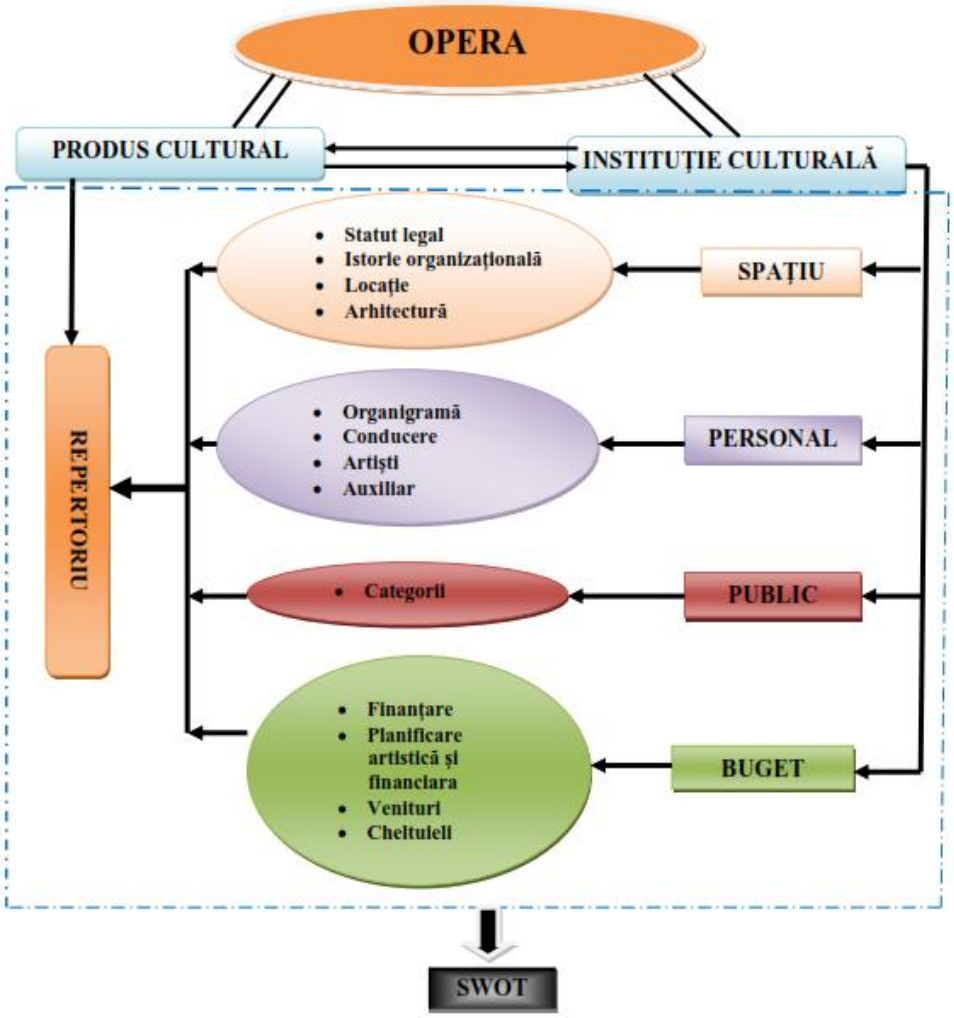

Figura 2. Reprezentare grafică a modelului de analiză organizaţională propus

Sintetic, modelul propus pentru fiecare analiză instituţională cuprinde următorii indicatori (Tabel 1):

1. **Spaţiu:**	
	Istorie organizaţională şi statut legal
	Arhitectura si locaţia
2. **Personal:**	
	Organigrama; board de directori, structură decizională, structura personal
3. **Public:**	
	Statistici vânzări bilete, public

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4. **Buget:**	
	Surse de finanţare; venituri şi grafice de cheltuieli
5. **Repertoriu**	
	Planificare financiară şi artistică

Tabel 1. Indicatori de analiză organizaţională

Considerăm că toţi indicatorii propuşi în cadrul modelului de analiză prezentat mai sus contribuie la o radiografiere robustă şi riguroasă a instituţiei, prin identificarea aspectelor esențiale pentru buna funcționare a operei și prin diagnosticarea disfuncționalităților existente pe mai multe paliere.

Utilizarea și aplicarea acestui model asupra mai multor teatre lirice permite o radiografiere edificatoare a tuturor indicatorilor ce țin de structura și funcționarea teatrului liric, în structura căreia performanțele individuale pot fi nu doar identificate, ci și în mod realist comparate. Mai mult, abordarea comparativă a celor două teatre lirice, Opera Națională din București și Opera de Stat din Viena (Wiener Staatsoper), ca urmare a aplicării acestui model de analiză comun, ne-a permis identificarea nu numai a unor soluţii economice, ci şi a unor seturi concrete de instrumente de lucru pentru Opera Națională din București în încercările acesteia de aliniere la standardele cultural-economice occidentale. De asemenea, prin raportarea la un model performant occidental cum e cel reprezentat de Opera de Stat din Viena, acest model managerial poate fi emulat, adaptat, implementat și maximizat atunci când sunt întrunite condiţiile cerute.

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ASPECTS REGARDING WAYS TO EMBED QUALITY ASPECTS IN HIGHER EDUCATION ACCOUNTING

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Abstract: The present paper aims to demonstrate that through a customization of the accounts plan, accounting may represent the primary source of information that enables efficient measurement of quality in higher education. This, in its turn, contributes to the increase of the financing of public higher education in our country.
Keywords: accounting, quality, financing, accounts

Evoluţia contabilităţii publice în România a fost marcată decisiv de apariţia Regulamentului Organic al Moldovei, care preciza separarea bugetului şi finanţelor statului de cele ale demnitarului şi impunea organizarea mai riguroasă a contabilităţii publice şi a controlului efectiv de utilizare a banilor şi bunurilor publice. Dacă în orânduirile precapitaliste noţiunea de buget al statului echivala cu vistieria statului care, cel mai adesea, se confunda cu cămara domnitorului, neexistând o delimitare clară între veniturile şi cheltuielile domnitorului şi cele ale statului, odată cu Capitolul III din Regulamentul Organic al Moldovei care se ocupa cu finanţele publice a apărut termenul de buget pentru prima dată intr-un act normativ, pe teritoriul Ţărilor Române.
Succesiv, mai apoi, de-a lungul anilor 1861, 1864 şi 1895 au fost emise o serie de reglementări importante cum sunt: Regulamentul financiar, Legea contabilităţii publice în administraţia de stat, Legea contabilităţii publice şi în celelalte domenii ale administraţiei publice; anul 1929 a marcat o modificare fundamentală a contabilităţii publice prin emiterea noii Legi a contabilităţii publice, care a introdus o serie de elemente progresiste: principiul obligatoriu al contabilităţii în partidă dublă, inventarierea patrimoniului public, anul bugetar de 12 luni, termenul legal de depunere a bugetului public, separarea cheltuielilor ordinare de cele ale instituţiei, etc.
Între 1947 şi 1989, anul începerii mişcărilor sociale în Europa de Est, contabilitatea bugetară era organizată după modelul sovietic şi constituia o sursă importantă de date, prin excelenţă financiară, privitoare la execuţia bugetară. În perioada tranziţiei, contabilitatea publică a urmărit principiile noilor reglementări determinate de noua legislaţie din domeniul contabilităţii, Legea nr. 82/1991, care pentru instituţiile de învățământ superior a însemnat înscrierea lor în liniile

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directoare determinate de transformările importante care au avut loc în România după anul 1990, când a existat o proliferare fără precedent a numărului de universităţi în sistemul naţional al instituţiilor publice.

O nouă etapă în organizarea sistemului contabil al instituţiilor publice a fost marcată de obligativitatea instituţiilor de învăţământ superior (în 2005) de a asigura şi conduce contabilitatea proprie, contabilitatea publică şi contabilitatea de gestiune, după caz, utilizând planul de *conturibugetare* (conturi speciale în afara bilanţului, deschise pe structura clasificaţiei bugetare) şi *conturi generale* (utilizate pentru organizarea contabilităţii patrimoniale şi pentru determinarea rezultatului patrimonial). Astfel, începând cu 2005, contabilitatea generală a instituţiilor publice este organizată în baza principiilor contabilităţii de angajament care presupune recunoaşterea în contabilitate a tranzacţiilor şi evenimentelor economice şi financiare în momentul în care se produc şi nu în momentul în care acestea se încasează.

Si totuşi, în organizarea şi conducerea ei, contabilitatea instituţiilor de învăţământ superior, prezintă anumite limite care au o oarecare influenţă asupra modului de înţelegere a scopului contabilităţii, acela de a reflecta o imagine fidelă a patrimoniului şi de a asigura realitatea, exactitatea, rezonabilitatea datelor şi informaţiilor contabile, şi nu în ultimul rând, de a menţine astfel încrederea utilizatorilor în informaţiile furnizate de aceasta.

Instituţiile de învăţământ superior îndeplinesc sarcini de organizare şi conducere a contabilităţii bugetare, sunt finanţate de la bugetul de stat, pun la dispoziţie informaţii referitoare la execuţia bugetară pentru perioada trecută şi întocmesc dări de seamă contabilă periodice şi anuale. Contabilitatea instituţiilor de învăţământ superior constituie sursa primară de informaţii care permite reflectarea unor aspecte de calitate ale procesului de învăţământ superior. Informaţiile pe care le furnizează aceasta se regăsesc în situaţiile financiare întocmite de către instituţiile de învăţământ superior, trimestrial şi anual. Aspectele surprinse în conţinutul acestor situaţii sunt prezentate în *Contul de rezultat patrimonial, Venituri din activităţi economice, Contul sintetic 751 Venituri din vânzări de bunuri şi servicii*.[1]

Calitatea în învăţământul superior oferă o sferă largă de cuprindere şi vizează atât aspecte cu exprimare monetară, cât şi aspecte care nu pot fi evaluate rezonabil în bani.Actualul plan de conturi, urmare a caracterului normativ al contabilităţii publice, cuprinde conturi cu un conţinut economic ce limitează totuşi posibilităţile de reflectare a calităţii procesului de învăţământ

[1]OMFP nr.2021/2013- pentru modificarea şi completarea Normelor metodologice privind organizarea şi conducerea contabilităţii instituţiilor publice, Planul de conturi pentru instituţiile publice şi instrucţiunile de aplicare a acestuia, aprobate prin Ordinul ministrului finanţelor publice nr.1917/2005;

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superior. În acest context, arătăm că practica actuală a universităţilor se rezumă doar la înregistrarea tuturor veniturilor realizate din activităţile de învăţare şi cercetare ştiinţifică în *Contul 751Venituri din vânzări de bunuri şi servicii*, fără a face diferenţierea acestora pe naturi şi surse de formare, ceea ce restrânge posibilitatea utilizatorilor de informaţii contabile de a efectua analize şi studii privitoare la calitatea procesului de învăţământ superior. Altfel spus, conturile de venituri din planul de conturi al contabilităţii publice nu surprind componenta calitativă a procesului de învăţământ superior. Plecând de la ipoteza că procesul de educaţie şi cercetare trebuie să fie unul al calităţii şi excelenţei, se impune ca şi evidenţa contabilă să răspundă acestei cerinţe, prin adaptarea corespunzătoare a instrumentarului său la acest deziderat.

Prin urmare, apreciem oportună şi necesară dezvoltarea *Planului general de conturi la Clasa 7, Conturi de venituri*, prin introducerea unor conturi ale căror conţinuturi economice să permită reflectarea calităţii procesului de învăţământ superior şi cercetării ştiinţifice universitare.

În acest sens, considerăm că veniturile rezultate din prestarea de servicii de educaţie şi de cercetare ştiinţifică determinate pe bază de elemente cantitative (număr de studenţi fizici, număr de studenţi echivalenţi, număr de studenţi echivalenţi unitari şi alocaţia bugetară unitară) trebuie să facă obiectul, în continuare, a *Contului 751Venituri din vânzări de bunuri şi servicii*, iar veniturile determinate pe bază de criterii ce caracterizează calitatea şi excelenţa academică să facă obiectul unui nou cont sintetic de venituri de gradul I cu posibilitatea de dezvoltare a acestuia în conturi sintetice de gradul II. Conţinutul economic al acestor noi conturi trebuie să surprindă şi să reflecte contribuţia fiecărui aspect calitativ la formarea veniturilor instituţiilor de învăţământ superior.

Spre exemplificare, dacă urmărim structura veniturilor totale ale Universităţii „Lucian Blaga” din Sibiu în perioada 2010-2012, observăm că aceasta cuprinde şi componenta calitativă a alocaţiilor bugetare destinate finanţării de bază. Astfel, componenta calitativă disponibilă (Figura 2) este determinată prin intermediul indicatorilor de calitate şi prezintă variaţii anuale diferite. După cum se ştie, rezultatul patrimonial al exerciţiului financiar este determinat la sfârşitul anului bugetar şi se poate regăsi într-unul din situaţiile: excedent sau deficit, în funcţie de veniturile instituţiei care sunt mai mari sau mai mici decât cheltuielile. Acest rezultat patrimonial este prezentat în Tabelul 1.

Indicatori	**2010**	**2011**	**2012**
Venituri totale	131.955.314	166.527.314	98.773.952
Cheltuieli totale	123.980.896	123.608.678	134.308.694

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Rezultat patrimonial + excedent, - deficit	+7.974.418	+42.918.636	-35.534.742

Tabel 1. Situaţia rezultatului patrimonial realizat la ULBS în perioada 2010-2012[2]

După cum se observă, deficitul bugetar înregistrat de universitate în anul 2012 s-a datorat, în principal, amortizărilor calculate pentru imobilizări necorporale, precum şi angajării şi efectuării unor cheltuieli în contul proiectelor externe nerambursabile care au fost efectuate de către universitate şi pentru care nu s-au întocmit cererile de rambursare.
Grafic, situaţia acestui rezultat patrimonial este reprezentată în Figura 1 de mai jos:

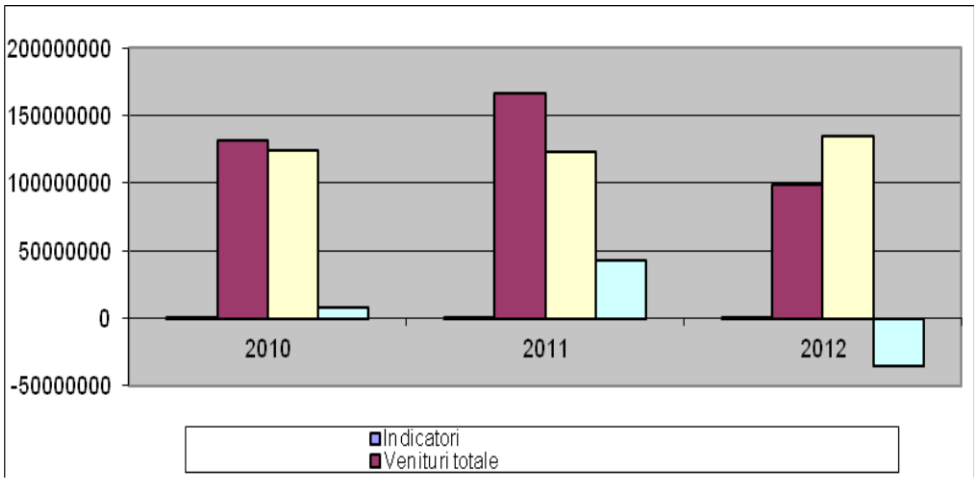

Figura 1. Rezultatul patrimonial realizat la ULBS în perioada 2010-2012

Informaţiile furnizate de contabilitatea instituţiilor de învăţământ superior, prin situaţiile financiare ce se întocmesc periodic, arată faptul că în structura veniturilor totale înregistrate de aceste instituţii o pondere relevantă o constituie finanţarea de bază şi componenta calitativă. Dimensiunile acesteia din urmă sunt în mod direct influenţate de către indicatorii de calitate, standardele generale şi standardele de referinţă care contribuie la creşterea performanţei universităţii.
Dacă se face analiza pe structură de venituri, atunci, în cadrul ULBS, constatăm că există o evoluţie ascendentă a alocărilor de resurse cu destinaţia finanţarea de bază, atât în funcţie de

[2] www.ulbsibiu.ro.

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numărul studenţilor echivalenţi, cât şi în funcţie de indicatorii de calitate, până în anul 2010 (Tabel 2).

Indicatori	**2010**	**2011**	**2012**
Venituri totale, din care:	131.955.314	166.527.314	98.773.952
-finanţarea de bază	36.964.784	32.784.339	27.558.947
-componenta calitativă disponibilă	15.842.040	14.050.431	12.360.998
-componenta calitativă acordată	13.016.832	11.480.509	7.516.593
-grad de utilizare a finanţării disponibile	82,17 %	81,70 %	60,81 %

Tabel 2. Situaţia veniturilor la ULBS în perioada 2010-2012

Astfel, începând cu anul 2011, observăm o evoluţie descendentă a alocărilor de resurse, în special a componentei calitative din finanţarea de bază. Anul 2012 a însemnat pentru ULBS o diminuare accentuată a finanţării de bază, iar componenta calitativă a înregistrat o alocare mult diminuată datorită, în principal, efectelor pe care le-a propagat noua Lege a Educaţiei Naţionale (Len nr 1/2011). Aşadar, clasificarea universităţilor, ierarhizarea programelor de studii, organizarea de programe de studii în ştiinţe şi tehnologii avansate, organizarea studiilor doctorale în cotutelă, implicarea universităţilor în mediul local, zonal sau regional, au influenţat în mod direct dimensiunea componentei calitative a finanţării învăţământului superior. Aceste efecte pot fi urmărite grafic în Figura 2.

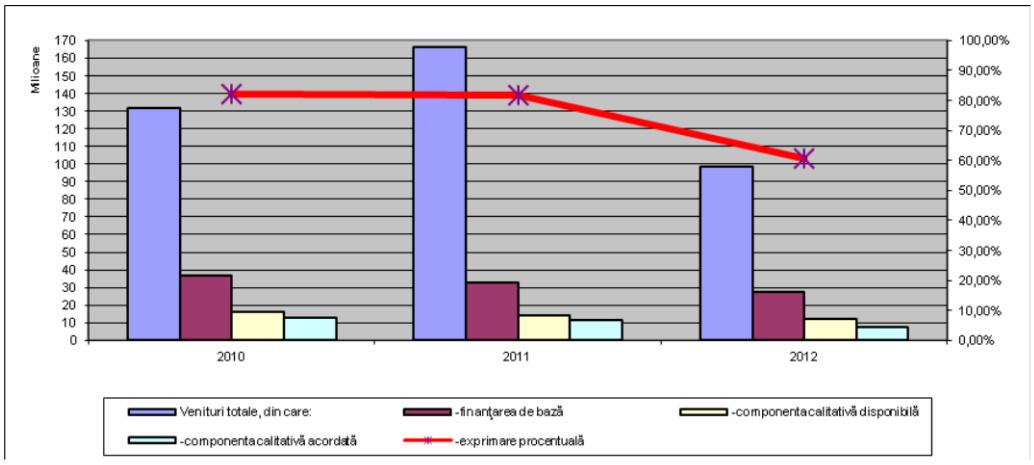

Figura 2. Reprezentarea grafică a situaţiei veniturilor realizate de ULBS

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în perioada 2010-2012

Reflectarea de către contabilitatea universităţilor publice de învăţământ superior a unor aspecte calitative ale procesului de învăţământ şi cercetare, este posibilă în viziunea noastră prin componenta cantitativ-valorică a modului de formare a resurselor financiare. Instituţiile de învăţământ superior de stat din ţara noastră îşi „procură" resursele financiare din bugetul de stat printr-un mecanism în care concură atât elementele cantitative concretizate în număr de studenţi şcolarizaţi în regim de fără taxă, cât şi elemente calitative constând în cantitatea şi calitatea cercetării ştiinţifice, gradul de absorţie al absolvenţilor în piaţa muncii, etc. Contribuţia fiecărei categorii de elemente la repartizarea alocaţiilor bugetare, se stabileşte de către Ministerul educaţiei în raport de obiectivele strategice de dezvoltare a acestei importante ramuri de activitate din societatea românească.

Astfel, resursele financiare încasate de către universităţi sunt contabilizate în conturile sintetice din Clasa 7, Grupa 70, Simbol 751.01.00.33.10.05[3] şi nu reflectă explicit contribuţia componentei calitative a finanţării instituţionale cu destinaţia de finanţarea de bază şi finanţare suplimentară[4].

Pentru reflectarea de către contabilitatea instituţiilor publice de învăţământ superior a unor aspecte calitative ale procesului de învăţământ, considerăm utilă şi relevantă introducerea în *Planul general de conturi* a unor conturi de venituri în care să se înregistreze alocaţiile bugetare cu destinaţia de finanţare de bază şi finanţare suplimentară[5] a învăţământului superior, repartizate în raport de elementele calitative. Astfel, se pot contabiliza toate veniturile încasate pe fiecare sursă de venit în parte, constituind astfel surse de informaţii pentru manangementul academic, în scopul creşterii contribuţiei componentei calitative la formarea resurselor financiare.

Propunem introducerea în Planul general de conturi a contului sintetic de gradul I - 7510 *Venituri din contribuţia calităţii educaţiei şi cercetării* şi a următoarelor conturi sintetice de gradul II:

75101 - Venituri din clasificarea universităţilor

75102 - Venituri din ierarhizarea programelor de studii universitare

75103 - Venituri din programe de studii univesitare în ştiinţe şi tehnologii avansate

75104 - Venituri din doctorate organizate în cotutelă

75105 - Venituri din asumarea de către instituţiile de învăţământ superior a unui rol

[3]Ordinul ministrului delegat pentru buget nr. 2021/2013 cu privire la modificarea şi completarea Normelor metodologice privind organizarea şi conducerea contabilităţii instituţiilor publice. Planul de conturi pentru instituţii publice şi instrucţiunile de aplicare a acestuia, aprobate prin Ordinul ministrului finanţelor publice nr.1917/2005.
[4]Legea Educaţiei Naţionale nr. 1/2011 şi Monitorul Oficial nr.18/10.01.2011.
[5] Ibid.

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activ la nivel local şi regional

75106 - Venituri din componenta calitativă a activităţii de educaţie şi cercetare ştiinţifică

Propunerile de mai sus constituie o viziune personală de amendare a actualului *Plan general de conturi* al contabilităţii publice cu precizarea că rămâne la posibilitatea fiecărei instituţii de învăţământ superior de a-şi organiza şi conduce contabilitatea de gestiune într-o manieră care să permită într-o cât mai mare măsură reflectarea calităţii procesului de învăţământ superior şi cercetării ştiinţifice universitare, mai ales în acele domenii în care contabilitatea financiară, graţie caracterului său normalizat, nu poate oferi informaţii credibile şi rezonabile în această materie. In ciuda acestor constrângeri, analiza datelor furnizate de contabilitatea publică a instituţiilor de învăţământ superior privind nivelul, structura, dinamica resurselor financiare realizate într-o perioadă de gestiune poate evidenţia aspecte ale procesului de integrare ale calităţii învăţământului superior şi cercetării ştiinţifice universitare.

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Ordinul ministrului delegat pentru buget nr. 2021/2013 cu privire la modificarea şi completarea Normelor metodologice privind organizarea şi conducerea contabilităţii instituţiilor publice.

Planul de conturi pentru instituţii publice şi instrucţiunile de aplicare a acestuia, aprobate prin Ordinul ministrului finanţelor publice nr.1917/2005.

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THE EVOLUTION OF TOURISM FLOWS IN THE CLIMATIC HEALTH RESORT SÂNGEORZ-BĂI

Mircea Mureşianu

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Abstract: The Evolution of Tourism Flows in the Climatic Health Resort Sângeorz-Băi. The location was once a flourishing health resort due to its mineral waters, but is presently fighting to survive the harsh economic environment caused by the financial crisis of the past several years. Since the 1990s, when state-supported treatment for union members was discontinued, the hotels Hebe and Someşul, the two main lodging and treatment facilities, are trying to attract a minimal number of tourists to assure their survival. Smaller units are also competing for tourists, but until the domestic economy will recover (due to the fact that the absolute majority of tourists are Romanians), tourism flows in Sângeorz-Băi will stay low.

Keywords: tourism flows, health resort, underutilised facilities, lack of investments

Introduction

The mineral water deposit from Sângeorz-Băi is considered "the gold" of the town, and its existence is linked to the Rodna Fault, dividing the Mesozoic crystalline structures of the Rodna Mountains from the Neogene eruptive rocks of the Bârgău Mountains. The mineral water resources of the spa have been surveyed as early as the 18th century, when the Austrian authorities from the former Năsăud Border District built some spa facilities around several rich springs.

Nowadays, both representative spa "giants", the *Hebe* Complex (900 beds) and the *Someşul* Complex (600 beds), accommodate far less tourists for treatment than their capacity would allow, as a result of the dramatic decrease of social-unionist tourism after the year 1989. The decline of tourism flows is also due to the absence of managers able to negotiate with government and union representatives for the allocation of sufficient treatment vouchers for the resort to be profitable. These negative aspects are amplified by the lack of investments in recreational facilities which could create an all-year interest in the location and attract tourists looking for leisure and recreation, thus diminishing seasonality.

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Materials and methods

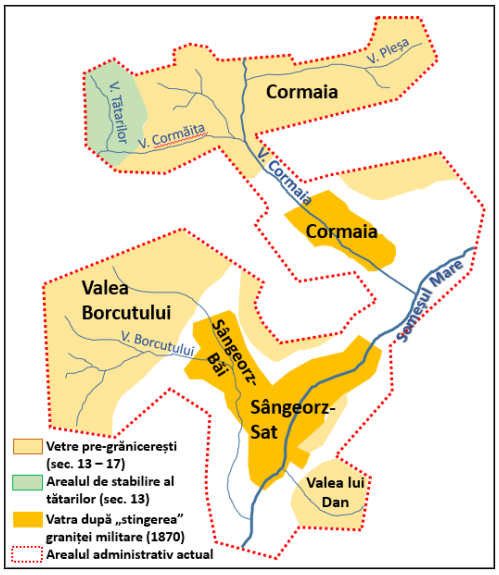
The present paper represents an effort to monitor the development of local spa industry and supporting tourism flows over the past three decades. This temporal span comes with inherent difficulties, given the regime change in Romania in the year 1989 and the incoherent and deficient system of quantifying tourism flows.

The focus of the paper is directed towards four distinctive data collecting methods: 1. Consulting bibliographical sources which can provide relevant information on the topic; 2. Conversations with local authorities and the management of the *Hebe* and *Someșul* hotels and spa complexes; 3. Collecting statistical data directly, from the aforementioned lodging facilities; 4. Tourist interviewing, asking two questions: *How do you appreciate the spa and wellness services in the resort?* and *How do you appreciate the lodging, eating, and recreational facilities?* with the answers being noted within a simple matrix.

Geographical and historical features. Spa treatment factors and spa infrastructure

The climatic health resort Sângeorz-Băi is situated in the upper basin of the Someșul Mare River, upstream its confluence with its right tributary, Cormaia, in a geological and geomorphological contact zone between the Rodna Mts. to the north and the Bârgău Mts. to the south.

Sângeorz-Băi is the only town in the area, an old settlement known for a very long time by its Saxon name, Sänt-Gergen, first documentary mentioned in 1245, ten years after Rodna, together with several other settlements on the Someș River (Maieru, Feldru, Rebrișoara, Năsăud, Salva) (Mureșianu, M., 2004).



The first habitation core was built around the present-day Orthodox church, on the natural and communication axis of the Someș River, from where the settlement extended along the river and the lower course of the Cormaia stream, on the Borcut Valley (where, at the end of the 18th century, the initial health resort took shape).

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After the establishment of the Năsăud Border District, most of the scattered peripheral houses have been moved in the valleys and along the roads, so that the Austrian authorities could keep the local population under control.

The present administrative territory incorporates several distinct locations: Sângeorz-Village, Sângeorz-Băi, Cormaia, Valea Borcutului, and Valea Tătarilor.

Fig. 1. Territorial evolution of the settlements in Sângeorz (after M. Mureșianu, 1997)

The touristic attractiveness of the resort is given by its nine mineral springs, with bicarbonate, calcic, magnesian, sodium-chloride, mild ferruginous waters, already utilised in the 18th century (Mureșianu, 1997). Associated with the mineral water resources are curative muds and carbon dioxide escapes (mofette).

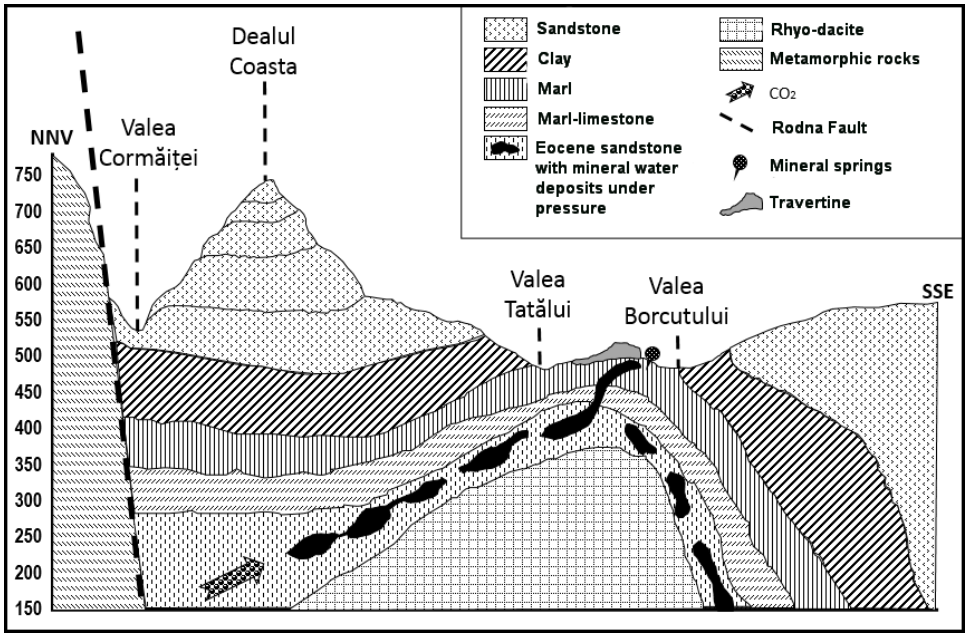

Fig. 2. Cross section of the Hebe springs area (after M. Mureșianu, 1997)

The resort infrastructure went through several changes during the spa's existence. The location was once a pretty villa resort, until the inauguration, in 1973-1974, of the spa hotel complexes *Hebe* (450 rooms, 900 beds) and *Someșul* – the former UGSR Hotel, belonging to the sole communist union, controlled by the Communist Party (600 beds), and of 17 villas accommodating a maximum of 611 tourists (until now, only 5 of these villas have been privatised and refurbished, the rest lying in decay. In the proximity of these facilities there were built numerous private guesthouses, capable of lodging 500-600 tourists, effectively revitalising the resort. Also to mention are the dining facilities (restaurants, canteens, bars, cafés), the treatment and recreational infrastructure of the two complexes, and auxiliary tourism services providers.

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Results and discussions

Carefully studying and analysing the statistics and linking them with all the factors we registered in our research files we found that there can be identified three distinct periods, each having special characteristics, as follows:

1986-1990

1991-2007

2008-2015

The timeframe **1986-1990** defined the resort as a major tourism attraction, with high demand and elevated lodging facility occupation rate (between 60-66% for the *Hebe* Complex, and 88-90% for the *Someşul* Complex, at the end of the 1980s) (Cocean, Mureşianu, 1991).

In the year 1990, the growing demand trend is interrupted, with the occupation rate for the two facilities dropping to 58% (*Hebe*) and 66% (*Someşul*), respectively.

The period **1991-2007** is showing a relative reviving and stability of tourism flows, thanks to managers (directors and/or chief accountants) who accomplished productive negotiations with the Labour Ministry, the National Pension House, and the unions, thus gaining a reasonable number of treatment vouchers.

In the first part of the period (timeframe 1991-1995), tourism flows are significantly lower than before, not exceeding 3500-4000 tourists/year, as a result of a certain inertia linked to the „good times", as many of the old clients kept visiting the resort.

Among the causes of the decrease of tourists, we mention:

The transition from a mass tourism special to socialist societies (as it was state subsidised), to a free market tourism, afforded only by those with a high enough income to spend for treatment and recreation;

A dramatic increase of tourism services prices, in clear contrast to the income of the general population;

The occurrence of far more stringent social problems for the majority of the population than health and leisure concerns;

A drop in foreign visitors from the neighbouring former socialist countries due to their own social-economic problems.

On the other hand, the resort successfully keeps its activity thanks to union leaders from the county of Bistrița-Năsăud (growing in both number and presence) which, profiting from a lack of legislation and clear rules, raised the interest of employees from the county's industries and

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companies for vouchers for Sângeorz-Băi. Thus, accepting and promoting unwritten rules of mutual advantage, the employees went to the spa, where they acquired groceries (canned food, meat products, oil, sugar, etc.) covering 60-70% of the free voucher offered by the union, while the rest of 30-40% of the voucher's value remained to the service providers. In the timeframe 2000-2005, there still were state facilities operating with substantial government subventions (e.g. the Mining Facility from Rodna, closed at January 1, 2006).

The last part of this period starts with a decrease in tourist numbers to under 3000 visitors/year (in 2006) for the first time since 1986 and to less than 2000 tourists in 2007.

Between 2005 and 2007, an Arab businessman who leased the *Hebe* Complex invested in the renovation of just the first two floors of the nine of the hotel, while the rest entered a visible state of degradation. We face a hotel and therapy giant that is hard to be maintained and managed efficiently. The coexistence of abandonment and wealth is hard to ignore.

This period witnesses the loss of a large share of the traditional tourists, caused by the lack of an active and dynamic manager-negotiator, but also by the poor financial means of old clients who lost their jobs.

Between **2006 and 2015**, the effects of the economic-financial crisis that disturbed the entire society also affect the resort, and tourist numbers fall dramatically to 1041 in 2008, and 893 in 2012.

The last three years of the period (2013-2015) show a slightly rising trend in tourism flows (from 1312 in 2013, to 1525 in 2015), as well as a shift in tourism preferences towards guesthouses, villas, and other private-owned houses that offer better conditions, with an adjustment to the time interval spent here (weekend – week-long stay). Traditional tourists, spending the classic spa treatment period of 2-3 weeks, are still bond to the old units *Hebe* and *Someşul*, and number some 1500-1600 visitors/year.

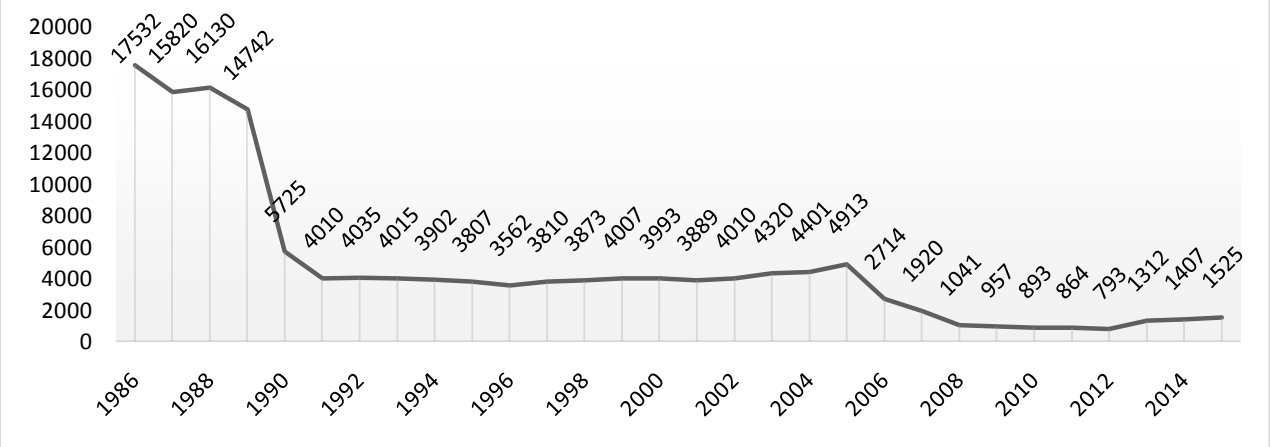

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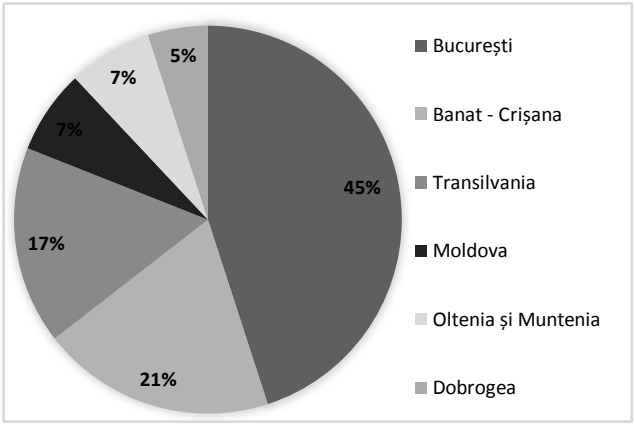
Fig. 3. Evolution of tourism flows in Sângeorz-Băi between 1986 and 2015 (based on data provided by the hotels Hebe and Someșul)

Of real interest were the answers to a small interview from July 2015 from the 220 tourists (120 from *Hebe* and 100 from *Someșul*). To the question *How do you appreciate the spa and wellness services in the resort?* 58 tourists were satisfied; 39 considered that the services were not modernised for the past decade; and 38 tourists were very dissatisfied. The question about *the lodging, eating, and recreational facilities* received different answers from the visitors of the two facilities, with those from *Hebe* being far more satisfied about the hotel (95 positive answers), because the rooms from the two refurbished and modernized floors, as well as restaurant services are of higher quality, and tourists have reasonably priced buses at their disposal for visiting the area; only 25 tourists from *Hebe* had higher expectations, expressing some concerns. On the other hand, all 100 tourists from *Someșul* complained about the old, damp rooms and bathrooms, and the expensive bus tours. The answers shed light on the visitor's disposition, explaining, at the same time, the modest numbers of visitors.



Regarding the **origin of the tourists** (relying on data from the hotels *Hebe* and *Someșul*), the majority is domestic (95%), while foreign tourists represent only a small part – a situation that didn't changed during time. Also unchanged remained the regional structure of domestic tourists for the past two decades, showing only minor fluctuations from one period to another (fig. 4).

Fig. 4. Structura fluxurilor turistice interne din Sângeorz-Băi după aria de proveniență a turiștilor (2011; surse: Hebe, Someșul)

Conclusions

The Sângeorz-Băi health resort is undergoing a deep crisis caused by the dramatic recess of social-unionist tourism and the associated decrease of state-supported treatment vouchers.

The lack of investments in the recreational infrastructure (gyms and sports grounds, spa centres, discos, winter sports facilities, swimming pools, bowling alleys, training camp facilities, etc.) also contributes to low visitor numbers, rendering it unattractive for those who seek only recreational activities.

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Under these circumstances, it is not easy to predict the future of a resort with huge geographic and human potential, once the proud of the upper Someșul Mare River. It is still too early to give a precise answer to the question: where is the spa and leisure tourism from the only national ranking resort in the county of Bistrița-Năsăud heading to?

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ASPECTS REGARDING THE RECENT DEVELOPMENT OF ONLINE TICKETING PLATFORM IN THE TOURISEM INDUSTRY

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Abstract: My paper sets out to present the recent development of innovating online ticketing platforms in the tourism industry as well as the constant growing potential provided by instant and mobile tickets. The paper illustrates ways in which the increasing number of online ticket sales, mainly as a result of the global IT progresses and the hassle-free entrance provided for tourists, offers a long-term solution against the countless hours spent waiting in line in front of an attraction, show or concert just to be informed that unfortunately all tickets for the respective venue are already sold out. Easy to use, mobile ticketing seems to represent a convenient and fast solution in a world where every wasted minute counts.
Keywords: online ticketing platforms, tourism industry, instant tickets, mobile tickets, fast solution

Introduction The modern foundation of the ever blooming worldwide industry named tourism is also formed out of online ticketing platforms. Nowadays due to the lack of time available people tend to pre-book everything online. After a long day at work, customers wish to buy their groceries, concert tickets, public transportation tickets and hotel ticket directly online without wasting much time. For most internet users the above mentioned solutions are just a couple of clicks away. Today's tourist can plan an entire journey or adventure in a couple of minutes by just sitting comfortably on their own couch while watching TV. Sites like booking.com for hotels and tiqets.com for attractions, shows and concerts allow customers to pre-book and pre-arrange everything from home in a simple and fast way by using their own computer /laptop / tablet, smart -TV or smartphone.

Features of online ticketing platforms In order for an attraction or a well planned event to increase its profit, ticket sales must also be done online. There are multiple online pre-registration or ticketing options available ready to serve the ever growing demand. The overall financial success of an attraction, show, concert, sports event, etc. often depends on selling as many tickets

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as possible hence it is crucial for a manager to work with a good ticketing company or to have his own ticketing solution.

Each ticketing platform allows users to register for an event (sport-event, concert, show, etc.). Such ticketing platforms in order to be successful must display certain characteristics. They must be:

1) *Easy to use platforms.* Each ticketing platform needs to be easy to use for potential customers. Everything needs to be hassle-free, user-friendly and quick to do.

2) *Excellent online experience.* Potential clients should be able to book their favorite ticket easily and registration must be stress-free. The perfect scenario should be: registration and check out on the same page

3) *Customer dedicated link*(s) for each event, venue, concert, show. Unique URL for each client's favorite event, venue concert, show that can be quickly shared with friends and family.

4) *Customer onlineregistration*. If a customer registration page is created it directly help managers increase their bookings and underlines the attractions or events branding strategy.

5) *Excellent customer support*. In case problems occur or if something goes wrong there has to be a contact person to speak to in order to resolve the issue no matter what day and time.

6) *Smart-phone and Tablet-friendly*. Nowadays smart-phones and tablets are even more popular than laptops and desktops. This is the main reason why customers must be able to access a user friendly ticketing platform perfectly adapted to both smart phones and tablets.

7) *Data collection.* It is always in hand to collect data about clients in order to better understand their needs. Some platforms allow attraction and event managers to add custom service fields in order to collect useful data from potential clients.

8) *Social Media Integration.* Users should have the option to easily share an event through all social media channels. All major ticketing platforms should be totally social media integrated because it will definitely increase their popularity and online sales.

9) *Registrations for groups.* Some ticketing platforms are oriented more or less towards individual customers (for example *tickets.com*). Other ticketing platforms on the other hand concentrate more on groups. For those platform or venues, it is important to offer special group registration and pricing / offers.

10) *Constant updates.* Clients and potential clients must be informed about each new update regarding booking procedure, date and time of the event and also current price changes.

11) *Various price options.* All major ticketing platforms must be able to accommodate price differences or different types of tickets

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12) *Various reporting tools.* Most managers in the hospitality industry want to have monthly, weekly and even daily reports in order to see how sales are doing. Ticketing platforms have to adapt to this request.

In order to differentiate among multiple ticketing platforms one must take into consideration that a good ticketing platform can host, organize and manage hundreds of attractions / events at once. This scenario is similar to the work of a good event manager who "identifying the target audience, explores the brand and plans in detail the entire logistics, analyzing all the technical features (Ramsborg et al, 2008)".

The ticketing platform should be easily accessible, tech friendly and popular within the target group. Studying the pricing, managers from the industry should consider that a certain commission or sometimes a monthly fee must be paid for all services offered (tickets sold for them) by the ticketing company. For the normal consumer on the other hand, it is a cheap, fast and transparent way to skip a line and buy tickets for their favorite attractions. When it comes down to money distribution and collecting, the ticketing company can offer multiple solutions:

Ticketing platforms can be integrated within an external payment gateway (for example PayPal). This method provides quicker and easy setup with total control and transparency for the event or attraction management. For customers this means a small booking fee and some extra waiting time due to the fact that they have to access an external slide to play.

Ticketing platforms can also provide their own secure payment. This method ensures that the customers can pay without leaving the site of the event or attraction. Managers do not have direct control over their revenue and have to wait for their money to be redirected to them. Clients have therefore just benefits!

Ticketing platforms can allow the money to be paid into an online merchant account such as PayPal Pro. From an attraction or an event manager's perspective this can take up a lot of time and the set up cost for the platform can be increased. On the other hand, managers have full control over their incomes, being a quick way for them to receive payments.

Along these lines, one of the most important things for event- attracting managers is to have a clear overview of every ticket sold and to increase ticket sales. For customers the most important thing is to have a hassle free, interactive, fast and cheap ticketing platform.

A Success Story: tiqets.com Tiqets.com aims to make people happy all around the world with quick and hassle free cultural visits. The Dutch company tiqets.com that started in 2013 is one of the fastest growing companies in Europe. Tiqets.com is a ticketing platform that developed a

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technology to easily enter cultural venues (such as attractions, museums, zoos, concerts, shows etc.). Most ticketing companies provide the following forms of tickets when booking:

E-tickets

Mobile tickets

Printed tickets

Depending on the venue, tiqets.com nearly provides instant tickets and mobile entrance without printing vouchers. Tiqets.com offer their partners a unique technology aimed to help venues go mobile with the Scan App solution. Established in Amsterdam tiqets.com is now active in most European touristic hotspots including Vienna, Paris, London, Rome, Barcelona and Madrid. Tiqets.com is also active in non-European cities like New York or Dubai and it is expanding rapidly in more than 26 cities by the end of 2016 (Table 1). The revenue of the company has grown in 11 months from 200k to 12 million (Revenue in January 2015 to almost 12 million in December 2015).

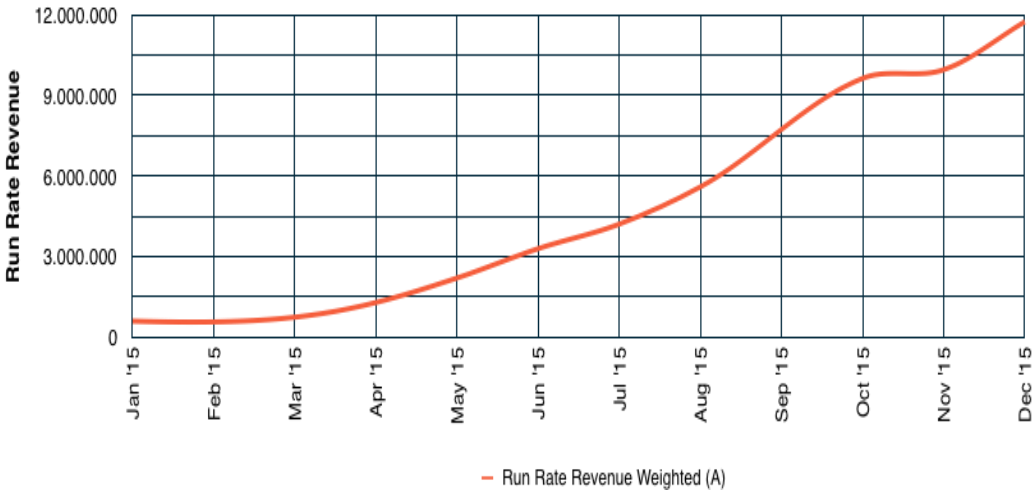

Table 1: Run Rate Revenue Weighted (A); *Source: Tiqet.com company presentation* (first quarter 2016)

The interactive ticketing company provides tickets for attraction all over the world. Both directly to travelers via www.tiqets.com but also to travel companies via API and white label integration, allowing partner companies to easily and quickly sell "dated" and "non-dated" entertainment to their own customers. This technology is unique because of the real-time data from hundreds of entertainment companies and millions of tickets that are distributed through partners and consumer websites to travelers worldwide.

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The ticketing platform provides access to the top 25 venues in every active city, almost always with instant delivery and without printing any physical ticket except by using the costumers' mobile phone. The Tiqets.com technology distributes the bookable content sometimes in 9 different languages across multiple channels. More the 500 national and international tiqets.com venue partners are advised to use scanning devices to easily, quickly and transparently check the tickets of the customers on sight. Everything is automated and explained in several different languages. The ticketing platform provides partner suppliers a modern way to promoteand sell entrance tickets and reach a new target audience. The supplier will automatically be promoted on tiqets.com webpage, making their tickets directly bookable for millions of potential customers around the world. Another important aspect is that tiqets.com sells tickets to a new target group before the trip, during the stay and on location through different partners. Tiqet.com supplier benefits from free setup, no monthly fee, no hidden costs and a well organized and prompt customer service team.Tiqets.com also offers a creative supplier service that helps supplier promote their tickets on the platform in the best possible way. "A well organized and structured company will constantly increase its number of clients and potential clients, year by year (Philip, 2006)". Tiqets.com is trying and it is succeeding to offer their customers and partners a simple, transparent and fast way to by/sell tickets worldwide.

Conclusions In a world where every wasted minute counts, online ticketing platforms seem to offer the optimal solution to book a favorite concert, show, event, attraction, exhibition or transportation ticket. Buying the tickets online, paying directly with a debit or credit card and enjoying skip the line instant and mobile entrance is definitely the most convenient and fast way to visit a new attraction. Promotion and marketing strategies should always be directed towards the target group: national and international tourist. With a well-organized long term plan, venues can utilize ticketing platforms as a highly efficient tool to increase their market shares and profit. "Similar to event planning that includes acquiring necessary permits, scheduling, budgeting, site selection, logistics, emergency plans, preparing decorations, etc. (Bowdin and Harris, 2012)", ticketing platforms are also based on hard work, preparation and planning in order to make everything simple and easy for the final customer: the tourist.

Customers should compare and study all major ticketing platforms in order to choose the one which is most suitable for their needs. Nevertheless, planning a city break in advance, gathering all needed information and buying all desired museum tickets directly from home via Smartphone, tablet or Pc is, in our vision, the smartest way to travel.

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HEALTH RISK MANAGEMENT IN RAILWAY TRANSPORT

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Abstract: Risk factors are all factors from the working environment that could have effects on the heath and integrity of the workers by causing injuries; most people refer to these as hazards or dangerous situations. The signalman is an employee of a railway transport network who manages, coordinates and controls the movement of the trains by operating the points and signals from a signal box. Signalman can only be a person which completes successfully rigorous trainings, has proper qualifications, as well as medical and psychological proven skills, all gained after a long experience in the railways sector.
Keywords: railway, evaluation, risk level, safety at work, accident.

1.INTRODUCERE

Factorii de risc sunt toţi factorii sistemului de muncă susceptibili să acţioneze asupra sănătăţii sau integrităţii lucrătorilor şi care pot produce vătămări. Este vorba despre ceea ce majoritatea persoanelor, în limbajul curent, denumesc pericole sau situaţii periculoase. În acest sens norma europeană EN 292-1 defineşte pericolul, situaţiile periculoase sau evenimentele periculoase asociate procesului de muncă (factori de risc) ca fiind o "cauză capabilă să provoace o leziune sau un atac la sănătate". Această definiţie constituie o apreciere calitativă a riscului uzitată în identificarea acestuia.

Securitatea este definită ca faptul de a fi la adăpost de orice pericol. Riscul şi securitatea sunt în strânsă corelaţie şi se exclud reciproc.

Riscul este definit, în conformitate cu norma europeană, ca fiind „combinaţia dintre probabilitatea şi gravitatea unei leziuni sau atac la sănătate ce poate surveni într-o situaţie periculoasă". Această definiţie constituie o apreciere cantitativă a riscului ce se poate utiliza în ierarhizarea riscurilor. Altfel spus, riscul reprezintă probabilitatea producerii unei daune de o anumită gravitate în timpul unei expuneri la factorul de risc.

În consecinţă, riscul profesional asociat unei situaţii particulare sau unui procedeu tehnic particular rezultă din combinarea următoarelor elemente:

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-gravitatea consecinţei previzibile (severitatea consecinţei cea mai probabilă);

-probabilitatea producerii acestei consecinţe.

Gravitatea consecinţei (severitatea daunei cea mai posibilă) poate fi estimată luând în considerare următoarele:

-natura obiectivului protejat (persoane, bunuri, mediu înconjurător);

-gravitatea leziunilor sau a afectării sănătăţii (uşoară - în mod normal reversibilă, gravă - în mod normal ireversibilă, deces);

-amploarea de manifestare a consecinţei (o persoană, mai multe persoane).

Categoriile de gravitate a consecinţelor permit atribuirea unei dimensiuni calitative accidentelor potenţiale datorate erorii umane, a condiţiilor de mediu, neconformităţii proiectului, deficienţelor procedurale sau avarierii şi disfuncţiei produsului, subansamblelor sau componentelor acestuia.

Managerul de produs, managerul programului de asigurare a calităţii de securitate a produsului şi cel care realizează produsul trebuie să stabilească exact ce se înţelege prin distrugerea produsului, prin consecinţe majore/minore aduse produsului/mediului şi prin boală profesională sau vătămare gravă/minoră. Gravitatea poate fi definită pe baza unor criterii cum ar fi:

-incapacitatea de muncă temporară (I.T.M.), incapacitatea de muncă permanentă (invaliditate), deces;

-efecte asupra sănătăţii, reversibile sau nu, pentru factorii de risc susceptibili să aibă efecte psihologice;

-interferenţa cu starea de confort, satisfacţia, motivaţia lucrătorului pentru factorii de risc sociali şi organizatorici.

Probabilitatea este condiţionată de chiar condiţiile procesului de muncă: fiabilitatea echipamentelor tehnice, periculozitatea materialelor, organizarea muncii, constrângeri temporale etc. Ca şi în cazul gravităţii consecinţelor pentru estimarea probabilităţii de apariţie a unei consecinţe se pot utiliza mai multe grile de apreciere. [1]

2.Locul de munca analizat Impegatul de mişcare (IDM)organizează, conduce şi raspunde de activitatea de circulaţie şi manevră a trenurilor asigură circulaţia trenurilor şi manevrarea materialului rulant în din staţiile de calea ferată şi pe liniile dintre acestea.

Activitatea IDM se desfăşoară în clădiri speciale amenajate în care sunt amplasate instalaţii SCB, TTR, ELF, IFTE, necesare pentru realizarea siguranţei circulaţiei feroviare.

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Circulaţia şi manevra se efectuează cu material rulant (locomotive, vagoane, automotoare, etc) pe linii dirijate prin macaze şi semnale.

Mijloace de producţie şi echipamente de muncă:

-clădiri pentru exploatare;

-linii, macaze, podeţe de trecere peste linii, traverse, şanţuri, poduri, etc;

-instalaţii SCB: pupitru de comandă, panou sinoptic cu schema liniilor, dulap cu butoane de asigurare, electromecanism de macaz, barieră automată;

-instalaţii SBW: inductor, busolă semnal, manipulatoare;

-instalaţii TTR: repartitor, schimbător, staţie RER, telefon, telefon cu apel în frecvenţa vocală, staţie de amplificare şi sonorizare, staţie RTF;

-instalaţii ELF: iluminat interior, prize, iluminat exterior – piloni, grup electrogenerator;

instalaţii IFTE:dulap CDS, separator manual, retur tracţiune;

-material rulant: locomotive, vagoane, drezine, automotor.[5]

Sarcina de muncă a IDM constă în realizarea parcursurilor pentru circulaţia trenurilor şi manevra vagoanelor prin acţionarea butoanelor de pe pupitrul de comandă şi urmărirea comutării macazelor şi a punerii pe liber a semnalelor, conform instrucţiunilor de serviciu.

În cazul instalaţiilor SBW, CEM,IDM trebuie să verifice pe teren starea de liber a liniilor, realizarea parcursurilor şi manevrarea semnalelor.

Dupa realizarea manevrei sau trecerea trenului, IDM efectuează operaţiile inverse de revenire cu instalaţiile în poziţia normală.

În cazul defectării instalaţiilor, IDM se deplasează pe teren unde trebuie să efectueze manual toate operaţiile în foarte scurt timp.

Pentru aceasta realizează următoarele operaţii:

-la intrarea în serviciu, se convinge personal prin verificarea pe teren a starii tehnice a instalaţiilor şi liniilor;

-se deplasează printre linii şi face traversarea acestora în incinta staţiei pentru diversele operaţii de verificare pe teren;

-manipulează instalaţiile SCB, TTR, ELF conform instrucţiilor de manipulare pentru necesităţile serviciului;

-intervine la instalaţii, inclusiv prin intrarea în sala de relee, pentru întreruperea alimentării cu energie electrică, în caz de incendiu;

-face defilarea trenurilor de călători şi marfă care trec prin staţie pentru a observa eventualele nereguli la locomotive sau vagoane care pot pune în pericol SC;

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-urmăreşte în permanenţă semnalizările oferite de instalaţie şi ia măsuri în funcţie de necesităţi;

-face avizarea operativă a circulaţiei, a deranjamentelor sau evenimentelor;

-asigură paza obiectivelor din sfera de activitate;

-vinde bilete şi face avizarea publicului călător despre circulaţie, dupa caz.[4]

Executantul îşi desfăşoară activitatea în biroul de mişcare, dar şi în aer liber.

Serviciul se executa ziua şi noaptea, în ture alternative, indiferent de anotimp, iar staţiile sunt amplasate în zone cu diverse forme de relief.

Mediul de muncă se caracterizează prin:

-temperatură ridicată vara şi scăzută iarna;

-curenţi de aer , intemperii, vînt, viscol;

-umiditate ridicată;

-iluminat insuficient pe timp de noapte la exterior.

IDM poate fi numai persoana care îndeplineşte condiţii riguroase de pregătire, calificare corespunzatoare, instruire şi autorizare în funcţie, dupa o practica de acomodare, precum şi cu aptitudini medicale şi psihologice verificate pe baza unor baremuri stabilite în urma unei experienţe îndelungate a caii ferate.

IDM executa serviciul de unul singur, pe proprie raspundere, după autorizarea la instalaţiile pe care urmeaza să le deservească.[3]

3.FACTORII DE RISC IDENTIFICAŢI

Factorii de risc identificaţi sunt daţi în fişa de evaluare a locului de muncă din tabelul 1

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Tabelul 1

UNITATEA: CNCF „CFR" SA	**4. FIŞA DE EVALUARE A LOCULUI DE MUNCĂ**	**NUMĂR PERSOANE EXPUSE: 452**
		DURATA EXPUNERII: 12 h
LOCUL DE MUNCĂ: **IMPIEGAT DE MIŞCARE**		**ECHIPA DE EVALUARE:** conform deciziei

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COMPONENTA SISTEMULUI DE MUNCĂ	FACTORI DE RISC IDENTIFICAŢI	FORMA CONCRETĂ DE MANIFESTARE A FACTORILOR DE RISC (descriere, parametri)	CONSE-CINŢA MAXIMĂ PREVI-ZIBILĂ	CLASA DE GRAVI-TATE	CLASA DE PROBA-BILITATE	NIVEL PAR-ŢIAL DE RISC
0	**1**	**2**	**3**	**4**	**5**	**6**
MIJLOACE DE PRODUCŢIE	FACTORI DE RISC MECANIC	Lovire de către materialul rulant manevrat pe linii, care se deplasează pe linii din inerţie, din recul sau este scăpat	DECES	7	1	3
		Leziune cauzată de contactul accidental cu suprafeţe unsuroase sau adezive la manevrarea macazelor sau legarea vagoanelor	ITM 3-45 zile	2	3	2
		Lovire prin cădere libera de obiecte sau materiale din vagoane	ITM 3-45 zile	2	3	2
		Afecţiuni de la recipiente sub presiune - explozie	DECES	7	1	3
	FACTORI DE RISC ELECTRIC	Electrocutare prin atingere directă, atingere indirectă sau tensiune de pas (scurtcircuite la LC)	DECES	7	1	3
	FACTORI DE RISC CHIMIC	Leziuni cauzate de substanţe inflamabile produse petroliere, gaze lichefiate	DECES	7	1	3

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0	1	2	3	4	5	6
	FACTORI DE RISC BIOLOGIC	Muşcătură periculoasă de vipere sau cîini	DECES	7	1	3
MEDIUL DE MUNCĂ	FACTORI DE RISC FIZIC	Îmbolnăviri cauzate de temperatura excesiv de ridicată vara, sau excesiv de scăzută iarna	ITM 3-45 zile	2	3	2
		Curenţi de aer la lucrul în exterior	ITM 3-45 zile	2	3	2
		Afecţiuni ale auzului cauzate de zgomot la comincaţii în cască sau difuzor	INV gr. III	4	1	2
		Accidenete cauzate iluminat necorespunzător la deplasarea la posturi pe timp de noapte	I.T.M. 3-45 zile	2	3	2
		Calamităţi naturale: trăsnet, grindină, viscol,intemperii	DECES	7	1	3
		Oboseala organului vizual la utilizarea videoterminalelor	INV gr. III	4	2	3
	CARACTERUL MEDIULUI	Agresiune fizică din partea unor persoane raufăcătoare	ITM 45-180 zile	3	6	4
		Acidente rutiere sau CF de traseu sau de circulaţie în deplasarea la posturi sau pe traseu	DECES	7	3	5
SARCINA DE MUNCĂ	SUPRASOLICITARE PSIHICĂ	Decizii dificile în timp scurt	ITM 3-45 zile	2	3	2

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0	1	2	3	4	5	6
		Lipsa de adaptabilitate la schimbarea regimului de muncă zi/noapte	ITM 45-180 zile	3	6	4
		Stres cauzat de responsabilitate sporită pentru realizarea siguranţei circulaţiei	ITM 45-180 zile	3	6	4
EXECUTANT	ACŢIUNI GREŞITE	Executarea de operaţii neprevăzute în sarcina de muncă: intervenţii la grup electrogen, instalaţii electrice, etc	DECES	7	2	4
		Efectuarea defectuoasa de manipulări ale macazelor	ITM 3-45 zile	2	3	2
		Deplasări, staţionări în zone periculoase - pe căile de acces auto, în gabarit CF	DECES	7	3	5
		Cădere la acelaşi nivel prin împiedicare, alunecare, dezechilibrare	ITM 3-45 zile	2	5	3
		Cădere de la înaltime împiedicare, alunecare, dezechilibrare la circulaţia pe poduri sau pasarele	DECES	7	1	3
		Efectuarea de comunicări accidentogene defectuoase cu personalul de locomotiva sau partidele de manevra	DECES	7	1	3
	OMISIUNI	Omiterea operaţiilor care-i asigură securitatea la locul de muncă - asigurare la traversarea CF	ITM 3-45 zile	2	3	2
		Neutilizarea echipamentului individual de protecţie şi a celorlalte mijloace de protecţie din dotare	ITM 3-45 zile	2	3	2

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Nivelul de risc global al locului de muncă este:

$$N_{rg} = \frac{\sum_{i=1}^{26} r_i \bullet R_i}{\sum_{i=1}^{26} r_i} = \frac{0(7\times 7) + 0\cdot(6\times 6) + 2\cdot(5\times 5) + 4(4\times 4) + 10(3\times 3) + 10(2\times 2) + 0(1\times 1)}{0\times 7 + 0\times 6 + 2\times 5 + 4\times 4 + 10\times 3 + 10\times 2 + 0\times 1} = \frac{244}{76} = 3{,}21$$

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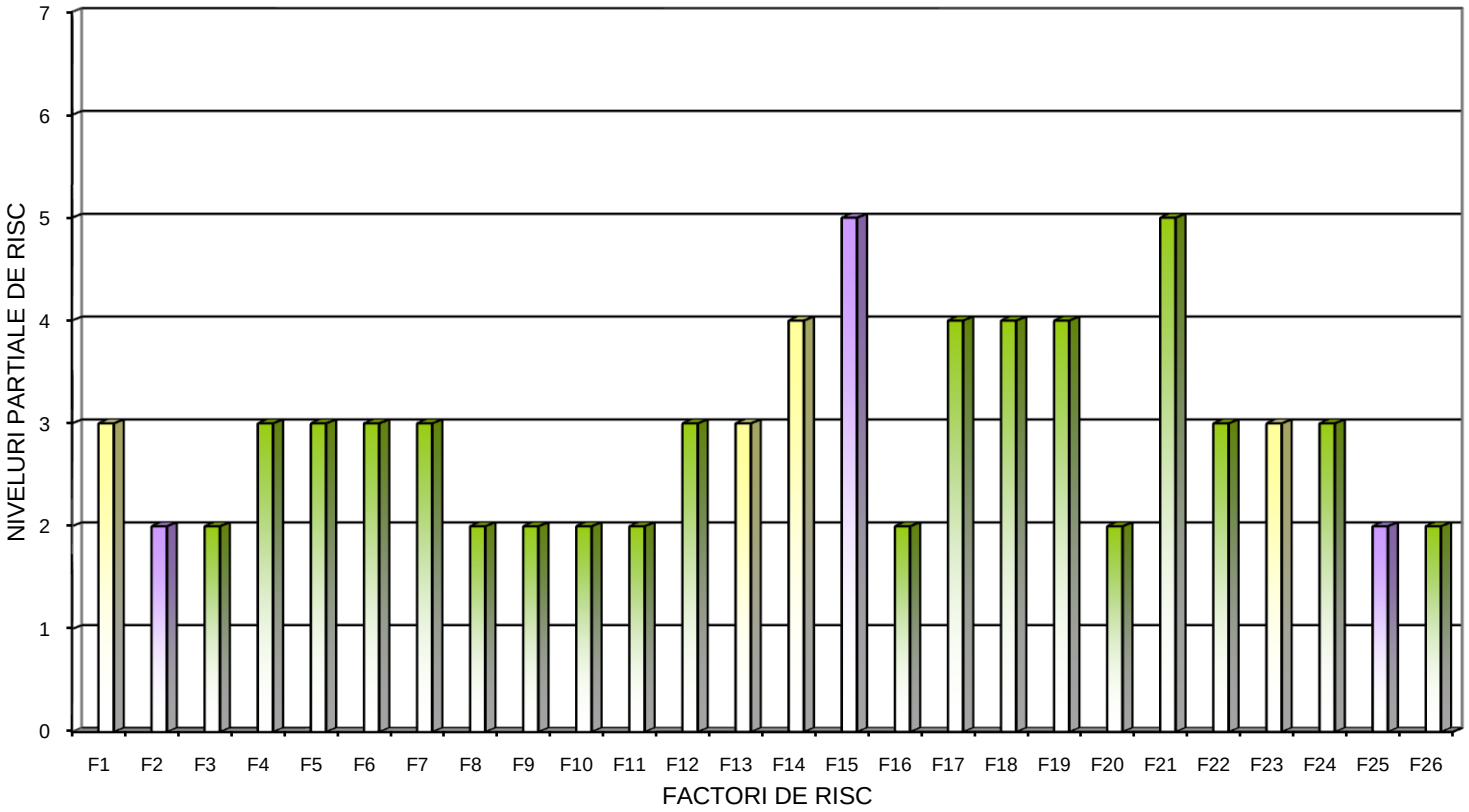

Figura 1 NIVELURILE PARŢIALE DE RISC PE FACTORI DE RISC

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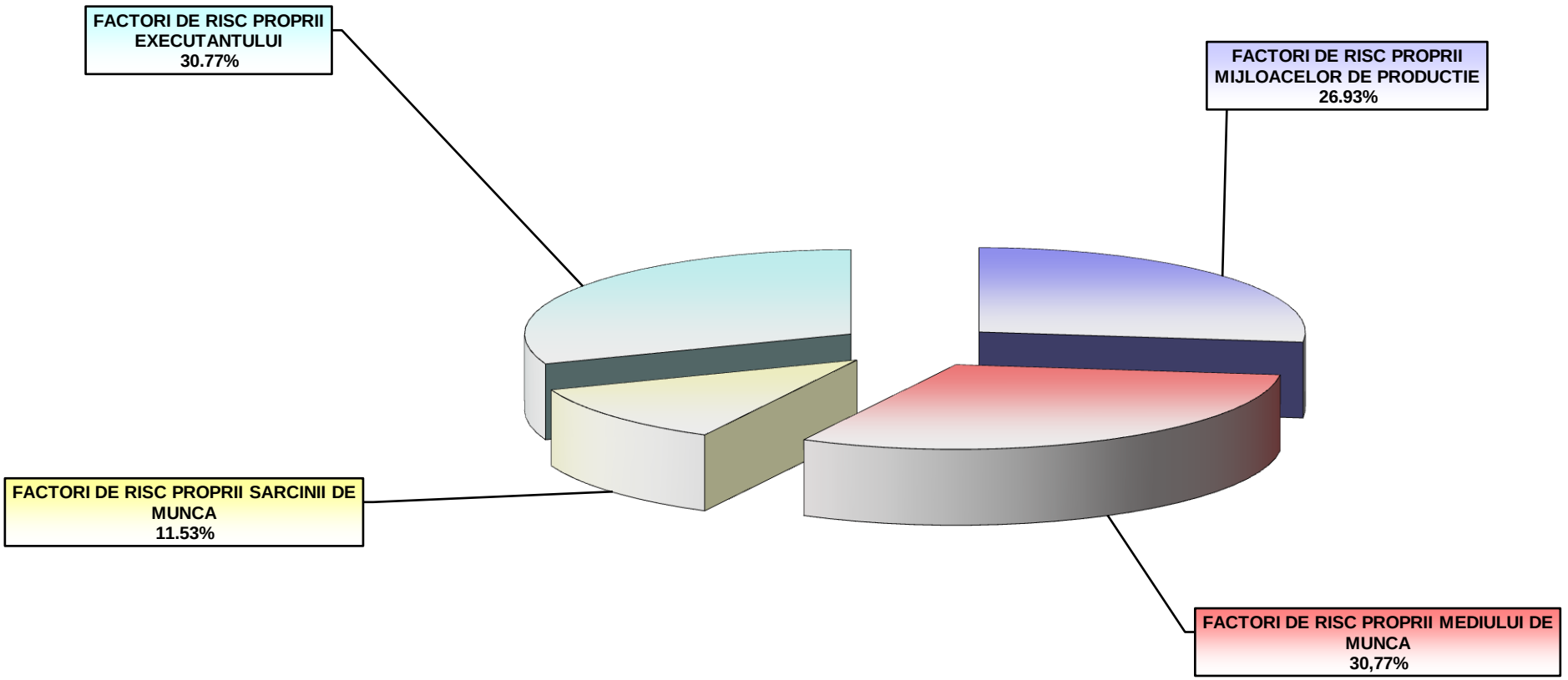

Figura 2 PONDEREA FACTORILOR DE RISC IDENTIFICAȚI DUPĂ ELEMENTELE SISTEMULUI DE MUNCĂ

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3.CONCLUZII

Nivelul de risc global calculat pentru locul de muncă analizat este egal cu **3,21,** valoare ce îl încadrează în categoria locurilor de muncă cu nivel de risc acceptabil.

Rezultatul este susţinut de "**Fişa de evaluare**", din care se observă că din totalul de 26 factori de risc identificaţi (figura 1), 6 depăşesc, ca nivel parţial de risc, valoarea 3:

0 - încadrându-se în categoria factorilor de risc maxim;

0 - încadrându-se în categoria factorilor de risc foarte mare;

2 - încadrându-se în categoria factorilor de risc mare;

4 - încadrându-se în categoria factorilor de risc mediu.

Cei 6 factori de risc ce se situează în domeniul inacceptabil sunt:

FACTORUL DE RISC	**NIVEL DE RISC**
F15 . Accidente rutiere sau CF de traseu sau de circulaţie în deplasarea la posturi sau pe traseu	**5**
F21. Deplasări, staţionări în zone periculoase (în săpături, în şanţuri, pe platforme la înalţime neimprejmuite, pe căile de acces)	**5**
F14. Agresiune fizică din partea unor persoane raufactoare mai ales unde se vînd bilete	**4**
F17 Schimbarea regimului de muncă zi/noapte	**4**
F18. Responsabilitatea deosebită în realizarea siguranţei circulaţiei	**4**
F19. Executarea de operaţii neprevăzute în sarcina de muncă: intervenţii la instalaţii neautorizat- grup electrogen, instalaţii electrice	**4**

Pentru diminuarea sau eliminarea celor 6 factori de risc (care se situează în domeniul inacceptabil), sunt necesare măsurile generic preventive..

În ceea ce priveşte repartiţia factorilor de risc pe sursele generatoare, situaţia se prezintă după cum urmează (figura 2):

26,92%, factori proprii mijloacelor de producţie;

30,76%, factori proprii mediului de muncă;

11,53%, factori proprii sarcinii de muncă;

30,76%, factori proprii executantului.

Din analiza **Fişei de evaluare** se constată că 50, 0% dintre factorii de risc identificaţi pot avea consecinţe ireversibile asupra executantului (**DECES sau INVALIDITATE**).

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MANAGEMENTUL RISCURILOR SĂNATĂŢII ÎN TRANSPORTURI FEROVIARE

Rezumat

Factorii de risc sunt toţi factorii sistemului de muncă susceptibili să acţioneze asupra sănătăţii sau integrităţii lucrătorilor şi care pot produce vătămări. Este vorba despre ceea ce majoritatea persoanelor, în limbajul curent, denumesc pericole sau situaţii periculoase. Impegatul de mişcare (IDM)organizează, conduce şi raspunde de activitatea de circulaţie şi manevră a trenurilor ,asigură circulaţia trenurilor şi manevrarea materialului rulant în din staţiile de calea ferată şi pe liniile dintre acestea. IDM poate fi numai persoana care îndeplineşte condiţii riguroase de pregătire, calificare corespunzatoare, instruire şi autorizare în funcţie, dupa o practică de acomodare, precum şi cu aptitudini medicale şi psihologice verificate pe baza unor baremuri stabilite în urma unei experienţe îndelungate a caii ferate.

CUVINTE CHEIE:cale ferată, evaluarea, nivel de risc, securitatea muncii,accident

THE EFFECTS OF GLOBALIZATION IN THE CAR INDUSTRY

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Abstract: Globalisation in the automotive field began ever since Henry Ford patented the large series production of the car, even if the phenomenon of globalization is still not totally understood.
Keywords: Globalization, dialogue, economy, identity, change.

Globalisation of the automotive industry implies the extension of the operations of a company beyond the borders of the country of origin, for the purpose of marketing the products on new markets, with smaller costs and greater profits. There is no standard definition of globalisation as we deal with a constantly changing phenomenon. Only its goal is very clear: increase of sales and, especially, of profits.

For many of the developing countries, the automotive globalisation may represent the necessary motivation on the road of economic evolution. In theory, a third of the planet's inhabitants are potential clients of new cars. In order to afford a new car, a client should also reach a certain level of income. There are other non-automotive factors here, such as regional economies, political and cultural situations or limitation of resources. Hence, the automotive globalisation is a large equation with many variables and unknown sides.

As the aspects of globalization are highly diverse and they may be found in all fields directly or indirectly related to the life and evolution of human society, in general, and of each individual, in particular, it is worth to analyse who are the beneficiaries and who suffers losses due to the spread of the phenomenon of globalization.

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The exposure of different developing or undeveloped countries, to the requirements and advantages of globalization, depend of many factors, among which:
resources owned by these countries;
level of development of infrastructure reached by that country;
level of political stability existing in the respective country or region;
the weather conditions, the environment and various historical objectives favourable to the development of tourism;
the level of education and qualification of the respective people;
the perspectives of developing in the foreseeable or distant future;
the distances of the main water or air transportation services;
geographical and strategic position at global level.
Many times, not all these factors are concurrently taken into consideration by the investors. Even some of these factors may attire investors.
Among the **positive effects** of globalisation, we shall point out:
production internationalization thanks to the companies with a global activity;
quick assimilation of new technologies;
privatisation reaches global levels;
telecommunications eliminates the distances and brings people physically closer and ensures the awareness of global issues;
financial and commercial markets get to the stage of integrating their activity and operation;
supporting the political and economic reforms;
sustaining the people's desire to live in a system governed by law and based on the law;
stimulating the integration;
reducing the probability of war and of using the military force;
cultural enrichment by symbiosis and convergence.

One of the effects of globalization is represented by the improvement of the relations among the developers of the same industry from different regions of the world, the globalization of an industry, but also an erosion of the national sovereignty on the economic field.
Beginning with the moment when the American market and the Western European one reached a certain degree of saturation, many producers migrated towards the developing markets, such as the Romanian one. One of the migration reasons is related to the costs involved by the

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inauguration of some production facilities in Romania, which are very low compared to other markets.

Car manufacturers do not perform the entire manufacturing process of the cars. They only design and assemble the parts, as they are generally performed by different suppliers. Thus, we may assert that the car became global. The development and the innovation in the automotive field were all the time supported by competition and investments. The main automotive brands started off based on their desire to innovate, to develop, engineering pride or of any other nature, but also motivated by their nationalism.

The major car manufacturers have a particular interest in the phenomenon called globalisation, even if it may also imply certain disadvantages and dangers, not only benefits. The transition from the local planning to the global one implies not only vision, but also great material efforts.

In this context, the evolution of the local brand, Dacia, reflects well enough a part of the features of the automotive globalisation. Although we mention here the communist period when Dacia 1300 was manufactured, the Romanian-French cooperation may be looked upon as an example of globalisation.

The same thing happened in other regions of the world, generally, in the developing countries, for which the car represented, as it was in Romania, both a symbol of evolution and an insignificant pillar of the economy. Practically, by the technological loan, the big automotive companies made sure that they could expand in the areas where, over a decade or two, would economically evolve up to the phase when they could become markets with potential.

For the major manufacturers of cars and automotive parts manufacturers, the Romanian market seems to promising since more and more choose to move their factories from the Western Europe to the Eastern Europe. The strategy of each great global manufacturer of cars resides in maintaining the cooperation with the major suppliers of automotive sub-assemblies.

Dacia truly became global when, after 4 years after its production was started, it reached the quota of 1 million of pieces manufactured in 5 factories from 5 different countries: Romania, Brazil, Colombia, Russia and India.

The models of cars manufactured for the global market and the use of the common platforms allow the automotive companies to make savings in research and development and to negotiate better prices with the suppliers, as the beneficiary is, theoretically, the final customer. Still, the global cars and the platforms have their limits since there cannot exist a total convergence of the automotive markets, explained Carlos Ghosn, chief of Renault-Nissan Alliance, at the Frankfurt Showroom (17^{th} – 27^{th} September 2015).

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One of the terrible effects of the automotive globalization is a change of the "poles of power": if until two decades ago, USA, Japan and Europe (mainly Germany) were the main major car manufacturers, "the conventional powers" lose ground in relation with other developing countries, especially Brazil, Russia, India, China – countries which, during the last 10 years, they covered 30% of the global automotive market, both in terms of production and sales. This fact influences the modern automotive world even in unexpected ways.

The development and innovation in the automotive field are also supported by the nationalism, the car being a symbol of pride for the developed countries, besides being a useful product.

A great part of the profits realized by the car manufacturers were directly used for research and development, the innovations are more and more nowadays. Everything is done for the client's benefit, as he enjoys more comfort and more safety.

A great advantage of globalization is closely related to the spectacular evolution of the means of communication. Teams of designers and engineers from all over the world immediately share their ideas and solutions, decreasing thus the time necessary for design and contribute to the settlement of many potential issues even from the phase of design or pre-production. Hence, we assist to a reduction of the cycle of life of a model, as well as to a faster adjustment to the requirements of the markets. Another related advantage for preserving the competitiveness is that now the companies may recruit more easily the talented people.

The idea of "technical platform" evolved – the modularity is now the basic word. For instance, the new MQB platform of Volkswagen group allows the execution of a wider range of models, pertaining to different classes, but also the reduction of the time of production with around 30%, as well as of the costs. Considering the idea that this platform may also be sold to other companies, the plan is to obtain additional revenue from this sale too.

For many of the developing countries, the automotive globalization meant the necessary incentive on the road of economic evolution. The automotive companies which had resources and invested in these countries fully contributed to creating new jobs, both by the plants opened locally, and thanks to the suppliers who, at their turn, appealed to the local manpower. As a direct consequence, the level of living of these countries improved, entailing evolutions on other plans as well (economic, political, social).

In order to be able to reap the benefits of globalization, it is imposed to take the steps of a process of adjustment, as the production factors – as well as the capital of investments – pass from the activities and enterprises which cannot cope with the harsh competition to those which know how to take advantage of it.

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Even though the advantages of globalization are obvious, there also exist **negative effects or the disadvantages**, even though some are pretty hard to estimate as intensity.

Among the negative effects of globalization, one may count the following:

fragmentation and weakening of the social cohesion;

increase of the inequalities both on the internal and external plan;

destruction of the classical system of value prioritisation;

proliferation of the weapons and of the transnational crime;

depletion of cultural and national values under the pressure of globalization and expansion of the techniques of information and communication;

use of some complex legal and financial methods in order to reach the limits of local laws and standards to control the balance between work and services of some regions unequally developed and to turn them against themselves.

The main fear of the developed countries is related to the depreciation of the living level, as the automotive companies tend to relocate the production in countries where the level of wages is lower, hence the manufacturers make sure they have smaller costs to bear. The automotive crises caused by the economic crises provided us several tragic examples in Europe, where major manufacturers such as Ford, decided to close important plants, which left thousands of employees of these plants unemployed, but also other thousands of workers from the suppliers' factories which depended of these plants. The controversial decisions by which the automotive corporations ensure their competitiveness lead to issues not only of economic nature, but also of social and political nature. The consequences may be also related to pressures of changing the law in order to control the migration phenomenon of the automotive companies towards areas which are more attractive from the point of view of the costs.

The more and more complex integration and modularisation may create difficulties when it comes to errors undetected in time. The use of some common platforms makes even more serious the act of overlooking some small errors, which propagate to a larger number of cars than normal. It is even worse when the error does not pertain to the designer, but to the supplier which would put into question the integrity of the cars manufactured even by competitive companies. The direct outcome consists in the recall in service in order to repair certain issues which are more or less serious. These recalls, sometimes at a large scale, imply huge expenses for the manufacturer, but also losses at the level of image and confidence granted by customers, with harmful consequences as regards the plans of sales and the position in relation with its competitors.

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One of the sensitive points of the automotive globalization refers to the intensive level of growth of pollution in the countries with an accelerated industrial evolution. In Chine or India, for instance, the explosive growth of automotive sales and production, as well as the great number of plants built in a very short time led to the accentuated environmental degradation, affecting also the neighbouring countries, even the global climate in a certain measure, with consequences that may be hardly anticipated.

In order to get the most out of the real advantages of globalization, the political challenge is to change the possible benefits of the phenomenon in real gains, reducing, at the same time, the social costs. The measures for the improvement of the operation of EU markets and of the performance support in the matter of innovation will contribute to the reduction of the duration implied by the adjustment process, while certain active measures, as well as those funded by the European Globalization Adjustment Fund will support the workers affected. Besides these internal issues, there are also other main external challenges that EU needs to deal with and which need political solutions, such as:

encouraging the global trade and maintaining the position of Europe as main trading block at global level;

managing the immigration as source of manpower, as a response to the phenomenon of population ageing and as an advantage in favour or development

maintain the position of EU as source and destination of the direct foreign investments (FDI);

managing the issue of imbalances existing in the global economy in partnership with other countries.

The globalization continues to be a real fact, with which we have to deal, irrespective of our will or choice. It is considered that the greatest danger implied by the globalization is the dehumanisation of some of those simply swallowed by it.

In conclusion, if the race for the increased income and profits leads to actions that pertain to globalization, in the automotive industry, this phenomenon implies evolution, innovation and progress.

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STATE OWNED ENTERPRISES IN CHINA: THE CHALLENGES OF REFORM

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Abstract: The reform of state owned enterprises in China has become a major issue of China's economic policy. This paper shows the importance of the public sector in China's economy and emphasizes, from an Austrian economics perspective, the challenges that any attempt to reform public companies has to meet. In particular, it assesses the case for reform in light of the incentives and economic calculation problem of public decision-makers.
Keywords: China, state owned enterprises, Austrian economics, economic reform, bureaucracy

How important are state enterprises in China?

Although the private sector has increased progressively, state enterprises are still significant in China's economy. State firms' share in GDP is debated but has been assessed at between 30% and 50%. According to independent sources[1], the public sector holds around 150,000 enterprises, which employ 17% of the urban labor force, and create 22% of all the revenues generated in industry. The assets of these companies are estimated at 16 trillion dollars, representing 38% of all the industrial assets. The public sector of China is a heavier borrower and a major customer of the banking system: the enormous amount of commercial loans, most of which is dedicated to these public companies, is now close to 170% of GDP, a huge increase relative to the level recorded in 2008, when it was less than 100% of GDP.

In strategic industries, various authors estimate that the government controls more than 90% of assets. The government is especially involved in strategic industries, controlling more than 90% of all domestically funded fixed investments in IT and transportation, and more than 80% in the production of electricity, gas and water.[2] Oil and chemicals and automobile construction are also heavily controlled by the state.[3] However, the exact share and influence of state companies cannot be accurately established, given that the government does not provide comprehensive statistics. According to official information, the number of state companies in China is 9105, and the number of government-controlled firms is 11405, but this seems to severely understate the

[1] Curran, Enda, 2015.
[2] Szamosszegi and Kyle, 2011, p. 16
[3] McgGregor, James, 2012, p.19.

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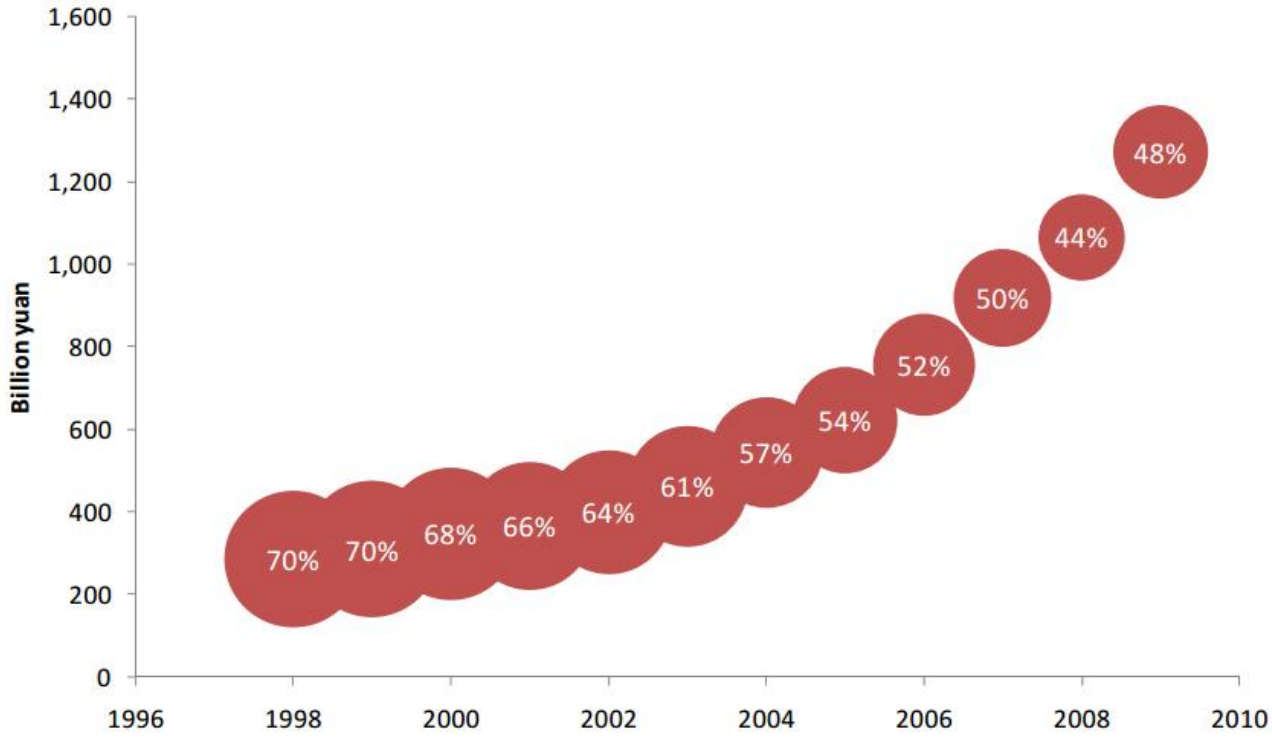
importance of public sector. A former leader of State-owned Assets Supervision and Administration Commission of the State Council (SASAC) presents a completely different figure: 114500 state enterprises.[4]

Figure 1. Value added of state enterprises share of value added
(after Szamosszegi and Kyle, 2011, p. 14)



The Xi Jinping administration considers the reform of state-owned enterprises as a fundamental pillar of the much needed economic restructuration, a reform intended to improve the competitiveness of Chinese economy. In 2015, policymakers issued a plan for reforming public companies, so as to improve their performance and reduce corruption.

The goal of this paper is to show that the ambition of Chinese decision-makers to reform public enterprises is groundless. The problem these companies are facing is deeper than most decision-makers want to admit, and it is related to the property regime which shapes their behavior.

State owned enterprises as a legacy of socialism

The most important economic pillar of the Chinese economy refers to the state-owned enterprises. Their mission is, on the one hand, to fuel economic growth and, on the other hand, to enhance the geopolitical influence of Chinese government. The selection and evaluation of its

[4]Idem, p. 18-19.

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managers belongs to the Central Department of Organization, of the Chinese Communist Party: "The department is accurately, if blandly, described as the human resources arm of the Party, but this does not do justice to its extraordinary brief and the way it is empowered to penetrate every state body, and even some nominally private ones, throughout the country. The best way to get a sense of the dimensions of the department's job is to conjure up an imaginary parallel body in Washington. A similar department in the US would oversee the appointment of the entire US Cabinet, state governors and their deputies, the mayors of the major cities, the heads of all federal regulatory agencies, the chief executives of GE, ExxonMobil, Wal-Mart, and about fifty of the remaining largest US companies, the justices of the Supreme Court, the editors of the *New York Times* and the *Washington Post*, the bosses of the TV networks and cable stations, the presidents of Yale, Harvard, and other big universities, and the heads of think tanks like the Brookings Institution and the Heritage Foundation."[5]

We could say that the rotation of directors in state companies defies the quotas[6] proposed by Oskar Lange: the directors have the rank of a minister and generally are members of the Chinese Central Committee,[7] while the regime still relies on the pseudo-solution of managerial know-how

[5]McGregor, Richard, *The Party*, p. 72.

[6] Refering to Lange's model, Yasheng Huang argues that although it has been assimilated by the chinese system, it is no longer important in contemporary China: „Lange (1938) also envisaged that the government in his socialist market economy would have a major influence on the level of aggregate investment and that investment would be allocated by an investment board. Lange's model assumed the state ownership of the means of production. Such ownership is becoming less and less important in China. Nevertheless, the Chinese Government has a major influence both on the amount and nature of investment in China, particularly in infrastructure and in the selection of key sectors for development, as well as in human capital formation and in the direction of scientific and technological research. It could therefore be argued that this aspect of Lange's socialist model has, to some extent, been adopted. The Chinese economy has become a mixed economy in which the CCP plays a central role by providing a general framework or blueprint for China's development. Nevertheless, whereas Lange's model assumed state ownership of all capital, this pattern is no longer followed in China. We can conclude that the Chinese model does not conform with Lange's model of competitive market socialism." Huang, Yasheng, p. 286. Also, the economist Janos Kornai considers that chinese market socialism is not an implementation of Lange's model, which was based on public property, because: "In the real world of China and Vietnam, the market has become the chief coordinator. That may be a welcome change, but the profound changes in the ownership structure mean the present state of affairs has nothing to do with that earlier intellectual vision of "market socialism." See Kornai, Janos, *From socialism to capitalism: eight essays*, *Central European University Press*, Budapest, Hungary, 2008, p. 58.

[7]See Ming Du, *China's State Capitalism And World Trade Law*, International and Comparative Law Quarterly, vol. 63, no.2, April 2014, p. 418. See also Duanjie Chen: "among the past five CEOs of CNOOC, the first was the deputy minister of the Ministry of Petroleum Industry before heading CNOOC, the third became a provincial governor in 2003 and the fifth became the CEO and party secretary of Sinopec in 2011, while the current CNOOC chairman of the board and party secretary was from CNPC, and was promoted to be one of the 205 members of the Central Committee of the Communist Party in 2012. Similarly, among the other nine top executives of the top 10 SOEs, there is a former deputy provincial governor (CNPC),a former CEO of CNOOC (Sinopec), a former deputy minister of the central government (China Mobile), a former Chinese economic and commercial counsel in Spain (China Minmetals), and a former CEO of another major central SOE (Sinochem). The other four top executives were promoted internally. And all these top executives are the party secretaries in the company." Duanjie Chen, *China's State-Owned Enterprises: How Much Do We Know? From Cnooc To Its Siblings*, p. 19.

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transfer from semi-private sector.[8] Moreover, it is claimed that politically managed enterprises have social virtues: "State owned enterprises are not only productive enterprises. They perform important social functions, providing education and medical and child care to their employees. In the mid-1990s, they operated more than 18,000 schools with an enrollment of 6.1 million students and 600,000 teachers and other staff. Hospitals built and run by state owned enterprises account for one-third of all hospital beds in China (Lardy 1998: 51). State owned enterprises were mostly founded in the 1950s-70s when all of their profits were submitted to the government, including the implicit pension funds of employees. However, since the early 1980s state owned enterprises have been required to be responsible for their own profits and losses, and the pension funds of their retired employees have to be paid out of retained earnings."[9]

The elusive attempt to make state companies efficient

Chinese policymakers have sought for decades to improve the efficiency of public companies. Everybody acknowledges that an essential feature of China's state capitalism is the government strong intervention in the economy. As public property and state enterprises tend to fuel corruption and laziness, the government has tried to limit these adverse effects by regulating businesses and asking their directors to assume responsibility for the financial results. It offered fiscal and other advantages in an attempt to create "national champions" and to turn domestic firms into significant economic actors in the global economy.[10] How exactly did the government change in the behavior of public companies, which criteria did it used to measure and improve their productivity, how were established their economic targets? Well, relative to this issue, it is perhaps revealing the following idea: „In September, 2008, I asked a leading Chinese scholar what 'market socialism with Chinese characteristics' means. His reply was that it means whatever the CCP wants it to mean."[11]

In our view, three major issues should be analyzed before going any further.

First, the concept of efficiency in economics is not autonomous; it needs a proper foundation. To talk meaningfully about efficiency, one needs first of all to assume the existence of private property. Also, following the principle of methodological individualism, given that only

[8]"On the other hand, the better performance of the collectively owned enterprises and shareholding cooperatives may suggest that the performance of state owned enterprises can be improved if some elements of employee or community ownership can be introduced into the organization structure of the state owned enterprises." Minqi Li, *Three Essays on China's State Owned Enterprises: Towards an Alternative to Privatization*, p. 79.
[9]Ming Du, *China's State Capitalism And World Trade Law*, p. 26.
[10] Ming Du, *China's State Capitalism and World Trade Law*, International and Comparative Law Quarterly, (Cambridge), vol. 63, no. 02, April, 2014, p. 448.
[11] Huang, Yasheng, 2009, p. 287.

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individuals have goals and objectives, not the states or other organizations, we can deduce that these goals have a subjective nature. Only acting individuals are able to draw conclusions about the relation between their preferences, expectations, used resources and given results. An external observer cannot establish the degree of satisfaction of one person or another.

Moreover, although the acting individual can make ex post evaluations relative to the efficiency of his/her activities, one does not have any instrument for measuring this efficiency, since personal utility and opportunity costs are established on the ordinal scale of preference – that is, one does not deal with cardinal magnitudes.

Secondly, it is nonsensical to make interpersonal comparisons of utility, therefore one cannot discuss the impact of an activity in terms of efficiency or benefits, for the wellbeing of the whole society. This leads us to conclude that justifying public policies through the lenses of efficiency cannot have a solid scientific foundation.

Thirdly, human goals are different. As a consequence, they can be contradictory. We can argue that the policy of making state enterprises more efficient conflicts the goals of those who become victims of this policy.

It is perhaps time to get back to ethics as a foundation for the problem of efficiency. As Rothbard said:" But if not costs or efficiency, then what? The answer is that only ethical principles can serve as criteria for our decisions. Efficiency can never serve as the basis for ethics; on the contrary, ethics must be the guide and touchstone for any consideration of efficiency. Ethics is the primary. In the field of law and public policy, as Rizzo wittily indicates, the primary ethical consideration is the concept that "dare not speak its name" – the concept of justice."[12]

The challenges of SOE's reform: insights from Austrian Economics

Besides the arguments presented above, the industrial policy and economic interventionism are plagued by major issues. Following a long tradition in Austrian Economics[13], we can say that any attempt to improve the efficiency of state companies has to take into account the following theoretical arguments:

The incentive argument

In the absence of private property rights people do not have proper incentives to conserve or to increase the value of resources. Thus, any industrial policy is inevitably plagued by corruption and rent-seeking.

[12] Ibidem, p. 187.
[13] See Glăvan, 2008.

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The interests of bureaucrats and small businessmen who become political entrepreneurs are a very good illustration of the weaknesses of the Chinese industrial policy, and of any economic models which overlook the fact that individuals respond to incentives, that they are not immune to their own self-interest. Even the most optimistic Chinese experts maintain, more or less explicitly, that the chances for the development of a genuine entrepreneurial class are quite small. As Walter and Howie show, the most important goal of Chinese industrial policy is to maintain the stability of the system created by nomenklaturists with the intention to promote their own interests: "What moves this structure is not a market economy and its laws of supply and demand, but a carefully balanced social mechanism built around the particular interests of the revolutionary families who constitute the political elite. China is a family-run business. When ruling groups change, there will be an inevitable change in the balance of interests; but these families have one shared interest above all others: the stability of the system. Social stability allows their pursuit of special interests. This is what is meant by calls for a "Harmonious Society".[14]

We are talking about a politicians' dream come true, that is about a group of persons who are simultaneously managers of public assistance, beneficiaries of this assistance and arbiters; a group owning all the means necessary for perpetuating this illusion. Everything that is considered state economy in China is basically a big family business: "The state-owned economy, nominally "owned by the whole people", is being carved up by China's rulers, their families, relations and retainers, who are all in business for themselves and only themselves. From the very start of political relaxation in 1978, economic forces were set in motion that have led to the creation of two distinct economies in China—the domestic-oriented state-owned economy and the export-oriented private economy. The first, which many confuse with China, is the state-owned economy operating inside the system. Sponsored and supported by the full patronage of the state, this economy was, and has always been, the beneficiary of all the largesse that the political elite can provide. It is the foundation of China's post-1979 political structure and the wall behind which the Party seeks to protect itself and sustain its rule."[15]

In the last decades China's public sector has implemented numerous changes and transformations. But most of them are only tools to obscure the true nature of state companies. For instance, state-controlled firms now use the stock exchange market, have contracts with financial intermediaries and borrow in a "transparent" fashion applying modern financial

[14] Carl E. Walter and Fraser J.T. Howie, *Red Capitalism*: *The Fragile Financial Foundation of China's Extraordinary Rise*. See the section*China is a family business* of the first chapter.
[15] Idem.

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techniques. Apparently public companies use economic and innovative means to win an economic competition. In fact, this modern interface is just a mask for the old habits of a system basically controlled by the *nomenklatura*. Neither the profits nor the critical decisions of these companies come from the realm of private property, but belong to the political system and are dependent on the relations between various political groups of interests.[16]

From a different study[17] we can understand better the exact dimensions of the relation between political elite and Chinese business environment, which shapes the kind of capitalism functioning in China. For example, China Satellite Communications Corp., the country's monopoly satellite operator is managed by Wen Yunsong, the son of former prime minister Wen Jiabao. Zhu Yunlai, the son of another former prime minister, Zhu Rongji, is CEO of China International Capital Corp., one of the most important investment banks.

The calculation argument

Starting with Mises (1990), Austrian economists have acknowledged that without private property, economic calculation is impossible because money prices cannot develop. The market process transforms the ordinal preferences of market participants into quantitative information, i.e. market prices. These cardinal values are essential in order to calculate the profitability of various production processes, and to guide entrepreneurs into making the optimal investments.

With no private property (as in socialism), the decision-maker lacks a rational possibility to make decisions among various investments. Interventionism is arbitrary because it cannot be assessed in terms of profit and loss test, as private activities are. As Rothbard (1962, p. 825) added, any particular decision to replace private property with public action creates an island of calculational chaos.

Now, in light of this approach it is of course an error to maintain that in state enterprises – where we have islands of calculational chaos – it is possible to calculate the level of productivity. And as far as the social role of public enterprises is concerned, we should not forget the political origin of these firms, and the moral hazard associated with them. And if we know a priori that

[16] Idem. Newspaper articles discussing the family businesses of chinese politicians are quite few. See, for example, *Mapping China's Red Nobility*, Bloomberg News, December 26, 2012: http://go.bloomberg.com/multimedia/mapping-chinas-red-nobility/ and Barboza, David, *Billions in Hidden Riches for Family of Chinese Leader*, The New York Times, October 25, 2012, available at: http://www.nytimes.com/2012/10/26/business/global/family-of-wen-jiabao-holds-a-hidden-fortune-in-china.html?pagewanted=all.

[17] McgGregor, James, *No Ancient Wisdom, No Followers: The Challenges of Chinese Authoritarian Capitalism*, Prospecta Press, 2012.

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"every government enterprise not only lowers the social utilities of the consumers by forcing the allocation of funds to other ends than those desired by the public; it lowers the utility of everyone (including the utilities of some government officials) by distorting the market and spreading calculational chaos. The greater the extent of government ownership, of course, the more powerful will this impact become"[18] – then any social ambition related to public enterprises is highly problematic.

Conclusions

In this paper I have tried to put the current ambitions of the Chinese industrial policy in the light of economic theory and in the context of empirical observations concerning the quality of management in state-owned companies. Despite the political rhetoric and efforts to improve the efficiency of these companies, a number of issues will continue to plague the attempts to reform public firms. In my view, only the change of the property regime (privatization) can pave the way for increasing the productivity in China's economy.

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[18] Rothbard, Murray, *Man, Economy, and State*, p. 953.

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SUSPENSION OF THE INDIVIDUAL LABOR CONTRACT IN LIGHT OF NEW REGULATIONS LEAVE ACCOMMODATIVE

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Abstract: Adoptive son ship is a creation of law.It stems from the adoption and generates civil kinship. By adoptive parentage is established between adopted and adopter and family ties between the adoptee and the adopter's relatives.

Kinship civil replaces natural kinship; the adoptee and his descendants became the adopter kin and relatives.

Exceptionally, in case of adoption of the child by natural or adoptive spouse's parent, leaving the family applies only in relation to the parent's parent and relatives naturally naturally adopter who is not married.

Keywords: adoptive, son ship, kinship, family, parents

CONSIDERAŢII TEORETICE CU PRIVIRE LA MODIFICĂRILE ADUSE ADOPŢIEI PRIN LEGEA NR.57/2016

Adopţia este operaţiunea juridică prin care se creează legătura de filiaţie între adoptator şi adoptat, precum şi legături de rudenie între adoptat şi rudele adoptatorului.

Adopţia este supusă cumulativ următoarelor principii:

a) interesul superior al copilului;

b) necesitatea de a asigura creşterea şi educarea copilului într-un mediu familial;

c) continuitatea creşterii şi educării copilului, ţinându-se seama de originea sa etnică, lingvistică, religioasă şi culturală;

d) celeritatea în îndeplinirea oricăror acte referitoare la procedura adopţiei.

Condiţiile şi procedura adopţiei internaţionale, ca şi efectele acesteia asupra cetăţeniei copilului se stabilesc prin lege specială.

Adopţia se încuviinţează de către instanţa de tutelă, dacă este în interesul superior al copilului şi sunt îndeplinite toate celelalte condiţii prevăzute de lege.

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Copilul poate fi adoptat până la dobândirea capacităţii depline de exerciţiu.

Cu toate acestea, poate fi adoptată, în condiţiile legii, şi persoana care a dobândit capacitate deplină de exerciţiu, dacă a fost crescută în timpul minorităţii de către cel care doreşte să o adopte.

Adopţia fraţilor, indiferent de sex, de către persoane sau familii diferite se poate face numai dacă acest lucru este în interesul lor superior.

Adopţia între fraţi, indiferent de sex, este interzisă.

Persoanele care nu au capacitate deplină de exerciţiu, precum şi persoanele cu boli psihice şi handicap mintal nu pot adopta. De asemenea, persoana care a fost condamnată definitiv pentru o infracţiune contra persoanei sau contra familiei, săvârşită cu intenţie, precum şi pentru infracţiunea de pornografie infantilă şi infracţiuni privind traficul de droguri sau precursori nu poate adopta.

Legea prevede că adoptatorul trebuie să fie cu cel puţin 18 ani mai în vârstă decât adoptatul însă pentru motive temeinice, instanţa de tutelă poate încuviinţa adopţia chiar dacă diferenţa de vârstă dintre adoptat şi adoptator este mai mică decât 18 ani, dar nu mai puţin de 16 ani.

Adopţia între fraţi, indiferent de sex, este interzisă.

Legea nr. 273/2004 cu privire la regimul juridic al adopţiei reglementează, printre condiţiile de fond ale adopţiei[1] şi consimţământul următoarelor persoane:

al părinţilor fireşti ai copilului[2];

al tutorelui copilului[3];

al copilului care a împlinit vârsta de 10 ani[4];

al adoptatorului sau, după caz, al familiei adoptatoare[5];

al soţului care este deja părinte adoptator al copilului[6];

al soţului persoanei care adoptă[7].

Consimţământul la adopţie reprezintă manifestarea de voinţă a persoanelor prevăzute de lege, prin care acestea îşi exprimă, după caz, acordul pentru încetarea legăturilor de filiaţie şi rudenie naturală sau pentru stabilirea legăturilor de filiaţie şi rudenie civilă.

Condiţia consimţământului dezvăluie natura esenţial civilă a actului juridic al adopţie.

[1]art. 5 - 18
[2]art. 11 alin. 1 lit. a şi alin. 2, art. 12 alin. 1 teza I şi alin. 2 - 4, art. 13 - 16, art. 23 alin. 2^1, art. 23^1 - 23^5 şi art. 36^1
[3]art. 11 alin. 1 lit. a, art. 13 - 14, art. 15 alin. 1 şi 3, art. 16 şi art. 23 alin. 2^1
[4]art. 11 alin. 1 lit. b şi alin. 2, art. 17 şi art. 64
[5]art. 11 alin. 1 lit. c şi alin. 2 şi art. 18 alin. 1
[6]art. 12 alin. 1 teza a II-a
[7]art. 18 alin. 2

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În plan internaţional, Convenţia europeană în materia adopţiei de copii, în art. 5 paragr. 1, prevede condiţia exprimării consimţământului de către următoarele persoane:

mama copilului, în cazul copilului nelegitim (lit. a teza I);

mama şi tatăl copilului, în cazul copilului legitim (lit. a teza a II-a);

persoana sau organismul abilitat să exercite drepturile părinteşti, în cazul în care nu există nici mamă, nici tată care să consimtă la adopţie (lit. a teza a III-a);

soţul adoptatorului (lit. b).

În schimb, Convenţia de la Haga asupra protecţiei copiilor şi cooperării în materia adopţiilor internaţionale, în art. 4, instituind cerinţele exprimării consimţământului, se referă generic la diverse persoane şi autorităţi (lit. c pct. 1-3) şi expres doar la mama copilului (lit.c pct.4) şi la copil (lit.d).

Modificările aduse prin legea nr.57/2016[8] aduce modificări și în ceea ce privește îndeplinirea unor condiții de fond pentru încheierea adopției.

Astfel consimţământul la adopţie nu poate fi exprimat în locul părinţilor fireşti/tutorelui copilului de către curator, mandatar sau o altă persoană împuternicită în acest sens.

În mod excepţional, în situaţia în care unul dintre părinţii fireşti, deşi au fost realizate demersuri suficiente, nu a putut fi găsit pentru exprimarea consimţământului, consimţământul celuilalt părinte este îndestulător. Când ambii părinţi se află în această situaţie, adopţia se poate încheia fără consimţământul lor. Instanţa de judecată poate încuviinţa luarea consimţământului la locuinţa celui chemat să exprime consimţământul, printr-un judecător delegat, dacă partea, din motive temeinice, este împiedicată să se prezinte în faţa instanţei.

Părinţii fireşti ai copilului sau, după caz, tutorele acestuia, trebuie să consimtă la adopţie în mod liber şi necondiţionat, numai după ce li s-a explicat, într-un limbaj accesibil, consecinţele exprimării consimţământului şi asupra încetării legăturilor de rudenie ale copilului cu familia sa de origine, ca urmare a încuviinţării adopţiei.

Obligaţia de a asigura consilierea şi informarea înaintea exprimării consimţământului la adopţie îi revine direcţiei în a cărei rază teritorială locuiesc în fapt părinţii fireşti sau, după caz, tutorele, direcţia realizând şi un raport în acest sens. Raportul se comunică direcţiei de la domiciliul copilului, în termen de 15 zile lucrătoare de la solicitarea acesteia.

În cazul adopţiei persoanei care a dobândit capacitatea deplină de exerciţiu, consimţământul adoptatorului sau familiei adoptatoare, precum şi cel al adoptatului se exprimă în faţa instanţei judecătoreşti. În acest caz, consimţământul părinţilor fireşti nu este necesar.

[8]PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 283 din 14 aprilie 2016

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Evaluarea adoptatorului sau a familiei adoptatoare în vederea obţinerii atestatului se realizează pe baza solicitării adoptatorului sau familiei adoptatoare de către direcţia de la domiciliul acestora sau de către organismele private autorizate să desfăşoare activităţi în cadrul procedurii adopţiei interne. În cazul unui rezultat favorabil al evaluării, direcţia în a cărei rază teritorială îşi are domiciliul adoptatorul sau familia adoptatoare eliberează atestatul de persoană sau familie aptă să adopte, care se constituie ca anexă la dispoziţia directorului general/executiv al direcţiei.

În situaţia în care soţii familiei adoptatoare şi-au stabilit domicilii diferite, atestatul se eliberează de către direcţia de la domiciliul unuia dintre soţi, în funcţie de opţiunea acestora.

Atestatul eliberat de direcţia în a cărei rază teritorială domiciliază adoptatorul sau familia adoptatoare este valabil pentru o perioadă de 2 ani.

Valabilitatea acestui atestat se prelungeşte de drept până la încuviinţarea adopţiei, în situaţia în care:

a) a fost introdusă pe rolul instanţei judecătoreşti cererea de încuviinţare a adopţiei copilului aflat în plasament de cel puţin un an;

b) a fost introdusă pe rolul instanţei judecătoreşti cererea de încredinţare în vederea adopţiei;

c) persoana/familia atestată are deja încredinţaţi, în vederea adopţiei, unul sau mai mulţi copii.

Pe parcursul procesului de evaluare, adoptatorul sau familia adoptatoare este obligată să colaboreze cu specialiştii care realizează evaluarea, refuzul acestora de a participa la toate etapele evaluării constituind motiv pentru formularea propunerii privind neacordarea atestatului.

În situaţia copilului pentru care s-a instituit plasamentul la o rudă până la gradul al patrulea, planul individualizat de protecţie poate avea ca finalitate adopţia internă, numai în situaţia în care managerul de caz apreciază că este în interesul copilului deschiderea procedurii adopţiei.

În situaţia copiilor care au împlinit vârsta de 14 ani, planul individualizat de protecţie poate avea ca finalitate adopţia dacă există solicitări de adopţie a acestora din partea unor familii/persoane atestate. În situaţia fraţilor care nu pot fi separaţi, dacă unul dintre ei a împlinit vârsta de 14 ani, planul individualizat de protecţie poate avea ca finalitate adopţia numai dacă există solicitări de adopţie a acestora împreună din partea unor familii sau persoane atestate.

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Planul individualizat de protecţie, astfel cum este acesta reglementat de Legea nr. 272/2004 privind protecţia şi promovarea drepturilor copilului, republicată, cu modificările şi completările ulterioare[9], are ca finalitate adopţia internă dacă:

a) după instituirea măsurii de protecţie specială a trecut un an şi părinţii fireşti ai copilului, în grija cărora acesta nu a putut fi lăsat din motive neimputabile părinţilor, precum şi rudele până la gradul al patrulea ale acestuia, care au putut fi găsite, nu realizează niciun demers pentru reintegrarea sau integrarea copilului în familie;

b) după instituirea măsurii de protecţie specială au trecut 6 luni şi părinţii fireşti ai copilului şi rudele până la gradul al patrulea ale acestuia, care au putut fi găsite, nu colaborează cu autorităţile în vederea realizării demersurilor pentru reintegrarea sau integrarea copilului în familie;

c) după instituirea măsurii de protecţie specială au trecut 6 luni şi părinţii şi rudele copilului până la gradul al patrulea nu au putut fi găsite;

d) după instituirea măsurii de protecţie specială, părinţii şi rudele copilului până la gradul al patrulea care au putut fi găsite declară în scris că nu doresc să se ocupe de creşterea şi îngrijirea copilului şi în termen de 30 de zile nu au revenit asupra declaraţiei. Direcţia are obligaţia înregistrării acestor declaraţii, precum şi a celor prin care părinţii şi rudele până la gradul al patrulea revin asupra declaraţiilor iniţiale;

e) copilul a fost înregistrat din părinţi necunoscuţi. În acest caz, adopţia ca finalitate a planului individualizat de protecţie se stabileşte în maximum 30 de zile de la eliberarea certificatului de naştere al acestuia.

Adoptatorul sau, opţional, oricare dintre soţii familiei adoptatoare, care realizează venituri supuse impozitului pe venit potrivit prevederilor Legii nr. 227/2015 privind Codul fiscal, cu modificările şi completările ulterioare, din activităţi salariale şi asimilate acestora sau, după caz, activităţi independente sau activităţi agricole, denumit în continuare persoană îndreptăţită, poate beneficia de un concediu de acomodare cu durata de maximum un an, care include şi perioada

[9]PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 159 din 5 martie 2014. Republicată în temeiul art. V din Legea nr. 257/2013 pentru modificarea şi completarea Legii nr. 272/2004 privind protecţia şi promovarea drepturilor copilului, publicată în Monitorul Oficial al României, Partea I, nr. 607 din 30 septembrie 2013, dându-se textelor o nouă numerotare. Legea nr. 272/2004 privind protecţia şi promovarea drepturilor copilului a fost publicată în Monitorul Oficial al României, Partea I, nr. 557 din 23 iunie 2004 şi a mai fost modificată prin Legea nr. 71/2011 pentru punerea în aplicare a Legii nr. 287/2009 privind Codul civil, publicată în Monitorul Oficial al României, Partea I, nr. 409 din 10 iunie 2011, rectificată în Monitorul Oficial al României, Partea I, nr. 489 din 8 iulie 2011, cu modificările şi completările ulterioare, prin Legea nr. 197/2012 privind asigurarea calităţii în domeniul serviciilor sociale, publicată în Monitorul Oficial al României, Partea I, nr. 754 din 9 noiembrie 2012, cu modificările ulterioare, şi prin Legea nr. 187/2012 pentru punerea în aplicare a Legii nr. 286/2009 privind Codul penal, publicată în Monitorul Oficial al României, Partea I, nr. 757 din 12 noiembrie 2012, rectificată în Monitorul Oficial al României, Partea I, nr. 117 din 1 martie 2013, cu modificările ulterioare.

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încredinţării copilului în vederea adopţiei, precum şi de o indemnizaţie lunară, raportată la indicatorul social de referinţă, în cuantum de 3,4 ISR.

Concediul şi indemnizaţia se acordă pe baza cererii persoanei îndreptăţite, la care se anexează certificatul de grefă în baza căruia se execută hotărârea judecătorească de încredinţare în vederea adopţiei, documentul care atestă mutarea copilului la adoptator/familia adoptatoare, înregistrat la direcţia în a cărei rază administrativ-teritorială a fost protejat copilul, precum şi dovada intrării efective în concediu sau a suspendării activităţii.

Cererea se completează potrivit modelului care se aprobă prin normele metodologice de aplicare a prezentei legi. Drepturile se stabilesc şi se acordă începând cu ziua următoare celei în care a fost pusă în executare hotărârea judecătorească de încredinţare în vederea adopţiei.

Persoanele îndreptăţite cărora li s-au stabilit drepturile prevăzute de lege nu pot beneficia, în perioada concediului de acomodare, de drepturile acordate în baza art. 2 şi 7 din Ordonanţa de urgenţă a Guvernului nr. 111/2010 privind concediul şi indemnizaţia lunară pentru creşterea copiilor, aprobată cu modificări prin Legea nr. 132/2011, cu modificările şi completările ulterioare.

Pe perioada concediului de acomodare, persoana îndreptăţită beneficiază de plata contribuţiei individuale de asigurări sociale de sănătate. Cuantumul contribuţiei se calculează prin aplicarea cotei procentuale, prevăzută de lege, la valoarea indemnizaţiei acordate.

Cererea şi documentele doveditoare se depun şi se înregistrează la agenţia pentru plăţi şi inspecţie socială judeţeană şi a municipiului Bucureşti în a cărei rază teritorială are domiciliul sau reşedinţa persoana îndreptăţită.

Concediul de acomodare şi plata indemnizaţiei încetează începând cu ziua următoare celei în care se produce una din următoarele situaţii:

a) a expirat perioada maximă de un an prevăzută pentru concediul de acomodare;

b) la cererea persoanei îndreptăţite;

c) copilul a împlinit 18 ani;

d) a avut loc decesul copilului;

e) persoana îndreptăţită care urma să adopte în calitate de persoană singură a decedat;

f) a rămas definitivă hotărârea judecătorească privind revocarea încredinţării în vederea adopţiei.

Concediul de acomodare şi plata indemnizaţiei se suspendă începând cu ziua următoare celei în care se produce una dintre următoarele situaţii:

a) s-a dispus plasamentul copilului în regim de urgenţă;

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b) a fost pusă în executare hotărârea judecătorească privind revocarea încredinţării în vederea adopţiei.

Reluarea concediului de acomodare şi a plăţii indemnizaţiei aferente suspendate se face la cererea persoanei îndreptăţite, începând cu data depunerii acesteia, dacă nu au intervenit situaţii care să determine încetarea drepturilor.

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THE RIGHT TO LANGUAGE TRAINING OF THE FOREIGNERS IN ROMANIA

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The issue of education access, having as consequence the access to the labor market for the people from other countries on Romanian land, in the context of optimal management of the migration flows towards the European Union as well as of the integration process, represents a challenge regarding the efficiency of current law application in order to observe the fundamental right to education.

Language training and language competencies acquirement in/for the destination country is established by Governmental Emergency Ordinance no 194/2002 regarding the foreigners' regime in Romania, Governmental Ordinance no 44/2004 regarding foreigners' social integration who have acquired international protection or residence right in Romania, as well as the citizens of the member states of the European Union and of the European Economic Area, and the Ordinance no 5924/2009 that establishes the methodology regarding the organization and development of the course of initiation into Romanian language, of the procedures regarding the elaboration, approval and distribution of the curriculum and books for the course of initiation into Romanian language, and of the procedures regarding the evaluation of the participants to the course of initiation into Romanian language for adult foreigners who have acquired a form of protection or a residence right in Romania, as well as for the citizens of member states of the European Union and of the European Economic Space. The positive aspects and the gaps of current law represent the discussion topic of this article.

Keywords: education, migration, integration, process, language

The issue of education access, regarding in particular the language training and the language competencies acquirement of the immigrants from other countries, in the language of the country they are in, represents a challenge in terms of the efficiency of current law application at the moment for the observance of the fundamental education right.

The absolute and adequate implementation of the Union aquis in the field of rights, obligations, discrimination/ non-discrimination, immigrants' protection has materialized at the level of

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national legislation in a body of regulations that establish explicit and unreserved immigrants' rights including the right to education and language training in Romanian language.

Romanian legislative basis regarding the right to education and language programs for immigrants, having a right of residence or protection in Romania is represented by Governmental Emergency Ordinance no. 194/2002 for foreigners in Romania [1], Governmental Ordinance no. 44/2004 regarding the social integration of aliens who were granted international protection or a right to stay in Romania and the citizens of the member states of the European Union and European Economic Area [2] and the Order nr.5924/2009 approving methodology for the organization and development of the initiation course in Romanian, of the procedures relating to the preparation, approval and distribution of curricula and textbooks for the initiation course in Romanian and of the procedures relating to the assessment of the participants to the initiation course in Romanian language for the foreigners adults who were granted a form of protection or a right of residence in Romania, as well as the nationals of member states of the European Union and European Economic Area [3].

Governmental Emergency Ordinance no. 194/2002 regarding the foreigners in Romania devotes Section IV to the regulation of the integration modality of the immigrants in the Romanian economic, social, and cultural life, the article 79 paragraphs 1 and 2 setting that the Romanian state provides the conditions for the integration of foreigners, who were granted a right of residence in Romania, in the economic, social and cultural life and their access to the education system in order to acquire language skills through the organization and development of Romanian language courses. According to article 132 paragraph 1, by explicitly outlining the rights of infant immigrants sets that the foreign infants living in Romania have access to compulsory education under the same conditions as the underage Romanian citizens, benefiting of a free Romanian language initiation during a school year.

Starting from the general frame (Governmental Emergency Ordinance no. 194/2002) regarding the legal regime applicable to nationals of other countries, the Romanian lawmaker regulates the social integration (including the acquisition of language skills) to immigrants through Ordinance no.44 / 2004. Distinguishing between the categories of immigrants (nationals of other countries who were granted a form of protection in Romania / nationals of other countries who were granted a form of stay in Romania) and customizing by age (infants / adults), within each category of immigrants the right to education through access to language programs and integration in the host country is established by article 10, article 14, article 35 index 1 paragraph 1, article 35 index 2, article 35 index 3 paragraph 3 indicate. The right to benefit of language

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training programs and concrete ways to access them by the immigrants can be found in the content of the provisions of Governmental Decision no.1483 / 2004, which approves the Methodological Norms for the application of Governmental Ordinance no.44 / 2004.

Order no. 5924 / 2009 approving the methodology for the organization and developing of the initiation course in Romanian, of the procedures relating to the preparation, approval and distribution of curricula and textbooks for the initiation course in Romanian, and of the procedures for the evaluation of the participants to the Romanian language initiation course for adult foreigners who were granted a form of protection or a right to stay in Romania, as well as the citizens of the member states of the European Union and European Economic Area, establishes concrete framework for organizing language training programs for adults. In annex no. 1, the legal text establishes the organization and development of the Romanian language initiation course for adult foreigners in the following conditions determined by article 3 paragraph 1 "Every school year, the enrollment for the Romanian language initiation courses is performed before the start of the first semester, from August 25th to September 5th"; article 6 *(1)* The Romanian language initiation courses develop throughout a school year, which fixed annually by the Minister of Education, Research and Innovation; *(2)* The number of hours per week is 4 (four).

The over-regulation of the right and of the access to language programs through the last piece of legislation, namely the Order nr.5924 / 2009 determines, in many cases, the impossibility to exercise the right with consequences for the priority if the social integration process and of the labor market in the host country of the foreign person.

Entering the country and installing the alien is a bureaucratic process and customized for each case, so that in most situations the foreigner cannot predict the moment of acceptance / installation in the host country and the moment when he/she can participate in language training (for example, the alien who entered the country in October, according to the methodology of development of the Romanian language courses, will have to wait for his/her participation in the training program until September, the following year).

Also, for the host country, too, the acceptance process of the immigrants is a continuous process so that, as with the stranger, the state cannot anticipate the entry / installation of a certain number of immigrants at a particular time and in a certain area of the country, forecasting that will allow the development of the language training program in the parameters required by the legal provision.

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The imposition of the abovementioned legal act led to a strict schedule (4 hours / day, 1 day / week, throughout a school year), with no possibility to adapt it to the needs of the foreign adult, can be a hindrance in using the recognized right.

The integration into the host society and into the labor market requires primarily knowledge of language, and language programs should be more differentiated, more efficient and more specific, customization needs being imposed for groups of citizens.

If in the case of the foreign infants, the legislative regulations relating to language courses do not raise difficulties in accessing them, in the case of foreign adults language programs must be tailored to their needs.

The direct and immediate consequence of non-capitalization by immigrants of the right to language classes is considered to be the lack of opportunity for integration in Romanian society, the impossibility to capitalize formal or informal skills acquired in the home country and the impossibility of accessing the labor market in the host country.

The Union Institutions "emphasize that learning the host language is the basis of success on the European labor market oriented towards services; they also stress that the member states must ensure that there are enough opportunities for language learning, so that language barriers in the labor world cease to be an obstacle, [...]" [4].

The immigrant's integration on the labor market in the host country and in society requires a continuous two-way process involving the foreigners, especially in terms of acquiring language skills, and the state, and the host society. Assuming the duties of the integration process, including the provision by the state of training programs tailored to the needs of the foreigner and the his/her accessing to available programs that can provide solutions to the problem of social integration and employment of the alien.

The refusal to exercise the right to language training by the immigrant should not be understood in the restrictive conditions of Order nr.5924 / 2009 (given the high rate of drop-out rates) as a refusal to assume his/her tasks in the integration process but as an inability to actually capitalize the law as a result of the maladjustment of legal proceedings to the needs of the right holder.

In turn, we believe that the state should legislate so that the rights can be capitalized, keeping it at the level of the implementation of normative acts the reasons of the basic normative acts. Thus, Governmental Ordinance 44/2004 on the social integration of immigrants regulates the organization of language courses (article 35 index 1,2) but taking the Union requirements on flexibility and adaptability of integration measures, saying in article 35 index 5 that "The National Refugee Office may contract under the law, depending on the number of beneficiaries

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and in the extent of available funds, the services of non-governmental organizations to organize sessions of cultural accommodation, counseling and learning the Romanian language to the individuals referred to in article 351 paragraph (1) and to the aliens who were granted a form of protection in Romania".

The fact that the legislator in the Governmental Ordinance 44/2004 did not foresee any restrictive conditions on supporting language courses by other legal entities, leads us to consider that a uniform application of the Union requirements, and a consistency in the policies rules for integration as excessive regulation by the Order no.5924 / 2009 were not justified. The legislator's will to overregulate the language training of foreigners appears as a deprivation of the subject to capitalize leverages his/her right.

Although it is difficult to accept, currently the immigrants' integration is not just a process of inclusion of the individual newcomer in the host society but it is primarily an individual process conditioned by the legal parameters of each country of destination. S. Carrera in his study *Typology of different integration programs in the UE* thinks that the very notion of integration is not defined as a process of social inclusion of the immigrants but has rather become a notion with the consent of legal and political mechanisms of control by which the states decide who enters and who stays on their territory, integration actually expressing the transition from social inclusion measures to the legal regulation and legal [5].

Starting from this legal perspective of integration and models of integration, (multiculturalism - based on respect for and protection of cultural diversity and on the guarantee of the identity of immigrant communities, of the assimilationism - based on the assimilation complete newcomers into the host society, of the exclusionism - based on the rejection of integration immigrants into the communities), the Romanian legislator needs to outline more precisely his/her position towards the immigrant by regulating important issues aiming at integration, including language training but also through permissiveness in regulating certain minor legal aspects in the integration process (conditioning the start of the courses to some unimportant dates for the training program).

Article 35 index 5 of Governmental Ordinance 44/2004 provides the possibility of outsourcing the language courses by non-governmental organizations, respectively by associations and foundations organized according to Governmental Ordinance 26/2000, discriminating the legal entities that can participate in the outsourcing of such services. According to the above mentioned dispositions, providers of training services to adults having the legal organizational form of non-governmental organizations (associations and foundations) but also companies or

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freelancers are excluded (the latter) unduly from an activity that could be carried by them. The legislator has left from a wrong premise, the appropriate adult educational activity corresponding to the classification from the Code of economic activities in Romania 8559 - other forms of education can be made according to the Law 1/2011 – the national education law by public and private providers of education and training who are certified / accredited in terms law (Article 331 paragraph 1), and not only by the non - profit organizations. This prohibition exists in its former shape of the national education law No 84/1995 in Article 104 which specifies that any form of private education cannot function unless the non-profit principle. Moreover, foreign languages courses are organized and authorized under Governmental Ordinance no. 129/2000 considering that for the same legal regime, Romanian language courses must obey the same laws, too.

The condition that the outsourcing of language courses to be made exclusively by non-governmental organizations, respectively associations and foundations organized according to Governmental Ordinance 26/2000, appears as a restrictive condition in terms of the acquisition of these services according to Emergency Governmental Ordinance 34/2006 on the assignment of public acquisitions contracts, of public works concession contracts and of service concession contracts. According to Article 21 from Emergency Governmental Ordinance 34/2006 contracting authorities have an obligation to purchase through electronic means both direct and competitive purchases in percentage of at least 60% in 2016, at least 80% in 2017, and 100% since 2018. The exclusion from the acquisitions procedures of the private providers of education and training that are certified / accredited by law as companies or freelancers should appear as a violation of the principle of non-discrimination and equal treatment postulated in Article 2 of Emergency Governmental Ordinance 34/2006. This ban could also lead to numerous appeals of the education and training providers that were excluded from the procedure that would delay, justifiably, the access to language training and acquisition of language skills of nationals of other countries, making it hard to apply Governmental Ordinance 44/2004 regarding the social integration of immigrants to language courses.

Thus, article 14 paragraph 1 and Article 35 paragraph 1 from Governmental Ordinance 44/2004 talking about the right to language training for migrants who have the right to stay in Romania but also for beneficiaries of a form of protection, uses the term "they benefit of free courses [...] ", the term used by the legislator establishing the voluntary nature of training giving the immigrants the opportunity to capitalize or not this right. We believe that the legislator in view to effective integration should rule including the compulsoriness of language courses at least for

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certain categories of foreigners (for example, foreigners who have the right to stay in Romania etc.).

A study of the Council of Europe shows that a Western European legislator considered in 8 of 12 cases that language training is indispensable for the foreigner, ruling the binding nature of it [6].

According to the legislation the course of initiation in Romanian language is structured in levels of acquired knowledge, the documents released by the Ministry of Education attesting that this course was completed. In terms of optimal functioning of the Common European Framework of Reference for Languages (CEFR) the provision of Romanian legislation to align to the course stairs / assessment on the framework levels is extremely useful both in terms of creating a referential regarding the levels of mastery of the Romanian language from a foreign adult's perspective who is involved in an ongoing program and especially in terms of language certification levels. The legislator should also realize a referential for a free introductory course in Romanian language, referential that addresses the objectives and the content of the training, the evaluation / the certification of the acquired skills. The existence of such a referential would also be useful in the process of outsourcing to suppliers of language training programs. The French referential based on five evaluation criteria of training providers (the organization and development of the provider, access ways, the objectives and the content of the training, the trainers' skills, the capacity to evaluate the level gained in the training program) [7] can be a starting point in the elaboration of a training / evaluation system for the Romanian language.

Another important aspect is the funding of language programs. Romanian legislator opted for the gratuity of the initiation training, procedurally conditioning the access to it.

The legislation of community states is various in terms of funding of the language courses, according to a study made by the Council of Europe, most of them imposing a system of sanctions and incentives given based on the percentage of the foreigner's participation to the course and the successful testing graduating - "The sanctions may be of a financial nature taking the form of some reductions or taking full responsibility for the course / certification fees " [8].

We believe that granting the free courses just for getting a certain level of linguistic competence (for example, B1), with the subsequent possibility for the foreigner to acquire higher levels of certification through full or partial payment of the course / test, is the correct solution and of interest of the foreigner in integration programs.

We believe that the foreigners' access to language courses should be much easier, through the lack of the conditions imposed by the Order no.5924/2009, and by beginning courses only once a year, the long development period (the length of a school year).

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Maintaining Governmental Ordinance 44/2004 with the introduction of the possibility for the competent authority to organize language training programs based on existing requests at some point would be a beneficial legislative change. Also, from our point of view, it is useful to provide for a minimum number of hours for the language training program with the opportunity for the course initiator to rate the ways of supporting, and the introduction of the possibility of accessing the courses in e-learning system.

The immigrants' impossibility to access the free language courses, organized into levels of linguistic competence, and the impossibility to capitalize language skills acquired in informal contexts represent issues that a future legislative change would have to consider.

Currently, we believe that, from the perspective of Order no.5924 / 2009, the legislator's will to overregulate the language training of immigrants appears as a negative model that the host country's legal system could have on the lives of immigrants.

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RISK MANAGEMENT OF ACCIDENTS AND OCCUPATIONAL DISEASE WITHIN THE SECTOR OF THERMIC TREATMENT

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Abstract: Work prevention is a set of procedures and measures which are taken or planned in all working steps. The design and development of work processes are created to ensure that work processes are done in maximum security conditions, to protect the health and integrity of the workers. The study was conducted in a cold-rolled strip mill, where the rolled strip is processed in the heat treatment sector and where it will be thermally prepared to form a roll or a metal sheet. The main purpose of the heat treatment worker is to cur the laminate roll (recrystallization annealing treatment), to transport the laminated roll using a mini-locomotive LDH 65 to the treatment hall, and also to carry out cleaning work at the workplace.
Keywords: evaluation, risk level, job security, accident.

1.Introducere

Componentă intrinsecă a strategiei manageriale, activitatea de prevenire reprezintă un ansamblu de procedee şi măsuri luate sau planificate la toate stadiile de concepere.Proiectare şi desfăşurarea proceselor de muncă menite să asigure desfăşurarea acestora în condiţii de maximă securitate pentru sănătatea şi integritatea participanţilor la proces, prin care se elimină riscurile de accidentare sau îmbolnăvire profesională. În acest context se poate afirma că sarcina principală a activităţii de prevenire o reprezintă obţinerea maximumului de eficienţă şi de calitate a muncii în condiţiile reducerii numărului de accidente către zero.

Indiferent dacă este vorba de un loc de muncă, un atelier sau o societate comercială în ansamblul său, o asemenea analiză permite identificarea şi ierarhizarea factorilor de risc în funcţie de importanţa lor şi alocarea eficientă a resurselor financiare şi umane pentru măsurile prioritare de eliminare sau reducere a riscurilor reziduale associate.

Obligativitatea evaluării riscurilor profesionale în ţara noastră decurge din legislaţia actuală în domeniu, care a fost armonizată cu legislaţia Uniunii Europene privind securitatea şi sănătatea în muncă. Astfel, art. 7 alin.(4) din Legea 319/2006 a Securitaţii si Sănătăţii în Muncă , preluând

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paragraful 2, punctul b - art. 5 din Directiva Cadru 391/89 C. E. E. prevede: "Angajatorul" are obligaţia:

a) să evalueze riscurile pentru securitatea şi sănătatea lucrătorilor, inclusiv la alegerea echipamentelor de muncă, a substanţelor sau preparatelor chimice utilizate şi la amenajarea locurilor de muncă;

b) ca, ulterior evaluării prevăzute la litera a şi dacă este necesar, măsurile de prevenire, precum şi metodele de lucru şi de producţie aplicate de către angajator să asigure îmbunătăţirea nivelului securităţii şi al protecţiei sănătăţii lucrătorilor şi să fie integrate în ansamblul activităţilor întreprinderii şi/sau unităţii respective şi la toate nivelurile ierarhice."[4]

2 .Procesul de muncă analizat

Studiul realizat într-un laminor de bandă laminată la rece în sectorul de tratament termic unde banda va fi pregătită termic pentru a putea fi dresată umed sub forma de rulou sau pachete cu foi de tablă. Rolul sectorului de tratament termic , cum arată şi denumirea , este acela de a realiza tratamentul termic de recoacere- recristalizare la bandă laminată la rece aşa încît banda să aibă proprietăţile fizice necesare prelucrării ulterioare în sectorul dresare .

Tratamentul termic al rulourilor se face în cuptoarele clopot . În aceste cuptoare mobile ,banda e încalzită indirect pînă la temperatura de palier de $720^{O}C$, dupa care urmează menţinerea la aceasta valoare a temperaturii pentru un timp bine determinat şi apoi răcirea lentă pînă la o temperatură de aproximativ $80^{O}C$,cînd se consideră încheiat ciclul de tratament termic. Dupa încheierea ciclului termic ,cuptorul clopot e mutat pe un alt soclu unde ciclul termic este aplicat altor rulouri de tablă conform programului de fabricaţie. În hala de tratament termic L.B.R sunt 58 de cuptoare clopot care pot funcţiona în funcţie de gradul de încărcare al sectorului .

Încalzirea , menţinerea palierului răcirea lentă se face într-un mediu protectiv de azot şi hidrogen (conţine 8%H_2 si 92%N_2) [2].În interiorul fiecarui soclu , sunt montate trei termocuple care măsoara temperatura în diferite zone , cel mai apropiat de rulouri , numit termocuplul de reglare, măsoara temperatura care trebuie menţinută de echipamentul A.M.C.periferic. Echipamentul periferic are în componenta un servomotor care închide sau deschide proporţional debitul de gaz metan al arzătoarelor , în funcţie de comanda primită de la PLC-ul aflat în cabina termotehnică.

Procesul de muncă analizat este al termistului tratamentist drept scop tratarea benzii laminate (tratament de recoacere de recristalizare), transportul benzii cu ajutorul minilocomotivei LDH 65 catre hala de tratare şi dresare, cît şi efectuarea de curăţenie la locul de muncă.[3]

Elementele componente ale sistemului de muncă evalual (tabelul 1).

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Tabelul 1

UNITATEA:LAMINOR DE BENZI LA RECE		**FIŞA DE EVALUARE A POSTULUI DE LUCRU**	**NUMĂR PERSOANE EXPUSE: 7**			
SECTOR:TRATAMENT TERMIC			**DURATA EXPUNERII: 8 h/schimb**			
LOCUL DE MUNCĂ: TRATAMENT TERMIC – L.B.R.			**ECHIPA DE EVALUARE: INSPECTOR**			
COMPONENTA SISTEMULUI DE MUNCĂ	**FACTORI DE RISC IDENTIFICAŢI**	**FORMA CONCRETĂ DE MANIFESTARE A FACTORILOR DE RISC (descriere, parametri)**	**CONSE-CINŢA MAXIMĂ PREVI-ZIBILĂ**	**CLASA DE GRAVI-TATE**	**CLASA DE PROBA-BILITATE**	**NIVEL PARŢIAL DE RISC**
0	**1**	**2**	**3**	**4**	**5**	**6**
MIJLOACE DE PRODUCŢIE	**FACTORI DE RISC MECANIC**	1.Contact direct al epidermei cu suprafeţe periculoase (muchii tăioase, bandă de legat, etc)	ITM 45-180 zile	1	3	1
		2. Rostogoliri de piese cilindrice neasigurate împotriva deplasărilor necontrolate(rulouri transportate pe vagoneţi)	DECES	7	1	3

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		3. Răsturnarea de materiale fară asigurarea stabilităţii	DECES	7	1	3
		4. Lovire de catre minilocomotiva sau vagoneţi de transfer a benzii laminate din depozit in T.T., Dresare	GRAVE	5	1	3
		5 Cadere de la înalţime prin păşire în gol, prin dezechilibrare, prin alunecare – goluri tehnologice, lucru pe pasarelă, etc	ITM 45 zile	2	3	2
		6. Accidente produse ca urmare a manevrării incorecte a sarcinilor cu podul rulant	ITM 45 zile	2	2	2
	FACTORI DE RISC TERMIC	7.Contact accidental cu suprafeţe fierbinţi	ITM 45 zile	2	2	2
		8. Arsuri datorate radiaţiilor termice	ITM 45 zile	2	2	2
	FACTORI DE RISC TERMIC	9. Arsuri datorate flacărilor (surprinderea de flacări pe timpul efectuarii controlului cuptoarelor sau la pornirea acestora)	ITM 45 zile	2	2	2
MEDIUL DE MUNCĂ	**FACTORI DE RISC FIZIC**	10. Zgomot ridicat(peste 87-105dB)	ITM 3-45 zile	2	3	2

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		11.Intoxicare cu CO(peste C.M.A.20 mg/m^3 aer-28,7mg/m^3aer)	DECES	7	1	3
		12. Gazare cu CH_4	DECES	7	1	3
		13. Explozii	DECES	7	1	3
EXECUTANT	**ACŢIUNI GREŞITE**	14.Neutilizarea E.I.P., E.I.L. şi a celorlalte mijloace de protecţie din dotare	DECES	7	1	3
	OMISIUNI	15.Omiterea unor faze din ordinea operaţiilor de punere şi scoatere de sub tensiune a instalaţiilor	DECES	7	1	3

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1.Mijloace de producţie**:**minilocomotiva LDH 65 şi vagoneţi;mufle de protecţie;clopote de încălzire;clopote de răcire lente;dispozitive de răcire finala;cheie pentru strans mufla.

2.Sarcina de muncă:venirea la locul de muncă;verificarea rulourilor ce urmează a fi încărcate; verificarea funcţionării minilocomotivei şi a vagoneţilor;efectuarea sarcinilor prevazute în fişa postului;efectuarea curăţeniei la locul de muncă;raportarea eventualelor nereguli apărute în cursul zilei;predarea schimbului;terminarea lucrului.

3. Mediul de muncă:termistul tratamentist îşi desfaşoara activitatea în incinta secţiei laminorului de benzi la rece –sectorul tratament termic 1+2 (stapi K-L si L-M), iluminat artificial şi natural.[5]

Factorii de risc identificaţi în sector sunt prezentate în fişa de evaluare a postului tabelul 1.

Obţinem o scală de cotare a probabilităţii cum este cea din tabelul 2.

Având la dispoziţie aceste două scale - de cotare a probabilităţii şi gravităţii consecinţelor acţiunii factorilor de risc - putem să asociem fiecărui factor de risc dintr-un sistem un cuplu de elemente caracteristice, gravitate - probabilitate, pentru fiecare cuplu stabilindu-se un nivel de risc.

Liniile din tabel sunt liniile claselor de gravitate , iar coloanele - coloanele claselor de probabilitate. Fiecare căsuţă corespunde câte unui punct , de coordonatele g,p.Exprimarea efectivă a riscurilor existente în sistemul analizat,este sub forma cuplului gravitate - frecvenţă de apariţie(tabelul 3).

Tabelul 2

CLASE DE GRAVITATE / CONSECINŢE		**GRAVITATEA CONSECINŢELOR**
1	NEGLIJABILE	consecinţe minore reversibile cu incapacitate de muncă previzibilă până la 3 zile calendaristice (vindecare fără tratament)
2	MICI	consecinţe reversibile cu o incapacitate de muncă previzibilă de 3 - 45 zile care necesită tratament medical
3	MEDII	consecinţe reversibile cu o incapacitate de muncă previzibilă între 45 - 180 zile care necesită tratament medical şi prin spitalizare
4	MARI	consecinţe ireversibile cu o diminuare a capacităţii de muncă de maxim 50 % (invaliditate de gradul III)

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5	GRAVE	consecinţe ireversibile cu pierdere între 50 - 100 % a capacităţii de muncă, dar cu posibilitate de autoservire (invaliditate de gradul II)
6	FOARTE GRAVE	consecinţe ireversibile cu pierderea totală a capacităţii de mun-că şi a capacităţii de autoservire (invaliditate de gradul I)
7	MAXIME	deces
CLASE DE PROBABILITATE / EVENIMENTE		**PROBABILITATEA CONSECINŢELOR**
1	EXTREM DE RARE	Probabilitate de producere a consecinţelor extrem de mică **$P < 10^{-1}$/an**
2	FOARTE RARE	Probabilitate de producere a consecinţelor foarte mică **$10^{-1} < P < 5^{-1}$/an**
3	RARE	Probabilitate de producere a consecinţelor mică **$5^{-1} < P < 2^{-1}$/an**
4	PUŢIN FRECVENTE	Probabilitate de producere a consecinţelor medie **$2^{-1} < P < 1^{-1}$/an**
5	FRECVENTE	Probabilitate de producere a consecinţelor mare **1^{-1}/an $< P < 1^{-1}$/lună**
6	FOARTE FRECVENTE	Probabilitate de producere a consecinţelor foarte mare **$P > 1^{-1}$/lună**

Tabelul 3

CLASE DE PROBABILITATE					
1	**2**	**3**	**4**	**5**	**6**
EX-TREM DE RAR	**FOA R-TE RAR**	**RAR**	**PUŢI N FRE C-VEN T**	**FREC - VEN T**	**FOA R-TE FREC - VEN T**

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CLASE DE GRAVITATE			$P>10^{-1}$/an	$P > 10^{-1}$/an $P < 5^{-1}$/an	$P > 5^{-1}$/an $P < 2^{-1}$/ an	$P > 2^{-1}$/ an $P < 1^{-1}$/an	$P > 1^{-1}$/an $P < 1^{-1}$/lună	$P > 1^{-1}$/ lună
	CONSECINŢE							
7	**MAXIME**	**DECES**	**(7,1)**	**(7,2)**	**(7,3)**	**(7,4)**	**(7,5)**	**(7,6)**
6	**FOARTE GRAVE**	**INVALIDI-TATE GR. I**	**(6,1)**	**(6,2)**	**(6,3)**	**(6,4)**	**(6,5)**	**(6,6)**
5	**GRAVE**	**INVALIDI-TATE GR. II**	**(5,1)**	**(5,2)**	**(5,3)**	**(5,4)**	**(5,5)**	**(5,6)**
4	**MARI**	**INVALIDI-TATE GR. III**	**(4,1)**	**(4,2)**	**(4,3)**	**(4,4)**	**(4,5)**	**(4,6)**
3	**MEDII**	**ITM 45 - 180 ZILE**	**(3,1)**	**(3,2)**	**(3,3)**	**(3,4)**	**(3,5)**	**(3,6)**
2	**MICI**	**ITM 3 - 45 ZILE**	**(2,1)**	**(2,2)**	**(2,3)**	**(2,4)**	**(2,5)**	**(2,6)**

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1	**NEGLIJA BILE**	**(1,1)**	**(1,2)**	**(1,3)**	**(1,4)**	**(1,5)**	**(1,6)**

Dacă luăm în considerare toate combinaţiile posibile ale variabilelor specificate, câte două, obţinem o matrice $M_{g,p}$ cu 7 linii - g, care vor reprezenta clasele de gravitate, şi 6 coloane - p - clasele de probabilitate:

$$M_{g,p} = \begin{Vmatrix} (1,1) & (1,2) & (1,3) & (1,4) & (1,5) & (1,6) \\ (2,1) & (2,2) & (2,3) & (2,4) & (2,5) & (2,6) \\ (3,1) & (3,2) & (3,3) & (3,4) & (3,5) & (3,6) \\ (4,1) & (4,2) & (4,3) & (4,4) & (4,5) & (4,6) \\ (5,1) & (5,2) & (5,3) & (5,4) & (5,5) & (5,6) \\ (6,1) & (6,2) & (6,3) & (6,4) & (6,5) & (6,6) \\ (7,1) & (7,2) & (7,3) & (7,4) & (7,5) & (7,6) \end{Vmatrix}$$

Nivelul de risc 1 - cuplurile g-p: (1,1) (1,2) (1,3) (1,4) (1,5) (1,6) (2,1);

Nivelul de risc 2 - cuplurile g-p: (2,2) (2,3) (2,4) (3,1) (3,2) (4,1);

Nivelul de risc 3 - cuplurile g-p: (2,5) (2,6) (3,3) (3,4) (4,2) (5,1) (6,1) (7,1);

Nivelul de risc 4 - cuplurile g-p: (3,5) (3,6) (4,3) (4,4) (5,2) (5,3) (6,2) (7,2);

Nivelul de risc 5 - cuplurile g-p: ((4,5) (4,6) (5,4) (5,5) (6,3) (7,3);

Nivelul de risc 6 - cuplurile g-p: (5,6) (6,4) (6,5) (7,4);

Nivelul de risc 7 - cuplurile g-p: (6,6) (7,5) (7,6).

Din scala de încadrare a nivelurilor de risc **(**tabelul 4)se deduce imediat că nivelul 7 de risc reprezintă un nivel critic, la care securitatea sistemului este minimă. Despre factorii de risc caracterizaţi prin cuplurile (6,6), (7,5), (7,6) se poate afirma că ei vor conduce rapid şi cu certitudine la producerea evenimentului extrem - decesul (pericol iminent).[1]

Tabelul 4

NIVEL DE RISC		**CUPLUL GRAVITATE - PROBABILITATE**
1	MINIM	(1,1) (1,2) (1,3) (1,4) (1,5) (1,6) (2,1)
2	FOARTE MIC	(2,2) (2,3) (2,4) (3,1) (3,2) (4,1)
3	MIC	(2,5) (2,6) (3,3) (3,4) (4,2) (5,1) (6,1) (7,1)

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4	MEDIU	(3,5) (3,6) (4,3) (4,4) (5,2) (5,3) (6,2) (7,2)
5	MARE	(4,5) (4,6) (5,4) (5,5) (6,3) (7,3)
6	FOARTE MARE	(5,6) (6,4) (6,5) (7,4)

Cu ajutorul scalei de încadrare a nivelurilor de risc se determină apoi aceste niveluri pentru fiecare factor de risc în parte. Se obţine astfel o ierarhizare a dimensiunii riscurilor la locul de muncă, ceea ce dă posibilitatea stabilirii unei priorităţi a măsurilor de prevenire şi protecţie, funcţie de factorul de risc cu nivelul cel mai mare de risc.

Nivelul de risc global (Nr) pe locul de muncă se calculează ca o medie ponderată a nivelurilor de risc stabilite pentru factorii de risc identificaţi. Pentru ca rezultatul obţinut să reflecte cât mai exact posibil realitatea, se utilizează ca element de ponderare rangul factorului de risc, care este egal cu nivelul de risc.

În acest mod, factorul cu cel mai mare nivel de risc va avea şi rangul cel mai mare. Se elimină astfel posibilitatea ca efectul de compensare între extreme, pe care-l implică orice medie statistică, să mascheze prezenţa factorului cu nivel maxim de risc.

Plecând de la aceste premise, s-a elaborat metoda de evaluare a riscurilor a meseriei **t**ermist tratamentist care este prezentată in continuare.

Nivelul de riscglobal al locului de muncă ca (figura 1):

$$N_{rg} = \frac{\sum_{i=1}^{38} r_i \bullet R_i}{\sum_{i=1}^{38} r_i} = \frac{2 \cdot (1 \times 1) + 5 \cdot (2 \times 2) + 9 \cdot (3 \times 3)}{2 \times 1 + 5 \times 2 + 9 \times 3} = \frac{103}{39} = 2{,}64$$

în care:

Nr - nivelul de risc global pe loc de muncă;

r_i - rangul factorului de risc "i";

R_i - nivelul de risc pentru factorul de risc "i";

n - numărul factorilor de risc identificaţi la locul de muncă.

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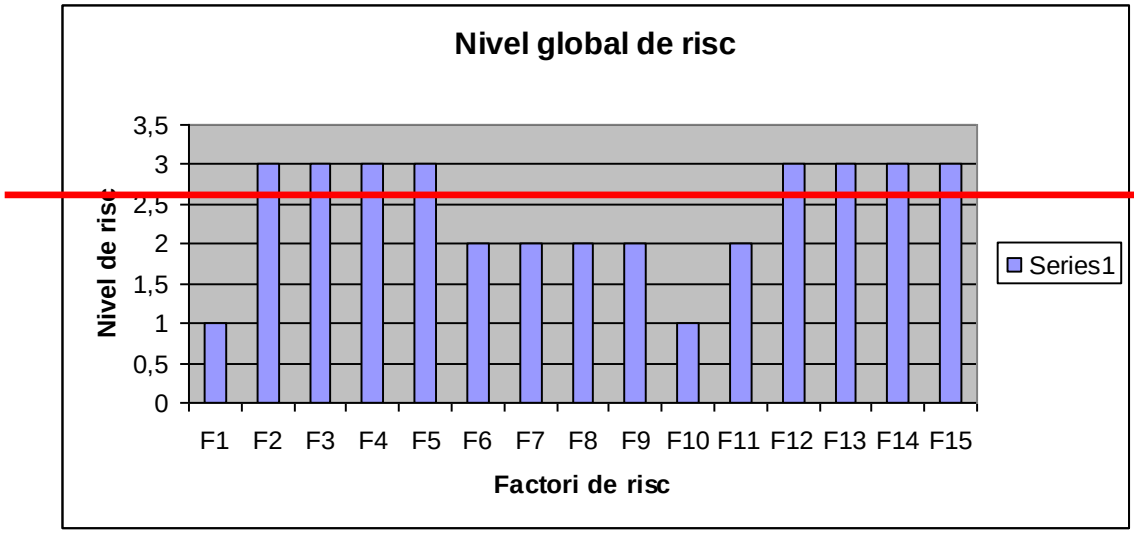

Figura 1 Nivelul de risc global al locului de muncă calculat

În ceea ce priveşte repartiţia factorilor de risc pe sursele generatoare, situaţia se prezintă după cum urmează (figura 2):

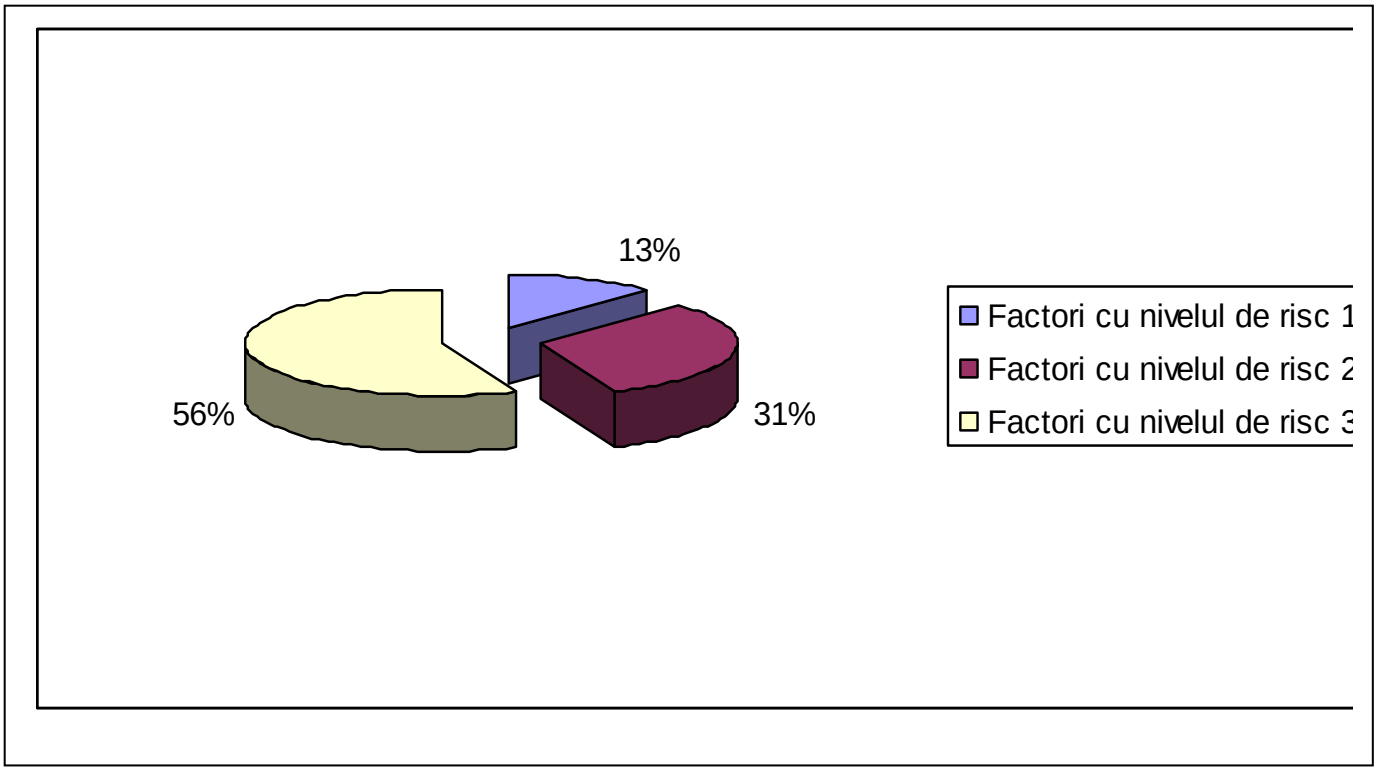

Figura 2 Ponderea factorilor de risc identificaţi

3.CONCLUZII

Evaluarea riscurilor profesionale la un laminor de benzi la rece sector tratamente termice s-a efectuar în perioada 01.08.2015-28.12.2015.

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Inexistenţa accidentelor de muncă şi îmbolnăvirilor profesionale în acest sector pană în prezent denota faptul ca există preocupări majore din partea angajatorului de a asigura condiţii bune şi sigure de muncă lucrătorilor, pentru a proteja integritatea, sănătatea şi viaţa acestora.

Implementarea barierelor de securitate (măsuri de prevenire/protecţie) propuse la fiecare loc de muncă va îmbunătaţii şi mai mult condiţiile de muncă şi va reduce in continuare valoarea nivelului de risc global agreat pe unitate.

Ierarhizarea locurilor de muncă după nivelul global de risc a fost de 2,64.

Locul de muncă evaluat are nivelul de risc sub nivelul maxim de risc acceptat în România (3,5).

Din totalul de 15 factori de risc identificaţii evaluate, ponderea cea mai mare o are nivelul de risc mic (3), 9 factori (56%): apoi cu nivel de risc foarte mic (2) sunt 5 factori (31%): cu nivel de risc minim (1) sunt 2 factori (13%)

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THE STATUS OF THE HUMAN CAPITAL IN ROMANIA AND ITS COUNTIES

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Abstract: The human capital concept implies thus that the capital is the active capital of people themselves and that people cannot be separated from their knowledge, abilities, health or values. We can consider that the human capital can be divided into four elements: Knowledge, Skills, Talent and Behavior.

In this article, I analyzed, at a detailed territorial level - that of the counties, taking into account the territorial structure, with its intrinsic issues at the human capital level and the specificities of the Romanian regions, a territorial human capital index – THCI, capable of comprising, in my view, the current situation and the related issues at the level of the Romania's counties.

Keywords: human capital, Europe 2020 Strategy, Romanian counties, pillars, territorial human capital index – THCI.

JEL Classification: I15, I24, I25, R23

1. Human Capital Definitions

The first elements referring to the *human capital,* such asthose regarding the importance of education on work productivity and the idea o investing in the *human capital* were first defined by Adam Smith, in „The Wealth of Nations" (1776), in the context of the analysis of differences between workers with different education background and instruction levels[1].

The modern concept of *human capital* belongs toTheodore W. Schultz (Nobel winner for economy) who in his article - *Investment in Human Capital (1961)*[2] published in the American Economic Review demonstrated that in the US economy the results of the investment in human capital by education and training are greater than those of the investment in the physical capital

[1] (Smith, Adam,*Avuţia naţiunilor*:Cercetarea asupra naturii şi cauzelor ei vol.1, Editura Academiei, 1962, p. 9-12, 14)

[2] Schultz, Theodore, W., Investment in Human Capital, *American Economic Review*, 1(2), 1961, p.1-17 (http:///www.jstor.org/stable/pdfplus/1818907.pdf)

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(machinery, buildings, computers). Schultz defined the concept in 1968: "I consider all human abilities innate or acquired. The capabilities that are valuable and that can be improved by appropriate investment constitute the human capital. Investing in themselves, people can enlarge the range of choices available to them'[3]. The human capital concept implies thus that the capital is the active capital of people themselves and that people cannot be separated from their knowledge, abilities, health or values.

Jacob Mincer introduced the concept of human capital in the neoclassic economic literature via his 1958 article „*Investment in Human Capital and Personal Income Distribution*"[4]. The idea of human capital was put in practice by the Chicago School whose representatives are Jacob Mincer and Gary Becker. According to Gary Becker, the human capital is defined by *the monetary and non-monetary activities which influence future monetary income. These activities include: education, training on the job, medical expenses, migration, seeking information on prices and incomes. The* ***factors*** that impact the human capital are this: *schooling, physical health, mental health child care and migration*[5].

Newer perspectives, more precisely those referring to the total human capital mention the value of the return on investment of human capital on its owner. On the other hand both economic trends and the literature in the field emphasized that *in both economic development and in firm behavior—the most important assets are the human ones.*[6]

To support this idea, Thomas Davenport concluded that: 'the human capital comprises all the intangible assets that people bring to their jobs. He studies the so-called metaphor of the human capital, broken into four elements: i) Knowledge: command of a body of facts from different sources ii) Skills: facility, developed through practice; iii) Talent: inborn facility for performing a task; iv) Behavior: observable ways of acting that contribute to accomplishing a task.[7]

[3]Schultz, T. W.,*Reflection on Investment in Man,* The Journal of Political Economy, Vol.70,No.5 Part 2, Investment in Human Beings, Oct.1962,p.1-8 (http:///www.jstor.org/stable/pdfplus/1818907.pdf)

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2. Human Capital Quantifying Indicators

The attempts of assessing human capital at world level were motivated by the acknowledgement of human capital as determining factor of economic growth (OECD, 2001).

There are numerous approaches for measuring the *human capital stock* and developing national *human capital accounting* in countries such as USA, Canada, Australia, Norway, New Zeeland, United Kingdom , Portugal etc., at OECD level (human capital accounting development) and ant EU level by the ***European Human Capital Index*** and the ***Regional Human Capital Index***.

On the other hand, studying human capital in connection with *competitiveness* (more recently taking into account the knowledge society framework and the interconnections) lays light on the links among these concepts characterized by extensive theoretical debates and disputes. At global level, a series of famous international organisms (World Bank, OECD, World economic Forum, European Commission etc.) and education renowned educational and consultancy institutions (INSEAD, McKinsey etc.) have made substantial efforts for years (decades) to measuring and identifying *aggregated indicators* to highlight the development status of countries from the competitiveness perspective, of human capital and of the knowledge society. The results obtained by means of these methodologies provide first of all a hierarchy of countries according to the levels of different indicators and the analyses of the trends as compared the previous years[8].

More in-depth analyses at country level emphasize the *critical fields* which need *improvement interventions* regardless if it implies the education level or the quality of the economic environment or the capacity to attract and retain talent and make use of certifications in activities locally or increase the health and wealth level of the population.

Out of these indicators of the type, the most renowned at international level are the *index of human capital (World Economic Forum, the global talent competitiveness index (INSEAD), the IMD world talent raking (IMD Lausanne) human development index (UN); the gender gap index(World Economic Forum).* Further on we will refer in more detail to Romania's position in the world according to the human capital index, at the end we will present a fitting of this index at territorial level, in the specific context of the Romanian counties.

[8] E. Pelinescu (coordonator) (2014), *Capitalul uman – factor esențial al creșterii competitivității în societatea cunoașterii*, Institutul de Prognoză Economică, București.

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The Human Capital Index – HCI was elaboratedby World Economic Forum, being presented in the first *Human Capital Report* in 2013. It provides a comprehensive framework for evaluating and benchmarking human capital at the level of national economies, emphasizing the best national performances regarding the investments in the health, education and talent of their own citizens as well as far as ensuring a proper environment so that these investments are translated into high productivity at the entire economy level. The index was calculated for 122 countries of the world, providing besides a global hierarchy, more complete pictures of he specific context of each country.

Taking into account that the human capital index is determined by the physical, economic and social context of a specific society and by a series of other components which vary in time (health, environment factors etc), similarly to other indicators calculated by WEF, HCI, the human capital are based on four main pillars (Addendum 1):

The *Education* pillar contains indicators relating to quantitative and qualitative aspects of education across primary, secondary and tertiary levels and contains information on both the present workforce as well as the future workforce.

The *Health and Wellness* pillar contains indicators relating to a population's physical and mental well–being, from childhood to adulthood

The *Workforce and Employment* pillar is designed to quantify the experience, talent, knowledge and training in a country's working–age population

The *Enabling Environment* pillar captures the legal framework, infrastructure and other factors that enable returns on human capital

The Human capital index scores for 2013 show that Romania had the weakest performance on the *Workforce and Employment* pillar (85) and the *Enabling Environment* pillar *(position 8)* as well a relatively average gap on inter-HCI performance (28 ranks) which signals the presence of a *relatively reduced balance of performance level of the factors/evolutions favorable to the development and action of the human capital at national level* – a serious alarm for the economic and social development perspectives of Romania (issues that will be tackled in another article correlated with other indicators of human capital and competitiveness).

Considering the four HCI pillars, for the *Education* pillar in Romania, a paradox and an alarming situation is noticeable *for the future of the human capital of the country*: it ranks the highest as far as the *level of primary education* of the current work force is concerned (15) and the lowest as far

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as the 'primary enrolment rate' (position 96!) – with impact on the future work force (taking into account the importance of primary education in the personal and professional development) and on the perspective of achieving the Europe 2020 objective as far as reducing early school abandonment. Regarding *Health and Wellness* Romania records the same paradoxical situation, potentially alarming: the least favorable positioning on *healthcare quality (place 114*- no surprise, taking into account the deplorable state of the national health insurance system) and the most favorable as far as 'depression' is concerned (position 2- not necessarily because Romanians are in good health, on the contrary, due to the poor and insufficient service offered as well as the population's lack of information). The paradoxes continue with the *Workforce and Employment* pillar: Romania ranks lowest in the *capacity to retain talent (position 115* – no surprise, considering the extension of the phenomenonof the external migration of the specialists educated in Romania, searching first decent income and welfare as well as career opportunities), which, at least theoretically, would offer premises and better and diverse development chances of the Romanian human capital.

The last paradox of the human capital situation in Romania is revealed by the least unfavorable and most favorable positions on the *Enabling Environment* pillar, which signals quasi-chronical overall inequality and social polarization: position 119 as far as social mobility and 56 as far as the Social safety net protection and mobile usage are concerned (a factor related to the emergence of the knowledge society, insufficient on its own for the renewal of the social, economic and political system).

To conclude and sum up, a possible equation of the current state of the human capital in Romania revealed by the first global HCI would be: deterioration of the basic education + deterioration of health and wellness + migration of the work force+ sectorial and territorial unevenness on the occupational market + great income unevenness and work force impoverishment + high dependence on social assistance and inappetence in engaging in economic activities + a certain propensity towards novelty and modernization, which can be systemic but also determined by the pressure of the media + a possible change in the system of values (not necessarily in a good direction) + rigid, unstimulating and truly hostile legal, political and administrative environment.

3. The territorial human capital index at the Romanian counties level

Whether at national level things were presented in a more extended European context, we will try to detail the analysis at a detailed territorial level -that of the ***counties*** - taking into account the territorial structure, with its intrinsic issues at the human capital level and the specificities of the

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Romanian regions ('development regions' constituted by the aggregation of several counties, without legal personality, although a focus of the specific community /national programs).

As a novelty: we will also present and analyze a ***territorial human capital index – THCI,*** capable ofcomprising, in our view, the current situation and the related issues at the level of the Romania's counties , based on the ***human capital index*** elaborated by theWorld Economic Forum in 2013.

It is worth mentioning that although ***THCI*** is an *aggregated index*, based on the same pillars (*education, health and wellness, workforce and employment, enabling environment)* it will be different from the human capital index in certain aspects:

THCI includes only strictly quantitative indicators and sub-indicators, taking into account the restriction concerning data availability, qualitative variables being unavailable for the moment

The same data availability restriction determined that several sub-indicators be approximated by means of other quantitative indicators that mainly describe the same phenomenon, direct statistical information being unavailable, which, on the other hand, lead to a relatively numerical unevenness of the *Enabling Environment* pillar. Thus, in the future, it will be necessary to identify other potential indicators to be taken into consideration in the structure of this pillar.

For all indicators, the data refers to year 2013 or to the most recent year available[9].

Determining the values of THCI and of other component indicators were made based on the following formula: $y = (x-x_{min})/(x_{max}- x_{min})$,frequently used in the literature in the field.

Where applicable, depending on the statistical data, some indicators were calculated taking into account the *discrepancy between the rural and urban environment*, better scores being given to lower differences

, better rural areas values respectively. The capital city, Bucharest was also taken into consideration in this context, assigning randomly equal values for both environments, which resulted in 0 differences (which can affect negatively or positively a certain county, according to each specific indicator).

The results regarding THCI and the constitutive pillars for the counties of Romania (grouped by regions) are available in Table 1, the main aspects emphasized being the following:

Table 1. Territorial human capital index (THCI) at the county level in Romania

Counties	**THCI**				

[9] The year is stated in the detailed figures, available upon request.

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		IC Education Pillar	**IC Health and wellness Pillar**	**IC Workforce and occupation Pillar**	**IC Incentive/Demanding environment Pillar**
North-Western Region					
Bihor	11	**6**	19	**9**	19
Bistriţa-Năsăud	20	12	**7**	23	**36**
Cluj	**4**	**4**	**3**	**4**	**4**
Maramureş	14	13	**8**	14	29
Satu Mare	24	**37**	22	13	18
Sălaj	31	18	**35**	31	**40**
Central Region					
Alba	25	27	17	**39**	11
Braşov	**6**	23	**4**	**6**	**10**
Covasna	27	**33**	15	32	**35**
Harghita	19	16	**9**	25	28
Mureş	18	20	26	11	23
Sibiu	**8**	11	**6**	**8**	15
North – Eastern Region					
Bacău	26	24	29	28	17
Botoşani	32	**9**	**39**	**38**	27
Iaşi	**5**	**1**	**10**	**10**	**5**
Neamţ	30	31	32	30	25
Suceava	**9**	**2**	14	20	**9**
Vaslui	**39**	**10**	**34**	**42**	**39**

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South-Eastern Region					
Brăila	**35**	**35**	**36**	27	32
Buzău	**33**	30	**37**	**36**	20
Constanţa	**7**	21	11	**5**	12
Galaţi	22	17	20	26	21
Tulcea	29	**41**	28	21	30
Vrancea	**41**	**38**	**38**	**33**	**42**
Southern Region Muntenia					
Argeş	12	14	18	17	**6**
Călăraşi	**37**	29	**40**	**35**	26
Dâmboviţa	23	22	21	29	14
Giurgiu	**40**	**39**	**41**	19	**34**
Ialomiţa	**34**	32	30	**34**	**38**
Prahova	15	19	24	12	13
Teleorman	**42**	**40**	**42**	**41**	**33**
Bucharest-Ilfov Region					
Ilfov	**2**	**42**	13	**2**	**1**
Municipiul Bucureşti	**1**	**5**	**1**	**1**	**2**
South-Western Region Oltenia					
Dolj	21	**8**	23	22	16
Gorj	13	**3**	16	15	31

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Mehedinţi	**36**	**36**	27	**37**	**41**
Olt	**38**	25	**33**	**40**	**37**
Vâlcea	16	26	**5**	16	22
Western Region					
Arad	**10**	15	25	**7**	**7**
Caraş-Severin	28	28	31	24	24
Hunedoara	17	**34**	12	18	**8**
Timiş	**3**	**7**	**2**	**3**	**3**

Source:. The author's calculation/counts based on the information from National Institute of Statistics's TEMPO –on line data base

Except the Southern Region Muntenia and the South-Western region Oltenia, in all the other regions there is at least one county among the first 10 regarding the THCI (in Bucharest-Ilfov region, Western Region, Central Region, but also in the norh-western region there are even 2). Without being a surprise, Bucharest stays on top, followed by Ilfov, which makes Bucharest-Ilfov region to be on top among the country regarding the performance level in the human capital field. If Bucharest registers positionings in the first 10 counties regarding even all the compounds of THCI, and Ilfov county registers an unexpected last place (42) regarding the education pillar and a thirteenth place regarding the heath and wellness pillar it means that there are significant deviations even in the heart of the most developed region in Romania.

Other 3 counties register positionings among the first 10 counties both from THCI and compound pillars point of view:Timis County (the western region), Cluj County (the north-western region) and Iasi County (the North-Estearn region). Positionings in the firsts 10 counties for more than two pillars register also counties like Brasov and Sibiu (Central region). All these aspects lead us to a fisrt conclusion *that the best global performances regarding the human capital are registered in counties with a higher development level*.

Four out of the eight development regions have no county in the first 10 places (the North-western region, Central region, Bucharest-Ilfov region and the Western region), but one region has no less than 4 counties among the last 10 in the country regarding THCI (the southern region Muntenia, with the following counties: Calarasi, Giurgiu, Ialomita and Teleorman) and another

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one has 3 counties (the south-eastern region with the following counties Braila, Buzau and Vrancea). This aspect leads us to another conclusion that *the worst performances regarding the human capital are registered in the counties with a lower development level.*

Two counties (*Vrancea* from the south Eastern region and *Teleorman,* from the southern region Muntenia) register positionings among the last 10 counties in the country if we are talking about all the main pillars of THCI, 4 counties (*Mehedinti* and *Olt* from the south-western region Oltenia, *Giurgiu* from the Southern region Muntenia and *Vaslui* from the north-eastern region) register unfavourable positionings if we are talking about 3 out of the 4 pillars of THCI, and 4 other counties (*Calaras*i and *Ialomita* from the southern region and *Braila* and *Buzau* from the south-eastern region) if we are talking about 2 out of 4 pillars. Vaslui county registers an uncomfortably paradox - a good positioning regarding the education pillar, but a very disadvantageous one regarding the rest of the pillars, which makes us seriously thinking about the way the human capital is exploited, about its productivity and about its development opportunities. We can meet some other paradoxical situatios, but of a lower amplitude, in counties like *Bistriţa-Năsăud* and *Satu Mare* in the North-Western region, *Alba* and *Harghita* in the Central region, *Botoşani* in the North-Estearn region, *Ilfov* in Bucharest-Ilfov region and *Hunedoara* the Western region). These situations lead us to two conclusions: *the worst performances regarding the human capital are registered in the less developed areas within the regions outside the Carpathian mountain range and also in the counties with a lower development level within the more developed regions, which confirms the statistical correlation, mostly direct and positive, between the development level and the performances in the human capital field, inclusively at a sub-regional level. (a correlation coefficient of 0,739).*

The analysis in each pillar in part highlights other issues, some of which concern. Thus, in terms of education pillar stands very good position amoung the first 10 counties, some counties in regions with weaker economic performance (no more than four counties in the North-Estearn region - Iasi, Suceava, Botosani and Vaslui counties and two in the South-Western Oltenia - Dolj and Gorj), unfavorable relative positions of all counties in the south-eastern and South Muntenia, and the presence of the least developed counties, but in regions with a higher level of development among the last 10 counties (Satu Mare from the norh-western region, Covasna from the Centre Region, Ilfov, Hunedoara from the Western Region).

The human capital endowment (expressed partially by the education pillar) is weakly corelated with the overall economic performance in the counties of Romania, indicating at least the risk of

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migrating human capital with a good level of education to other counties/ regions that provides favorable conditions for better and more efficient use of it (expressed by higher level of employment, higher incomes and lower unemployment rate).

Regarding the health and wellnesspillar, two regions have no less than three counties amoung the top 10 in the country (Bistrita-Nasaud, Cluj, Maramures in the North-Western region and Brasov, Sibiu and Harghita in the Central region), three regions (West, Bucharest-Ilfov and Centre) have no county among the last 10 in the country, but the opposite two regions have three counties among the last 10 in the country (Braila, Buzau and Vrancea in the South-Eastern and Calarasi, Giurgiu and Teleorman in South Region).

Other unfavorable positioning are recorded by counties with a lower development level, both in more developed regions (Salaj from North-Western region) and least developed (Botosani and Vaslui in the North-Estearn region and Olt in the South-Western Oltenia) , indicating a stronger correlation between the level of economic development of a county and the health and wellnesspillar, but with certain intra-regional particularities.

The labor and employment pillar reveals again the best positioning all of the counties in more developed regions (Bihor and Cluj in the North-Western region, Brasov and Sibiu in the Central region , Ilfov and Bucharest in the Bucharest-Ilfov region, Arad and Timis in the West region).

If in the case of some counties in developed regions seems to exist a direct positive correlation between level of performance on education and the labor and employment (Bihor and Cluj in the Nord-West region, Sibiu in the Central region, Bucharest in the Bucharest-Ilfov region and Timis and Arad in the West region), in most counties in regions with lower development level who performed well in terms of education correlated with employment and labor force pillar the situation is reversed (Botosani, Vaslui and Suceava in the North-Estearn region), confirming earlier observations regarding low capacity of less developed counties to use local human capital high level of education and sophistication.

Moreover, there are indications that even some counties that have achieved average or lower performance in terms of education, both in less developed regions or more developed regions may become net attraction of labor force in the counties listed above and beyond (Satu Mare in the North-Western, Brasov and Mures in the Central region, Constanta and Tulcea in the South-Eastern region, Giurgiu si Prahova in South Muntenia, Ilfov in Bucharest-Ilfov region, Valcea in South-Western Oltenia, Hunedoara in West region).

4. Conclusion

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Finally, although the number of indicators considered is, as mentioned, relatively low in the case of the stimulating environment pillar (reflecting partially the human capital productivity) the best placement are record, in general, by the counties located in more developed regions (Ilfov and Bucharest from the Bucharest-Ilfov region, Timis, Arad and Hunedoara from the West region , Cluj from North-Western and Brasov from Central region).

Notable exceptions are Iasi and Suceava from North-Estearn region and Arges from South Muntenia, whose best performance are related at least partially, with thouse relating to education – indicating possible opportunities to develop human capital locally (in terms of solving the problems regarding the poor use of it) and increase the general level of development. It should be noted a greater intra-regional variability for this pillar – a reflection of the general disparities significant intraregional on productivity and competitiveness.

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Addendum 1. The Structure of the human capital Index

Pillar 1: Education		
Sub-pillar	Indicators	Source
Access	Enlistment in elementary education rate %	UNESCO, Institute for Statistics, available data for

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		2003-2012
	Enlistment in secondary education rate %	UNESCO, Institute for Statistics, available data for 2003-2012
	Rata de înrolare în învățământul terțiar (%)	UNESCO, Institute for Statistics, available data for 2003-2012
	Gendre inequality regarding education	World Economic Forum, *Global Gender Gap Report*, 2012
Quality	Internet access in schools	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Quality of the education system	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Quality of the primary education schools	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Quality of education in regarding Maths and Science field	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Quality of the managemnt in schools	World Economic Forum, *Executive Opinion Survey*, 2013-2014
Level	Level of primary education (% from population over 25 years old)	UNESCO, Institute for Statistics, available data for 2011 or for a more recent year
	Level of secondary education (% from the population over 25 years old)	UNESCO, Institute for Statistics, available data for 2011 or for a more recent year

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	Level of tertiary education (% from the population over 25 years old)	UNESCO, Institute for Statistics, available for 2011 or for a more recent year
Pillar 2: Health and wellness		
Survival	Infant mortality (at 1000 living child births)	World Health Organisation, Global Health Observatory, *World Health Statistics, Mortality and Burden of Disease, Child mortality*, 2011
	Life expectancy	World Health Organisation, Global Health Observatory, *World Health Statistics, Mortality and Burden of Disease, Child mortality*, 2011
	Gendre inequality regarding survival	World Economic Forum, *Global Gender Gap Report*, 2012
Health	Deficiencies in speaking (% from the children under 5)	World Health Organisation, Global Health Observatory, *World Health Statistics, Nutrition, Child malnutrition*, date disponibile pentru intervalul 2003–2011
	Years of unhealthy life (% from life expectancy)	Speranța de viață ajustată pentru sănătate, World Health Organisation, 2007, din *Global Gender Gap Report*, 2012 și World Health Organisation, Global Health Observatory, *World*

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		Health Statistics, Mortality and Burden of Disease, Child mortality, 2011
	Deaths/defunctions under 60 years old because of the intransmissible diseases (% from the total deaths/defunctions because of the intransmissible diseases	World Health Organisation, Global Health Observatory, *World Health Statistics, Non–communicable diseases*, 2008
	Obesity (% from adults with IMC over 30)	World Health Organisation, Global Health Observatory, *World Health Statistics, Adult risk factors*, 2008
	Impact of the intransmissible deseases over economical activities	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Impact of the transmissible deseases over economical activities	World Economic Forum, *Executive Opinion Survey*, 2013-2014
Wellness	Stress (% from the answers)	Gallup, *Worldview* database, available data for 2009–2013
	Depression (% from the answers)	Gallup, *Worldview* database, available data for 2006–2011
Services	Water,sewage/canalization, hygiene	World Health Organisation, Global Health Observatory, *World Health Statistics, Environmental Health*, available data for 2005–2011
	Quality of the health care	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Accesibility of the health	World Economic Forum,

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	care	*Executive Opinion Survey*, 2013-2014
Pillar 3: Workpower and occupation		
Attending	Workforce attenting rate, between 15-64 years old (%)	ILO, *Key Indicators of the Labour Market, (KILM)*, 2010
	Workforce attenting rate, over 65 years old(%)	ILO, *Key Indicators of the Labour Market, (KILM)*, 2010
	Gendre inequality regarding the attending rate	World Economic Forum, *Global Gender Gap Report*, 2012
	Unemployment rate (%)	ILO, *ILOstat*, date disponibile pentru intervalul 2003–2010
	Unemployment rate amoung young people (%)	ILO, *Laborstat*, date disponibile pentru intervalul 2003–2010
Talent	Capacity of the country to attract talented people	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Capacity of the country to retain talented people	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	The easeness in finding competent employees	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	The link between salaries and productivity	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Capacity of innovation	World Economic Forum, *Executive Opinion Survey*, 2013-2014

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	The indicator of the economical complexity	Hausmann, R., Hidalgo, C., et al. *The Atlas of Economic Complexity*. Cambridge: Puritan Press, 2011
	Absorption of the technology within the companies	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Articles in Scientific and Technical magazines (at 1000 inhabitants)	World Bank, *World Development Indicators* online database, 2009 and United Nations, Department of Economic and Social Affairs, *World Population Prospects*, 2009
	Average age of the people in work efficiency	United Nations, Department of Economic and Social Affairs, Population Division, *World Population Prospects DEMOBASE* 2010
Instruire /Training	Personnel training	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Training services	World Economic Forum, *Executive Opinion Survey*, 2013-2014
Pillar 4: Demanding /Incentive Environment		
Infrastructură/Infrastructure	Mobile phone users (at 100 inhabitants)	World Bank, *World Development Indicators* online database, 2011
	Internet users (at 100 inhabitants)	World Bank, *World Development Indicators* online database, 2011
	Quality of the internal	World Economic Forum,

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	transport	*Executive Opinion Survey*, 2013-2014
Colaborare/Collaboration	Level /Phase of the clusters' development	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Collaboration between the business environment and the universities within C&D field	World Economic Forum, *Executive Opinion Survey*, 2013-2014
Cadru legislativ /Legislative Background	Doing Business index	World Bank and International Finance Corporation, 2012
	Social security network protection	World Economic Forum, *Executive Opinion Survey*, 2013-2014
	Protection of the intellectual property rights and of the property	World Economic Forum, *Executive Opinion Survey*, 2013-2014
Mobilitate socială/Social Mobility	Social mobility	World Economic Forum, *Executive Opinion Survey*, 2013-2014

Source: *The Human Capital Report* 2013, World Economic Forum, Geneva.

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THE VALIDITY OF COSMOPOLITANISM

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Abstract: In the context of globalization some academics, politicians and philosophers believe that national cultural differences can be overcome and the humanity can become a community based on the same democratic and moral values. This article is an attempt to prove the lack of validity of that idea. The author argues that the religious, economic, political and cultural differences are insurmountable in contemporary world and the cosmopolitan writings are only utopias. The unified democratic global society and the shared moral system is possible only if western democracies abandon the idea of political rights and civil liberties, accepting the violation and abuses of human rights from communist or authoritarian states. The rejection of that democratic standards is not a simple step back but the defeat of democratic values and of the occidental civilization.

Keywords: Cosmopolitanism, Globalization, Human Rights, Cultural Differences, Authoritarism.

Cosmopolitanismul este o noțiune cu caracter utopic apărută în antichitate, care a revenit în primplan în contextul globalizării. Termenul provine din cuvintele grecești ***Kosmos*** care înseamnă univers, lume, ordine și ***Polis*** - comunitate politică a cetățenilor. În filosofie, de multe ori cosmopolitanismul e conceput ca o comunitate morală a ființelor umane unite printr-un sentiment de solidaritate. Originea ideii poate fi găsită în scrierile stoicilor, care insistau că oamenii sunt egali și trebuie să se respecte reciproc.

În oarecare măsură cosmopolitanismul e legat de ideea de drept natural. Filosofii și juriștii antici susțineau că oamenii au drepturi în virtutea apartenenței la specia umană fără să facă diferența între membrii unor rase sau etnii. Această teză a stat dealtfel și la baza sistemului actual al drepturilor omului.

Filosofia contemporană a nuanțat uneori această idee sau i-a dat noi valențe. Jacques Derrida de pildă, continuând o idee kantiană, leagă cosmopolitanismul de dreptul și datoria de ospitalitate[1] iar Kwame Anthony Appiah[2] de toleranța și înțelegerea pentru membrii altei culturi

[1] Derrida, Jacques, ***On Cosmopolitanism and Forgiveness***, London: Routledge, 1977, p, 5.
[2] Appiah, Kwame Anthony, ***The Ethics of Indentity***, Princeton: Princeton University Press, 2005.

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în contextul globalizării. Seyla Benhabib[3] ajunge la concluzia că dreptul la ospitalitate trebuie completat cu presiuni ale statelor democratice și organizațiilor internaționale pentru afirmarea drepturilor omului în toate țările.

Din punct de vedere politic, un cosmopolit este un cetățean al lumii. Unii politicieni cred într-un viitor comun al umanității în care granițele dintre state vor dispărea. Această perspectivă este corelată cu ideea globalizării, a guvernului global și dispariția suveranității naționale.Originile politice ale noțiunii pot fi găsite în scrierile lui Kant. În eseul "Spre pacea eternă: Un proiect filosofic"[4] și în alte scrieri politice filosoful german constata faptul că starea naturală a umanității nu este cea de pace ci cea de război. Pentru realizarea dezideratului păcii eterne Kant propunea impunerea câtorva principii și instituții pe plan mondial. Printre altele el preconiza cetățenia globală bazată pe ospitalitatea universală, desființarea armatelor naționale și impunerea unei legislații internaționale bazate pe o federație de state libere, sau o ligă a națiunilor. Dreptul la ospitalitate își are originea, în opinia filosofului, în principiile dreptului natural.

Aceste idei utopice nu sunt însoțite de metode practice de punere în aplicare a proiectului păcii eterne. Fără îndoială că filosoful german era conștient de obstacolele pe care le vom invoca în continuare, pentru că susține că validitatea proiectului e strict legată de necesitatea impunerii unui sistem politic republican, bazat pe guverne reprezentative, în toate țările. La fel ca alți filosofi iluminiști Kant pleca de la prezumția că cetățenii fiecărui stat sunt conștienți de superioritatea democrației față de alte regimuri politice și ar dori instaurarea acestui regim.

După câteva decenii de la sfârșitul celui de-al Doilea Război Mondial, în anii '60-'70, un număr de politologi, sociologi și economiști dintre care se remarcă Daniel Bell[5], Pitirim Sorokin[6] și Clark Kerr[7], au formulat teorii ale convergenței comunismului și capitalismului, ajungând la concluzia că în scurt timp cele două sisteme vor fuziona renunțând la trăsăturile negative și adoptând aspectele pozitive ale celuilalt. Adepții teoriilor convergenței simplificau excesiv datele problemei luând în considerare doar modelul comunist din U.R.S.S. și țările europene satelite și modelul capitalist din statele occidentale dezvoltate. Două treimi din populația globului trăia în țări care, deși erau etichetate drept comuniste sau capitaliste, nu prezentau decât trăsături superficiale ale acestor sisteme.

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[3] Benhabib, Seyla, ***Another Cosmopolitanism***, Oxford: Oxford university Press, 2006.
[4] Kant, Immanuel, ***Toward Perpetual Peace and Other Writings on Politics, Peace, and History***, New Haven: Yale University Press, 2006.
[5] Bell, Daniel, ***The End of Ideology***, 2nd. ed., Cambridge, Mass,: Harvard University Press, 2000.
[6] Sorokin, Pitirim, ***The Basic Trends of our Time***, New Haven: Yale University Press, 1964.
[7] Kerr, Clark; Dunlop, John; Harbinson, Frederick; Myers, Charles, ***Industrialism and Industrial Man***, Cambridge, Mass.: Harvard University Press, 1960.

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Prăbușirea sistemului comunist european a dat naștere unui alt fenomen - proclamarea triumfalistă a victoriei capitalismului și a democrației de tip liberal și aserțiunea că toate statele vor adopta acest sistem. În ”Sfârșitul istoriei și ultimul om”[8], Francis Fukuyama susținea că evoluția ideologică și politică a umanității a ajuns la un sfârșit odată cu impunerea sistemului democrației liberale care nu mai poate fi îmbunătățit. De curând autorul a recidivat reiterând aceste idei într-o altă carte în care argumenta că eșecul primăverii arabe și rezistența regimurilor nedemocratice sunt etape trecătoare pe drumul spre democrație[9] iar rezultatul final va fi un sistem democratic global.

Majoritatea adepților contemporani ai cosmopolitanismului fac aceeași greșeală ca și Fukuyama, analizând problema din perspectiva ideologică occidentală sau cea culturală a eurocentrismului. Sistemul politic democratic a fost adoptat într-o cultură a valorilor greco-romane, cultură necunoscută sau neacceptată în alte zone ale lumii. Ceea ce filosofii sau politologii europeni iau ca un dat de necontestat este privit de mulți autori din alte zone ca o caracteristică culturală particulară, specifică statelor occidentale. Barierele culturale nu sunt unicele obstacole împotriva realizării statului global și a comunității cosmopolitane. Cosmopolitanismul nu poate funcționa într-o lume asimetrică și neomogenă.

Majoritatea autorilor consideră că avantajele democrației sunt atât de evidente încât acest sistem va fi acceptat și însușit fără probleme în toate țările. Evoluția evenimentelor din zona arabă și asiatică dovedește însă faptul că acest sistem politic este privit cu ostilitate de țările care nu acceptă modelul politic și moralitatea vestică. Un index al democrației publicat de revista The Economist[10] arată că doar 8,9% din populația lumii trăiește în democrații depline, 39,5% trăiește în țări care caracterizate de o democrație defectuoasă, 17,5% în regimuri hibride și 34,1% în regimuri autoritare. Proporția mică a țărilor cu democrație deplină, care au adoptat un sistem modern de drepturi ale omului, dovedește că democrația nu este atât de contagioasă precum susțin optimiștii. Unele dintre țările nedemocratice au o pondere importantă în sistemul global. China, un stat comunist, care după izbucnirea crizei economice din 2008 a încercat să se impună ca putere dominantă în zona Oceanului Pacific, nu manifestă tendințe de democratizare. Ba chiar dimpotrivă, în ultimul an încercările de izolare a cetățenilor și de suprimare a militanților pentru drepturile omului s-au accentuat. Dependența economică a Occidentului față de această țară a făcut ca liderii țărilor democratice să treacă cu vederea aceste derapaje.

[8] Fukuyama, Francis, ***The End of History and the Last Man***, New York: Free Press, 1992.
[9] Fukuyama, Francis, ***Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy***, New York: Farrar, Straus and Giroux, 2015.
[10] http://www.yabiladi.com/img/content/EIU-Democracy-Index-2015.pdf

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Politica struțului a fost aplicată și în cazul abuzurilor din unele țări arabe. Executarea dizidenților politici sau a unor atei în ultimul an în Arabia Saudită a fost întâmpinată doar de proteste jurnalistice. Iranul, o altă țară fundamentalistă, care duce o politică antioccidentală deschisă, a reintrat în grațiile Occidentului datorită șantajului atomic și a creșterii pericolului jihadismului în zonă.

În momentul de față evoluția politică globală dovedește faptul că democrația nu se află în expansiune ci chiar pierde teren. Opinii antidemocratice sunt importate cu succes și în inima democrațiilor europene. Un sondaj efectuat de publicația britanică Times[11] arată printre altele că 52% dintre musulmanii din Marea Britanie consideră că homosexualitatea ar trebui să fie pedepsită de lege iar 23% doresc introducerea legii Sharia în Marea Britanie. Aceste opinii pot fi întâlnite și în alte țări cu minorități musulmane precum și în unele țări din zona Balcanilor. În Turcia partidul aflat la putere și președintele Erdogan militează în favoarea islamismului și a creșterii rolului religiei în viața publică. Persecutarea jurnaliștilor care critică guvernul și închiderea unor ziare de opoziție a devenit un fapt obișnuit în această țară care dorește să fie acceptată cu drepturi depline în Uniunea Europeană.Un număr mare de partizani ai islamismului și chiar ai jihadismului se găsește și în Bosnia și Cecenia, țări care furnizează o proporție importantă de voluntari pentru I.S.I.S.

Un alt pol de putere din zona euroasiatică, Rusia, nu manifestă nici ea semne de apropiere de idealurile democratice. Regimul putinist e caracterizat nu doar prin încălcări ale drepturilor omului și încercări de suprimare a libertății de exprimare ci și printr-o politică activă de recâștigare a rolului de mare putere, pierdut odată cu prăbușirea comunismului. Ambițiile politice rusești s-au manifestat nu numai în zona adiacentă, prin recâștigarea Crimeii ci și în războiul din Siria și prin implicarea în negocieri din alte zone.

Din punct de vedere politic cosmopolitismul este legat de fenomenul globalizării. Acest fenomen este inevitabil în condițiile actuale, însă de multe ori globalizarea este doar o altă fațetă a neocolonialismului. Conceptul de guvern global, de instituții transnaționale sau de dispariție a statului național, sunt puse în discuție și considerate aprope certitudini de ideologia cosmopolitanismului și de partizanii globalizării. În realitate, diferențele de putere dintre actorii politici fac și acum ca deciziile cele mai importante să fie luate la Washington și impuse partenerilor occidentali. Organizația Națiunilor Unite, considerată de unii un precursor al guvernului global, nu este un actor important în jocurile de putere și este folosită doar pentru a oferi legitimitate demersurilor unor membri din Consiliul de Securitate. Modul în care

[11] http://www.thetimes.co.uk/edition/news/half-of-muslims-say-gays-should-be-outlawed-cb5bcdtcx

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funcționează acest forum nu poate convinge pe nimeni în privința modului democratic în care ar putea fi luate deciziile unui guvern global. Intervențiile militare ale O.N.U. au fost anemice și au fost determinate de interesele marilor puteri.

Fără îndoială, cele mai multe războaie recente în care s-a implicat O.N.U. au avut la origini și probleme umanitare. Într-o carte dedicată noii ordini cosmopolitane și ”războiului just” John W. Lango[12] face o apologie a războiului determinat de cauze umanitare. Autorul consideră că intervențiile din Afghanistan, Rwanda, Darfur, Libia și Sudanul de Sud sunt exemple de acțiuni cosmopolitane care prefațează o nouă ordine internațională în cadrul căreia statele democratice vor acționa pentru impunerea principiilor umanitare. Conflictele militare ale viitorului, consideră autorul, vor fi determinate de cauze etice. Războiul just va fi o soluție împotriva războaielor civile generatoare de genocid și împotriva terorismului global. Argumentele oferite de Lango sunt discutabile. În cazul intervenției din Rwanda și Somalia trupele O.N.U. s-au mobilizat doar după ce faza acută a conflictului s-a consumat. La început marile puteri sesizate au amânat luarea unor decizii făcând posibilă exterminarea unui mare număr de oameni. Doar scandalul internațional și apelurile disperate a organizațiilor umanitare nonguvernamentale au dus la urnirea aparatului birocratic al O.N.U. Intervențiile din Afghanistan și Libia au fost de fapt determinate de dorința S.U.A. de a elimina guverne considerate teroriste și de a prezenta această acțiune ca pe o intervenție comună. În acest caz rezultatul a fost jalnic. După retragera trupelor O.N.U și a trupelor americane, grupări islamiste au reușit să obțină puterea în zonele respective. Acțiunile americane de încurajare a rebelilor care doreau răsturnarea unor regimuri autoritare nu au dus la instaurarea democrației ci la preluarea puterii de către forțe islamiste care au impus regimuri mult mai retrograde decât cele înlăturate.

Dezechilibrul de putere poate fi constatat și în cazul Uniunii Europene. Modul în care au fost luate deciziile în contextul crizei economice recente și a altor evenimente importante a relevat faptul că statele mari, și în special tandemul Germania-Franța, sunt cele care guvernează de fapt uniunea. Nemulțumirile privind ascendentul Germaniei au determinat unele forțe politice din Marea Britanie să pledeze pentru ieșirea din Uniune. Chiar dacă Brexit-ul nu va avea loc este evident că în acest organism nu funcționează atât de armonios precum ne-am putea aștepta. Aceste dezavantaje sunt trecute cu vederea pentru că cele mai multe state au aderat la Uniune pentru a contracara amenințarea rusă și pentru a obține avantaje economice. Uniunea a fost creată în contextul competiției economice inegale dintre statele europene, S.U.A. și Japonia.

[12] Lango, John W., ***The Ethics of Armed Conflict: A Cosmopolitan Just War Theory***, Edinburgh: Edinburgh University Press, 2014.

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Nemulţumirile statelor membre sunt înăbuşite pentru că avantajele sunt mai importante decât dezavantajele. Un stat global ar fi lipsit de forţa unificatoare a unor duşmani comuni.

Modul în care funcţionează organismele politice internaţionale i-a făcut pe adversarii globalizării să susţină că un guvern global este doar un alibi pentru marile puteri care caută să domine lumea. Dispariţia graniţelor ar determina extinderea puterii corporaţiilor occidentale şi o dominaţie a statelor mari care şi-ar impune poziţia fără să mai fie stânjenite de o legislaţie naţională sau bariere protecţioniste. Lumea fără graniţe ar pune faţă în faţă forţe economice firave ale satelor din lumea a treia cu corporaţii care au un buget mai mare decât a unor state mici.

Partizanii cosmopolitanismului au propus o serie de soluţii la această problemă. Unii au negat existenţa ei. John W. Meyer[13] şi colaboratorii săi susţin că statul-naţiune este un simplu construct cultural şi asociaţional care funcţionează după un model legal-raţional de natură feudală. Acest model este raţionalizat de actorii care participă la viaţa culturală şi care contribuie la perpetuarea lui. Meyer consideră că în momentul de faţă are loc o tranziţie, o schimbare a paradigmei sociale, şi modelul statului-naţiune va fi înlocuit de cel al societăţii globale. Procesul de tranziţie nu va fi însă uşor pentru că presupune o transformare a mentalităţilor. Principalul motor al subminării statului-naţional este legitimarea actorilor subnaţionali şi a practicilor locale. În momentul de faţă individul îşi construieşte identitatea plecând de la apartenenţa statală. Influenţa internaţională care a dus de exemplu la legitimarea drepturilor homosexualilor şi altor minorităţi va duce la ”dezinstituţionalizarea identităţii” şi individualizarea ei. Individul nu se va mai identifica pe baza apartenenţei la un stat ci pe baza apatenenţei la o categorie socială. Autorii recunoşteau însă faptul că această evoluţie este frânată de elemente religioase şi naţionaliste, în special de cele fundamentaliste, dar considerau că presiunea socială internaţională va fi suficient de puternică pentru a trece de aceste obstacole.

Tranziţia spre societatea globală, susţine Meyer, va fi favorizată de recunoaşterea unor interese economice comune şi de adoptarea valorilor occidentale devenite un standard universal. Exploatarea fostelor state naţiune mici ar fi împiedicată de noile standarde morale care vor înlocui egoismul şi lupta economică din ordinea anterioară. Chiar dacă în momentul de faţă în multe state se constată violări grave ale drepturilor omului, inegalitate socială şi corupţie sau standarde morale şi religioase învechite, acestea sunt doar accidente trecătoare. Acest lucru e dovedit de faptul că problemele de acest tip au devenit probleme globale şi comunitatea internaţională face presiuni pentru rezolvarea lor. Dispariţia statelor, spune Meyer, nu va determina atomizarea societăţii globale ci, dimpotrivă, crearea unei reţele gloabale care îi va unii

[13] Meyer, John W.; Boli, John; Thomas, George M., Ramirez, Francisco O.,”World Society and the Nation-State” în ***The American Journal of Sociology***, Vol. 103. Nr. 1/1997, pp. 144-181.

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pe agenții locali și care va funcționa pe baza unei culturi juridice și morale unificate. Forța acestei rețele sociale va duce la înlăturarea inechităților existente în societate. Această viziune are aceleași valențe utopice pe care le aveau și teoriile comuniste. Tezele comuniste care susțineau că o societate a egalilor va duce la crearea unor state bazate pe înalte standarde morale au fost contrazise de realitatea crudă care a condus la instaurarea unor dictaturi indiferente total față de drepturile omului.

Unii autori consideră că cosmopolitismul este posibil doar în condițiile unei globalizări multipolare. Guvernul global este înlocuit de o rețea de guverne locale care colaborează pentru impunerea unor standarde politice, economice și morale comune. Un raport recent al Institutului de Cercetări al Băncii Credit Suisse[14] ajunge la concluzia că tendințele de globalizare care au în centru S.U.A. s-au epuizat și fac loc unor tendințe de globalizare bazată pe centri de putere locali. Ca o variantă de rezervă raportul menționează și posibilitatea ca globalizarea să fi ajuns la un sfârșit urmând o perioadă de izolaționism și opoziție în fața unificării culturale. Lumea multipolară preconizată s-ar baza pe dominația financiară și economică a unor centri de putere locali. Studiul apreciază de pildă că Asia va fi dominată de China. Rezultatul final al globalizării multipolare este incert. În varianta în care standardele occidentale sunt acceptate și în alte centre de putere globală, putem vorbi de globalizare și de o lume cosmopolită. În cazul în care centrele de putere regionale rămân opace față de aceste influențe culturale nu putem vorbi de o globalizare propriuzisă ci de o lume fragmentată. Chiar dacă studiul nu contestă posibilitatea globalizării tonul de ansamblu este sumbru. Nimic nu ne poate convinge că guvernul comunist chinez va adopta un sistem de drepturi ale omului în urma unor presiuni morale occidentale. Acest tip de presiuni s-au exercitat de câteva decenii cu mai multă intensitate fără să aibă un rezultat vizibil. În cazul statelor arabe situația este și mai gravă. Lipsa drepturilor omului este completată aici de un despotism de tip feudal bazat pe fundamentalism religios.

Cosmopolitismul ”hard” întâlnit în cărțile politologilor este înlocuit de o variantă ”soft” în cazul unor filozofi proveniți din sfera academică. Cel mai important reprezentant al acestei tendințe este Kwame Anthony Appiah. În câteva cărți dedicate cosmopolitanismului[15] acesta susține că cosmopolitanismul nu implică dispariția granițelor naționale comune ci adoptarea unor standarde morale universale și abolirea unor practici culturale învechite. Acest proces va avea loc

[14] ***Credit Suisse - Is globalization coming to an end? New research signals a possible shift away from globalization to a multi-polar world*** consultat la https://www.credit-suisse.com/media/mediarelease-assets/pdf/2015/09/globalization-global-press-release-en.pdf

[15] Appiah, Kwame Anthony, ***The Ethics of Identity***, Princeton: Princeton University Press, 2005; ***Cosmopolitanism: Ethics in a World of Strangers***, New York: W.W. Norton & Co., 2006; ***The Honor Code: How Moral Revolution Happen***, New York: W.W. Norton & Co., 2010.

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prin dialog cultural între intelectualii care fac parte din diferite culturi și care constituie centre de cristalizare ale unor noi opinii. Appiah e convins că dialogul bazat pe respect reciproc și pe toleranță va duce la unificare morală și la o lume cosmopolitană. Exemplele pe care le dă filosoful în ”The honor code: How moral revolutions happen ” sunt abandonarea duelului, a practicii chinezești de bandajare a tălpilor pentru ca acestea să rămână mici, și a obținerii de drepturi pentru femei. Autorul consideră că presiunile societății civile și lucrările unor autori care criticau aceste fenomene au condus spre o revoluție morală și la eradicarea lor. În realitate aceste fenomene au încetat în urma intervenției unor factori politici. Simpla presiune morală exercitată de-a lungul unor decenii sau chiar secole nu a avut nici un rezultat. Duelurile au fost interzise în armata lui Napoleon datorită faptului că subminau capacitatea militară și duceau la pierderea unor vieți prețioase. Același fenomen poate fi constat și în cazul altor state. Mutilarea tălpilor fetelor a fost interzisă și impusă cu forța abia de Partidul Comunist din China iar dreptul de vot și alte drepturi ale femeilor au fost obținute într-un context favorabil, la sfârșitul Primului Război Mondial iar în unele țări după cel de-al Doilea Război Mondial, în contextul unui dezechilibru demografic între bărbați și femei și a recrutării femeilor pentru a susține efortul de război.

Aceste evenimente au avut loc datorită unor schimbări majore, a unor cutremure sociale care au provocat dezechilibre politice. În cazul multor altor practici discriminatorii eforturile de persuasiune intelectuală nu au dat nici un rezultat. Discriminarea femeilor în societățile arabe continuă iar în unele state în care dictaturile de stânga sau de dreapta impuseseră renunțarea la legea sharia, doborârea lor coincide cu revenirea la vechile cutume sau chiar impunerea unor restricții mai severe. Practici barbare, precum este mutilarea genitală a fetelor în aceleași culturi musulmane sunt generalizate în statele islamice. Un raport recent al UNICEF arată că peste 200 de milioane de femei au fost supuse acestei practici[16] iar în unele țări între 80-90% dintre femei sunt mutilate prin extirparea clitorisului. Influențele morale occidentale nu au avut nici un rol în stoparea acestui fenomen. Mai mult, un studiu din Marea Britanie arată că imigranții musulmani din acele zone practică mutilarea genitală și în noua țară de adopție[17]. Nici alte forme de discriminare nu au fost abandonate datorită eforturilor ”soft” de convingere a populației musulmane. Această rezistență e datorată legăturilor dintre cutumă și religia islamică. Abandonarea practicilor discriminatorii echivalează pentru credincioși cu încălcarea preceptelor religioase.

[16] ***Female Genital Mutilation: A Global Concern***, New York: United Nations Children's Fund, 2016 consultat la http://www.unicef.org/media/files/FGMC_2016_brochure_final_UNICEF_SPREAD.pdf
[17] Burrage Hilary, ***Eradicating Female Genital Mutilation: A UK Perspective***, Farnham: Ashgate, 2015.

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Renunțarea la unele forme de discriminare însemnă în multe cazuri renunțarea la identitatea culturală, națională și religioasă. Ostilitatea fostelor state colonii față de fosta metropolă face ca eforturile de persuasiune să fie inutile. Chiar și în cazul unor state europene reformele au fost făcute doar atunci când nu existau alte alternative. Dezincriminarea comportamentului homosexual a fost făcută în România de către factorii politici cu întârziere, doar pentru că era o cerință pentru acceptarea integrării în Uniunea Europeană, chiar dacă biserica ortodoxă și o mare parte a populație se împotrivea. Statele arabe sau unele state asiatice care practică discriminarea nu se află într-o situație asemănătoare.

Un alt autor care militează pentru o variantă ”soft” a cosmopolitismului este Seyla Benhabib. Benhabib susține că dispariția statului națiune nu este de dorit pentru că ar duce la o lume dominată de corporații, la privatizarea suveranității și la convertirea puterii publice în competență privată comercială sau administrativă[18]. La cosmopolitanism se ajunge printr-un dialog între culturi bazat pe influență reciprocă. Acest dialog rațional va duce la atenuarea diferențelor culturale și la impunerea democrației și drepturilor omului în toate statele lumii. Un rol important în cadrul acestui proces îl va avea societatea civilă globală și crearea unei solidarități care va transcende granițele. Benhabib face aceeași greșeală ca și Appiah considerând că un dialog rațional intercultural este posibil. În cele mai multe cazuri diversele forme de discriminare sunt susținute plecându-se de la argumente iraționale bazate pe emoții, credințe și cutume. Diverse studii au arătat că fanatismul sau aderența la credințe religioase sau ideologii nu pot fi combătute cu eficiență pe cale rațională. La fel de naive sunt și opiniile privind lipsa de interese și generozitatea din cadrul unei societăți civile globale. Organizațiile mari, oricât de informale ar fi, prezintă tendința de a deveni captive ale propriei birocrații. Acest fapt poate fi constat cu ușurință prin studierea activității sindicale sau a unor organizații nonprofit care pot coagula un capital politic. În momentul în care o organizație poate deveni un factor de influență globală ea va fi ținta actorilor politici care vor dori să o folosească.

Concluzie

Teoriile și ideologia care susțin că societatea viitorului va fi o societate cosmopolită se bazează mai mult pe deziderate morale occidentale decât pe posibilități reale. Majoritatea autorilor care abordează tema societății globale bazate pe standarde etice unitare prezintă tendința de a minimaliza diferențele existente între state și oferă soluții naive pentru trecerea la cosmopolitanism.Abordările de acest gen pleacă de la o poziție eurocentristă neglijând diferențele

[18] Benhabib, Seyla, ***Another Cosmopolitanism***, Oxford: Oxford university Press, 2006, pp. 176-177.

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culturale, ideologice și religioase dintre state sau ostilitatea în fața democrației occidentale. Cosmopolitanismul ar necesita pe de o parte convergența între diverse sisteme ideologice aflate pe poziții contradictorii - cum este cel comunist, cel fundamentalist islamic și cel democratic și pe de altă parte renunțarea la mecanismul economic al concurenței și pieței libere care ar duce la o dominație a actorilor economici din statele dezvoltate. Nici unul dintre autorii care susțin că statul națiune se va dizolva nu oferă un model politic convingător de guvernare a viitoarei societăți. În momentul de față majoritatea statelor de pe glob sunt state nedemocratice sau state în care unele elemente ale democrației sunt completate de trăsături autoritare. Impunerea standardelor civice și morale occidentale nu poate fi făcută nici prin persuasiune și nici prin folosirea forței armate după cum o dovedesc și evenimentele din ultimul deceniu. Concluzia care se impune este că la fel ca în cazul altor utopii și cosmopolitanismul este o ideologie care nu are acoperire în realitate și nu are nici o șansă de realizare.

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THEORETICAL CONSIDERATIONS REGARDING ADOPTION RECENT AMENDMENTS BY LAW NO. 57/2016 OF 11 APRIL 2016

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Abstract: Labour Code, art. 49 para. 1 sets out three ways of suspending the individual labour contract: law, the unilateral act of one of the parties and the parties' agreement.For each way, covers key limiting situations where the individual employment contract or may be suspended.
Art. 49 para. 2 of the Code specify that the suspension of individual labour contract has the effect of rendering the suspension of work by the employee and payment of salary rights by the employer. Regardless of why that occurred, the suspension has the effect of rendering work stoppages principal and payment of wages, while maintaining individual labour contract.

However, in some situations, the employee is deprived of income, and receives different benefits (for instance, in case of temporary work incapacity, maternity leave, vacation accommodation).
Keywords: vacation accommodation, contract, suspension, payment, labour

SUSPENDAREA CONTRACTULUI DE MUNCĂ ÎN LUMINA NOILOR REGLEMENTĂRI PRIVIND CONCEDIUL DE ACOMODARE

Contractul individual de muncă este contractul în temeiul căruia o persoană fizică, denumită salariat, se obligă să presteze munca pentru şi sub autoritatea unui angajator, persoană fizică sau juridică, în schimbul unei remuneraţii denumite salariu.

Prin angajator se înţelege persoana fizică sau juridică ce poate, potrivit legii, să angajeze forţă de muncă pe bază de contract individual de muncă.

Contractul individual de muncă se încheie în baza consimţământului părţilor, în formă scrisă, în limba română. Obligaţia de încheiere a contractului individual de muncă în formă scrisă revine angajatorului. Forma scrisă este obligatorie pentru încheierea valabilă a contractului.

Contractul individual de muncă se încheie pe durată nedeterminată.

Prin excepţie, contractul individual de muncă se poate încheia şi pe durată determinată, în condiţiile expres prevăzute de lege.

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Suspendarea contractului individual de muncă şi răspunderea disciplinară sunt două instituţii juridice distincte aparţinând legislaţiei muncii. Condiţiile în care intervin, drepturile şi obligaţiile părţilor, procedura de suspendare şi de sancţionare sunt diferite.

Codul muncii nu impune un anumit conţinut al deciziei de suspendare, astfel încât este suficient ca decizia să cuprindă datele care pot permite, în concret, analiza temeiurilor suspendării şi îndeplinirii cerinţelor prevăzute de lege.

În conformitate cu art.49 alin.1 din Codul muncii[1], sunt prevăzute trei modalităţi de suspendare a contractului individual de muncă: de drept, prin acordul părţilor şi prin actul unilateral al uneia dintre părţi.

Pentru fiecare dintre aceste situaţii, actul normativ menţionat enunţă limitativ situaţiile în care contractul individual de muncă este sau poate fi suspendat.

Aceste reglementări referitoare la modalităţile de suspendare ale contractului individual de muncă sunt, în general, în consonanţă şi cu alte reglementări prevăzute în legislaţiile din statele membre ale Uniunii Europene.

În Franţa, de exemplu, principalele cauze de suspendare a contractului individual de muncă sunt[2]:

- cele stabilite prin lege *(concediile plătite; sărbătorile oficiale plătite; repausul compensator plătit etc.);*
- din iniţiativa angajatorului *(şomajul parţial plătit într-o anumită proporţie de angajator; suspendarea disciplinară fără plata salariului corespunzător pentru zilele suspendate; suspendarea cu caracter de conservare plătită, cu excepţia cazului în care este urmată de concediere pentru abatere gravă);*
- din iniţiativa salariatului *(concediul individual de formare, când remuneraţia este rambursată angajatorului de către organismul interesat; concediul pentru studii, neplătit; concediul pentru constituirea unei întreprinderi, neplătit; concediul parental pentru educaţie, neplătit; concediul pentru îngrijirea copilului bolnav sau cu handicap grav, neplătit; concediul sabatic, neplătit; concediul de solidaritate internaţională, neplătit; concediul pentru îngrijirea unei persoane în vârstă, neplătit);*
- raporturile colective;
- incidente şi viaţa privată;

[1]PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 72 din 5 februarie 2003
[2] J.-E. Ray, Droit du travail. Droit vivant, 2005/2006, 14e édition actualisée et refondue, Éditions Liaisons, 2005, p. 186.

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- activităţi publice *(perioada în care salariatul participă la campania electorală pentru Camera Deputaţilor sau pentru Senat, neplătită; perioada mandatului parlamentar, neplătită; perioada îndeplinirii unui mandat de ales local, plătită, urmând ca angajatorului să i se ramburseze plata făcută etc.).*

Contractul individual de muncă se suspendă de drept în următoarele situaţii:

a) concediu de maternitate;

b) concediu pentru incapacitate temporară de muncă;

c) carantină;

d) exercitarea unei funcţii în cadrul unei autorităţi executive, legislative ori judecătoreşti, pe toată durata mandatului, dacă legea nu prevede altfel;

e) îndeplinirea unei funcţii de conducere salarizate în sindicat;

f) forţă majoră;

g) în cazul în care salariatul este arestat preventiv, în condiţiile Codului de procedură penală;

h) de la data expirării perioadei pentru care au fost emise avizele, autorizaţiile ori atestările necesare pentru exercitarea profesiei. Dacă în termen de 6 luni salariatul nu şi-a reînnoit avizele, autorizaţiile ori atestările necesare pentru exercitarea profesiei, contractul individual de muncă încetează de drept;

i) în alte cazuri expres prevăzute de lege.

Contractul individual de muncă poate fi suspendat din iniţiativa angajatorului în următoarele situaţii:

a) pe durata cercetării disciplinare prealabile, în condiţiile legii;

b) în cazul în care angajatorul a formulat plângere penală împotriva salariatului sau acesta a fost trimis în judecată pentru fapte penale incompatibile cu funcţia deţinută, până la rămânerea definitivă a hotărârii judecătoreşti[3];

c) în cazul întreruperii sau reducerii temporare a activităţii, fără încetarea raportului de muncă, pentru motive economice, tehnologice, structurale sau similare;

c^1) în cazul în care împotriva salariatului s-a luat, în condiţiile Codului de procedură penală, măsura controlului judiciar ori a controlului judiciar pe cauţiune, dacă în sarcina acestuia au fost stabilite obligaţii care împiedică executarea contractului de muncă, precum şi în cazul în care salariatul este arestat la domiciliu, iar conţinutul măsurii împiedică executarea contractului de muncă;

[3]Curtea Constituţională, prin Decizia nr. 279/2015 , a constatat că dispoziţiile art. 52 alin. (1) lit. b) teza întâi din Legea nr. 53/2003 sunt neconstituţionale.

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d) pe durata detaşării;

e) pe durata suspendării de către autorităţile competente a avizelor, autorizaţiilor sau atestărilor necesare pentru exercitarea profesiilor.

În cazurile prevăzute la lit. a) şi b), dacă se constată nevinovăţia celui în cauză, salariatul îşi reia activitatea anterioară şi i se plăteşte, în temeiul normelor şi principiilor răspunderii civile contractuale, o despăgubire egală cu salariul şi celelalte drepturi de care a fost lipsit pe perioada suspendării contractului. În cazul reducerii temporare a activităţii, pentru motive economice, tehnologice, structurale sau similare, pe perioade care depăşesc 30 de zile lucrătoare, angajatorul va avea posibilitatea reducerii programului de lucru de la 5 zile la 4 zile pe săptămână, cu reducerea corespunzătoare a salariului, până la remedierea situaţiei care a cauzat reducerea programului, după consultarea prealabilă a sindicatului reprezentativ de la nivelul unităţii sau a reprezentanţilor salariaţilor, după caz.

Recent, articolul 51 din Codul muncii, a fost modificat și s-a introdus o nouă modalitate de suspendare a contratului individual de muncă și anume contractual de acomodare.

În lumina acestor modificări, contractul individual de muncă poate fi suspendat din inițiativa salariatului, în următoarele situaţii:

a) concediu pentru creşterea copilului în vârstă de până la 2 ani sau, în cazul copilului cu handicap, până la împlinirea vârstei de 3 ani;

b) concediu pentru îngrijirea copilului bolnav în vârstă de până la 7 ani sau, în cazul copilului cu handicap, pentru afecţiuni intercurente, până la împlinirea vârstei de 18 ani;

c) concediu paternal;

d) concediu pentru formare profesională;

e) exercitarea unor funcţii elective în cadrul organismelor profesionale constituite la nivel central sau local, pe toată durata mandatului;

f) participarea la grevă.

g) concediu de acomodare[4].

De asemenea, contractul individual de muncă poate fi suspendat în situaţia absenţelor nemotivate ale salariatului, în condiţiile stabilite prin contractul colectiv de muncă aplicabil, contractul individual de muncă, precum şi prin regulamentul intern.

Având în vedere conținutul art. 51 alin.1 reiese fără tăgadă cã salariatul are dreptul sã solicite (nu sã decidã) suspendarea, în condițiile stabilite de legislația muncii incidentă.

[4]Introdus prin legea nr. 57/2016 din 11 aprilie 2016 pentru modificarea şi completarea Legii nr. 273/2004 privind procedura adopţiei, precum şi a altor acte normative, PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 283 din 14 aprilie 2016 și care va intra în vigoare începând cu data de 12 august 2016

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Suspendarea are ca efect principal oprirea temporară a prestării muncii şi a plăţii salariului, în condiţiile menţinerii contractului individual de muncă.

Pe durata suspendării, salariatul nu prestează munca şi ca urmare nu primeşte salariu, dar alte drepturi câştigate şi obligaţii asumate se menţin.

În cazul suspendării contractului individual de muncă din cauza unei fapte imputabile salariatului, pe durata suspendării acesta nu va beneficia de niciun drept care rezultă din calitatea sa de salariat. De fiecare dată când în timpul perioadei de suspendare a contractului intervine o cauză de încetare de drept a contractului individual de muncă, cauza de încetare de drept prevalează.

În cazul suspendării contractului individual de muncă se suspendă toate termenele care au legătură cu încheierea, modificarea, executarea sau încetarea contractului individual de muncă, cu excepţia situaţiilor în care contractul individual de muncă încetează de drept.

Legea nr. 57/2016 din 11 aprilie 2016[5] pentru modificarea şi completarea Legii nr. 273/2004 privind procedura adopţiei[6], precum şi a altor acte normative, prevede că adoptatorul sau, opţional, oricare dintre soţii familiei adoptatoare, care realizează venituri supuse impozitului pe venit potrivit prevederilor Legii nr. 227/2015 privind Codul fiscal[7], cu modificările şi completările ulterioare, din activităţi salariale şi asimilate acestora sau, după caz, activităţi independente sau activităţi agricole, poate beneficia de un concediu de acomodare cu durata de maximum un an, care include şi perioada încredinţării copilului în vederea adopţiei, precum şi de o indemnizaţie lunară, raportată la indicatorul social de referinţă, în cuantum de 3,4 ISR.

Concediul şi indemnizaţia prevăzute se acordă pe baza cererii persoanei îndreptăţite, la care se anexează certificatul de grefă în baza căruia se execută hotărârea judecătorească de încredinţare în vederea adopţiei, documentul care atestă mutarea copilului la adoptator/familia adoptatoare, înregistrat la direcţia în a cărei rază administrativ-teritorială a fost protejat copilul, precum şi dovada intrării efective în concediu sau a suspendării activităţii.

Cererea se completează potrivit unui model care se aprobă prin normele metodologice de aplicare legii. Drepturile prevăzute se stabilesc şi se acordă începând cu ziua următoare celei în care a fost pusă în executare hotărârea judecătorească de încredinţare în vederea adopţiei.

Persoanele îndreptăţite cărora li s-au stabilit drepturile prevăzute nu pot beneficia, în perioada concediului de acomodare, de drepturile acordate în baza art. 2 şi 7 din Ordonanţa de urgenţă a

[5]PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 283 din 14 aprilie 2016
[6]PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 557 din 23 iunie 2004
[7]PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 688 din 10 septembrie 2015

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Guvernului nr. 111/2010 privind concediul şi indemnizaţia lunară pentru creşterea copiilor[8], aprobată cu modificări prin Legea nr. 132/2011[9], cu modificările şi completările ulterioare. Pe perioada concediului de acomodare, persoana îndreptăţită beneficiază de plata contribuţiei individuale de asigurări sociale de sănătate. Cuantumul contribuţiei se calculează prin aplicarea cotei procentuale, prevăzută de lege, la valoarea indemnizaţiei acordate.

Fondurile necesare plăţii indemnizaţiei, a contribuţiei, cheltuielilor administrative, precum şi cele de transmitere a drepturilor se asigură din bugetul de stat, prin bugetul Ministerului Muncii, Familiei, Protecţiei Sociale şi Persoanelor Vârstnice.

Cererea şi documentele doveditoare se depun şi se înregistrează la agenţia pentru plăţi şi inspecţie socială judeţeană şi a municipiului Bucureşti în a cărei rază teritorială are domiciliul sau reşedinţa persoana îndreptăţită. Calculul şi plata indemnizaţiei, inclusiv a contribuţiei individuale de asigurări sociale de sănătate, se fac de Agenţia Naţională pentru Plăţi şi Inspecţie Socială, prin agenţiile pentru plăţi şi inspecţie socială judeţene şi a municipiului Bucureşti, şi se achită, în funcţie de opţiunea persoanei îndreptăţite, în cont bancar sau la domiciliul acesteia, respectiv la Fondul naţional unic de asigurări sociale de sănătate.

Procedura de plată a indemnizaţiei care se acordă pe perioada concediului de acomodare se aprobă prin normele metodologice de aplicare legii.

Concediul de acomodare şi plata indemnizaţiei încetează începând cu ziua următoare celei în care se produce una din următoarele situaţii:

a) a expirat perioada maximă de un an prevăzută pentru concediul de acomodare;

b) la cererea persoanei îndreptăţite;

c) copilul a împlinit 18 ani;

d) a avut loc decesul copilului;

e) persoana îndreptăţită care urma să adopte în calitate de persoană singură a decedat;

f) a rămas definitivă hotărârea judecătorească privind revocarea încredinţării în vederea adopţiei.

Concediul de acomodare şi plata indemnizaţiei se suspendă începând cu ziua următoare celei în care se produce una dintre următoarele situaţii:

a) s-a dispus plasamentul copilului în regim de urgenţă;

b) a fost pusă în executare hotărârea judecătorească privind revocarea încredinţării în vederea adopţiei.

[8]PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 830 din 10 decembrie 2010
[9]PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 452 din 28 iunie 2011

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Suspendarea încetează în ziua următoare celei în care a rămas definitivă hotărârea judecătorească prin care s-a dispus revenirea copilului la persoana/familia la care fusese încredinţat în vederea adopţiei sau, după caz, în ziua următoare celei în care a rămas definitivă hotărârea judecătorească prin care s-a dispus respingerea revocării încredinţării în vederea adopţiei.

Reluarea concediului de acomodare şi a plăţii indemnizaţiei aferente suspendate se face la cererea persoanei îndreptăţite, începând cu data depunerii acesteia, dacă nu au intervenit situaţii care să determine încetarea drepturilor.

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LEGE Nr. 227/2015 din 8 septembrie 2015 privind Codul fiscal, PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 688 din 10 septembrie 2015

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ORDONANŢĂ DE URGENŢĂ Nr. 111 din 8 decembrie 2010 privind concediul şi indemnizaţia lunară pentru creşterea copiilor, PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 830 din 10 decembrie 2010

J.-E. Ray, Droit du travail. Droit vivant, 2005/2006, 14e édition actualisée et refondue, Éditions Liaisons, 2005, p. 186.

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THEORETICAL CONSIDERATIONS ON THE ROLE AND SIGNIFICANCE OF MINISTERIAL ACCOUNTABILITY

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Abstract: The position of Minister is a great responsibility for the destiny of a country in a particular field of activity, something that involves the possibility of the person who has accepted liability such a charge. Action important sectors of the state, a minister, and their decisions may be influenced profound and sometimes irreversible, negatively or positively.

This undeniable reality has led to that institution since inception shaping ministerial to put the issue of accountability of ministers.

Keywords: role, ministry,country,decisions,minister

CONSIDERAŢII TEORETICE PRIVIND LOCUL ŞI SEMNIFICAŢIA RĂSPUNDERII MINISTERIALE

Funcţia de ministru reprezintă o mare responsabilitate pentru destinele unei ţări, într-un anumit domeniu de activitate, aspect ce presupune şi posibilitatea angajării răspunderii persoanei care a acceptat o astfel de însărcinare. Sunt sectoare importante de acţiune ale statului, în care un ministru, prin deciziile sale, poate influenţa în mod profund şi, uneori, ireversibil, în sens negativ sau pozitiv, interesele generale.

Funcţia de membru al Guvernului[1] este incompatibilă cu:

a) orice altă funcţie publică de autoritate, cu excepţia celei de deputat sau de senator ori a altor situaţii prevăzute de Constituţie;

b) o funcţie de reprezentare profesională salarizată în cadrul organizaţiilor cu scop comercial;

c) funcţia de preşedinte, vicepreşedinte, director general, director, administrator, membru al consiliului de administraţie sau cenzor la societăţile comerciale, inclusiv băncile sau alte instituţii de credit, societăţile de asigurare şi cele financiare, precum şi la instituţiile publice;

[1] Niculae Neagu, Adrian Rapotan, Lucian Gheorghe, Studii de etică și deontologie. Deontologia funcționarilor publici din administrația publică și structurile de poliție, Editura Europolis, Constanța, 2009

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d) funcţia de preşedinte sau de secretar al adunărilor generale ale acţionarilor sau asociaţilor la societăţile comerciale prevăzute la lit. c);

e) funcţia de reprezentant al statului în adunările generale ale societăţilor comerciale prevăzute la lit. c);

f) funcţia de manager sau membru al consiliilor de administraţie ale regiilor autonome, companiilor şi societăţilor naţionale;

g) calitatea de comerciant persoană fizică;

h) calitatea de membru al unui grup de interes economic;

i) o funcţie publică încredinţată de un stat străin, cu excepţia acelor funcţii prevăzute în acordurile şi convenţiile la care România este parte.

Funcţia de secretar de stat, funcţia de subsecretar de stat şi funcţiile asimilate acestora sunt incompatibile cu exercitarea altei funcţii publice de autoritate, precum şi cu exercitarea funcţiilor prevăzute la lit. b) - i).

În mod excepţional, Guvernul poate aproba participarea persoanelor prevăzute mai sus (ministru, secretar de stat, funcţia de subsecretar de stat şi funcţiile asimilate) ca reprezentanţi ai statului în adunarea generală a acţionarilor ori ca membri în consiliul de administraţie al regiilor autonome, companiilor sau societăţilor naţionale, instituţiilor publice ori al societăţilor comerciale, inclusiv băncile sau alte instituţii de credit, societăţile de asigurare şi cele financiare, de interes strategic sau în cazul în care un interes public impune aceasta.

Membrii Guvernului, secretarii de stat, subsecretarii de stat şi persoanele care îndeplinesc funcţii asimilate acestora pot exercita funcţii sau activităţi în domeniul didactic, al cercetării ştiinţifice şi al creaţiei literar-artistice.

Această realitate de necontestat a condus la necesitatea, ca încă de la începuturile conturării instituţiei ministeriale, să se pună în discuţie problema responsabilităţii miniştrilor.[2] În literatura de specialitate s-a arătat că se preferă a se folosi sintagma „*răspundere ministerială*” în loc de „*răspunderea guvernamentală*” deoarece prima noţiune este mai largă, *răspunderea guvernamentală* fiind definită ca o răspundere colectivă a Guvernului, în timp ce *răspunderea ministerială* presupune în acelaşi timp, atât răspunderea colectivă (a Guvernului) cât şi responsabilitatea solidară a miniştrilor şi responsabilitatea individuală a fiecărui membru al organului colegial[3], independent de angajarea răspunderii celorlalţi. Astfel, noţiunea de

[2] *Ion Corbeanu*, Drept administrativ, Editura Lumina Lex, Bucureşti, 2002, p. 304.
[3] Niculae Neagu, Adrian Rapotan, Lucian Gheorghe – Studii de etică și deontologie. Deontologia funcționarilor publici din administrația publică și structurile de poliție, Editura Europolis, Constanța, 2009,

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răspundere ministerială elimină riscurile confuziei răspunderii Executivului în faţa Legislativului cu răspunderea Guvernului.[4]

În doctrina interbelică, din perspectiva unei abordări comparate a instituţiei, s-a arătat că *ideea responsabilităţii ministeriale* a apărut pentru prima oară în Anglia, cea dintâi acuzare, ***impeachment,*** a fost adusă unui ministru al lui Eduard al III-lea (1327-1377), Camera Comunelor dobândind dreptul de a susţine acuzarea miniştrilor în faţa Camerei Lorzilor.[5]

Procedeul, existent încă în regimul britanic ca şi în cel american, constă în acuzarea penală a unui ministru de către una din Camere, urmată de judecarea lui de către cealaltă.

Dacă, la început, acest procedeu a fost folosit pentru sancţionarea delictelor de drept comun ale miniştrilor, cu timpul, acesta a început să fie folosit şi în afara faptelor penale, pentru a concretiza o judecată politică asupra funcţionării Guvernului. Începând cu anul 1742, miniştrii se retrag în cazul unui vot negativ în Camera Comunelor, evitând să apară în faţa Camerei Lorzilor constituită în Curte Supremă. S-a instituit astfel regula potrivit căreia, Guvernul nu poate guverna decât pe baza încrederii Legislativului sau cel puţin a Camerei celei mai reprezentative a acestuia. Răspunderea ministerială nu se mai bazează deci pe ideea de faptă imputabilă, nici pe cea de risc, deşi nu le exclude, ci pe ideea că guvernanţii s-ar afla în serviciul guvernaţilor.

Ei răspund în faţa corpului electoral în mod direct atunci când acesta se pronunţă cu prilejul noilor alegeri, dar răspund şi indirect, prin intermediul răspunderii în faţa Reprezentanţei Naţionale.

Executivul are posibilitatea să se sustragă acestei din urmă variante a răspunderii, optând pentru prima variantă, prin dizolvarea Adunării reprezentative şi supunerea diferendului, arbitrajului corpului electoral. *Răspunderea ministerială* se prezintă astfel ca un complement şi ca o contrapondere a dreptului de dizolvare. Cele două noţiuni, ca şi cele două instituţii, nu au sens decât împreună. Existenţa lor separată creează disfuncţionalităţi, distrugând echilibrul constituţional.

Desigur, niciuna dintre instituţii nu trebuie idealizată; ele au o eficacitate limitată, ce depinde de „cultura politică" şi de sistemul de partide cărora li se aplică.[6]

Din Anglia, ideea s-a propagat în constituţiile revoluţionare ale Franţei, începând cu cea din 1791 şi apoi, sub diferite forme, în organizarea tuturor regimurilor constituţionale din Europa.

[4]*Dan Claudiu Dănişor*, Drept constituţional şi instituţii politice. Tratat. Vol. I Teoria generală, Editura C.H. Beck, Bucureşti, 2007, p. 468.
[5]*Anibal Teodorescu,* op. cit., vol. I, p. 121.
[6]*Dan Claudiu Dănişor*, op.cit., p. 469.

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Răspunderea ministerială este o *răspundere politică*, acest lucru semnificând în primul rând, că baza ei nu este nici penală, nici civilă, ci de o natură aparte, deşi se întemeiază pe acelaşi principiu ca răspunderea civilă sau penală, adică pe faptul că puterea publică este ţinută să dea socoteală de actele sale şi să-şi asume consecinţele acestora. În al doilea rând, natura politică a acestei răspunderi rezultă din faptul că sancţiunea ei este pur politică, constând în obligaţia ce incumbă ministrului sau Guvernului în totalitatea sa, de a se retrage dacă pierde încrederea Parlamentului.

Dar această responsabilitate ce impune Guvernului sau ministrului să demisioneze în caz de manifestare expresă a neîncrederii Adunării reprezentative poate fi privită şi dintr-un alt punct de vedere. Ea impune Guvernului să aibă o politică proprie, care poate fi distinctă de cea a Parlamentului şi care constituie o alternativă la aceasta, prin faptul că Executivul poate provoca un arbitraj al corpului electoral între cele două politici, prin intermediul instituţiei dizolvării.

Responsabilitatea ministerială interzice deci Guvernului să se supună Legislativului. Ea asigură o preponderenţă a Legislativului doar dacă este privită în sine. Dacă este însă privită în corelaţie cu dizolvarea, ea cere un preţ acestei facultăţi a Parlamentului de a răsturna Guvernul: preţul este existenţa unei politici guvernamentale autonome.

Caracterul dualist al funcţiei responsabilităţii ministeriale se relevă şi în faptul că ea este în acelaşi timp un instrument prin intermediul căruia Legislativul domină şi controlează Executivul şi un instrument prin care acesta din urmă poate presa asupra primului.

Când responsabilitatea ministerială îmbracă forma cenzurii, ea serveşte Legislativului.

Dar atunci când problema încrederii este pusă de Guvern cu ocazia votului asupra unui proiect de lege, de exemplu, ea serveşte Executivului, care presează asupra Legislativului, punându-l să opteze între o criză guvernamentală şi adoptarea fără discuţii a proiectului guvernamental.[7]

Responsabilitatea ministerială este în acelaşi timp individuală şi colectivă. Această afirmaţie se impune, în pofida faptului că răspunderea individuală a fost contestată, invocându-se caracterul unitar al Guvernului ca organ colegial. Solidaritatea ministerială nelimitată, însoţită de imposibilitatea de a angaja selectiv responsabilitatea membrilor Guvernului fără a provoca demisia întregului Guvern face instituţia aproape impracticabilă în condiţiile în care transferul nivelului decizional către structurile partizane este în statul actual extrem de accentuat, căci, aşa cum vom vedea, acest transfer face ca mecanismul răspunderii parlamentare să fie blocat de existenţa majorităţii aparţinând unui singur partid sau unei coaliţii relativ stabile.

[7] *Idem*, 469 şi urm.

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Existenţa responsabilităţii individuale a miniştrilor face ca Guvernul să reflecte mai fidel mişcările raportului de forţe la nivel partizan, prin faptul că permite distrugerea şi refacerea alianţelor care asigură majoritatea fără să provoace în mod necesar o răsturnare a Guvernului.

De asemenea, responsabilitatea individuală face ca remanierea să crească în importanţă şi ea să fie o chestiune ce priveşte nu doar Executivul, ci şi Legislativul. Ea întăreşte astfel controlul parlamentar, substituind mitului armei absolute a cenzurii o înţelegere şi o aplicare realistă a răspunderii.[8] Deşi au existat texte constituţionale care foloseau sintagma „răspunderea politică a Guvernului" sau, după caz, „răspunderea politică a miniştrilor" această răspundere era privită ca ceva para juridic[9]. A fost, desigur, o etapă. În dreptul public, constantele doctrinare s-au impus cu mari eforturi şi după succesive organizări statale şi experienţe constituţionale, în timp ce în dreptul privat, în special, în dreptul civil, în spaţiul Europei Continentale (sistemul de drept romano-germanic) există noţiuni care îşi păstrează semnificaţia chiar din perioada Romei antice.

Atât timp cât suntem în prezenţa unei noţiuni utilizate de Constituţie[10], care este legea fundamentală a ţării, de vreme ce există o procedură şi sancţiuni specifice prevăzute de Constituţie, de regulamentele Camerelor, dar şi de legea răspunderii ministeriale, este firesc ca răspunderea politică a Guvernului şi a membrilor acestuia, la care se referă alin. (2) al art. 109 din Constituţie să fie înţeleasă ca o formă de răspundere juridică, *o instituţie mixtă ale cărei norme aparţin dreptului constituţional şi dreptului administrativ*, deopotrivă.

În toate cazurile, răspunderea politică nu poate interveni decât pentru o conduită culpabilă a Guvernului în ansamblul său sau a unui membru al acestuia, o „*culpă politică*" adevărat, dar culpă care poate să constea pur şi simplu în neputinţa de a face faţă unei situaţii sau în rezolvarea defectuoasă a unui caz, ceea ce înseamnă că implicit Guvernul sau ministrul în cauză, fie au încălcat cadrul constituţional şi legal, fie au acţionat dincolo de acest cadru, deci cu exces de putere.[11]

Atât în Constituţia României cât şi în alte legi, sunt folosite conceptele de *responsabilitate* şi *răspundere*, în mod diferit.

Astfel, în art. 109 din Constituţie[12] intitulat *Răspunderea membrilor Guvernului*, întâlnim sintagma "*responsabilitate ministerială*", atunci când se dispune: "*cazurile de răspundere şi*

[8] *Idem*, p. 470.
[9] Niculae Neagu, Adrian Rapotan, Lucian Gheorghe – Studii de etică și deontologie. Deontologia funcționarilor publici din administrația publică și structurile de poliție, Editura Europolis, Constanța, 2009
[10] Gheorghe Lucian, Ioniță Mihai - Culegere de acte normative, Editura Muntenia, Constanţa, 2003
[11] *Antonie Iorgovan*, în *Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu*, (în colectiv), op.cit., 2004, p. 194 şi urm.
[12] PUBLICATĂ ÎN: MONITORUL OFICIAL NR. 767 din 31 octombrie 2003. Modificată şi completată prin Legea de revizuire a Constituţiei României nr. 429/2003, publicată în Monitorul Oficial al României, Partea I, nr. 758 din

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pedepsele aplicabile membrilor Guvernului sunt reglementate printr-o lege privind responsabilitatea ministerială". Curtea Constituţională[13] a decis, cu majoritate de voturi, printre altele, următoarele: "(...) 2. În aplicarea dispoziţiilor art. 109 alin. (2) teza întâi din Constituţie, Ministerul Public - Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie va sesiza Camera Deputaţilor sau Senatul, după caz, pentru a cere urmărirea penală a membrilor şi a foştilor membri ai Guvernului pentru faptele săvârşite în exerciţiul funcţiei lor şi care, la data sesizării, au şi calitatea de deputat sau senator. 3. În aplicarea dispoziţiilor art. 109 alin. (2) teza întâi din Constituţie, Ministerul Public - Parchetul de pe lângă Înalta Curte de Casaţie şi Justiţie va sesiza Preşedintele României pentru a cere urmărirea penală a membrilor Guvernului şi a foştilor membri ai Guvernului, care, la data sesizării, nu au şi calitatea de deputat sau senator. (...)".

Aceasta presupunea ca în Legea privind responsabilitatea ministerială[14] să fie reglementată atât responsabilitatea ministerială cât şi răspunderea membrilor Guvernului, concepte care sunt total diferite. Deci, temeiul responsabilităţii ministeriale urma să-l constituie legea cadru în materie şi să o reglementeze în baza principiilor generale şi speciale ale acestui tip de responsabilitate juridică.

Tot din formularea art. 109 din Constituţie, observăm că responsabilitatea are un caracter general, iar răspunderea are un caracter mai concret.

Potrivit art. 71 alin. 2 din Constituţie, calitatea de deputat sau senator este compatibilă cu funcţia de membru al Guvernului. Aşa fiind, dacă un ministru - în acelaşi timp deputat sau senator - săvârşeşte o faptă penală, se pune problema care dispoziţii constituţionale îi vor fi aplicabile?

În raport de coroborarea prevederilor art. 72 şi art. 109 alin. 2 din Constituţie, pot exista mai multe situaţii:

a) Dacă a acţionat ca membru al Guvernului - fost sau actual în concepţia Curţii Constituţionale - şi în exerciţiul funcţiei lui, se va face aplicarea art. 109 alin. 2, cererea de începere a urmăririi penale făcută de Camera din care face parte, semnificând totodată, în sensul art. 72, încuviinţarea acesteia. Când cererea de începere a urmăririi penale aparţine celeilalte

29 octombrie 2003, republicată de Consiliul Legislativ, în temeiul art. 152 din Constituţie, cu reactualizarea denumirilor şi dându-se textelor o nouă numerotare (art. 152 a devenit, în forma republicată, art. 156). Legea de revizuire a Constituţiei României nr. 429/2003 a fost aprobată prin referendumul naţional din 18 - 19 octombrie 2003 şi a intrat în vigoare la data de 29 octombrie 2003, data publicării în Monitorul Oficial al României, Partea I, nr. 758 din 29 octombrie 2003 a Hotărârii Curţii Constituţionale nr. 3 din 22 octombrie 2003 pentru confirmarea rezultatului referendumului naţional din 18 - 19 octombrie 2003 privind Legea de revizuire a Constituţiei României.Constituţia României, în forma iniţială, a fost adoptată în şedinţa Adunării Constituante din 21 noiembrie 1991, a fost publicată în Monitorul Oficial al României, Partea I, nr. 233 din 21 noiembrie 1991 şi a intrat în vigoare în urma aprobării ei prin referendumul naţional din 8 decembrie 1991.

[13]Decizia nr. 270/2008, publicată în "Monitorul Oficial al României", Partea I, nr. 290 din 15 aprilie 2008

[14]Gheorghe Lucian, Ioniţă Mihai - Culegere de acte normative, Editura Muntenia, Constanţa, 2003

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Camere sau Preşedintelui României, se va face aplicarea art. 72 pentru încuviinţarea percheziţionării, reţinerii sau arestării, de către Camera al cărui membru este.

b) Dacă a acţionat ca simplă persoană, în afara funcţiei ministeriale şi a mandatului parlamentar, va putea fi urmărit şi trimis în judecată penală, fără încuviinţarea Camerei.

Legea răspunderii ministeriale cuprinde, pe lângă dispoziţii cu caracter substanţial, şi minime dispoziţii cu caracter procedural. Aceasta se impunea cu atât mai mult cu cât însăşi Constituţia, prin art. 109 alin. 2, prevede o procedură specială de declanşare a urmăririi penale.

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A THEORETICAL APPROACH OF THE LEGAL DIGITAL DEPOSIT

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Abstract : A legal deposit is represented by documentary heritage collections sent by editors of publications to a national library and maybe to other libraries of the system of national libraries to ensure the national, cultural and scientific document references for future generations. The principles of a legal deposit also apply to digital documents. The issues related to a legal digital deposit are defining the categories of documents subjected to such a preservation and conservation type, archiving strategies, document processing and making up a specific heritage flow. It is equally important to establish the proper legal framework necessary to achieve this specific type of activity.

Keywords: Legal Digital Deposit, digital document, digital archiving, documentary heritage, legislation

1. Introduction

A Legal Deposit (LD) is a legal stipulation according to which all categories of editors are compelled to send a certain amount of copies of publications to the National Library and possibly also to other libraries of a given country. The principle of Legal Deposit is established through an international convention and it is overtaken by the national legislation of each state aiming at ensuring the preservation, conservation and access to documentary heritage through libraries. National libraries have a heritage function and they fulfil the role of National Agency for the Legal Deposit of Publications.

The appearance of electronic documents and their publication online has determined the extension of the Legal Deposit towards the digital environment. If the principle of a Legal Deposit is to preserve, conserve and provide access to the documentary, cultural and scientific heritage of a nation, no matter the type of support, it should be applied for digital publications too, be digital publications accessible offline or online. The issue of digital document resources and of their archiving and the establishment of a legal digital deposit (LDD) is approached within a much broader context in Internet Resources and Information Practices [1] on which relies this study.

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2. Features of the Legal Digital Deposit

The features of the digital environment and of digital documents generate major issues in the application of the Legal Digital Deposit: technical issues related to the control of editing and to the collection, processing, conservation, and accessing digital documents; copyright and copyright-related issues; long-term archiving of the digital content issues; national legal framework issues for the ensurance of the Legal digital deposit (including penalties).

Specific legislation. In many countries, the legal framework for the establishment of the legal digital deposit was designed as an extension of the legislation for the Legal Deposit for traditional publications, so that it includes the stipulations for the digital environment and for digital documents and that the national documentary heritage can be represented in a unitary form, no matter the support. In countries such as Holland or Switzerland, customs and good practices make possible the functioning of a Legal Deposit without a precise legal framework: it relies only on agreements between editors and national libraries and these practices extend over the legal digital deposit. However, in most countries, the efficiency of the legal deposit is ensured by a well-defined legal framework that regulates the relationship between editors and libraries and that supports the preservation and conservation of the documentary heritage. Above national levels, there are international regulations that support the legal digital support as well as UNESCO resolutions and reports [1]. The Conference of European National Libraries (CENL) and The Conference of Directors of National Libraries (CDNL) support the editing of guides, methodologies and regulations for the activities of legal digital deposits through specialised work groups.

What and how is deposited? The documents subjected to a Legal digital deposit represent a much wider and more diversified category than that of the documents on traditional support in Legal Deposits. Are considered digital or electronic the documents that need, in order to be produced, published and accessed, a proper information infrastructure. Such documents can contain text, sounds, images, and information applications. Are subjected to Legal Digital Deposits [2]:

Digital publications that correspond to printed publications (books, newspapers and magazines, brochures, posters, etc.);

Bibliographical, statistical, image, spatial, etc. databases;

Media, multi-media documents, interactive multi-media applications (e.g., electronic games);

Information programmes and expert systems.

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In the case of similar printed publications, there are specific situations such as the existence and distribution of both printed and electronic variants: these variants can be identical or not; the digital variants can be distributed offline on CDs, CD-ROMs or DVDs; they can be published individually on websites; they can be available in collections or databases; they can be digital variants of documents and publications published previously and converted, through scanning and digital processing, into digital documents.

In the case of databases, the specific issue is their dynamics, i.e. the alteration, removal, or addition of digital content.

Including the media in the Legal digital deposit causes the most serious issues. There are debates, among national library work groups and UNESCO and European experts on whether Radio and TV productions should be subjected to Legal Digital Deposits or not. The trend is that these information resources be included into the Legal digital deposit and that they should be approached within the same legal framework as the rest of digital documents; however, archiving, preservation, and the entire documentary flow should be done separately for audio-video resources.

3. Strategies for the Establishment of a Legal Digital Deposit

Because of the huge amount of information and digital resources in the networks and because of the heterogeneity of the processing standards and of the publication forms, they have developed several strategies for their collection and storage in the Leal Digital Deposit.

The *exhaustive approach* supposes the collection of all websites and online resources corresponding to a national area identified as a field. This selection is made without any selection form of criterion regarding their heritage value. This approach is rather a theoretical one since it is impossible to collect and archive everything that is published online. In addition, even if it were possible, because of the dynamics of the digital content, it would be impossible to collect all the resources or variants.

The *selective app*roach supposes the collection and archiving of well-defined portions of the web space and online resources subordinated to clearly defined specific criteria. Such criteria could be a typology of the resources collected (e.g., mass media), a certain type of website (e.g., academic and research websites), or a certain time interval (e.g., national ones according to a certain field, but at well-defined time intervals, usually annually or biennially), or instantaneous, at time intervals).

The *topical approach* supposes the selection and collection of websites and online resources subordinated to a certain field of knowledge or precise topic (e.g., web digital content related to a

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certain event such as a major athletic event, legislative elections, etc.); there is also the possibility of archiving and collecting on a certain topic subjected to a research project.

The *combined approach* is the most pragmatic of all since it tried to unite the advantages of the other types of approaches and to remove disadvantages.

4. The Heritage Flow of Establishing a Legal digital deposit

As mentioned above, the institutions responsible for the collection, processing, valorisation, conservation and archiving of the cultural and scientific documentary heritage of a country are national libraries; they manage the traditional documentary heritage and the digital one since they need to observe the principles of the Legal Deposit though it is about digital support.

The heritage flow starts with the *identification of the producers of digital content* qualifying for being included in the legal digital deposit. Are subjected to the legal digital deposit the cultural and scientific digital content published in any country but referring to a certain country. Websites and cultural and scientific resources published in a national area can be identified after the domain and extension name (.ro for Romanian sites). Collecting can be done based on legal regulations (that can be a completion of the law for Legal Deposit or a regulation specific to the Legal digital deposit alone) or with the agreement of the producers of digital content. The problem here is the collection of digital content referring to a nation but that is published abroad, where legal regulations have no effect whatsoever. In this case, a Legal Deposit can only mention digital content of interest and collect and archive digital content from the public domain and free access.

The best known producers and suppliers of cultural and scientific digital content are the same as in the traditional environment (editors, mass media, academies, research institutes, physical persons), plus the owners and administrators of digital archives, governmental institutions and public institutions as well as a much broader category of users (legal and physical persons). For a Legal digital deposit o function, we need to clearly identify all these producers and suppliers of digital content, to know the types of resources that can be supplied and to accept responsibilities in the preservation and archiving of the documentary heritage.

Collecting and archiving digital content is a mainly technical issue: it is done based on search engines. The sites are browsed at certain time intervals. They collect digital content (observing the principles of digital archiving) and they make up heritage digital deposits. Digital documents on CDs, CD-ROMs and DVDs are deposited in national libraries in the same way as traditional

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publications. They are archived separately, but mentioned in the same database. The main issue here is the very high costs generated by the constitution and management of digital deposits.

It is important for a heritage flow that digital resources in the Legal digital deposit be also mentioned among the information and documenting instruments such as catalogues and bibliographies to allow the access to the national cultural and scientific heritage. *Processing through cataloguing, indexing and creating access points* is the activity through which digital content is expressed in bibliographical records and is included among specific reference instruments. Processing can be done automatically together with the collection of resources by the search engine (are assimilated the initial metadata of the resource archived) or semi-automatically when the human factor intervenes in the refinement of the processing to express as accurately as possible the requirements of the catalogue or bibliography – webography. The *national web bibliography or the national webography* is the final information product of the heritage flow together with the digital deposit proper. It is a series of the national bibliography and it contributes to the National Bibliographic Control, a component of the Universal Bibliographic Control; in other words, it contributes, together with other bibliographical series1, to the recording and recording of the national and universal documentary heritage.

Archiving long term is the last stage of the heritage flow for digital resources and it should be done in accordance with all preservation, conservation, and archiving standards for digital content. We need to take into account the preservation of the technological context, the ensurance of technical access and, from the perspective of copyrights, the back up and management of specific risks.

Establishing a Legal digital deposit and web archives is rather new and we cannot speak of universally accepted standards. We can rather speak of initiatives and good practices of national libraries [3]. At general level, as principles, attributions, activities, and procedures, a legal digital deposit is somehow similar to and different in organisation at national level from the perspective of the implementation of specific legislation and technical solutions. The most representative initiatives and good practices are in Austria, Japan, Singapore, Denmark, Finland, Australia,

[1]The documents edited in a country and subjected to the Legal Deposit are also recorded in the collections of the national libraries and are processed and published under the form of national bibliography. In Romania, publications are divided into categories, depending on the type of publication and each category is subjected to a series of the Romanian national bibliography. The series are:
- Books, albums, maps (since 1952, twice a month);
- Serial publications (since 1992, annually);
- Music notes. Discs. Cassettes (since 1968, every three months);
- Doctoral theses (since 1995, annually);
- Romanica (since 1990, annually);
- Articles from periodicals. Culture (since 2000, monthly).

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Great Britain, France, and Norway. These are countries that could afford IT investments to support such an approach and that have established a clear legal framework for Legal Digital Deposits.

5. Web Archiving and the Legal Digital Deposit

Web archiving and the Legal Digital Deposit, though aiming at preserving and conserving digital content, are not identical activities. They differ in objectives, technical solutions, modality and depth of mentioning content, institutional responsibilities and legal framework. Web archiving aims at archiving the digital content of a site medium- and long-term, no matter the type of site and field. A Legal digital deposit aims at archiving websites and digital resources representing the national cultural and scientific heritage long term and, in some resources, even perennial. Web archiving can be a responsibility of institutional structures that manage the site or it can be done with specialised firms and involves technical solutions adequate for archiving solutions. A Legal digital deposit has a national heritage function and it is achieved by national libraries or in cooperation with them, according to a legal framework. Together with the technical archiving solution, it also needs specific operations of cataloguing, indexing and development of reference instruments (webographies).

Exhaustivity in archiving web resources is a utopia. There are limits in archiving the entire digital content published on the Internet. If, short- and medium-term we can speak of archived digital resources close to what is really published, ling-term the amount of digital resources archived is increasingly smaller and based on the selectivity of the resources depending on scientific or heritage criteria. The limits of archiving can be technical and generated by the investment level, by the preservation of the technological context, by the web that makes impossible the collection of all data on the web, by the complexity of the sites, by the difficulties in the processing of the archived digital content, by the preservation and conservation proper, by the risk management in long-term preservation, by access and copyrights, by human resources.

The complexity of archiving, the resources involved, the objective limits make web archiving and Legal digital deposit be seen as activities necessary yet strictly specialised, with specific standards, with a proper legal framework and institutional and national responsibility.

6. Conclusions

The extraordinary dynamics of the digital environment from the perspective of technologies involved and specific information and documentary resources makes legal digital deposits a difficult task with multiple specific issues and aspects. We need to establish a correlation between the traditional legal deposit specific to printed documents and the legal digital deposit

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and develop a unitary legal framework. We also need to assimilate good practices at international level and adapt the best solutions regarding the collection of digital documents, their processing, the development of webographies and the proper methods of digital archiving and preservation. The resources involved – technological, financial, and informational – can be key factors in the support or limitation of a national project for the development of a Legal Digital Deposit.

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DOCTRINAL CONSIDERATIONS REGARDING THE PHENOMENON OF CORRUPTION

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Abstract: Regarded as a social phenomenon, corruption is present in all societies without taking into account each country's level of development, adapting to the specific conditions of each country, it could jeopardize the very essence of the state through the consequences it may determine. Given the fact that human society, viewed as a whole, is in constant motion, operating modifications and changes at the structural and organizational level of the states by free markets, by allowing the movement of financial resources and continuous exchange of information between various sectors, the opportunities to gain power also include illegal methods. This "scourge" of corruption alters the normal development of economies, it violates fundamental rights, transferring financial resources towards sectors for which those involved have interests.[1]

The term „corruption" comes from the Latin word „corruptio" which characterized a certain behavior of the public clerk that commercializes, sells the attributes of his function and the trust given by the society, in exchange of receiving certain amounts of money or other advantages.[2]
Corruption, explained in a simple manner, represents the misuse of authority with a clear purpose of obtaining personal gains or in the advantage of a group to which the person is devoted.[3]
Corruption bears as starting point the state and social level which the involved one wishes to keep or improve, motivated by the desire to keep or increase the authority or by the simple belief that this would guarantee a state of well-being.[4]
Law, through its multiple disciplines, cannot study the concept of corruption starting from the empirical level.

[1] Adriana Sandu, Mirela Nițu, article, Perception of the corruption in the public administration, published in the volume of the International Conference, 4th Edition , Law and Social Order, organized by the Faculty of Law and Public Administration, Constanța, University Spiru Haret, pp.93-98.
[2] Gheorghe Nistoreanu, Alexandru Boroi, Vasile Dobrinoiu, **Criminal Law, special part**, Editura Europa Nova, Bucureşti, 1997, p.345, *apud* Claudia Florina Uşvat, **Corruption crimes in the context of the European regulations**, Editura Universul Juridic, Bucureşti, 2010, p.7.
[3] The World Bank, **Corruption and fighting agains it,** Editura Irecson, Bucureşti, 2003, p.9.
[4] *Ibidem*

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This phenomenon, in the doctrinaires' opinion, is much alike a prism with numerous facets, which can be regarded from several angles, respectively either from the political sciences angle or it can be viewed as a social phenomenon, from the economic sciences, criminal or civil law angles.[5]

It is difficult to define exactly the concept of corruption, as it might bear different understanding, depending on the social and economic reality from each state. In the national reports, presented by France and Hungary during the International Criminal Law Congress from Beijing in September 2004, the definition of corruption was a determined one, restricted to an exchange between an undue advantage, on one side and the fulfillment or non-fulfillment of an act that is a part of the work duties from the public or private sector.[6]

In the Criminal Convention regarding corruption adopted at Strasbourg on the 27th of January 1999[7], corruption is defined, depending on the report it is based on, as follows:

active corruption is "when an intentional act of proposing, offering, giving, directly or indirectly, any undue advantage to one of the public agents for himself or for anyone else, in order for this one to fulfill or not fulfill an act while in the exercise of his functions" (art.2);

passive corruption is „when one of the public agents has intentionally requested or received directly or indirectly any undue benefit for himself or anyone else, or accepted the offer or promise to fulfill an act in the exercise of his functions" (art.3).

Corruption, as a social phenomenon, is imminent in all the societies, and the development level does not matter much. It is also true that its types are adapted to all the societies although, at a certain moment, it can put in jeopardy even the essence of the state through its consequences on the decisional levels.

In the context of the market and politics freedom and under the new conditions of free choices regarding the travel, movement of the financial resources and the information exchange between different sectors, the opportunities to gain power and welfare increase, including the illegal ways as well. The corruption makes the economic development difficult, violates the fundamental rights, stops the normal evolution and transfers the financial resources from the sectors that really need them.

[5] Claudia Florina Uşvat, **Corruption crimes in the context of the European regulations**, Editura.Universul Juridic, Bucureşti, 2010., p.7.
[6] D.Dolling, Rapport General, în „**Revue international de droit penal",** no.1-2/2005, *apud* Claudia Florina Uşvat, *op.cit.*, p.8.
[7] Criminal convention regarding corruption adopted at Strasbourg on 27 January 1999, adopted through Law no.27/2002.

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According to a single concept, corruption was defined as a failure of trust, which generally involved the public authority in order to obtain particular benefits.

Generally, if this phenomenon is analyzed from a global perspective, the harming consequences of corruption that spread out within the society are obvious and direct: when the political leaders and their business partners transfer national financial resources in their own bank accounts, a poor country becomes even poorer. When, for instance, the freedom of decision in criminal cases is „to rent", the normal evolution of the society, the civil and fundamental rights are in jeopardy, and what should normally be an efficient reaction in a society becomes a mere imitation.

Presently, corruption means[8]:

a) the systematic deviation from the impartiality and fairness principles which should stay on the basis on the public administration and which implies that the public goods be distributed universally, fairly and equally and

b) their replacement with practices that lead to the assignment of a disproportionate part of the public goods to certain individuals that does not correspond to their contribution.

The corruption acts are these deeds that bring harm to this universal and fair distribution, in order to bring profit to certain persons or groups.

The tendency of the leading political forces to resort to non-democratic ways of undermining the opponents, attitude which could also be explained by the persistence of certain behavioral reminiscences specific to the „unique party" or „state-party"; we believe that also due to these reasons, the political forces from the opposition did not manage to reach a corresponding level of structuring and consolidation, at least in order to be able to fight against the discretionary manifestations while performing the government act.[9]

Discretionary inclinations in the exercise of the power result, in a certain measure, from the human nature itself; as leaders, people cannot resist the temptation of overpassing the limits of their prerogatives and this not only to better serve the public interest, but also to gain personal benefits[10], as mentioned above as well. An important place is also occupied by the analysis of corruption as a causing fact and at the same time, as an effect of the power abuse and poverty; as proved by the detailed research, the degree of corruption if directly proportional with the poverty level, irrespective of the country where this phenomenon takes place; regarding Romania, the corruption rate grew constantly during the transition and unfortunately, instead of determining

[8] National Anti-Corruption Strategy 2005-2007, adopted through the Government Decision no 231/30.03.2005.
[9] Dana Apostol Tofan, **Discretionary power and the public authorities' abuse of power** , Editura All Beck, Bucureşti, 1999, pp. 35-60.
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the leaders to take more concrete measures to fight against it, it became more of a political reckoning topic, being mainly exploited in order to obtain electoral capital. Even in the campaigns for the parliament, presidency or local elections, the politic speech is strongly spiced with corruption topics.

A special role in the stimulation of the power abuse is assigned to the external factors. Their role cannot be neglected because after 1990 the politic leaders from Bucharest took numerous decisions against the provisions of the Constitution or the political programs approved by the electing public, from their own initiative or under the pressure or request of the European Union or USA organs.

These decisions were made because the power abuse became more and more „used" by the majority of wealthy people and not only, and for each issue, no matter how important it is, the clerk expects to be „stimulated" in order to resolve it, even if the resolution is a part of his tasks.

There is a direct connection between corruption and the concrete aspects of the power abuse. With this in view, we must consider the fact that the Romanian society, in general and the political class, in particular, goes through a complicated learning process of the democratic exercise, context in which two sides intersect: the necessity to state the objective and independent character of the state institutions, through the activity of their clerks and the subjective aspect, given by the human side in resolving the work duties by the public clerks. The study made on the implications on the economy of the states in which corruption was detected showed the fact that this implies firstly a failure of trust, which generally involves the public authority to obtain some particular benefits.

Taking into account the numerous studies, a conclusion has been drawn, namely the fact that corruption is a phenomenon present in all the societies, which started once with the organization of the human society; it may be found in ideologically, economically and socially developed different countries. Given the different development levels, each society is more or less vulnerable, and suffers differently from the devastating effects of corruption, but a conclusion can be drawn – presently, there is no state where the corruption never existed or if corruption was detected, it was eradicated. All these mentioned, we can still not state that the phenomenon of corruption is more largely spread presently.

Corruption has existed, under one shape or another, from the period of social organization, and presently there are favorable conditions to make information regarding the corruption acts

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available. Economic changes, both at the national and international level, determined a decrease in the corruption acceptance degree.[11]

According to Professor Silvio Wasibord's opinion, communication teacher at the Rutgers University, expressed in Globe and Mail, Toronto, on the 19th of December 1995 „the phenomenon of corruption is visible rather due to the new politic and media conditions, than to the fact that the governments from certain countries are more corrupted than the ones before them."[12]

In the public life, corruption mainly appears in several sectors, not taking into account the politic structure or the level of social or economic development of a state.[13]

Law no.78/2000[14]establishes as a central element the usage of the public function as an income source, in order to obtain certain material benefits or personal ones, for oneself or for another. This approach tends to the definition given by the Global Program against corruption carried on by the United Nations: „the essence of the phenomenon of corruptions consists in the abuse of power performed in order to obtain a personal profit, direct or indirect, for oneself or for another, in the public or private sector".

By analyzing the practice of governance in the democratic exercise period, through the rich conceptual literature offered by the politological doctrine, we have managed to identify, in the political reality of contemporary Romania, a series of factors with negative impacton the exercise of the politic power at all the levels of the social organization. Among these, we are to mention[15]:

- the persistence of the conservative mentalities both at the level of public authorities and the society viewed as a whole;
- the public authorities staff, who comes mostly from the ex-regime structures continued and still continues to act in a discretionary manner, specific to a dictatorship;
- at the social level we can still see the habit of waiting to receive directives from the organs of the state who, according to such mentality, has the task to resolve all the problems.

Regarding the case of Romania, the corruption found itself in a continuous development in the transition period, and the political parties that had the power did not work at searching and

[11] The World Bank, *op.cit.*, p.12.
[12] S.Wasibord, **Globe and Mail**, Toronto, 19.dec.1995.
[13]The Word Bank, *op.cit.*, p.12 and next
[14] Law 78/2000 for the prevention, discovery and sanctioning of the corruption acts published in the Official Gazette of Romania, Part I, no.219 from 18.05.2009.
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finding the most appropriate ways to fight against this phenomenon, but used this topic in order to obtain and „direct" the electoral capital.

Corruption is the expression of spiritual degradation emergence; it represents a complex social issue, whose manifestations, social consequences and resolution manners interest the public and the institutionalized level of the social control.

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THE PROCEDURE FOR THE REALIZATION OF ASSETS SEIZED FROM THE PERSPECTIVE OF LAW NO. 135/2010 ON THE CODE OF CRIMINAL PROCEDURE

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Abstract: As a result of the determination by the judiciary, but also by the competent bodies of the State, the procedures for the preservation does not teach on a timely manner, leading to depreciation of assets over time, the legislature considered it necessary to establish rules governing both unavailability and the procedure for recovery of proceeds of crimes.

Keywords: crime, safety measures, seizure, confiscation of the goods seized

1. Cadrul legislativ internaţional privind indisponibilizarea produselor infracţiunilor

În scopul prevenirii şi combaterii fenomenului infracţional este necesar să fie combătute în primul rând cauzele care generează fenomenul infracţionalităţii, precum şi condiţiile care îl favorizează. Acest fapt presupune bineînţeles un efort din partea statelor, astfel încât întreaga reglementare juridico-penală să asigure prevenirea săvârşirii faptelor periculoase[1], atât prin conformare, cât şi prin constrângere faţă de cei care săvârşesc astfel de fapte.

Datorită creşterii dimensiunilor infracţionalităţii, comunitatea internaţională a dezvoltat instrumente utile în scopul prevenirii şi combaterii eficiente a acestui fenomen. În acest sens menţionăm următoarele instrumente juridice internaţionale care au ca scop indisponibilizarea bunurilor provenite din săvârşirea infracţiunilor:

1.1 Convenţia Consiliului Europei privind spălarea, descoperirea, sechestrarea şi confiscarea produselor infracţiunii[2]

Scopul adoptării prezentei Convenţii a fost acela de a facilita cooperarea internaţională în ceea ce priveşte asistarea investigaţiilor, percheziţia, sechestrarea şi confiscarea produsului infracţiunilor, în special în cazul infracţiunilor grave privind traficul de droguri, traficul de arme, terorismul, traficul de minori, precum şi alte infracţiuni care generează profituri mari.

[1] Maria Zolyneac, *Drept penal. Partea generală*, vol. III, Editura Fundaţiei „Chemarea", Iaşi, 1993, p. 803

[2] Convenţia a fost adoptată la Strasbourg la 8 noiembrie 1990 (document disponibil online în www.coe.ro) şi a fost ratificată de România prin Legea nr. 263 din 15 mai 2002 pentru ratificarea Convenţiei Europene privind spălarea, descoperirea, sechestrarea şi confiscarea produselor infracţiunii, publicată în M. Of. nr. 353 din 28 mai 2002.

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1.2. Convenţia Consiliului Europei privind spălarea, descoperirea, sechestrarea, confiscarea produselor infracţiunii şi finanţarea terorismului[3]

Ca urmare a faptului că prin dispoziţiile Convenţiei din 1990 nu au fost rezolvate o serie de probleme, cu necesitate s-a impus adoptarea unor dispoziţii care să corespundă evoluţiei tehnicilor moderne de spălare a banilor care au apărut în sectorul nebancar şi folosesc intermediari profesionişti pentru investirea produsului infracţiunilor în economia legitimă. În acest sens, au fost adoptate măsuri legislative în scopul indisponibilizării fondurilor teroriştilor prin adoptarea de proceduri specifice identificării rapide a conturilor bancare, care să permită accesul rapid la informaţiile financiare referitoare la organizaţiile criminale, incluzând grupările teroriste şi de crimă organizată, în scopul dispunerii măsurilor preventive şi represive care să combată fenomenul infracţional. În acest scop a fost adoptată o nouă Convenţie, care prin dispoziţiile sale să prevină şi să combată mult mai eficient operaţiunile de spălare a banilor şi finanţarea terorismului.

1.3. Decizia-cadru 2005/212/JAI a Consiliului privind confiscarea produselor, a instrumentelor şi a bunurilor având legătură cu infracţiunea[4]

Adoptarea Deciziei-cadru nr. 2005/212/JAI privind confiscarea produselor, instrumentelor şi altor bunuri aflate în legătură cu criminalitatea, s-a realizat de către Consiliul Uniunii Europene, ca urmare a faptului că instrumentele juridice existente în materia confiscării nu au contribuit în mod suficient la asigurarea unei cooperări transfrontaliere eficace şi că un număr de state membre nu erau încă în măsură să confişte în mod eficient produsele infracţiunilor[5]. În acest scop, conform alin. (5) din preambulul Deciziei s-a recomandat statelor membre ca în considerarea celor mai bune practici în materia confiscării produselor infracţiunilor şi cu respectarea corespunzătoare a principiilor fundamentale de drept, să adopte norme juridice de drept penal, civil sau fiscal, care să conducă la reducerea sarcinii probei în ceea ce priveşte sursa bunurilor deţinute de o persoană condamnată pentru o infracţiune ce are legătură cu criminalitatea organizată.

[3]Convenţia Consiliului Europei privind spălarea, descoperirea, sechestrarea, confiscarea produselor infracţiunii şi finanţarea terorismului a fost adoptată la Varşovia la 16 mai 2005 (document disponibil online în www.coe.ro), ratificată de România prin Legea nr. 420/2006 pentru ratificarea Convenţiei Consiliului Europei privind spălarea, descoperirea, sechestrarea, confiscarea produselor infracţiunii şi finanţarea terorismului, publicată în M. Of. nr. 968 din 4 decembrie 2006.

[4] Publicată în JO L 68 din 15 martie 2005, p. 49, document disponibil online în www.europa.eu

[5] Expunere de motive la Legea nr. 63/2012 pentru modificarea şi completarea Codului penal al României şi a Legii nr. 286/2009 privind Codul penal.

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1.4.Decizia-cadru 2006/783/JAI privind aplicarea principiului recunoaşterii reciproce a dispoziţiilor de confiscare[6]

În cuprinsul acestei decizii-cadru se regăsesc regulile potrivit cărora statele membre trebuie să recunoască şi să execute pe propriul teritoriu un ordin de confiscare emis de o instanţă competentă a unui alt stat membru în cadrul procesului penal, în scopul facilita cooperarea între statele membre în baza principiului recunoaşterii reciproce şi executării imediate a hotărârilor judecătoreşti.

1.5. Decizia 2007/845/JAI a Consiliului Uniunii Europene privind cooperarea dintre oficiile de recuperare a creanţelor din statele membre în domeniul urmăririi şi identificării produselor provenite din săvârşirea de infracţiuni sau a altor bunuri având legătură cu infracţiunile[7]

Prin dispoziţiile art. 1 alin. (1) al Deciziei s-a prevăzut obligaţia fiecărui stat membru de a înfiinţa sau de a desemna un oficiu naţional de recuperare a creanţelor, în scopul de a facilita urmărirea şi identificarea produselor provenite din săvârşirea de infracţiuni şi a altor bunuri care au legătură cu infracţiunile şi care ar putea face obiectul unei dispoziţii de blocare, sechestrare sau confiscare, emise de autoritatea judiciară competentă, în cursul procesului penal prin dispoziţia expresă a organelor judiciare. De asemenea, se recomandă ca între oficiul de recuperare a creanţelor din cadrul fiecărui stat membru să existe o cooperare strânsă cu o altă autoritate însărcinată să faciliteze urmărirea şi identificarea produselor provenite din săvârşirea de infracţiuni, precum şi cu alte oficii de recuperare a creanţelor dintr-un alt stat membru în scopul prevăzut la art. 1 alin. (1) al acestei Decizii.

1.6. Directiva 2014/42/UE a Parlamentului European şi a Consiliului privind îngheţarea şi confiscarea instrumentelor şi produselor infracţiunilor săvârşite în Uniunea Europeană[8]

Directiva răspunde contextului economic actual care este caracterizat în prezent de criza financiară şi pe cale de consecinţă de încetinirea creşterii, fapt care generează posibilitatea săvârşirii unor noi infracţiuni transfrontaliere de către grupările de crimă organizată, infracţiuni care creează profituri considerabile din trafic de droguri, trafic de fiinţe umane, trafic ilicit de arme, corupţie.

Directiva se întemeiază pe prevederile art. 82 alin. (2) şi articolul 83 alin. (1) din TFUE, astfel că atribuirea de competenţe privind confiscarea şi recuperarea activelor s-a modificat ca urmare a

[6] Publicată în JO L 328 din 24 noiembrie 2006, p. 59-78, document disponibil online în www.europa.eu
[7] Publicată în JO L 332 din 18 decembrie 2007, document disponibil online în www.europa.eu
[8] Publicată în JO L 127 din 29.04.2014, p. 39, document disponibil online în www.europa.eu

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intrării în vigoare a Tratatului de la Lisabona, propunerea menţinând art. 2, 4 şi 5 din Decizia-cadru 2005/212/JAI.

Astfel, în materia confiscării bunurilor, potrivit dispoziţiilor art. 4 alin. (1) din Directivă se recomandă ca statele membre să adopte măsurile necesare care să permită confiscarea totală sau parţială a instrumentelor şi a produselor sau a bunurilor a căror valoare corespunde unor astfel de instrumente sau produse, cu condiţia să existe o condamnare definitivă pentru o infracţiune.

2. Instrumente juridice interne în materia sechestrării, confiscării şi valorificării produselor provenite din săvârşirea de infracţiuni

Vor fi supuse confiscării speciale, conform prevederilor art. 112 C. pen., bunurile produse prin săvârşirea faptei prevăzute de legea penală; bunurile care au fost folosite, în orice mod, sau destinate a fi folosite la săvârşirea unei fapte prevăzute de legea penală, dacă sunt ale făptuitorului sau dacă, aparţinând altei persoane, aceasta a cunoscut scopul folosirii lor; bunurile folosite, imediat după săvârşirea faptei, pentru a asigura scăparea făptuitorului sau păstrarea folosului ori a produsului obţinut, dacă sunt ale făptuitorului sau dacă, aparţinând altei persoane, aceasta a cunoscut scopul folosirii lor; bunurile care au fost date pentru a determina săvârşirea unei fapte prevăzute de legea penală sau pentru a răsplăti pe făptuitor; bunurile dobândite prin săvârşirea faptei prevăzute de legea penală, dacă nu sunt restituite persoanei vătămate şi în măsura în care nu servesc la despăgubirea acesteia; bunurile a căror deţinere este interzisă de legea penală.

De asemenea, alături de bunurile enumerate mai sus, vor putea fi supuse confiscării şi alte bunuri în cazul în care persoana este condamnată pentru comiterea uneia dintre infracţiunile prevăzute la art. 112^1 alin. (1) lit. a)-q)[9] C. pen., dacă fapta este susceptibilă să îi procure un folos material şi pedeapsa prevăzută de lege este închisoarea de 4 ani sau mai mare.

[9] Art. 112^1 din C. pen. - Sunt supuse confiscării şi alte bunuri decât cele menţionate la art. 112, în cazul în care persoana este condamnată pentru comiterea uneia dintre următoarele infracţiuni, dacă fapta este susceptibilă să îi procure un folos material şi pedeapsa prevăzută de lege este închisoarea de 4 ani sau mai mare: a) infracţiuni privind traficul de droguri şi de precursori;b) infracţiuni privind traficul şi exploatarea persoanelor vulnerabile;c) infracţiuni privind frontiera de stat a României;d) infracţiunea de spălare a banilor;e) infracţiuni din legislaţia privind prevenirea şi combaterea pornografiei;f) infracţiuni din legislaţia privind combaterea terorismului;g) constituirea unui grup infracţional organizat;h) infracţiuni contra patrimoniului;i) nerespectarea regimului armelor, muniţiilor, materialelor nucleare şi al materiilor explozive;j) falsificarea de monede, timbre sau de alte valori; k) divulgarea secretului economic, concurenţa neloială, nerespectarea dispoziţiilor privind operaţii de import sau export, deturnarea de fonduri, infracţiuni privind regimul importului şi al exportului, precum şi al introducerii şi scoaterii din ţară de deşeuri şi reziduuri;l) infracţiuni privind jocurile de noroc;m) infracţiuni de corupţie, infracţiunile asimilate acestora, precum şi infracţiunile împotriva intereselor financiare ale Uniunii Europene; n) infracţiuni de evaziune fiscală;o) infracţiuni privind regimul vamal;p) infracţiuni de fraudă comise prin sisteme informatice şi mijloace de plată electronice;q) traficul de organe, ţesuturi sau celule de origine umană.

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Menţionăm, în acest sens, necorelarea dispoziţiilor legii penale cu cea procesual penală în materia confiscării speciale a bunurilor, aşa cum prevăd dispoziţiile art. 112 şi 112[1] din C. pen. cu dispoziţiile art. 574 din C. proc. pen., care fac referire la ,,lucrurile confiscate".

În vederea confiscării speciale sau extinse a acestor categorii de bunuri se pot dispune măsurile asigurătorii. Categoriile de măsuri procesual penale ce pot fi dispuse în cursul procesului penal au fost clasificate în funcţie de anumite criterii: valoarea socială asupra căreia se îndreaptă, persoana împotriva căreia se pot lua, faza procesuală în care pot fi dispuse, scopul special urmărit prin luarea lor, organul judiciar care le dispune şi modul în care sunt reglementate în lege[10].

Măsurile asigurătorii sunt măsuri procesuale cu caracter real care constau în indisponibilizarea bunurilor mobile şi imobile ale suspectului, inculpatului sau părţii responsabile civilmente în vederea confiscării speciale, a reparării pagubei produse prin infracţiune, precum şi pentru garantarea executării pedepsei amenzii[11].

Aceste măsuri au un caracter asigurător, nu şi reparator[12], fiind dispuse prin hotărâre judecătorească în vederea reparării pagubei, obligând pe inculpat sau partea responsabilă civilmente la acoperirea prejudiciului. De altfel, dispunerea acestor măsuri asigurătorii se face pentru a evita ascunderea, distrugerea, înstrăinarea sau sustragerea de la urmărire a bunurilor care pot forma obiectul confiscării speciale sau extinse sau care pot servi la garantarea executării pedepsei amenzii sau a cheltuielilor judiciare ori a reparării pagubei produse prin infracţiune.

Din analiza reglementărilor procedurii de luare a măsurii asigurătorii rezultă că sechestrul penal se poate realiza în una din următoarele forme: sechestrul penal propriu-zis; notarea sau înscrierea ipotecară şi poprirea, aceste măsuri fiind modalităţi ale sechestrului judiciar, deosebindu-se însă după natura bunurilor asupra cărora sunt dispuse. Astfel, bunurile asupra cărora sunt instituite măsuri asigurătorii sunt indisponibilizate, în sensul că persoana care le are în proprietate pierde atributul dispoziţiei, iar când bunurile sechestrate trebuie ridicate în mod obligatoriu, atunci acea persoană pierde şi folosinţa acelui bun.

3. Procedura de valorificare a bunurilor indisponibilizate

Constatându-se că durata procedurilor judiciare nu permite valorificarea cu celeritate a bunurilor intrate în proprietatea statului ori că anumite bunuri faţă de care s-a dispus măsura confiscării ori sechestrul îşi pierd din valoare odată cu trecerea timpului prin deprecierea valorică şi morală a bunurilor indisponibilizate, făcând ca deţinătorii acestora să suporte costuri importante generate

[10] Ion Neagu, *Tratat de procedură penală. Partea generală*, ediţia a II-a, Editura Universul Juridic, Bucureşti, 2010, p. 541

[11] Anca Lelia Lorincz, *Drept procesual penal*, ediţia a III-a, Editura Universul Juridic, Bucureşti, 2011, p. 257

[12] Ion Neagu, Mircea Damaschin, *Tratat de procedură penală. Partea generală*, ediţia a II-a, Editura Universul Juridic, Bucureşti, 2015, p. 668

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de măsurile luate pentru conservare, care de obicei nu sunt recuperate în urma valorificării[13], s-a impus modificarea şi completarea actelor normative care reglementează valorificarea bunurilor indisponibilizate.

Prin Legea nr. 28/2012 pentru modificarea şi completarea unor acte normative în vederea îmbunătăţirii activităţii de valorificare a bunurilor sechestrate sau, după caz, intrate, potrivit legii, în proprietatea statului[14], s-au adus unele modificări şi completări O.G. nr. 14/2007 pentru reglementarea modului şi a condiţiilor de valorificare a bunurilor intrate, potrivit legii, în proprietatea privată a statului[15], precum şi Codului de procedură penală anterior.

De asemenea, prin dispoziţiile art. 88 din Legea nr. 255/2013 pentru punerea în aplicare a Legii nr. 135/2010 privind Codul de procedură penală şi pentru modificarea şi completarea unor acte normative care cuprind dispoziţii procesual penale au fost aduse unele modificări şi completări dispoziţiilor art. 3 din O.G. nr. 14/2007. Nu este vorba despre modificări substanţiale, legiuitorul punând astfel în acord dispoziţiile prevăzute în art. 3 din ordonanţă cu cele ale C. proc. pen., astfel încât, în baza unei încheieri emise de către judecătorul de cameră preliminară sau a unei hotărâri judecătoreşti definitive, bunurile confiscate sau neridicate, să treacă în proprietatea privată a statului, urmând apoi a fi predate organelor de valorificare, care sunt obligate să le preia în termen de 10 zile de la data primirii de către deţinător a documentului care constituie titlu de proprietate al statului asupra acestora. O comisie formată din cinci membri (trei reprezentanţi ai organului de valorificare, un reprezentant al Autorităţii Naţionale pentru Protecţia Consumatorilor şi un reprezentant al deţinătorului bunurilor respective) va proceda la evaluarea acestora în termen de 21 de zile de la preluare.

În cazul în care se contestă în instanţă procesul-verbal prin care s-a dispus confiscarea acestor bunuri, acestea pot fi valorificate în cazul în care există riscul ca, prin trecerea timpului până la soluţionarea definitivă a litigiului, valoarea bunurilor confiscate să se diminueze semnificativ sau când măsura confiscării priveşte bunuri a căror depozitare, întreţinere sau conservare necesită cheltuieli disproporţionate în raport cu valoarea bunului.

Conform prevederilor art. 10 din O. G. nr. 14/2007, veniturile încasate din valorificarea bunurilor se varsă la bugetul de stat, după deducerea cheltuielilor efectuate conform prevederilor legale în

[13] Expunere de motive la Legea nr. 28/2012, document disponibil online în www.cdep.ro
[14] Publicată în M. Of. nr. 189 din 22 martie 2012.
[15] O.G. nr. 14/2007 pentru reglementarea modului şi a condiţiilor de valorificare a bunurilor intrate, potrivit legii, în proprietatea privată a statului, publicată în M. Of. nr. 82 din 2 februarie 2007. Menţionăm şi dispoziţiile H.G. nr. 731 din 4 iulie 2007 privind aprobarea Normelor metodologice de aplicare a O.G. nr. 14/2007 pentru reglementarea modului şi condiţiilor de valorificare a bunurilor intrate, potrivit legii, în proprietatea privată a statului, publicată în M. Of. nr. 532 din 7 august 2007

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vigoare, precum şi a altor reţineri prevăzute prin legi speciale în cazul organelor abilitate, în termen de 5 zile lucrătoare de la încasare.

Prin dispoziţiile art. II pct. 2 din Legea nr. 28/2012 pentru modificarea şi completarea unor acte normative în vederea îmbunătăţirii activităţii de valorificare a bunurilor sechestrate sau, după caz, intrate, potrivit legii, în proprietatea privată a statului[16], au fost introduse în dispoziţiile Legii nr. 29/1968 privind Codul de procedură penală, cu modificări şi completări, art. art. 168^1–168^4, dispoziţii care au fost preluate, fără modificări semnificative, în cuprinsul Legii nr. 135/2010 privind Codul de procedură penală prin dispoziţiile art. 102 pct. 167 din Legea nr. 255/2013 pentru punerea în aplicare a Legii nr. 135/2010 privind Codul de procedură penală şi pentru modificarea şi completarea unor acte normative care cuprind dispoziţii procesual penale.

În prezent, prin dispoziţiile art. 1 din Legea nr. 318/2015 pentru înfiinţarea, organizarea şi funcţionarea Agenţiei Naţionale de Administrare a Bunurilor Indisponibilizate şi pentru modificarea şi completarea unor acte normative[17]

se înfiinţează Agenţia Naţională de Administrare a Bunurilor Indisponibilizate, denumită în continuare Agenţia, instituţie publică de interes naţional cu personalitate juridică, în subordinea Ministerului Justiţiei. Dispoziţiile prezentei legi creează cadrul juridic necesar reglementării valorificării bunurilor indisponibilizate provenite din săvârşirea de infracţiuni, căci dacă până în prezent activitatea de valorificare a acestor bunuri se realiza prin dispoziţiile O. G. nr. 14/2007 şi prin dispoziţiile H. G. nr. 731 din 4 iulie 2007, fiind vorba de bunuri de orice fel intrate, potrivit legii, în proprietatea privată a statului şi care se valorificau de către Ministerul Finanţelor Publice prin organele de valorificare abilitate, în condiţiile în care bunurile provenite din săvârşirea de infracţiuni erau valorificate tot de către Ministerul Finanţelor, după aplicarea procedurii de secestru şi confiscare potrivit dispoziţiilor în materie prevăzute în Codul de procedură penală.

Menţionăm de altfel, unele modificări intervenite şi în cuprinsul normelor care reglementează procedura de sechestru, confiscare şi de valorificare prevăzute în cuprinsul Codului de procedură penală tot prin dispoziţiile Legii nr. 318/2015.

Potrivit dispoziţiilor art. 3 din prezenta lege, Agenţia îndeplineşte următoarele funcţii: de facilitare a urmăririi şi a identificării bunurilor provenite din săvârşirea de infracţiuni şi a altor bunuri având legătură cu infracţiunile şi care ar putea face obiectul unei dispoziţii de indisponibilizare, sechestru sau confiscare emise de o autoritate judiciară competentă în cursul

[16] Publicată în M. Of. nr. 189 din 22 martie 2012
[17] Publicată în M. Of. nr. 961 din 24 decembrie 2015

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unor proceduri penale; de administrare simplă, în cazurile prevăzute de prezenta lege, a bunurilor mobile indisponibilizate în cadrul procesului penal; de valorificare, în cazurile prevăzute de lege, a bunurilor mobile sechestrate în cadrul procesului penal; de gestionare a sistemului informatic naţional integrat de evidenţă a creanţelor provenite din infracţiuni; de sprijinire, în condiţiile legii, a organelor judiciare pentru utilizarea celor mai bune practici în materia identificării şi administrării bunurilor care pot face obiectul măsurilor de indisponibilizare şi confiscare în cadrul procesului penal; de coordonare, evaluare şi monitorizare la nivel naţional a aplicării şi respectării procedurilor legale în domeniul recuperării creanţelor provenite din infracţiuni.

Menţionăm astfel cazurile speciale de valorificare a bunurilor mobile sechestrate (art. 252^1 C. pr. pen.), valorificarea bunurilor mobile sechestrate în cursul urmăririi penale (art. 252^2 C. pr. pen.), valorificarea bunurilor mobile sechestrate în cursul judecăţii (art. 252^3 C. pr. pen.) şi contestarea modului de valorificare a bunurilor mobile sechestrate (art. 252^4 C. pr. pen.). În acest sens, pentru realizarea procedurii de valorificare a bunurilor mobile sechestrate în cursul procesului penal, înainte de pronunţarea unei hotărâri definitive, se aplică dispoziţiile art. 252^1, art. 252^2, art. 252^3 şi art. 252^4 din C. proc. pen.

Modificări au survenit şi în ceea ce priveşte procedura sechestrului prevăzută prin dispoziţiile art. 252 alin. (8) C. proc. pen., astfel că sumele de bani rezultate din valorificarea bunurilor perisabile, obiectelor din metale sau pietre preţioase, mijloacelor de plată străine, titlurilor de valoare interne, obiectelor de artă şi de muzeu, colecţiilor de valoare, precum şi sumelor de bani, precum şi a bunurilor perisabile se vor depune în contul constituit potrivit legii speciale, în termen de cel mult 3 zile de la ridicarea banilor ori de la valorificarea bunurilor.

Totodată, menţionăm modificările din Codul de procedură penală cu privire la organele judiciare. Remarcăm astfel că, spre deosebire de vechea reglementare a Codului de procedură penală, în noile dispoziţii, se limitează cadrul organelor judiciare care pot dispune măsura valorificării bunurilor sechestrate în cursul procesului penal, înainte de pronunţarea unei hotărâri definitive, în funcţie de existenţa acordului proprietarului[18], precum şi realizarea corecţiei necesare cu referire strict la procuror, şi nu la organele de urmărire penală ca în vechea reglementare. În consecinţă,

[18] Potrivit art. 252^1 alin. (1) C. pr. pen. „În cursul procesului penal, înainte de pronunţarea unei hotărâri definitive, procurorul sau instanţa de judecată care a instituit sechestrul poate dispune de îndată valorificarea bunurilor mobile sechestrate, la cererea proprietarului bunurilor sau atunci când există acordul acestuia".

Potrivit art. 252^1 alin. (2) C. pr. pen. „În cursul procesului penal, înainte de pronunţarea unei hotărâri definitive, atunci când nu există acordul proprietarului, bunurile mobile asupra cărora s-a instituit sechestrul asigurător pot fi valorificate, în mod excepţional, în următoarele situaţii: a. atunci când, în termen de un an de la data instituirii sechestrului, valoarea bunurilor sechestrate s-a diminuat în mod semnificativ, respectiv cu cel puţin 40% în raport cu cea de la momentul dispunerii măsurii asigurătorii; b. atunci când există riscul expirării termenului de garanţie sau când sechestrul asigurător s-a aplicat asupra unor animale sau păsări vii; c.atunci când sechestrul asigurător s-a aplicat asupra produselor inflamabile sau petroliere; d. atunci când sechestrul asigurător s-a aplicat asupra unor bunuri a căror depozitare sau întreţinere necesită cheltuieli disproporţionate în raport cu valoarea bunului".

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pentru situaţia în care nu există acordul proprietarului pentru valorificarea bunurilor sechestrate, se instituie o nouă procedură, în care competenţa de a dispune asupra valorificării bunurilor mobile sechestrate aparţine judecătorului de drepturi şi libertăţi.

Potrivit dispoziţiilor art. 252^2 alin. (1) din C. proc. pen., în cazul în care nu există acordul proprietarului şi procurorul care a instituit sechestrul apreciază că se impune valorificarea bunurilor mobile sechestrate, în cursul urmăririi penale, îl sesizează cu propunere motivată pe judecătorul de drepturi şi libertăţi, care va fixa un termen, dar nu mai scurt de 10 zile. La termenul fixat sunt chemate părţile şi custodele bunurilor, atunci când a fost desemnat unul, participarea procurorului fiind obligatorie. Acestora li se aduce la cunoştinţă intenţia de valorificare a bunurilor mobile sechestrate, dar şi dreptul de a formula observaţii sau cereri referitoare la bunurile ce urmează a fi valorificate, lipsa părţilor legal citate nu împiedică desfăşurarea procedurii [art. 252^2 alin. (3) C. proc. pen.].

În situaţia în care s-au formulat observaţii sau cereri, după examinarea acestora, judecătorul de drepturi şi libertăţi dispune prin încheiere motivată, asupra valorificării bunurilor mobile sechestrate, încheiere care poate fi contestată ulterior de părţi, custode, procuror, dar şi de orice altă persoană interesată, la judecătorul de drepturi şi libertăţi de la instanţa ierarhic superioară, în termen de 10 zile, termen care curge de la comunicare pentru procuror, părţi sau custode, iar în cazul altor persoane interesate, termenul curge de la data când acestea au luat la cunoştinţă de încheiere. Ca urmare a caracterului urgent alprocedurii de valorificarea bunurilor mobile sechestrate, judecarea cauzei se va face de urgenţăşi cu precădere, hotărârea prin care se soluţionează contestaţia fiind definitivă [art. 252^2 alin. (7) C. proc. pen.].

În ceea ce priveşte valorificarea bunurilor mobile sechestrate în cursul judecăţii, menţionăm că nu sunt diferenţe semnificative faţă de vechea reglementare, singurul element de noutate pe care îl menţionăm este obligativitatea prezenţei procurorului, la termenul fixat de instanţa de judecată în cadrul acestei proceduri.

În legătură cu contestarea modului de aducere la îndeplinire a încheierii sau a hotărârii judecătoreşti de valorificare a bunurilor mobile sechestrate, indiferent dacă a avut loc în cursul urmăririi penale sau în cursul judecăţii, dispoziţiile art. 252^4 din C. proc. pen., prevăd pentru suspect, inculpat, parte responsabilă civilmente, custode, precum şi pentru procuror, dreptul de a formula contestaţie, în termen de 15 zile de la îndeplinirea actului contestat. Rezolvarea contestaţiei se va face de către instanţa competentă să soluţioneze cauza în primă instanţă, în regim de urgenţă şi cu precădere, în şedinţă publică, cu citarea părţilor, prin încheiere definitivă.

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Dacă însă nu s-a formulat contestaţie în cursul procesului penal, împotriva modului de aducere la îndeplinire a încheierii sau hotărârii judecătoreşti de valorificare a bunurilor mobile sechestrate, după soluţionarea definitivă a procesului penal, se poate formula contestaţie potrivit legii civile. Remarcăm astfel faptul că, după soluţionarea definitivă a procesului penal, dacă nu s-a făcut contestaţie împotriva modului de aducere la îndeplinire a încheierii sau a hotărârii judecătoreşti de valorificare a bunurilor mobile sechestrate, se mai poate face contestaţie doar potrivit legii civile.

În concluzie, apreciem efortul legiuitorului de reglementare a procedurilor de valorificare a bunurilor produse prin săvârşirea de infracţiuni şi indisponibilizate prin procedura sechestrului şi a confiscării. Iniţiativa va avea însă efectul dorit dacă organele judiciare, cât şi cele implicate în procedura de valorificare a acestei categorii de bunuri îşi vor îndeplini atribuţiile reglementate prin dispoziţiile Codului de procedură penală, cât şi prin legile speciale.

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WASTE CULTURE IN THE LOCAL COMMUNITIES OF THE BÂRGĂU VALLEY IN THE DISTRICT OF BISTRIȚA-NĂSĂUD (ROMANIA)

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Abstract. Waste and refuse culture is a set of attitudes, habits and behaviors related to excessive consumption of material resources, their transformation into useless objects or debris and the ways they are stored as well. The Bârgău Valley is an ethno-cultural region located in the east of the Bistrița-Năsăud District, which includes the following municipalities: Josenii Bârgăului, Prundu Bârgăului, Tiha Bârgăului and Bistrița Bârgăului. The hereby study approaches this phenomenon in the local communities of the area, and methodologically offers the outline of the cultural profile of the inhabitants of the area in question, the connections of the local people with the refuse management and avoiding waste, the structure of refuse and its relevance, the legal framework for prevention, collection and recycling waste and people`s habits regarding waste disposal.
Keywords: refuse and waste culture, the Bârgău Valley, waste management, environmental protection.

INTRODUCTION

According to the DEXLR, culture is the total of values both material and spiritual created by mankind and the implicit institutions necessary to pass on these values; all vestiges of material and spiritual life through which the image of a past human community is reconstructed; a series of activities and behavioral patterns typical of a given social group, conveyable through education. Within this context, waste and refuse culture is a set of attitudes, habits and behaviors related to excessive consumption of material resources, their transformation into useless objects or debris and the ways they are stored as well, either legally or illegally.

The points that define the culture of refuse and waste at the time being are as follows:

- Materialism, namely public concern for material goods (electronics, clothing, accessories, furniture, cars);

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- Consumerism, more specifically the need of acquiring more and more goods, even if not indispensable.

The hereby study aims at the phenomenon in the local communities of the Bârgău Valley in the district of Bistrița-Năsăud, outlining the cultural profile of the inhabitants of the area, the connections of the local people with the refuse management and waste avoidance, waste structure and its relevance, the legal grounds for prevention, collection and recycling of waste and the locals` habits regarding waste disposal.

METHODOLOGY

In order to do this study there were made the following steps:

First, consulting the specialty literature on issues related to culture of refuse (Rathje, 1984; Rathje, 1991; Rathje, Cullen, 1992; Smith, Moe, Letts, Paterson, 1993 Trawick, Davis, 1999; Hawkins, 2002; Evans, 2014; Brown, 2015)

Second, studying the current legislation on waste management both within the European Union and Romania (The National Strategy and The National Plan for Waste Management, The Waste Management Plan for the District of Bistrița-Năsăud);

Third, consulting some sustainable development strategies for the villages of the Bârgău Valley (The Sustainable Development Strategy of the villages of Josenii Bârgăului, of Prundu Bârgăului, Tiha Bârgăului and Bistriţa Bârgăului);

Fourth, field searches so as to locate and analyze the waste illegally stored by the local communities;

Fifth, creating and applying a questionnaire on the production and storage of the waste in local communities of the Bârgău Valley;

Sixth, consulting the specialty literature on the geographical risks involved in the area of Bârgău Mountains (Cioanca, 2013).

THE STUDY AREA

The Bârgău Valley is an ethno-cultural region located in the eastern Bistriţa-Năsăud, comprising the municipalities of Josenii Bârgăului, Prundu Bârgăului, Tiha Bârgăului and the whole Bârgău Valley (Figure 1).

The region in question is crossed by the geographical axis of Prundu Bârgăului- Bistriţa-Piatra Fântânele- the Tihuţa Pass-Vatra Dornei (DE 58), fact reflected in the intense movement of matter, information and energy flows in the area.

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The importance of this geographical axis practically emerges once with the seventeenth century when the mail coach used to pass by on its way from Sibiu to Cernăuţi, and gradually increases in the nineteenth century when the Franciscan Road (Via Regia) was being built, a road which made the connection between Transylvania and Bucovina, more specifically it linked the town of Bistriţa to the town of Suceava. Moreover, between 1915 and 1939 the gas-fuelled electric train used to cross the region from Prundu Bârgăului to Dornișoara. Today, the Bârgău Valley is crossed by DN 17 / DE58, an important communication route, linking the North-Western developing regions (Cluj-Napoca) with the North-eastern ones (Suceava, Iași).

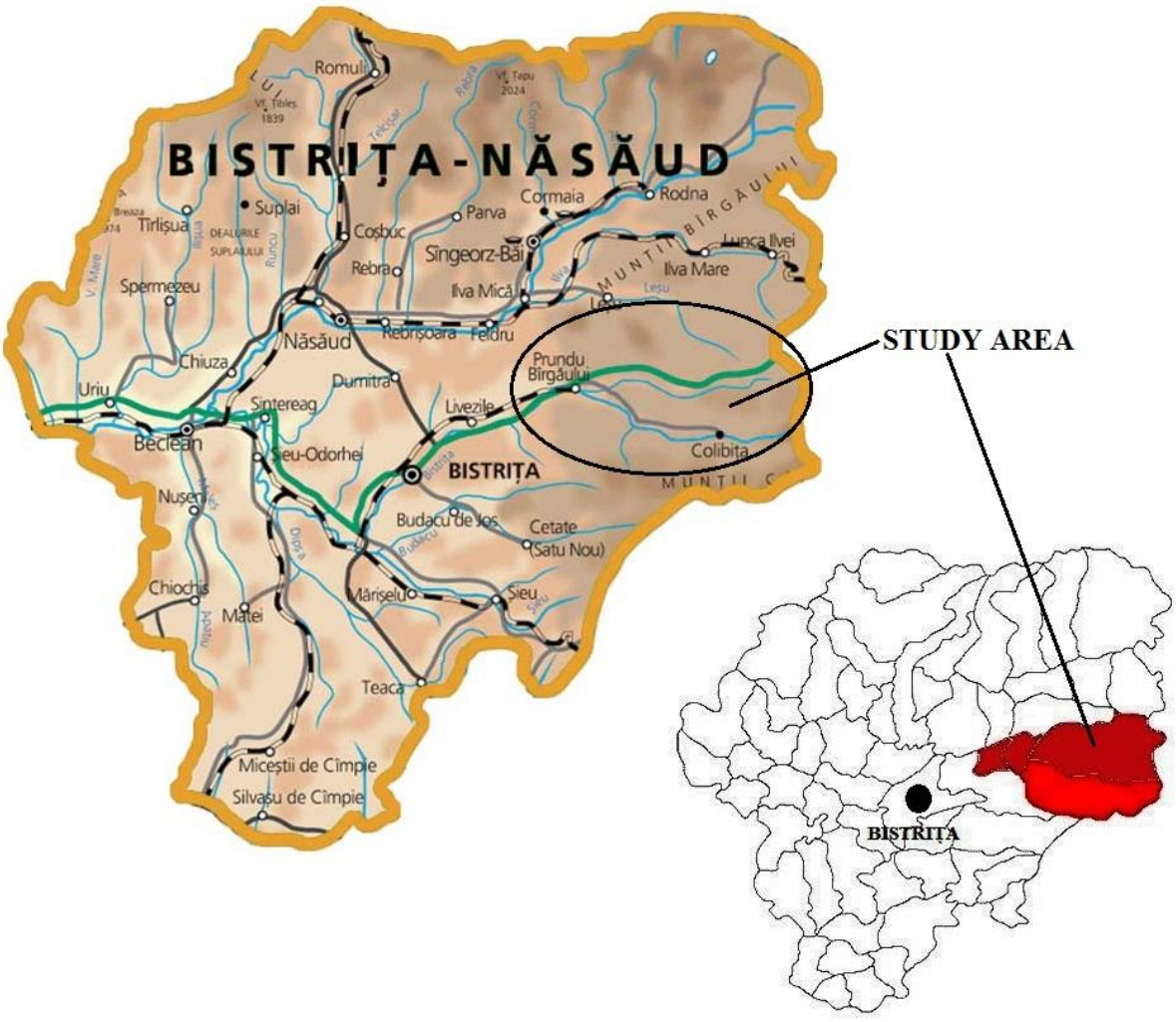

Figure1. The Bârgău Valley, geographically and administratively located within the district of Bistriţa-Năsăud

The tourist objectives of the region are as follows:

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- Bistriţa, the residence town of the district of Bistriţa -Năsăud;
-Prundu Bârgăului, the residence town of Prundu Bârgăului area (with industrial, commercial and cultural roles);
- Colibiţa, tourist attraction area;
- Piatra Fântânele, tourist attraction area.

RESULTS AND DISCUSSIONS

The cultural profile of the inhabitants of the Bârgău valley

The population of the Bârgău Valley is predominantly Romanian and is distinguishable through the following cultural features:
- 90% of the population belongs to the orthodox religion and 10% belongs to the cult of neo-protestant;
- 95% of the population has graduated from the compulsory school forms, 8/10;
- 90% of the population has access to mass media (radio, television, newspapers and the internet);
- 80% of the population deploys pastoral, agricultural and wood work activities, and 20% works in other economic branches (industry, transports, commerce).

The population`s connections with the refuse management and waste avoidance

In order to collect refuse in the villages from the Bârgău Valley, there have been signed contracts with different salubrity companies, providing each family with a waste container. On a weekly basis or every other week, these containers are picked up by the workers in charge. Because the taxes are too high, not all people conclude these contracts, thus illegally storing the waste produced in their own households, at the outskirts of villages, through forests, valleys or stream beds. This category includes not only the inhabitants of isolated areas, but also those in the centre of villages. Similarly certain schools which are not financially supported for sanitation services by municipalities carry out storing refuse in inappropriate places or they simply burn it (for instance, the Secondary School of Muresenii Bârgăului)

The sources of waste in the The Bârgău Valley

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The waste produced by the human communities in the Bârgău Valley has as sources the following:

- Housework and household: household waste (food scraps, packaging, bottles, jars and plastic bottles), metal waste, plastic and rubber refuse, textile waste etc;
- School activities: paper, plastic, textiles, food waste etc;
-Economic activities: agricultural (crop residues), industrial (metal, plastic, construction materials, sawdust, etc.), transport (worn-out car pieces, plastic or metal, oil filtres, etc.);
- Hygienic and sanitary activities: syringes, bottles, diapers, paper or paperboard packaging etc.

The waste structure in the communities of the Bârgău Valley

In order to determine the structure of waste deposited in restricted areas by the inhabitants of the villages from the Bârgău Valley, there have been completed two phases:

- making an inventory sheet of waste;
- carrying out certain surveys in several points with illegally waste

For the waste inventory sheet, there have been established the following headings:

1) Number sheet;
2) The administrative unit (village or small town) whose territory was covered by waste landfill;
3) The geographical unit where the waste landfill is: riverbed, minor slope, catchment area, forest area, grassland, pasturing meadows etc.
4) Locating the waste landfill: latitude and longitude;
5) The manner of waste disposal: areal concentrated;
6) The waste quantities: textile, metal, plastic, wood, rubber, organic, vegetable etc.

The measurements made at the points of The Lăzăroi Valley (Mureşenii Bârgăului), The Bârgău Coast (Mureşenii Bârgăului), The Prislopaş Valley (Tureac), on Doline (Prundu Bârgăului) and The Strâmbei Valley (Josenii Bârgăului) clearly showed the following structure of waste landfills (Figure 2) :

- Plastic waste (bottles, bags, boxes, bags, packaging, pipes, syringes, etc.);
- Textile waste (clothing, bedclothes, diapers);
- Food waste (bones, animal carcasses);

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- Waste resulted from home producing alcohol (alcohol husks);
- Wood waste (sawdust, slats, planks, furniture, etc.);
- Metal waste (cans, pipes, wire, electronic products and home appliances, spare parts, bodywork, wheels);
- Paper waste (cardboard boxes, bags);
- Rubber waste (tyres);
- Glass waste (glass bottles, jars, glass windows).

Figure2. Illegally deposited waste in the catchment area of the Strâmba River (the village of Josenii Bârgăului)

The legal framework on waste management locally

The main tools imposing the EU policy regarding waste management arethe National Strategy and The National Plan for Waste Management. Contrary to the previous period, this time the National Waste Management Strategy is based on reversing the priorities when tackling waste management problem. Thus, the algorithm includes: preventing, reducing waste production, reusing, recycling, energy recovery, treating and storing.

According to the Government Emergency Ordinance no. 78/2000 on waste, approved of within Law no.426/2001, the mayors of the territorial –administrative units and the authorized people on their behalf are in charge with the control of: generating, collecting, storing,

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transporting and treating household and construction waste and even implementing their management plan whereas the local councils adopt:

1) Fees under the law for various waste management services;

2) Regulations regarding the conditions and procedures for the collection, including separate collection, transport, transfer, neutralization, use and disposal of household waste.

The local councils decide, under the law, to give priority and provide some lands with a view to creating depositing areas with recovery facilities and waste disposal places for the localities. The city halls and local councils are forced to ensure the cleanliness of localities through the following:

a) Adopting an effective integrated waste management system through the waste collection, providing the conditions for the phased selective collection, the retrieval, the recovery, the neutralization, the incineration and the final landfilling;

b) Implementing and controlling the system and its function;

c) Providing equipment for the communication and transport means and the public places of waste collection with a sufficient number of containers for their separate collection;

d) Selective collection and on-time transportation of the entire quantity of waste produced on the grounds of the localities;

e) The existence of certain final repositories for the selectively collected waste appropriately sized and designed in such a way so as to protect health and the environment;

f) Banning waste depositing in places other than the deposits set by town planning documentation;

The local councils are responsible for:

- Implementing some modern systems of waste collecting, storing, transporting and processing;
- Arranging special storage places in each locality;
- Coordinating sanitation services that comprise pre-collection activities as well;
- Not only collecting, transporting and disposing of solid wastes but also pre-organizing wastes recycling.

The local public administration, through its sanitation employees, is required to introduce packaging waste resulted from the selectively collected household refuse, into a scheme in order to be later on reused by an economically authorized overtaker.

According to the Government Decision no. 621/2005 regarding packaging and wrapping waste management:

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a) The local government authorities and institutions ensure separate collection of packaging waste resulted from household refuse through the following:

1) Public sanitation services under applicable current law (Figure 3);

2) Spaces specially established and equipped by placing appropriate waste containers;

b) The local government authorities and institutions shall provide further reuse of the amounts of the selectively collected packaging waste;

c) For the homogenous application at the national level of the separate collection, the ways of labeling the containers for the different types of materials are determined according to the order of The Minister of the Environment, The Water Management Department and The Minister of Administration and Interior Affairs.

Figure3. Atypicalhome waste container for mixed refuse

The impact of illegal dumping on the environment

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Illegal waste dumping in unauthorized and inadequately established places contravene the rules of environmental protection. Besides the fact that this waste aesthetically pollutes riverbeds, forests and communal roads, they are sources for the spread of germs into waterways and air, especially when located nearby tourist sites and green spaces for picnicking (for instance, the Lăzăroi Valley in the village of Mureșenii Bârgăului), or on the adjacent roads (Strâmba in the village of Josenii Bârgăului, The Prislopaş Valley in the village of Tureac).

Even if it is stored in heaps, the wind and stray dogs contribute to their dispersion so that the light waste (like textile or plastic) spreads over a very large area. If waste is being stored in the stream beds, the river floods contribute to its dispersal along the valleys, fact which affects the water quality and the aesthetics of minor beds.

Solutions to stop illegal dumping

Stopping the phenomenon of illegal dumping is difficult, because there are not yet applicable the provisions of the Districtual Strategy on Waste Management, more specifically the establishment of some special storage places in each locality (ecological landfills). Similarly by sanitation services in the Bârgău Valley, there is collected only household waste whereas the refuse resulting from constructions is being neglected. In this respect, it is necessary the establishment of some fenced perimeters for the waste to be stored in, later on being able to be ground on the spot with a mobile breaker with transporting band and be used for the local unpaved roads to be repaired and reconditioned.

Analyzing the locally sustainable development strategies within each locality, there was found that they do not offer concrete solutions for the waste management in the community but they come up only with issues of principle, such as:

- Applying the policies of preservation, prevention and modern technologies in order to minimize the pollution and the environment development;
- Making sustainable projects for pollution prevention;
- Making a partnership with all the parties involved so as to maintain the environment unpolluted;

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- Promoting some economic activities with minimal environmental impact and cleaning up the existing ones;
- Deploying an efficient waste management and generating unconventional energy

The best solutions to eradicate this phenomenon harmful to the environment would be the following:

- Establishing ecological landfills for waste disposal within each human community;
- Applying severe sanctions to the people who deposit waste illegally.

As regards the latter case, there is another problem related to the supervision of suspicious areas which may become illegal landfills and another problem would be the personnel involved to carry out this surveillance (the local police, and the environmental protection officers in charge with the surveillance, etc.).

The actors involved in stopping illegal dumping are: the citizens, the mayors and municipal councils of the localities, The Districtual Council and the Environment Guard of Bistriţa-Năsăud.

CONCLUSIONS

Due to its geographical position of the Bârgău Valley, the local human communities have access to all social, economic and cultural changes in the Romanian society. As such, the consumption of food, agricultural and industrial products (textiles, footwear, electronics, cars, etc.) is very high, fact which causes high production of waste. Similarly, large amounts of refuse are provided by raising constructions (rubble, construction materials, etc.).

Household waste collection occurs under the contracts of sanitation which the locals may conclude. From the data provided by SC Vitalia SA, a sanitation company operating in the region, only 70% of the population from the Bârgău Valley possesses sanitation contracts, the rest of them illegally dumping waste (resulting from housework, constructions, etc.).

The storage of waste in unauthorized and inappropriate places has the following causes:

- Relatively high fees;
- The habit of landfilling at random;
- The lack of an ecological education: the locals have not grown the habits of environmental protection;
- The lack of local landfills for waste disposal.

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The structure of the waste quantities analyzed within this study highlights the following aspects of economic and cultural profile of the inhabitants of the Bârgău Valley:

- The permanent emancipation of the population;
- The access to all types of products on the market:
- A varied consumption;
- Openness to new and diversified products;
- The development of constructions.

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***Planul Județean pentru Gestionarea Deșeurilor Bistrița-Năsăud

***Strategia Națională și Planul Național de Gestionare a Deșeurilor 2014-2020

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THE IMPORTANCE OF EFFECTIVE COMMUNICATION IN EDUCATIONAL PROJECTS-INTERDISCIPLINARY APPROACH

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Abstract: Applying the effective communication in carrying out the interdisciplinary educational projects by educational partners, involved in the initial training of agronomy students for the teaching profession, is very important due to the way in which they communicate puts a mark on results.

It is known that: everyone involved in education (manager, teacher, student, pupil, parent) has its own style of communication formed by education, beliefs, personal skills, but it does not automatically ensure effective communication. It is therefore necessary the permanent acquisition of knowledge, skills, abilities achieved through permanent exercise in inter-personal communication.

To ensure the success of interdisciplinary educational projects at UASVM, we pay special attention to how that occurs between educational partners involved at each stage of design, the implementation of activities, and the feedback. Thus, we noticed it is important to pay attention to the demands related to this issue demands that are more important, as the strategy for the implementation of a project requires constant communication within project teams and between teams and communities school. Therefore we found that effective communication creatively stimulates the students involved in the project through the development of critical thinking, helping them to: decision making, self-organization and self-evaluation of individual resources, adopt a positive attitude towards formation of the cognitive interdisciplinary and trans-disciplinary abilities.

Keywords: communication, educational projects, interdisciplinary approach, cognitive capabilities, educational partners.

Communication was founded in the last decades due to the large volume of information and the need to teach people to communicate effectively. Etymologically, the word communication comes from the Latin word *comunnis* and means to reconcile, to be connected, to be in relationship with another person. However, the term also means to transmit something to someone. Communication has a high educational potential due to: the transmission of knowledge, training and facilitating the operations of intellectual thought, self-regulation of intellectual activity, transmitting the codes characteristic to each scientific discipline, thus being created a relationship of interdependence between communication and education. Communication aims at discovering the personality, a better understanding of human relationships and has already proven that it is an art to communicate effectively.

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The components of communicative competence

According to Canale and Swain (2006, Wikipedia) the communicative competence has four components:

• grammatical competence: it refers to grammar rules and words of a language;

• social-linguistic competence: this refers to aspects of social adequacy of language content;

• discursive competence: it refers to the cohesion and coherence necessary communicative act in a given context;

• Strategic competence: this requires proper use of all communication strategies in relation to the context of communication.

The didactic communication due to language teaching and interdisciplinary specific teacher used for teaching specialized agronomic and educational projects, has specific characteristics such as:

• accuracy and expressiveness, but also clarity and conciseness to enable the transfer of knowledge, and understanding of the message sent

• information transmitted must be adapted to the goal, didactic objectives and the intellectual level of learners

• presentation and transmission of knowledge has forms differentiated by audience (pupils / students) which they are intended

• using an intelligible and adequate teaching language based on expressive and persuasive communication

• transmission of the content in an attractive, nuanced, reasoned and understandable manner, using the whole methodical, logistical and scientific arsenal to realize an attractive exposure and rooted in social reality which prepares the pupils / students, that will turn conformism into participation and activism.

The didactic interdisciplinary communication is done both between teacher and pupils/ students and between pupils/ students and teacher, pupils/ students and pupils/ students, making it a multilateral one. A genuine interdisciplinary teaching communication is where the difference in status cannot be noticed, the teacher of specialized didactics makes the pupil / student to feel valued because it is treated on equal footing, becoming educational partners, because through the act of communication not only transmits and receives information but also it can develop interdisciplinary skills, abilities. The didactic interdisciplinary communication must comply with

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certain laws, certain rules imposed by any learning activity for classical teaching, but it can also be achieved through educational projects with students of agronomic specialization:

• it is necessary that both educational partners: both teacher and pupil / student to use the same language;

• teacher should play an active role, be the one who determines the student to engage in the interdisciplinary educational communication act;

• teaching communication must be structured in such a way as to lead to the understanding of the things transmitted;

• Communication must be centred on the objectives that are to be achieved within the educational project through interdisciplinary approach;

• teacher must take into account the wishes, aspirations and motivations of his pupils/ students;

• communication must be structured in such a way as to allow additions, changes, adaptations of the message sent.

Therefore, the activity of communication of the teacher of specialized agronomic didactics entails in terms of teaching effectively and expressively with educational partners:

• inform understandably and facilitate the easy understanding of the message sent;

• develop thinking, affection, motivation, will and personality of pupils/ students;

• apprehend and be aware of the reactions, attitudes and behaviour of learners;

• persuade those who communicate (pupils / students).

Interpersonal communication has grown into an essential goal of this new century. The failure or success of didactic communication largely depends on the personality of the teacher of agronomic specialized didactics must master not only the basic theoretical and practical notions from an interdisciplinary point of view, but also must demonstrate pedagogical tact.

In carrying out educational projects, the specific factors favouring a genuine interdisciplinary teaching communication are:

- ✓ **climate education** - when the atmosphere is relaxed, agronomy pupils / students can express themselves freely, can be natural, can achieve exchanges of views, ideas between them, leading thus to the discovery of new knowledge, new points view, thus the tackled interdisciplinary topic having high chances to be fully analyzed.

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- ✓ **relationships teacher-pupils/ students**. The democratic relations established between educational partners fosters communication, the pupil / student being considered to be the subject of interdisciplinary educational activities, participating in their own training; the information is transmitted to the teacher and the entire group conducting the educational project. In this respect the teacher treats pupils / students as mature people, as equals giving them the opportunity to communicate the information in a interdisciplinary manner that they have gathered from various sources, thus contributing to the educational projects .
- ✓ **methods of transmitting information**. Teachers who, in their teaching activity and in the implementation of educational projects use participatory and active methods based on accessing the interdisciplinary information transmitted and received, continually try to obtain feedback on educational projects.
- ✓ **way of reporting the information content**. The teacher is interested in the easy understanding of what is transmitted, allowing information exchanges between pupils/ students, tackling the interdisciplinary information from different perspectives. The interventions of pupils/ students with the aim of enriching the interdisciplinary knowledge, or its treating from a different perspective from that of the teacher, but equally effective lead to the success of the educational project.
- ✓ **conception of the role it holds in the educational process**. For the success of educational projects it is good that the teacher be a mediator between pupils / students and the interdisciplinary information to be sent, not a depository of knowledge, thus training the students in the act of educational communication and properties of information, determining them to discover new insights and meanings. In the teaching interdisciplinary communication, the teacher must be an animator, to succeed to activate pupils / students and train them constantly, trying to encourage students / students to be actively involved in interdisciplinary communication and to establish social relations among them.

The **feed-back** represents an important point of the didactic communication, serving to adjust when a situation requires. It is very important that the teacher of agronomic specialized didactics should apprehend the reactions of its pupils/ students to the information transmitted and

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adjust the communication for these reactions not to exist, in order not to compromise the teaching – learning process.

The feedback is very important in fulfilling the educational projects and has a regulatory feature, both of the activities of the teacher and the activity of agronomy pupils / students, but also on what they have managed to learn during the educational project respectively. It is based on a syllabus of didactic activity from the interdisciplinary point of view, considering the following aspects: objectives for the activity and how it will work and the results that will be obtained, the resources that the teacher has at hand (time, materials etc.), but also interdisciplinary educational environment in which he/she operates.

The study of the technical subjects in an interdisciplinary context involves transferring methods from one discipline to another, looking for common themes among several disciplines that can lead to the achievement of learning high-level skills and of transversal competences to students. It aims at: increasing the capacity of communication, teamwork, problem solving ability, ability of taking the right decisions on problems for the carrying out of educational projects. The ultimate goal is to develop the ability to transfer purchases from educational plan to everyday life on the real problems imposed by the current education based on a knowledge society.

Conclusion

It is recommended the expansion of inter-knowledge activities between teacher and student, as well as the increase of interpersonal contacts in extracurricular activities and social environment;

- It is required:
- Creativity and intellectual curiosity at pupils and students, of receptivity to new, various perspectives offered by real life;
- expansion of inter-knowledge activities between teacher and student and increasing the interpersonal contacts in extracurricular activities and social environment;
- modern methods of making students active in conducting interdisciplinary teaching act in order to foster good didactic communication
- development of critical thinking, self-criticism, self-evaluation at students;

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- Increased quality of pedagogical practices, by fostering interdisciplinary and teamwork (students, teachers).
- adjustment of agronomy teachers to the characteristics of new generations of pupils/ students is an essential requirement for optimizing networking;
- social responsibility, educational partners involved in educational projects.

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APPROACHES ON THE INSOLVENCY OF ECONOMIC AGENTS

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Abstract: For a good manager, the knowledge and especially the interpretation of financial and accounting statements must form the basis of forecasting and proposal of further strategies depending on the company's wellbeing. The manager has to identify and manage the threats that would prevent achieving the targets. The hardships of a company are identified by certain indicators, and if they are not identified in advance, the state of difficulty can be exacerbated by the manager's slow and late response. He is the one who plays a major role in pointing out the difficulties and also in the recovery of such adverse situations. Entry into insolvency is a dynamic process, determined both by the hardships occurred inside the company and the transactions conducted with third parties (suppliers, customers). This paperwork tries to show which are the reasons that cause the insolvency of a commercial company.

Keywords: insolvency, bankruptcy, asset, manager, risk, reorganization,

INTRODUCTION

Analysing the sources and actions that determine a company failure leads to a general idea on what caused this condition.

Through such an analysis it is indicated that there is a certain pattern in a company's evolution, a model that relates primarily to management inadequates and the inability of managers to collect timely critical information in the company he leads.

Delay or mismatch of recovery actions performed based on the critical needs of a company will cause its collapse. The failure or bankruptcy of a company is not defined clearly by the literature.

What is the failure of an enterprise, how it is produced and what are the consequences of its occurrence are elements about which there is still not a perfect agreement between the various

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disciplines involved. For this state of organizations have been used different terms such as the organization leaving the market, organizational collapse, bankruptcy or decline.

MATERIAL AND METHODS

Our approach aims studying the state of insolvency. The research was focused on literature review. For the case study it was conducted a data analysis ofthe financial statements in order to detect the occurrence of insolvency due to both objective and subjective factors.

RESULTS AND DISCUTIONS

According to The Law Dictionary, insolvency can be defined as: the inability/lack of means to pay the debt on due date during normal activity; relative condition in which a person has available its assets as immediate/liquid, but are not enough to cover the debt. It can also be defined by a cash flow test that measures if the liquidities and cash equivalents are sufficient to cover the debts.

Achieving a balance between supply and demand in a market economy makes some traders win and others lose. Losing in business is a normal risk, usually assumed by any merchant.

But when the losses for the trader become too high, the problem is in assuming responsibility before other aspects of the company be damaged due to negative results.

Facing this reality, trade legislation through collective proceedings, tried finding the most appropriate means to reduce the influences of losses on creditors as much as possible.

Over the past years, there was a tendency to amend the legislation in many European states regarding insolvency proceedings. This trend has resulted in some cases in adopting new legislation.

Countries like Germany, France, Great Britain or Finland have adopted laws and codes oriented on reorganization, emulating US law.

This procedure aims not to liquidate potentially viable companies, but to keep them operational. An effective insolvency proceeding is defined by its ability to reorganize companies in difficulty.

Reorganization is rare in cases of insolvency in Europe compared to the United States. Reforms in the European states, made in an attempt to boost reorganizations, had no significant

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effects. The main reason is that the management of European companies is often dismissed or it resorts to having an external manager to take the lead.

Given the primary motivation to reform the bankruptcy proceedings, to encourage entrepreneurship, it should be understood that entrepreneurs and creditors may get better results by reorganization than through bankruptcy.

However, reorganization was often criticized, some authors claiming that firms unable to obtain results should not be saved because the costs of a lengthy reorganization are high.

In a developed economy, a plus might be obtained by selling the assets of a company. On the other hand, in times of economic crisis the prices obtained in such a procedure are quite low. A company will exit the trade environment through bankruptcy or voluntary liquidation by its ability to pay debts and honor contracts.

Across the European Union it has been and still is trying the standardization and harmonization of legislation by creating a European legislation.

The cultural differences between Member States do not allow the issuance of a single law which is applicable in all countries. However, to this end, the European Union issue regulations that each state may or may not implement by amending their laws and incorporate information in European norms.

German insolvency code prior to the 1994 amendment provided a great control power to creditors holding secured claims, which generates a major trend toward liquidation of companies. These creditors could easily come in possession of the goods that were secured claims, which quickly led them to liquidation.

The changes to the German law adopted in 1994 involve measures in favor of the debtor company's existence and continuity. The opportunity of secured creditors to dispose assets became limited. Although adopted in 1994, provisions have been implemented with the start of year 1999. After 1999 Germany insolvency declaration could be made for the imminent insolvency also. However, compared to other countries, German insolvency application may be filed in the case of over-indebtedness.

Aiming to promote opening of insolvency proceedings in due time, the German law offers companies (those over-indebted or in imminent insolvency and apply voluntarily for a process of insolvency) a "protective shield" represented by a period of up to three months in which to prepare a restructuring plan before the actual start of insolvency proceedings.

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The German insolvency law is continually criticized, not just nationally. Critics of the regulations exist from foreign specialists, who often make comparisons with countries like Great Britain or the United States, especially on the possibility for creditors to convert their claims into capital.

Austria has regulated insolvency based on the German model. In these two countries the first payed creditors are the guaranteed ones.

Another characteristic of the German legislation is that, during the course of the proceedings, the company management is not changed, considering this as a beneficial feature for the continuation of the company. It is believed that the managers already have information and knowledge about the company in general and about its financial situation and keeping them makes them to take a more cautious attitude.

The uniqueness of insolvency regulations in France is given by the involvement of the judicial authorities throughout the procedure. Consequently, they do not favor completely the debtor, but do not offer advanced protection to creditors either. However, more than in other countries, insolvency laws in France involves rescuing bankrupt companies in order to protect the employees.

Diminishing turnover, increasing debt and increasing the share of financial costs are the main characteristics of French companies that go bankrupt and the most affected sector by this phenomenon is the production one.

However, even while the number of bankrupt companies grow from year to year, the level of entrepreneurship represented by new firms rate increases at the same time in France.

French origin legislations are in effect also in Italy, Spain, Portugal, Belgium and the Netherlands. Unlike France, in all these countries the primarily secured are creditors, to whom the claims are covered.

Spain has opted for an insolvency system orientated towards the debtor. However, secured creditors enjoy some protection. The 2003 reform, as in Germany, made it possible to trigger the proceeeding in case of imminent insolvency.

In the Netherlands resolving the financial difficulties of a company can be done in two formal ways: suspension of payments applied in order to reorganize the company and the insolvency proceedure, used mainly for liquidation. Since the hold option is not well implemented in the Dutch system, it is not often used.

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Of course there is the possibility of an informal restructuring, when the company reaches an agreement with its creditors without going through various legal formalities. Typically, the bank which is proposing such a procedure often has a major role in financing.

Sweden and Denmark have, as well as Finnish legislation, Scandinavian origins. In Finland there are two legislative rules governing the procedures in the event of financial difficulties.

In Sweden is implemented the confiscation of goods at the request of prohibition suppliers or creditors or the prohibition of an entrepreneur to carry on commercial activities when it is guilty of bankruptcy company.

Danish Bankruptcy Act is based on the following fundamental principles:

- Transfer of control of the company by creditors or by an external manager;
- Equality among creditors (however, differences in priorities from paying exist).

In Italy were made in 2012 significant legislative changes regarding VAT, sales regime and leasing, as well as those regarding bankruptcy by introducing changes to the current procedure, in particular in relation to the possibility of negotiating in times of crisis in order to save the company.

These amendments concern an agreement that can be achieved with creditors (the arrangement). Once completed the procedures for this process, the debtor company may seek funding to enable paying the debts to key suppliers and thus continuing work.

Central and Eastern European countries are countries with a developing economy that try to copy the models of developed countries in order to adapt to economic changes. Therefore, the regulations of these states were formed by reference to the law of other countries. We can showAs the Romanian legislation as an example, which is based on the French model, or the Polish system which is based on the German insolvency legislation.

However, there are still elements of insolvency that do not discuss emerging regulations, and the state was too involved in introducing exceptions or special rules in the procedure.

In Bulgaria, the Czech Republic and Slovakia, the insolvency proceedure applies only to commercial companies. Insolvency process is most often caused by the lack of liquidity.

However, some national laws add other criteria that may lead to the opening of a proceedure.

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To properly treat the phenomenon, Hungary issued several laws that govern bankruptcy and liquidation, accounting and registrating these processes at the same time. The Law of bankruptcy and liquidation proceedings, the Law of Companies, the Act of public information about companies, of involved court proceedings and liquidation of insolvent companies, the accounting Law and the Regulation of accounting regarding the liquidation are regulations that apply in situations of bankrupt companies.

According to the legislation, if no agreement was reached between the debtor and creditors, the company will be liquidated.

Insolvency law in the Czech Republic entered into effect on January 1st, 2008. It introduced two new ways to resolve the inability to pay debts: a reorganization of companies and debt cancellation for personal insolvency case.

Romanian insolvency regulations aim thoe legal issues of this procedure which has a number of features which we will develop below. Given that in recent years the number of companies that have gone into insolvency rose

The case study was conducted at the company ROMCARM PROD DISTRIBUTION LLC which has as main activity the production, processing and preserving of meat and meat products.

In order to establish the causes that led to a state of insolvency (shortage of funds available to pay outstanding debts), the official receiver has conducted research on several levels, which relate to financial performance and patrimonial situation.

Analysis of profit and loss account has the role to present, in a summary form, the financial performance of the work undertaken by the company in the period under review.The operating activity is of utmost importance in the analysis based on the profit and loss account.

Turnover from the structural point of view was supported almost exclusively from sales of meat. Operating expenses represent the total expenditures of the analyzed company's activity.

The main operating expenses that the company recorded during the current activity were: meat processing expenses, personnel expenses, salary contributions.

Being on a downward trend over the analyzed period of income and expenditure indicators show deficiencies on the management level (turnover increases but also a strong growth of debt is registered).

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The first step in analyzing the financial position it is the overall picture of the balance situation of the heritage in which are highlighted developments and structural changes in assets, liabilities and equity based on the information provided by the financial situation of the last three years.

Claims are amounts receivable from various debtors. Claims have the highest share in the total current assets of the year 2013 and follow a strong upward trajectory and are represented mainly by receivables from customers and customers in dispute.

At the present moment, the most significant receivables are from the sale of goods.

Treasury follows a strong descending trajectory at the level of year 2012, falling by about 50%, clearly indicating a lack of permanent liquidity needed to repay the due debts and completing the started investments, hence a limited level of business activityThe treasury becomes unbalanced with threats of overdrafts and monetary imbalances.

Upward evolution of total assets over the period is determined both by developments in current assets and fluctuationof fixed assets, consisting of alternating periods of increases and decreases from year to year.

Shareholders' equities are negative in the year 2013 with a special mark on earnings. Retained earnings are the result of previous years whose division was deferred by the associates. During the period under review, the result of the activity represents the difference between income and expenses, which is unfavorable.

The company recorded an increase in turnover, but at the same time, a significant increase in leverage by not collecting the receivables, which led the company ROMCARM PROD DISTRIBUTION LLC, in the medium term, defaulted.

During 2013, the company was significantly affected on the market by changes produced along withe the global recession, recording operating losses and accumulatingstruggling debts.

Guaranteed tax liabilities recorded a considerable value in the analyzed period, and are composed of VAT, payroll tax, income tax, revenues from fines, VAT interest and penalties, health insurance contributions, work accidents, unemployment compensations, guarantee fund, employer health, leaves and indemnities.

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CONCLUSIONS

When it comes to when the insolvency started, as it is defined in Law 85/2006: "the state of the debtor's assets, characterized by the evident failure of payment of the debt due to the amounts of money available", we appreciate that this has occurred since 2013, due to the fact the society did not collect receivables, which led to a state of insolvency.

The causes that led to the insolvency, based on the accounting documents available to the public receiver, we have established that the ROMCARM PROD DISTRIBUTION LLC has failed to achieve its objectives since it lacked a medium and long term business plan; this condition lead to deficiencies in the company's management, which were embodied in the medium term. Thus, while the indebtedness generated considerable costs, and return on the one hand and non-recovery of receivables on the other hand led irreversibly to an insolvent state. Lack of available liquidities and affected irreversibly the company's ability to meet its obligations for payment. To sum up, the main causes that led to the insolvency are obviously poor business management, business that was backed mainly by commercial loans contracted with third parties, such as leasing companies.

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EXISTENCE IN THIS WORLD

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Abstract: Existence in this world is only possible in this form; the permanent sacred aspect of space, its complete devotion in this dimension. The only condition for it to funcion is our dimention, the only chance earth has to communicate with the heavens. Othwerwise, the Cosmos would be crippled. The sacred is our wholeness it is the assurance of time and place of our space, it is life itself and its fertility. The sacred is a tale, it is always the same tale. The universe has lost its sacred aspect and we are now helpless and feeling sorry for ourselves. We are not ourselves though we seem to be.

Keywords: existence, our dimension, devotion, world, possible

Această lucrare de cercetare își propune o analiză completă a fenomenului demistificării, a mitului obligat să îl poarte în coordonatele sale. Un fenomen amplu care merită studiat comparativ cu celelalte tentative și reușite occidentale pentru a fi înțeles, pentru a fi anulate controversele menite să inducă în eroare memoria și realitatea unei națiuni. Nu numai acum ci pe totdeauna. De vreo douăzeci și ceva de ani - din cauza unui decalaj cultural dintre România și Occident (decalaj vizibil după 1989 consecință a acelui regim comunist și a tot ce i-a succedat) există o influență a unei mode, a unui apel al așa-zișilor intelectuali, experți autodeclarați susținuți de propriile echipe sau grupuri de interese oculte. Atât de pricepuți în a anula în mentalul colectiv tot ceea ce ar putea fi elementul său coagulant. O denigrare a științei, a raționalității, a filosofiei, a cinematografiei, a culturii, a mediului nostru creator de fond cultural autentic românesc - această unicitate identitar românească prin tradiție, prin sincronism, prin raportul său cu lumea pe care a creat-o, pe care o creează într-un plan real dar neluat în seamă de acești prigonitori-experți.

O lucrare care grație unei burse de cercetare în Italia, a unui acces constant la biblioteci prețioase ar putea demonta multe din aceste acte nedrepte pentru memoria și identitatea unei națiuni. O lucrare care pornind de la realitatea mitului ar putea echilibra printr-o complexă documentare raportul dintre demistificare și idealizare, fenomene pe cât de nocive, pe atât de influente într-o lume imprevizibilă precum cea a secolului 21.

Printre așa-zisele victorii ale epocii comuniste în România s-a numărat și aceea a creării „omului nou" – un hibrid căruia nu trebuia să-i lipsească niciuna dintre calitățile eroului de tip comunist-internaționalist (adică să fie egalitarist, antiimperialist, exponent al luptei de clasă, leal în mod absolut partidului), calități cărora ideologii regimului ceaușist le-au adăugat coordonata națională și protocronistă, menită să asimileze comunismul în istoria veche și nouă a poporului român. Evident că un naționalism demagogic și concurențial mai mult își alunga adepții decât să-i adune, și de fapt comunismul n-a reușit să-i păcălească pe români profitând de onestul lor

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patriotism. De aici a decurs însă o formă suplimentară de vulnerabilizare a sufletului românesc, pentru care noțiunile și principiile, mai ales cele vizând identitatea națională, deveneau pentru el tot mai difuze.
Se vorbește în mod curent că evenimentele din 1989 au fost un act de anulare a unui regim, prin urmare de câștigare a drepturilor, a libertăților și a unei bunăstări cuvenite, dar mult mai rar se focalizează spre o altă coordonată nu mai puțin importantă: românii au vrut să-și redobândească identitatea. O realitate care provoacă în continuare convulsii într-o societate ce trăiește printr-un decalaj cultural, existențial în raport cu lumea, cu ea însăși, cu neșansa ei de a se accepta valoric. De vreme ce nu putem vorbi după atâta timp de o psihanaliză a comunismului, de o preocupare anume pentru multiculturalism, de recunoaștere valorică individuală, de identificare a noțiunii de lider *vs.* șef, de un raport corect între egoism și rațiune, de vreme ce nu putem vorbi deschis despre toate acestea și multe altele înseamnă că identitar pierdem lupta cu noi înșine. Omul nou nu există, există doar acțiuni contrare comportamentului real social.
Această lucrare își propune elucidarea cauzelor ce afectează lumea noastră în detrimentul a ceea ce ar trebui să fie.

Existența mitului

Secolul 21 este un secol ce nu trebuie izolat, analizat disparat, dus spre un viitor incert, optimist sau pesimist, așteptat sau anticipat.
Acest secol, ca și predecesoarele sale, nu-și poate fi propria cauză sau fireasca consecință, căci istoria e însăși cheia a tot ce poate fi supus ei. Potrivit analizelor unor specialiști ai acestui domeniu, precum Reinhart Koselleck, dominantă ar fi nu doar „repetabilitatea pe fondul intangibilității", ci însăși legătura dintre istorie și limbă. Ea a putut influența relațiile sociale, gândirea, politicul, religiosul, fenomenul uman în toate datele sale. Istoria este o „voce". Depinde pe ce tonalitate poate fi interpretată, însă oricât de diferit ar fi abordată, ea rămâne o voce.
Secolul 21 este și el consecința istoriei și ceva mai mult decât acest lucru, fără a anula nimic datorându-i foarte mult. Acest secol este și istoria omului de început, prins în deplinătatea conștienței transcendentului, este și istoria omului actual, prins în vâltoarea propriei sale istorii derulată pe un fundal politic, social, religios, mistic, fundamentalist, etic, estetic etc. A uitat el ceva din ceea ce purta omul de început în pașii săi spre Dumnezeu? Să sperăm că nu, căci, genetic, ființa umană este purtătoare de divin, de nostalgia timpului mitic, una din căile sale de împăcare cu ea însăși. Ființa umană nu a uitat de mit. L-a înlocuit cu altceva un timp, l-a ignorat tot atât, însă în secolul 21 mitul se reîntoarce în istoria prezentă a ființei umane implorând-o să țină seama de el.
Ce puncte de reper, ce forme îl pot susține moral în rămășițele zilei trăite, în întâlnirea cu întunericul, în succesul sau insuccesul său sau în posibile forme de abandon?
Omul actual este tot atât de sărac, pe cât e de înzestrat cu bunuri materiale. El își trăiește „sărăcia" într-o mare angoasă, sperând că nu va fi decât ceva trecător. Astfel, el devine un trecător prin propria sa viață, ignorându-și șansele ce ar putea anula acest lucru. Mitul este și poate fi una dintre ele.
Cred fundamental în mit ca realitate a acestui secol și a tot ce i-a premers, cred în gestul omenirii de a se reîntoarce la ceea ce este arhetipal definitoriu. Realitatea mitului revendicat poate fi „răsplătită" prin libertatea atât de des invocată, însă atât de repede anulată de constrângerile societății indiferent de natura ei. Libertatea este indestructibil legată de viață. Este viața însăși. Și

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atunci, dacă una din căile de a ajunge la noi poate fi mitul, întreb, deloc retoric, de ce ne este distrasă atenția, de ce este invocată și impusă o altă lume în numele mitului? O lume mistificată, căutată, cercetată voit în a fi anulat tot ceea ce este arhetipal definitoriu uman, identitar. Nedreaptă situație după un regim totalitar ce a încătușat România timp de cincizeci de ani. O anomalie a vieții însăși menită să inducă mentalul colectiv într-o realitate searbădă, schematică, ostilă valorii. Măreția unei națiuni este definită în primul rând de valoarea oferită de numărul indivizilor capabili să o construiască, de cei care definesc elitele iubitoare de autenticul lumii căreia îi aparțin.

Karl R. Popper era convins că așa cum „gânditorul la modă este un prizonier al modei sale, expertul este un prizonier al specializării sale" de aici decurgând, prin urmare, libertatea faţă de modele intelectuale şi faţă de specializările ce fac posibile ştiinţa şi raţionalitatea, ce fac posibilă cultura unei națiuni. Anomalia lumii românești de după 1989 este cauzată și de aceste expertize ce aparțin atât „gânditorului la modă" cât și celor care fără a fi experți au reușit să amprenteze mentalul nostru colectiv. Consecința nu poate fi decât una, și anume privarea de libertate. Libertatea de gândire, de decizie, de asumare, etc. Toate acestea au făcut ca modelele intelectuale să dispară, să fie ignorate, specializările să fie de cele mai multe ori de formă, știința și raționalitatea ei ridiculizată, ca, în final, cultura română să devină un schelet în dulapul celor care au provocat toate acestea.

Demistificarea

Procesul demistificării este un fapt ce s-a impus în societatea românească după 1989 într-un mod special. Acel timp părea să fie cel mai potrivit pentru restabilirea adevărului istoric atât de contorsionat în regimul comunist. Înțeles în variante diferite, chiar contradictorii, acest adevăr a impus atitudini pe măsură, valabile și astăzi. Istoria se cerea imperios revendicată în anii '90 la fel de imperios ca și acum, în anul de grație 2016. Dacă atunci acest adevăr incita interesul, acum el pare de mult prăfuit, neinteresant pentru generațiile care vor veni. Societatea românească poate fi așezată în datele ei printr-un sistem de gândire, o cultură a prezentului ce se poate descurca fără trecut căci gradul de mitizare a istoriei poate provoca atitudini naționale nefaste pentru o uniune ce se dorește într-un parteneriat european și nu numai.
„Sub aparenţa unui naţionalism demagogic, am fost rupţi de lume şi învrăjbiţi sistematic între noi, adevăratele valori naţionale fiind falsificate, ascunse, distruse" – este un fragment din apelul istoricilor români semnat de un grup de istorici în acel decembrie 89.[1] Demistificarea în acele momente părea a fi acceptată unanim de către acest grup de istorici (și nu numai) ce aparțineau unor centre universitare importante și care, mai mult decât atât, condamnau discreditarea disciplinei lor în anii de regim comunist. Falsificarea programată a istoriei însemna falsificarea la fel de programată a tot ceea ce națiunea română putea fi în esența ei.
Așadar, falsurile de toate felurile puteau fi îndreptate și lumea toată, lumea noastră, în toate ale ei, revendicată.

[1]*Apel al istoricilor români*, 24 decembrie 1989, Printre semnatari, istorici ai antichităţii (MD Pippidi, P. Alexandrescu), medievişti (D. Prodan, S. Jako, Ş. Papacostea, Andrei Pippidi, Şt. Andreescu, Şt. S. Gorovei) contemporaneişti (V. Moisuc), sociologi ai istoriei (HH Stahl), sau istorici ai culturii (Al Zub, P Teodor).

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Revenind la demistificare, unanimatatea gesturilor şi atitudinilor promise păreau neclintite în punerea în drepturi a adevărului. Însă, România, după cincizeci de ani de regim comunist, nu-şi putea aroga dreptul de a fi în acelaşi pas cu Occidentul, cu lumea întreagă în privinţa curentelor de opinii şi de atitudine. Din cauza acestui decalaj cultural, existenţial, social, politic, un curent important (în istoriografia occidentală el a stârnit controverse şi modificări de percepţie, mai cu seamă în deceniul şapte şi opt) a fost preluat cu întârziere şi (ca întotdeauna „într-un moment nepotrivit") concomitent cu alte transformări majore din societate. Este vorba de acel interes şi acea preocupare pentru mentalul colectiv, pentru reprezentările sociale consacrate de revista *Annales d'histoire économique et sociale,* fondată în 1929 de Lucien Febvre şi Marc Bloch. Este vorba şi de contribuţia unor personalităţi precum Fernand Braudel, J. Le Goff, G. Duby, R. Mandrou, M. Vovelle, H. Dyserinck, R. Chartier, Walter Ong care s-au ocupat de istoria propriu-zisă sau de istoria culturii. Ei au marcat o „democratizare" a câmpului cercetării, prin privilegierea mentalităţii şi imaginarului. Acest curent, care pătrunsese chiar şi în Uniunea Sovietică în anii optzeci, nu a avut condiţiile de a se transforma într-o modă culturală, decât după 1989, când a fost îmbrăţişat ca o notă de modernizare a istoriografiei.

Era firesc ca şi istoriografia românească să adopte această perspectivă prin reprezentanţii săi. De la istoria mentalităţilor până la istoria recentă, de la perioada interbelică până la studiul regimului comunist, totul a fost provocare pentru istoricii români definindu-se rolul lor în societate. Însă acestor intenţii asumate s-a adăugat şi un nou curent (influenţat de tendinţele europene şi nu numai) preocupat de istoria orală, de identitatea europeană, de evenimente controversate, de *talk-show-uri* interminabile, de senzaţional. Mediul intelectual devenit permisiv a reuşit să acorde credit şi celor care au profitat de această conjunctură pentru a anula în mentalul colectiv memoria naţiunii române prin atacul vădit al identităţii sale culturale.

Lucian Boia este istoricul care a impus într-un fel anume procesul de demitizare în ultimul deceniu. Cu o perseverenţă remarcabilă, Lucian Boia debutează în raportul său cu mitul printr-un examen critic al comunismului atrăgând admiraţia publicului cititor, al mediului intelectual, în genere. Însă Boia nu se opreşte aici, el continuă să supună examenului său critic aproape tot ce ţine de mentalul colectiv al românilor. De la mitologia comunistă, analizată prin prisma scientismului secolului XIX, la mitologia naţionalismului, la mitul democraţiei şi aşteptările milenariste, totul este analizat şi disecat fără reţineri. Cărţile sale s-au răspândit ca o undă de şoc, mai cu seamă în rândul celor ce nu aparţineau strict breslei istoricilor, stârnind de la nedumerire, la admiraţie sau contestare violentă.

Lucian Boia pare a avea calităţile unui istoric, însă din păcate nu este. Un istoric are cultul autenticităţii documentate, este un cavaler al realităţii pe care o cunoaşte ca nimeni altul, este un neostoit apărător al cetăţii, este real prin faptele sale, este iubitor al neamului din care face parte iar deciziile, ele îi aparţin. Nu scrie la comanda unuia dintre prigonitorii-experţi iar grupurile din care face parte sunt la fel de autentice ca şi vocaţia sa pentru istorie. Istoria nu doar se scrie apărată de documente, ea se trăieşte prin ceea ce este în contextul deplin al existenţei sale, a ceea se respiră prin ea.

„*De ce este România altfel*?" - un titlu interesant al unei cărţi ce se vrea un discurs istoriografic, cu implicaţii şi explicaţii sociologice. Se vrea mai mult decât atât şi dacă stilul este concis, cronologic datele părând convingătoare, tainele românismului nostru dezlegate prin „demitizările" ce se ţin lanţ, cărţile lui L. Boia nu depăşesc statul unui besteller. Ca să fim corecţi în analiza noastră, cartea sa poate fi un besteseller istoric, adică o lucrare părtinitoare, subiectiv înţeleasă, fără a avea adevărul istoric, documentat drept obiectiv.

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În societatea românească supusă încă unui decalaj cultural, ştiinţific, în raport nu numai cu Occidentul, e firesc conformismul luat drept atitudine subtilă. Prin urmare, astfel de accidente editoriale devin evenimente-reper iar autorii, susţinătorii acestora nu pot fi în concepţia lor decât reprezentanţii elitelor. Dovada cea mai vie nu poate fi decât numărul ediţiilor cărţilor lui Lucian Boia, publicate de Editura Humanitas. Dovada că nu publicul cititor este atât de interesat de astfel de lucrări, cât editorul care impune această opţiune a sa transformând-o în eveniment editorial iar pe autor în salvatorul naţiunii.
Poate o modalitate directă, scriitoricească - brutală pe alocuri, autosuficientă, condimentată ironic, epurată de rigorile şi complexitatea unui limbaj ştiinţific - ce aparţine lui Boia, poate ea, alăturată unei atitudini de pervertire culturală să devină etalon al rescrierii istoriei noastre?
Profesorul Ioan Aurel Pop în cartea sa „*Istoria, adevărul şi miturile"*– apărută (iată!) într-o singură ediţie la Editura Enciclopedică în anul 2002 - aplică o critică necruţătoare aproape fiecărui rând din cartea lui Lucian Boia. Acesta este demascat ca inconsecvent în raţionamentele sale, paradoxal de cele mai multe ori. Profesorul Pop aduce în discuţie un aspect extrem de interesant: în 1976 Lucian Boia a scris un amplu articol în care afirmă exact opusul celor spuse în cartea „*Istorie şi mit înconştiinţa românească*". Apare astfel întrebarea când a spus ceea ce credea cu adevărat Lucian Boia: în 1976 sau în 1997? Şi ce îl califică pe Lucian Boia să îi destituie pe toţi istoricii români din perioada comunistă pentru exact aceleaşi fapte de care el însuşi se face vinovat (adică una a spus în perioada comunistă, alta după aceasta)?
Cert este că volumul profesorului Ioan-Aurel Pop nu a beneficiat de aceeaşi avalanşă de reeditări de care a beneficiat cel al lui Lucian Boia. Mai mult, nu ştiu ca Lucian Boia să fi răspuns vreodată criticii extrem de întemeiate aduse *sine ira et studio* de profesorul Ioan-Aurel Pop.
Cartea lui Lucian Boia a lansat în societatea românească o teză teribil de nocivă: „*istoria românilor? nu există dom'le! am fost nişte pădureţi călcaţi pe cap de primii veniţi, n-au existat nici un fel de victorii, au fost toate inventate de comunişti!"*

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YIN & YANG IN PROMOTING WINEVS THE FEMALE CONSUMER

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Abstract: Wine, in all of its textures and aromas, is known to be uplifting, delightful, graceful, appealing and exclusive. There are substantial reasons why this ancient drink is especially connected with one's feelings. Women want to drink less but better, without endangering their health, favoring a wine-happy approach in exceptional and festive occasions. But which wines do women prefer?
Emphasizing the art of attracting and keeping customers that bring profit, also known as marketing, the authors try through this study to identify which is women's behavior toward the product wine and which characteristics influence their decision making process, by following the next five steps: identifying wine products, information research, alternatives assessing, purchase decision and their behavior after purchasing.

Keywords: wine marketing, consumer behavior, information, education, communication

INTRODUCTION

According to The National Vineyard Growers and Wine Producers Association (PNVV), Romania produces over 4 million hectoliters of wine annually and wine consumption is of 25 liters per capita. Since there are not enough studies on the Romanian wine market, further research is needed. Wine growers together with inbound marketing teams have to find the optimum strategy to attract visitors, convert leads, close and delight customers.

Romanian winegrowers need to establish proper and successful marketing strategies, especially when dealing with the female gender. It is a known fact that wine drinkers have different preferences and knowing the key information will help increasing sales.

Through our study we intended to find out which are the female consumers' requests and significant characteristics when it comes to buying a bottle of wine.

Those who benefit the most from our study are the marketers, yet indirectly, the local economy could be affected in a positive way.

Our survey was conducted on female wine drinkers in Iaşi city (Romania) with ages ranging from 18 to 60 years old.

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What female wine drinkers dislike is as important as their preferences. Winegrowers would be able to focus only on what local wine buyers prefer and, thus, stop spending money on disliked characteristics. The wine industry is growing and local wineries need to find ways to survive and become strong. An improved wine and marketing strategy can be appealing and increase the demand for it.

MATERIAL AND METHODS

The primary data was collected via online survey, which had 95 kindly responses. The online tool Survey Monkey provided feedback. This amount is sufficient to represent Iasi District. The layout consisted of 10 questions which show the criterias female consumers use when purchasing wine.

We targeted females of legal age who have consumed wine in the past year.

RESULTS AND DISCUTIONS

The first question pointed out that all categories are similarly important (Fig. 1). These categories are label appearance, price, brand name, varietal-type and origin of wine, food pairing and alcohol level. The responses ranged on a scale of four: not important, less important, important and very important.

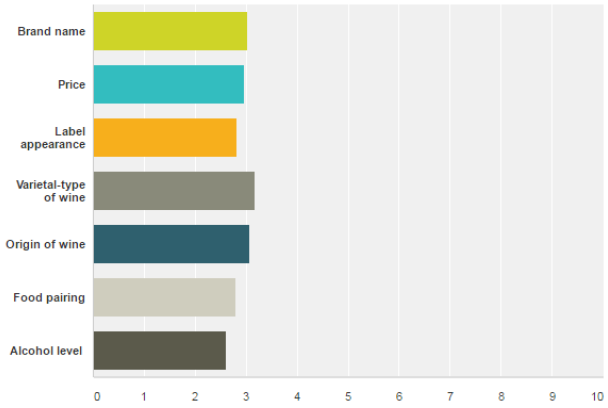

Fig. 1 – How important is the following information when purchasing wine?

The second question asked the respondents how often they drink a certain varietal-type of wine. Again, the responses ranged on a scale of four: do not drink, drink rarely, drink regularly and drink very frequently. Only 19.23% to 25% of female consumers drink regularly each

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varietal-type of wine (Fig. 2). Merlot, Pinot Noir and Cabernet Sauvignon are the most frequently drunk varietal- types of wine.

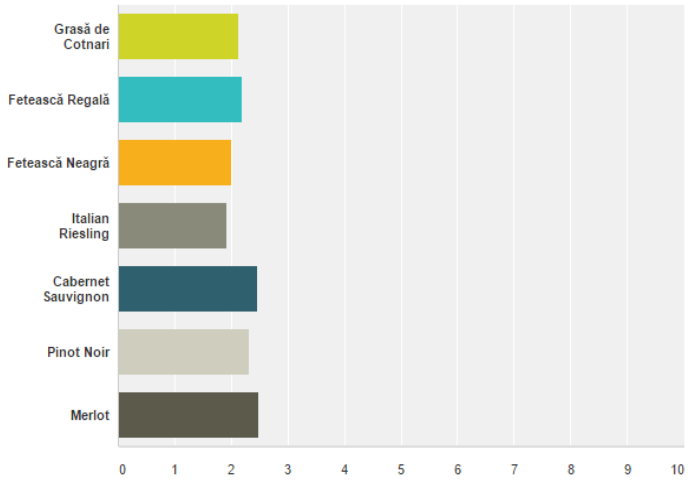

Fig. 2 – How often do you drink each varietal type of wine?

The third question asked which kind of wine the consumers prefer. Red wine is definetly more preferred, being chosen by almost 65% of the respondents (Fig. 3).

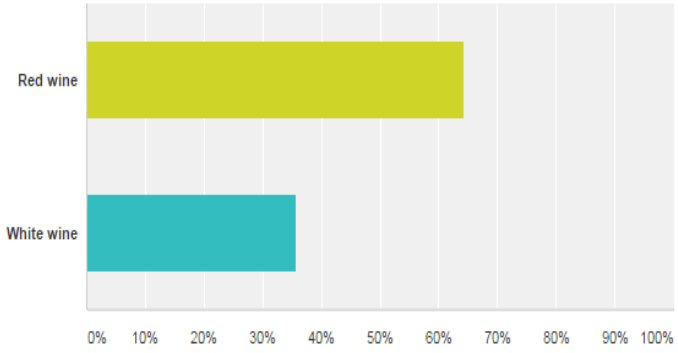

Fig. 3 – Between red and white wine, which one do you prefer to drink more?

Question number four wanted to find out which is the kind of wime women prefer between bone dry, dry, semi-sweet, sweet or all together.

Obviously, the most preferred kind (Fig. 4) is semi-sweet (48%), followed by sweet (24%) and dry (11%). Bone dry (7%) is less consumed by women

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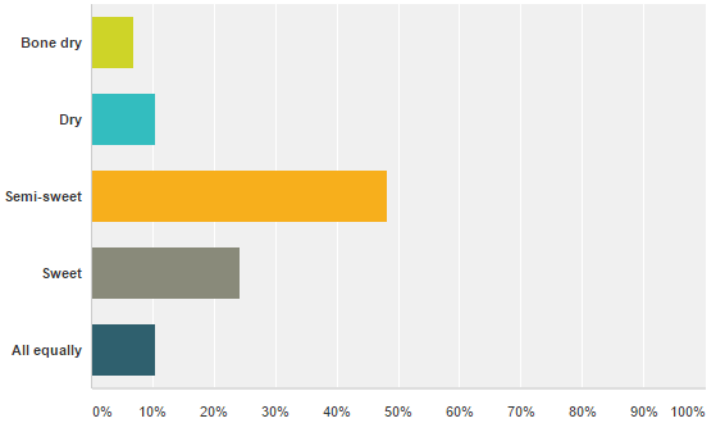

Fig. 4 – What kind of wine do you prefer?

The fifth question had the role of finding out how much wine do female consumers buy each month. Results showed that almost 80% buy between 1 and 3 bottles of wine (Fig. 5). None of the respondends buy more than 10/month

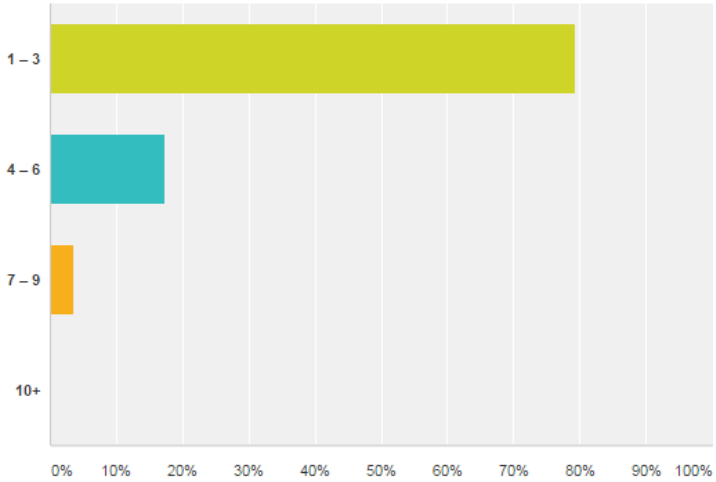

Fig. 5 – On average how many bottles of wine do you buy per month?

Question number 6 asked the female wine consumers what winegrower they know best. The first two most popular romanian wine brands (Fig. 6) are Cotnari (48%) and Murfatlar Romania (30%). Others are Bucium Iasi, Jidvei, Pietroasele, Purcari, Recas, Odobesti and Domeniul Segarcea.

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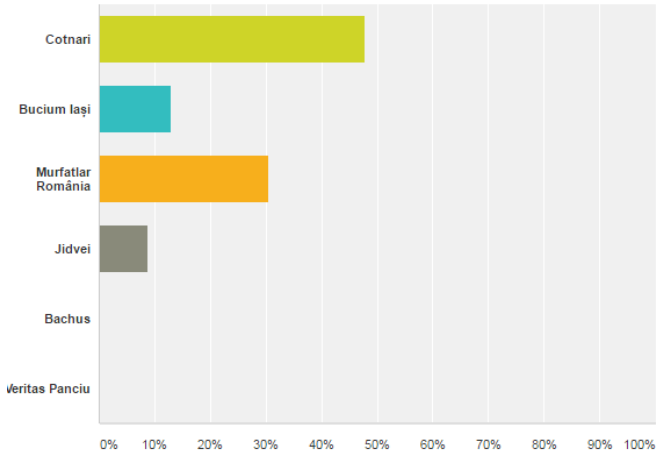

Fig. 6 – When thinking of wine, which winegrower comes first to your mind?

The next question brought to light what is important for the female consumer when they decide in buying a certain brand. Responses ranged on a scale of four: not important, less important, important and very important. They rely most on the wine's repute (Fig. 7), but also friends' recommendations are important. Less important is advertising.

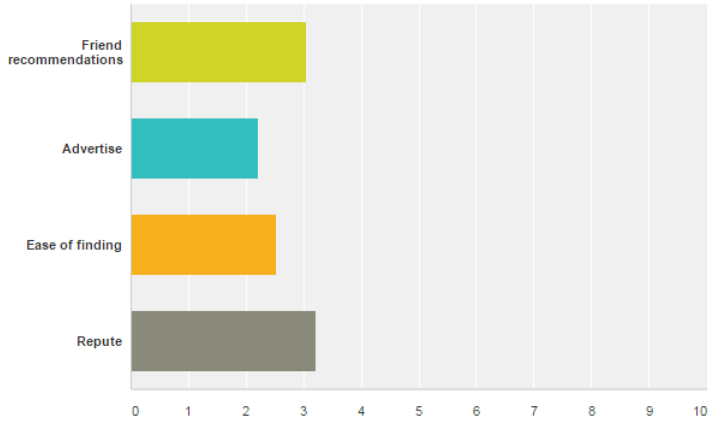

Fig. 7 – When choosing a wine brand, how important are the followings?

The eighth question is of great significance for wine marketers as well. It helps them in having a clear image where women purchase wine from. Results show that most female consumers go to hypermarkets (83%) when performing the action of buying wine (Fig. 8)

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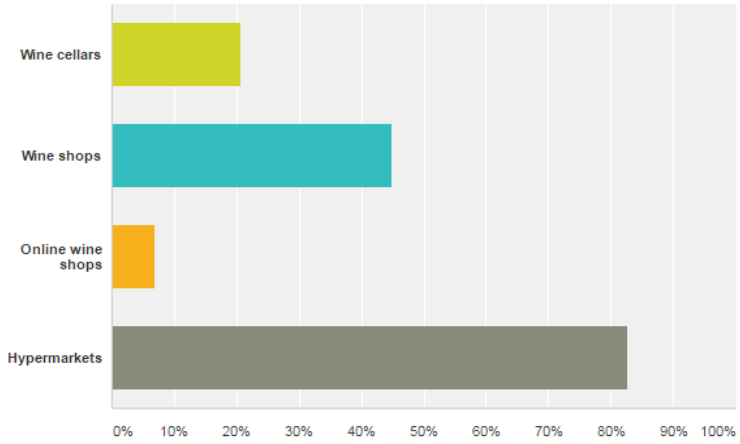

Fig. 8 – Where do you usually purchase wine from?

Question number nine helped us in having an idea how old female wine drinkers are. The age options were offered in five ranges. Most of the consumers are in the young age range (Fig. 9). This survey was taken by the same number of women between 18 – 25 years old and 25 – 30 years old which represents 41.38%. Similarly it goes for the following two age ranges, each responded by 6.90% of the total number of responses

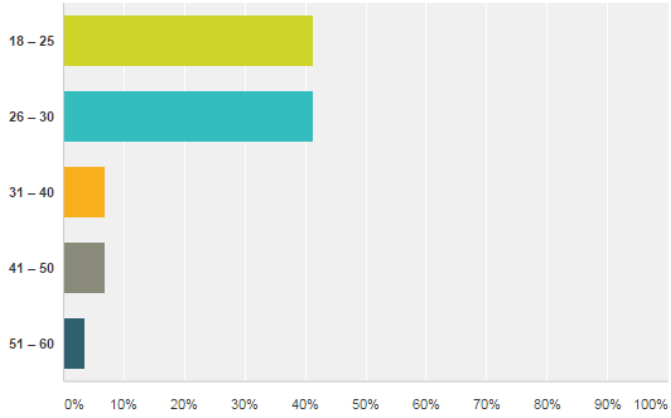

Fig. 9 – Which of the following ranges describes your age?

The last question asked the respondents what their monthly household income is. The options started at 0.00 lei to over 4500 lei and were divided into five ranges. Over 27% of respondeds have an income of 0 – 1500 lei, which is the same figure for range 1501 – 2500 lei. Almost 21% of respondeds have the income of over 4500 lei.

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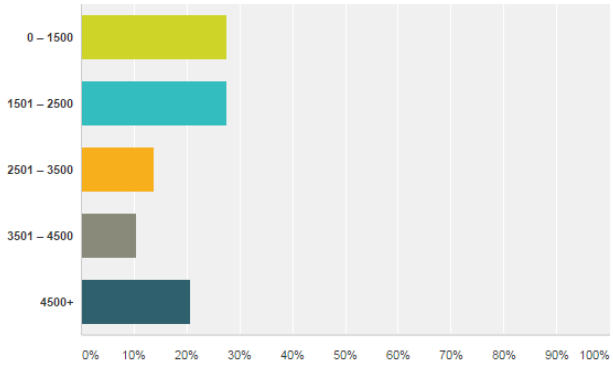

Fig. 10 – What is your household income per month (Lei)?

CONCLUSIONS

In ensuring a successful business it must be understand the female consumer behavior better by finding answers to the following questions: Who buys wine? How is it bought? When and where do they buy? Why do they buy? What are the most favorite products?

Female consumer understanding and detecting reactions to the different characteristics of the product, price and advertising campaign is an advantage for companies that have these answers.

The four elements of the marketing mix: product, price, placement, promotion, enter the "black box" of the female consumer where they are converted into a set of reactions, such as choice of product, brand and wine supplier, when is the acquisition made and the quantity purchased. Purchaser traits influence her way of perceiving and acting on the four elements and the making decisions process influences the consumer behavior.

In general, the decision to purchase is geared to income, social status, method of serving, group invitations.

Superior products bought are an attribute of people with a certain social status, for which price is a negligible amount in choosing a quality wine.

This should be an advantage for the wine grower who wants to conquer the market feature a high-income social class, used with small amounts of wine, yet highly qalitative.

Regarding lifestyle only top-quality wines take into account the personality and opinion of one self. Award-winning wines followers try to meet the needs of selfesteem. They can buy

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collection wine and demonstrate knowledge in the field. When the wines are to be offered as a gift, purchasing can become anxious. They buy wine to satisfy a social need, but cannot appreciate its quality.

Not to deceive, they purchase goods from famous shops or purchase wine that is legitimized by an advertising company. Wine consumers have a complex purchasing behavior if they are involved in the purchase of a brand wine or when wine is very expensive and is rarely purchased. Knowledge is very low in this area, buyers being uninformed in detecting wine characteristics. So, the uninformed buyer will have to firstly form a belief and then make an informed choice.

The wine manufacturer must try to educate the consumer and direct them to purchase their products.

When the consumer is heavily involved in the procurement of an expensive and rarely purchased wine brand, and notes that there is little difference between brands, most often the buying behavior is oriented towards reducing dissonance (discomfort after sales).

Buying behavior commonly occurs when the wine consumer is less involved in the process and the the differences between brands are insignificant.

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THE USE OF E-LEARNING PLATFORMS IN TECHNICAL UNIVERSITIES FROM ROMANIA - A RESEARCH

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Abstract: Today, modern higher education involves the use increasingly more of platforms for e-learning in universities due to the multiple advantages it offers. Universities manage their own e-learning platform providing remote interaction between student and teacher. This paper presents aspects regarding the use of e-learning platforms in Romanian universities. Regarding this issue, a research based on a questionnaire having as target group the technical Romanian universities was made. The results of this study are focus point of the paper. At the end, based on the data analysis, final aspects are presented.

Keywords: e-learning, technical universities, research, Romania

1. Introducere și context teoretic

În literatura de specialitate există numeroase definiții pentru eLearning. Două dintre acestea sunt date mai jos:

- Un mediu virtual de învăţare (VLE - Virtual Learning Environment) este un mediu cu două funcţii de bază: (1) interacţiune între tutori și studenţi, incluzând comunicare și schimb de informaţii, (2) distribuirea de conţinut, adică publicaţii online, management și recuperare de documente și alte informaţii [1].
- Instruirea asistată de calculator (IAC) reprezintă o metodă didactică ce valorifică principiile de modelare și analiză cibernetică ale activităţii de instruire în contexul utilizării tehnologiilor informatice și de comunicaţii, caracteristice societăţii contemporane [2].

eLearning, sau O*nline Learning*, *Web Based Learning* or *Distance Learning* poate fi descris având următoarele caracteristici [3]:

- procesul de învatare se realizează într-o clasa virtuală;

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- materialul educațional este accesibil pe Internet;
- clasa virtuală beneficiază de orientarea unui instructor (facilitator, moderator) care planifică activitatea grupului de participanți, supune dezbaterii acestora aspecte ale cursului în conferințe asincrone (forumuri de discuții) sau sincrone, furnizează resurse auxiliare, comentează temele, indicand fiecaruia unde trebuie să mai insiste;
- învatarea devine un proces social; prin interacțiune și colaborare, grupul de participanți și instructorul, formează pe parcursul cursului, de multe ori și după, o comunitate virtuală - rol important il au și așa-zisele conferințe de socializare;
- materialul cursului are o componenta statică - cea pregatită de facilitator împreună cu o echipă specilizată în design instrucțional - și una dinamică, rezultată din interacțiunea participanților, din sugestiile, clarificările, comentariile, resursele aduse de aceştia;
- cele mai multe medii de eLearning permit monitorizarea activității participanților, iar unele și simulări, lucrul pe subgrupuri, interacțiunea audio, video.

Dintre cele mai utilizate platforme eLearning putem aminti:

- ***Moodle*** este una dintre cele mai utilizate platforme LMS (platforma care înglobează sisteme de gestiune a învățării – LMS) în prezent, reprezentând o alegere bună mai ales pentru mediul academic. Această platformă este open-source și este în permanență modificată și îmbunătățită. Denumirea „Moodle" reprezintă un acronim pentru Modular Object-Oriented Dynamic Learning Environment (mediu de învățare structurat pe diverse module cuprinzând câte un subiect) [4].
- ***Blackboard*** este una dintre platformele cu durată de viață cea mai lungă, fiind lansată în anul 1997. Aceasta este utilizată îndeosebi în mediul academic, atât în ciclul inferior de învățământ, cât și în cel superior, dar și în context guvernamental și în mediul de afaceri în cadrul a numeroase industrii din toată lumea. Cei peste 19.000 de utilizatori ai acestei platforme provin din 100 de țări [4].

În cele ce urmează sunt prezentate rezultatele unei cercetări bazate pe chestionar, cu respondenți din universitățile tehnice din România.

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2. Cercetare în universitățile tehnice din România

A. Metodologia cercetarii

Această cercetare reprezintă un studiu pilot care a fost realizat pentru a investiga aspecte ce țin de utilizarea platformelor de e-learning în universitățile din România. Grupul țintă a fost constituit din studenți și absolvenți ai universităților tehnice din România. În acest context, cercetarea empirică din această lucrare are următoarele obiective:

- să studieze în ce măsura sunt folosite platformele de e-learning în universitățile tehnice din România;
- să investigheze aspecte ce țin de utilizarea platformelor e-learning în universitățile tehnice din România, cum ar fi: frecvența și scopul utilizării, gradul de interacțiune dintre profesor și student, influența utilizării platformelor asupra frecvenței la cursuri și aplicații etc.

Variabilele cercetării

Există două tipuri de variabile: nominale și variabile ce țin de gradul de utilizare a platformelor de e-learning în universitățile tehnice din România. În sumar, Tabelul 1 prezintă structura variabilelor relevante ale cercetării.

Tabelul 1. Maparea variabilelor cercetării

Variabilele cercetării		**Descriere conceptuală**
Variabile nominale	Variabile demografice	Gen
		Vârstă
		Background profesional
Variabile privind gradul de utilizare a platformelor de e-learning în universitățile tehnice din România		Gradul de utilizare, frecvența și scopul utilizării
		Prezența la cursuri vs frecvența utilizării platformelor
		Gradul de interacțiune profesor-student

Întrebările calitative au fost măsurate folosind o scala în trei puncte (exemplu Zilnic, Săptămânal, Lunar) (adaptare după [5]). Respondenții și-au exprimat opinia generală în legatură cu următorii itemi (selecție): tipul platformei de e-learning folosite, gradul de interacțiune

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student-profesor, feedback primit de la profesor prin intermediul platformei, feedback dat profesorilor prin intermediul platformei etc. Chestionarul include atât întrebări deschise cât și închise (DA / NU). Itemi (întrebări) corelați sunt de asemenea utilizați pentru a ajuta respondentul în a furniza un răspuns clar și precis.

B. Analiza datelor și rezultatele cercetării

Chestionarul, care debutează cu întrebări privind utilizarea platformelor de e-learning și se finalizează cu caracteristicile demografice ale respondenților, a fost distribuit unui număr de peste 300 de persoane, 221 dintre aceștia l-au completat. Numărul de răspunsuri zilnice este prezentat în Figura 1.

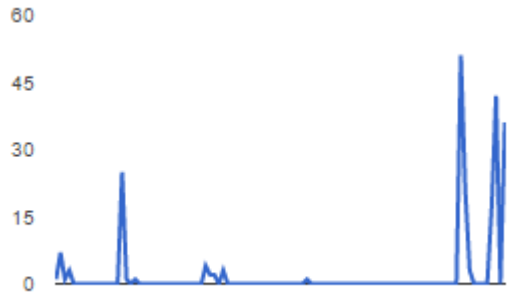
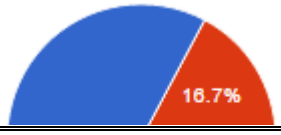


Figura 1: Numărul de răspunsuri zilnice

Respondenții au background tehnic, studenți sau absolvenți de Calculatoare și tehnologia informației, Inginerie și management, Ingineria sistemelor, etc. În termeni de gen, structura eșantionului este echilibrată: 89 - 40.3% bărbați, 132 - 59.7% femei. Vârsta majorității respondenților (215 - 97.3%) este cuprinsă între 20-25 de ani, 2.7% având între 26-30 de ani.

În ceea ce privește ciclul și forma de învățământ, situația este prezentată în Figura 2.

Sunteți student la	**Nr. / % dintre respondenți**	
Licența	183	82,8%
Master	37	16,7%



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ID/IFR	1	0,5%	

Figura 2: Ciclul și forma de învățământ urmate de respondenți

37,6% dintre respondenți sunt angajați, restul de 62,4% înca nu. 94,1% (208) dintre participanții la studiu au declarat că în universitatea lor există o platformă de e-learning. Cea mai utilizată platformă de e-learning este Moodle (171-78,8%). Alte platforme utilizate în universitățile tehnice din România sunt: Edu2.0 - 11 (5.1%), Blackboard – 4 (1.8%), Wiki – 14 (6.5%), alte platforme – 17 (7.8%).

Rezultatele analizei datelor cercetării cu privire la utilizarea platformelor de e-learning se pot vedea în Figura 3.

Platforma de e-learning este utilizată:	**Nr. / % dintre respondenți**	
La toate materiile	34	15.4%
La mai mult de 1/2, dar nu toate	64	29%
La mai puțin de jumatate, dar cel puțin o materie	80	36.2%
Platforma nu este utilizată	43	19.5%

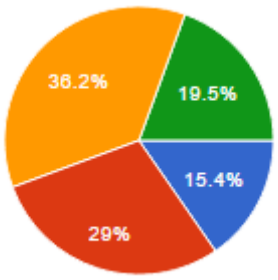
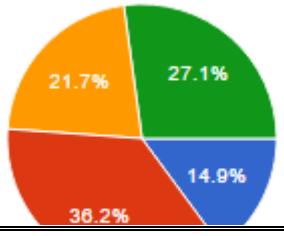


Figura 3: Utilizarea platformelor de e-learning

Frecvența cu care platformele de e-learning sunt accesate – rezultatele cercetării sunt prezentate în Figura 4.

Cat de des accesați platforma de e-learning	**Nr. / % dintre respondenți**	
Zilnic	33	14.9%
Saptămânal	80	36.2%



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Lunar	48	21.7%	
Platforma nu este utilizata	60	27.1%	

Figura 4: Frecvența accesării platformelor de e-learning

În ceea ce privește scopul utilizării platformelor de e-learning, rezultatele analizei datelor cercetării se pot vedea în Figura 5.

La materiile la care este folosită, platforma de e-learning se utilizează:	**Nr. / % dintre respondenți**	
Pentru încărcare conținut curs / aplicații	143	64.7%
Ptr. teme de casă	124	56.1%
Pentru evaluarea pe parcurs	58	26.2%
Ptr. examinarea finală	30	13.6%
Pentru feedback	67	30.3%
Platforma nu este utilizată la nicio materie	46	20.8%

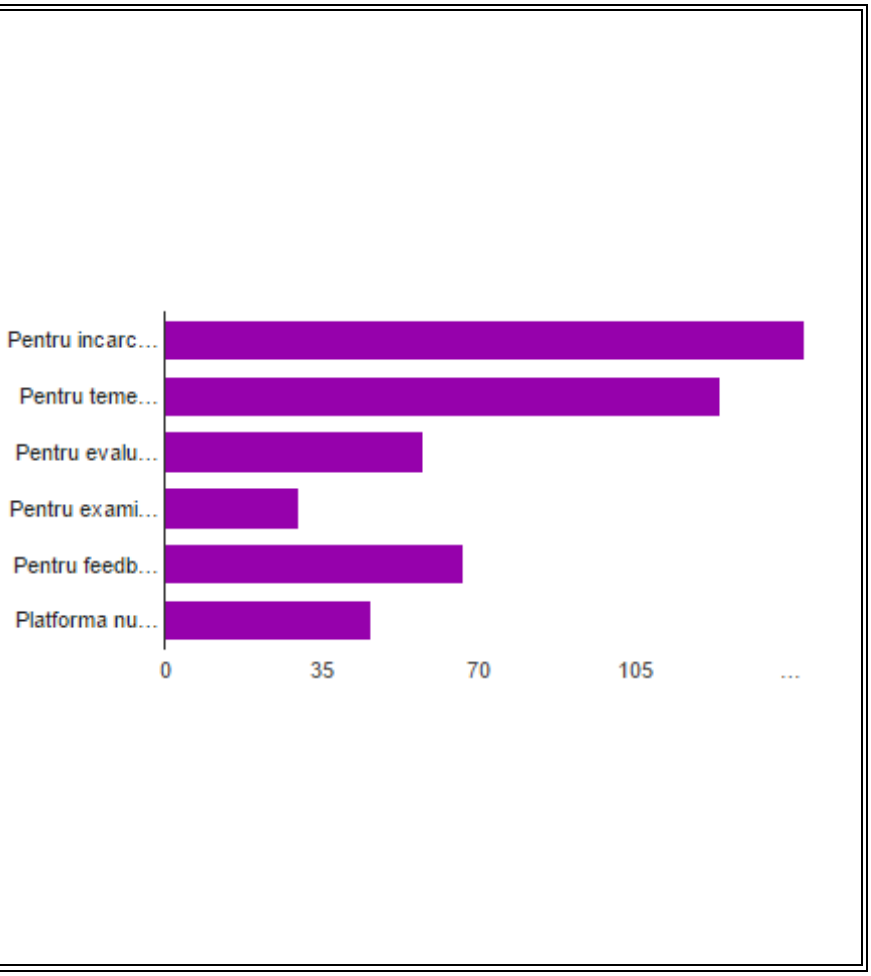

Figura 5: Scopul utilizării platformelor de e-learning în universitățile tehnice

În legatură cu gradul de interacțiune profesor – student în cadrul platformelor de e-learning, rezultatele cercetării relevă următoarele rezultate – Figurile 6, 7, 8.

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Există interacțiune profesor-student prin intermediul platformei de e-learning?	**Nr. / % dintre respondenți**	
Da, prin e-mail, forumuri etc în cadrul platformei	123	55.7%
Nu există interacțiune	49	22.2%
Platforma nu este folosită	49	22.2%

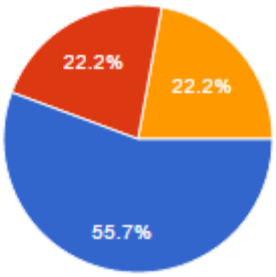

Figura 6: Existența interacțiunii profesor-student în cadrul platformelor de e-learning

Primiți feedback de la profesori prin intermediul platformei?	**Nr. / % dintre respondenți**	
Da	92	41.6%
Nu	77	34.8%
Platforma nu este folosită	52	23.5%

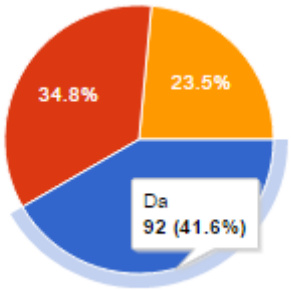

Figura 7: Feedback primit în cadrul platformelor de e-learning

Dați feedback profesorilor prin intermediul platformei?	**Nr. / % dintre respondenți**	
Da	91	41.2%
Nu	81	36.7%
Platforma nu este folosită	49	22.2%

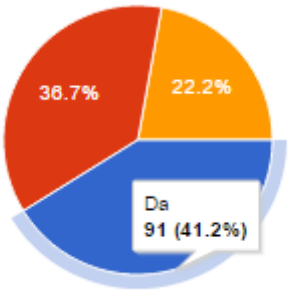

Figura 8: Feedback dat în cadrul platformelor de e-learning

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Alte rezultate ale cercetării sunt prezentate în cele ce urmează.

La întrebarea: ***Utilizarea platformei de e-learning v-a influențat prezența / frecvența la orele de curs?***analiza datelor arată următoarea situație – Figura 9:

Utilizarea platformei v-a influențat prezența / frecvența la orele de curs?	**Nr. / % dintre respondenți**	
Da, merg mai rar	12	5.4%
Da, merg mai des	23	10.4%
Nu a avut nicio influență	136	61.5%
Platforma nu este folosită	50	22.6%

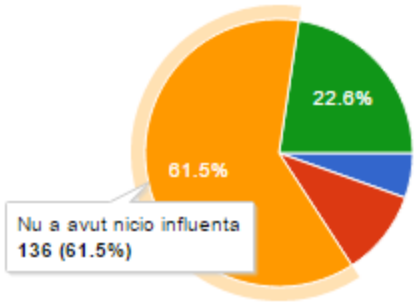

Figura 9: Influența utilizării platformei asupra prezenței la curs

La întrebarea: ***Utilizarea platformei de e-learning v-a influențat prezența / frecvența la orele de aplicații?***rezultatele cercetării sunt prezentate în Figura 10:

Utilizarea platformei v-a influențat prezența / frecvența la orele de aplicații?	**Nr. / % dintre respondenți**	
Da, merg mai rar	4	1.8%
Da, merg mai des	26	11.8%
Nu a avut nicio influență	145	65.6%
Platforma nu	46	20.8%

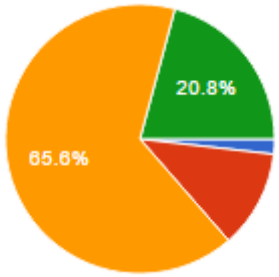

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Figura 10: Influența utilizării platformei asupra prezenței la aplicații

3. Aspecte finale

Pentru mediul universitar, e-learning este un instrument excelent. Inițial, conceptul de e-learning a înlocuit metodologia clasică de învățământ la distanță, materialele scrise fiind pe CD-uri. Ulterior, posibilitățile de conectare la Internet au facilitat realizarea unor medii colaborative, săli de clase virtuale, instruire sincronă si asincronă. Oferta Web de platforme de e-learning open source a ajuns la o configurație impresionantă, multe universități si instituții de prestigiu adoptand o astfel de soluție pentru organizarea cursurilor online. Comunitățile din domeniul invățământului electronic au adoptat multe tehnologii si tehnici Web moderne, precum: XML (Extensible Markup Language), RDF (Resource Description Framework), metadatele, obiectele educaționale [1].

Această lucrare încearcă să sublinieze importanța utilizării platformelor de e-learning în universitățile tehnice din România. Rezultatele sunt interesante. Ca posibilele cercetări ulterioare se poate conduce un studiu pilot despre caracteristicile tehnice și posibile recomandări privind îmbunătățirea utilizării platformelor e-learning.

Chiar dacă această cercetare are mai multe limitări, cum ar fi selectarea eșantionului sau numărul de respondenți, se pot trage urmatoarele concluzii:

- În peste 55% dintre cazurile studiate, există interacțiune profesor-student în cadrul platformelor de e-learning utilizate în universitățile tehnice din România;
- Utilizarea platfomelor e-learning se face pentru încarcare de conținut sau teme de casă – peste 50% și mai puțin pentru evaluare sau feedback – sub 30%;
- Un procent semnificativ – peste 20% au declarat ca platformele de e-learning nu sunt folosite.

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