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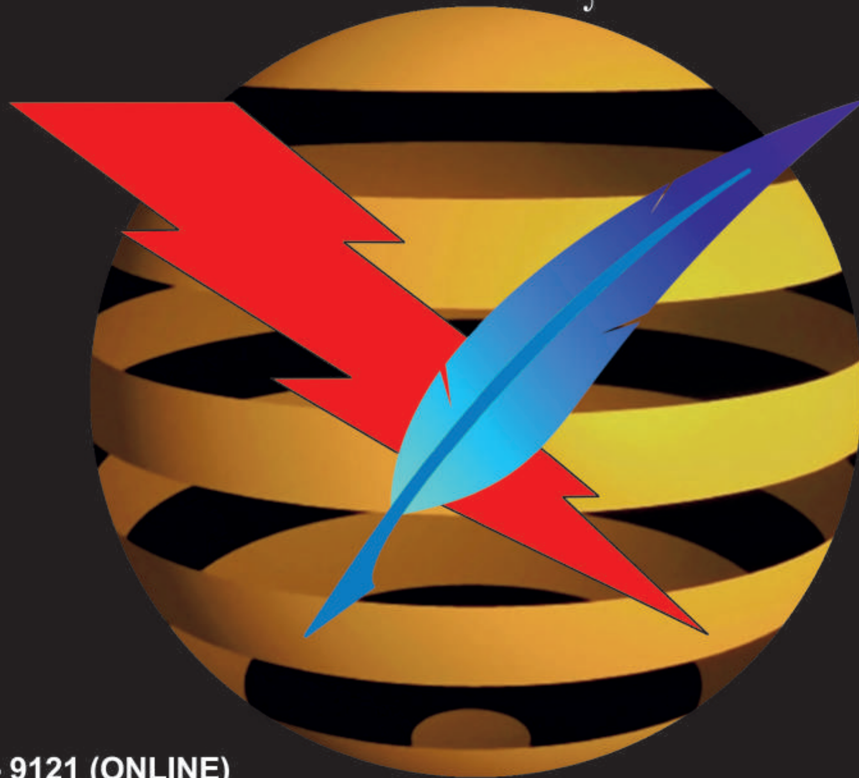

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Contents

Annual Activity Program of the Local/County Council
Dragos Valentin Dincă 7

Cultural and Natural Heritage and its Law
Andrei Duţu-Buzura 17

Accountability and Delegation of Regulatory Powers to Agencies
Simone Franca 35

Creating Collaborative Infrastructure for Inclusive Urban Innovation
Ani Matei, Andreea-Maria Tîrziu 45

Administrative and Financial Reforms in the Nigerian Public Sector
Ehiyamen Osezua, Abdullateef Ameen 61

Thinking Global: Factors and Challenges Influencing the Audit Function
Adelina Dumitrescu Peculea 77

Annual Activity Program of the Local/ County Council

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Abstract. *Deliberative local public authorities (local and county councils) must work predictably, planned. Predictability of administrative actions leads to predictability of the society's actions, therefore activity planning is a must. Annual Activity Program of the Local Council represents a tool for annual planning of the actions of the deliberative authorities - local and county councils. At the end of the year, for the following year, the local/county council draws up a planning of the draft decisions, on calendar months, which it intends to submit for debate and approval. In order to be introduced in the AAPLC, projects must meet certain requirements of maturity and opportunity.*

Keywords: *local public administration, strategic management, predictability of administration.*

JEL: H83.

Background

According to art. 121 of the Romanian Constitution, the public administration authorities, conducting the local autonomy in communes and cities, are the elected local councils and the elected mayors, under the law and according to art. 122, the county council is the authority of the public administration in charge of coordinating the activity of the communal and city councils, in order to provide the public services of county interest.

The administrative code approved by GEO 57/2019 regulates the role and duties of local and county councils. The local council takes the initiative and decides, in accordance with the law, on all issues of local interest, except those that are given by law in the competence of other local or central public administration authorities. The county council is the authority of the local public administration, constituted at county level for the coordination of the activity of the communal, city and municipal councils, in order to ensure provision of public services of county interest.

In the exercise of their duties, the local councils and counties adopt decisions, with absolute or simple majority, as the case may be.

1. Introduction

Deliberative local public authorities (local and county councils) must work predictably, planned. Predictability of administrative actions leads to predictability of the society's actions, therefore activity planning is a must.

Annual Activity Program of the Local Council (AAPLC - Or the Annual Work Plan of the Local / County Council) represents a tool for annual planning of the actions of the deliberative authorities - local and county councils. At the end of the year, for the following year, the local/county council draws up a planning of the draft decisions, on calendar months, which it intends to submit for debate and approval. In order to be introduced in the AAPLC, projects must meet certain requirements of maturity and opportunity.

AAPLC is a working tool for strategic planning, which can be used by the local public administration in Romania, being built in accordance with the legal provisions governing the organization and functioning of local public authorities.

The process of elaboration, implementation and monitoring of the AAPLC is coordinated by the Secretary General of the ATU.

The Annual Activity Program of the Local Council is made with the help of an IT system intended for its realization, planning and monitoring.

Local councilors, the mayor, the institutions under the coordination of the local county, citizens and non-governmental organizations, other public institutions can introduce draft decisions in the AAPLC.

Objectives of AAPLC elaboration:

- Increasing the predictability of local council actions by planning;
- Ensuring the local council' prioritization of draft decisions;
- Improving the regulatory action among local public authorities by planning and substantiated preparation of draft decisions impacting on the community.

2. Roles assignment in the elaboration and implementation of AAPLC

The **local/county council approves by decision** the application methodology of AAPLC and assumes its use, takes note of the Annual Activity Program of the Local Council prepared based on the proposals, of the monitoring reports and the annual monitoring implementation report of the AAPLC.

The Secretary General of ATU coordinates the process of elaboration, monitoring and evaluation of AAPLC, reviews and comments on the proposals for draft decisions made by the initiators, monitors the correlation between the proposals for draft decisions introduced in AAPLC and the strategic documents of ATU.

He also prepares the Note to inform the local/county council on the elaboration of the AAPLC and the Annual Implementation Report of the AAPLC, which is presented for information to the L/C council. The SG prepares the semi-annual monitoring reports that are presented to the county council for information, as well as regular reports on the evolution of the implementation of the AAPLC and methodologically supports the initiators in the development of the AAPLC and the use of the IT platform.

A technical team consisting of at least two persons with responsibilities in the process of elaboration and implementation of the AAPLC will be appointed in the mayor/president of the county council cabinet, along the SG. The process of elaboration and implementation of AAPLC will be coordinated by the Secretary General.

Local/county councilors and the mayor/president of the county council may comment on the files submitted, as applicable, follow the status of a form and report any inconsistencies to the Secretary General, monitor the implementation process of AAPLC and ensure that draft decisions will be submitted for approval by the deadline proposed.

3. Criteria for the introduction of projects in AAPLC

All draft decisions that concern strategic areas are subject to AAPLC if they originate from:

- Government program
- National strategies
- Regional strategies
- County strategies
- Local development strategy
- CAF plan
- Institutional Strategic Plan
- Procurement strategy
- Urban Mobility Plan
- Energy Efficiency Strategy
- Transposition of European directives
- Infringement proceedings
- Proposal of the initiator with significant impact in the regulated field (for which analyzes/studies/other relevant documents exist or will be elaborated until the presentation in the meeting of the local/county Council).

Therefore, those projects that derive from the above sources with the required information available in order do fill in all sections of the AAPLC file will be introduced.

Areas not taken into account under the AAPLC:

- routine projects, of the type:
  - information;
  - notes or other informative documents;
  - activity reports;
- draft individual decisions;
- projects targeting the:
  - organization and operation of institutions, committees, commissions, etc.
  - appointments and dismissals;
  - setting some data;
  - approval of technical-economic investment indicators;
  - approving the budgets of revenues and expenditures of economic operators and public institutions, their rectification, as well as the norms of expenditures, for the cases provided by law;
  - granting financial and emergency aid;
  - changing the legal regime of some buildings;
  - real estate transfers.

4. AAPLC file format

For all draft decisions entered into the AAPLC database, the initiator fills the form below.

Tabel 1

Heading	Explanations	Format
Number	*Registration number*	Numeric format
Date	*It is automatically generated by the IT support platform*	It is generated automatically Numeric format
Name of the initiator/ institution/ organization	*It is generated automatically, depending on the user who is logged in for local councilors, the mayor and the county council coordination institutions.* New users - citizens, NGOs, other public institutions, will create a user account and enter the name of the initiator.	Text format
Co-initiator	*In cases where the project will be initiated jointly by several persons/institutions, the initiator will have to submit the form and the co-initiator must be identified using the list with multiple options.*	Text format, predefined list
Source	*The source(s) will be selected from the predefined list: Government Program, strategies, strategic plans, etc.*	Text format, predefined list
	Detailing the source *For each selected source there will be a field for details: chapter of the government program, measure, title of the strategy, directive, Fire Fighting and "other sources" (documents with legal force, not declarations of intent) etc.*	Text format, field for details.
Scope of the proposal	*A short description is made to explain the purpose of the proposal, the substantiation, the legal grounds* *The reasons why the project is considered necessary will be briefly described (maximum 250 words). The description will take into account:* *-Description of the current situation* *-Expected changes*	Text format, field for details (maximum 250 words)
Month proposed by the initiator for submission to county council approval	*Choose the year and month from the predefined calendar.*	Numeric format. It will be chosen from the predefined calendar
Estimated month of adoption	*Choose the year and month from the predefined calendar.*	Numeric format. It will be chosen from the predefined calendar
Substantiation	YES/NO will be chosen (there is/there isn't any substantiation/justification document) If YES, the document will be uploaded.	Default, text format
The impact on socio-economy and the environment	YES/NO will be chosen (there is/is no socio-economic impact nor on the environment). YES button: *Starting from the goal, the way in which the project influences the business environment, the social environment, the natural environment, the institutional environment, etc. it will be presented.* NO button - go to the next field	Default, text format Text format, field for details (maximum 250 words)

Heading	Explanations	Format
The financial impact	YES / NO will be chosen (there is / is no financial impact on the local budget). YES button: *Starting from the scope, the project influences on the local budget will be presented.* NO button - go to the next field	Default, text format Text format, field for details (maximum 250 words)
Date of approval in Local Council	*The field is active only for the ATU SG. Following the monitoring of local council meetings, for each project in AAPLC, the stage will be specified by choosing Yes / No / Rejected* *The month of approval/rejection will be chosen from the predefined calendar.* *After approval, the file is locked - can no longer be modified/edited.*	Numeric format. It will be chosen from the predefined calendar
The title under which it was approved in the local council	*The field is only active for the ATU SG.* *Following the monitoring of the local council meetings, the title with which the project was approved in the local county will be completed, if it differs from the original title. If it is not different, the field may remain blank.*	Text format, field for details
ATU SG remarks - legality	*The heading is active only for the SG of the ATU, who will be able to comment on the legality of the projects introduced in the AAPLC* *Comments are submitted within 15 days of the expiry of the period during which the initiators must submit the projects to the AAPLC*	Text format, field for details
Remarks from other initiators	*The field will contain a predefined list of institutions/initiators and a field for comments.* *In this section, any institution/initiator in the AAPLC can comment on projects submitted by other initiators.* *Comments are submitted within 15 days of the end of the period in which the initiators must submit the projects to the AAPLC.*	Text format, field for details
Initiator remarks response	*The heading will contain a predefined list of initiators and a field for formulating responses to comments made by other initiators.* *Responses to comments are entered for 15 days, after the end of the period in which comments could be made.*	*Text format, field for details*

5. AAPLC monitoring /evaluation process

Following the entry of data in the AAPLC platform, the values of the following indicators are calculated and highlighted by the SG of the ATU:

I1 = **AAPLC project approval rate** = (No. of AAPLC projects that have been approved / adopted by the local council x 100): (No. of projects proposed in AAPLC) [%];

I2 = **Approval rate of AAPLC projects on term** = (No. of AAPLC projects that have been approved /adopted on term by the local council x 100) : (No. of projects proposed in AAPLC) [%];

I3 = **Approval rate of AAPLC projects with delay** = (No. of AAPLC projects that have been approved /adopted with delay by the local council x 100) : (No. of projects proposed in AAPLC) [%];

I4 = **The rate of withdrawal by the initiator of the projects from AAPLC during the local council meetings** = (No. of AAPLC projects that have been withdrawn by the initiator x 100) : (No. of projects proposed in AAPLC) [%];

I5 = **The rate of non-promotion by the initiator of the projects from AAPLC** = Number of projects included in AAPLC, but not subsequently promoted by the initiator x 100) : (No. of projects proposed in AAPLC) [%];

I6 = **The approval rate of projects not included in the AAPLC and which should have been provided in the AAPLC** = (No. of projects not included in the AAPLC and which should have been included in the AAPLC that were approved / adopted by the local council x 100): (No. of projects proposed in the AAPLC) [%];

6. Preparation, elaboration and updating of AAPLC

6.1. Preparation and elaboration of AAPLC

Preparation and development for AAPLC involves:

- Assigning the team responsible for the elaboration and implementation of AAPLC;
- Dissemination within the team of the Methodology for implementing the AAPLC;
- Informing all those involved regarding the start of the AAPLC elaboration process;
- The calendar for the elaboration and uploading of the AAPLC files is communicated to the local councilors, departments and specialized departments within the institution, other institutions, the community;
- The initiators submit the project proposals in order to complete the AAPLC forms;
- The technical team monitors at the level of the institution the implementation process of AAPLC and ensures that the draft normative acts will be submitted for approval within the proposed term.

6.2. AAPLC update

The AAPLC update is carried out at the initiative of the SG of the ATU, in the middle of the year, and follows the steps described above.

6.3. AAPLC presentation form

The Annual Activity Program of the Local Council will be presented for information in the local council/county council meeting, at the beginning of each year.

The table below represents the format in which the AAPLC will be submitted before the local council/county council.

Tabel 2

Initiator	Project title	The month of the submission for approval in the local county meeting	Source	Description

6.4. Monitoring and reporting process

The ATU SG will coordinate the AAPLC monitoring and reporting process. At the beginning of each year, an Implementation Report will be prepared that will present the way in which the AAPLC has been implemented.

The report will contain data on:

- projects from AAPLC that have been approved/adopted by local council;
- projects from AAPLC that were approved/adopted on time by local council;
- projects from AAPLC that were approved/adopted with delay by local council;
- projects from AAPLC that were withdrawn by the initiator in the local council meeting;
- Number of projects included in AAPLC, but not subsequently promoted by the initiator;
- projects not included in the AAPLC and which should have been included in the AAPLC that were approved/adopted by the local council;
- AAPLC projects that have impact studies, approved by local council.
- the situation of the proposals/initiator.

The quarterly progress reports shall be drawn up on 31 March, 30 June, 30 September and 31 December of the year and shall include the values of the 6 indicators, including the elements to be taken into account for their calculation within the said deadlines, both cumulatively and for each initiator.

The annual evaluation report shall be drawn up by 31 January of the following year and shall have the following framework structure:

- Introduction;
- General framework – framework analysis for the targeted year;
- The values of the 6 indicators, including the elements that are taken into account for the calculation of these cumulated levels and for each initiator separately;
- Comparative framework analysis with the results of the implementation of the AAPLC from the previous year and with the forecasts for the following year;
- Conclusions and proposals for improvement.

The annual report is presented by the SG of the ATU in a meeting of the local/county council and is presented on the ATU website.

7. AAPLC stages

Table 3

No.	ACTIVITY	CALENDAR - recommended period	RESPONSIBLE INSTITUTION
1	The SG of the ATU sends to the institutions/initiators the address by which it announces the start of the elaboration of the AAPLC for the following year, the calendar of the elaboration process, etc.	Every October	SG of the ATU
2	Completion and introduction of AAPLC files in the IT platform	Every November	initiators
3	Formulation of observations and answers to the observations formulated in AAPLC	Every November	initiators
4	The local council takes note of the Annual Activity Program of the Local Council prepared based on the proposals submitted	Every December	LC
5	Completion in AAPLC of the date of approval in the local council of the proposed project and completion in AAPLC of the title with which the project was approved in local council (if the title has undergone changes in the adoption process).	Throughout the year	SG of the ATU
6	Preparation of the annual report of AAPLC (for the previous year) and presentation in the local council meeting	January every year	SG of the ATU
7	Quarterly progress reports for the ongoing AAPLC	April, July, October	SG of the ATU
8	Notice of initiation of the reopening of the AAPLC for updating	June of each year	SG of the ATU
9	AAPLC update for the current year	June of each year	
10	Formulation of comments and replies to comments submitted in AAPLC for the new / updated files	June of each year	

8. IT tool support for the operationalization of the AAPLC methodology

8.1. General description

A AAPLC computer application can be used to operationalize AAPLC.

The AAPLC application includes:
- introduction of initiatives;
- comments / remarks on the initiatives entered;
- updating initiatives;
- publishing the initiative in the Annual Activity Program of the Local Council;
- monitoring initiatives from the Annual Activity Program of the Local Council.

The platform is developed in web technology, with facilities that allow an efficient monitoring, in real time, of the implementation stage of AAPLC, as well as a complex reporting on the supporting documents required in the process of elaboration and adoption of an initiative.

8.2. The main functionalities developed within the AAPLC platform consist of:

- elaboration and easy retrieval of the proposals (associated documents/calendar) which are introduced in the Annual Activity Program of the Local Council;
- monitoring the state of the proposals in the Annual Activity Program of the Local Council by versions management;
- specific and complex reporting (pre-arranged and ad-hoc reports);
- access control system for centralized reports according to the predefined roles in the AAPLC workflow;
- data and reports from the platform are available in various formats that allow reuse and redistribution, including combination with other data sets;
- sending notifications to users with reference to the status of a proposal initiated, the notification is send both on the platform and by e-mail. Notifications sent via the e-mail service are limited to important events regarding actions specific to the proposals initiated (comments, publication, etc.) and to the stage of a AAPLC session (warnings about the stage of a AAPLC session - opening/comments/ closing, etc.).

References

Romanian Constitution

Romanian Administrative Code

Cultural and Natural Heritage and its Law

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Abstract. *Differentiating itself from the civil law individualist vision of the concept of patrimony, as a specific mark of economic liberalism, the concept of common heritage – national, European and world –, both cultural and natural, much more conservative and unproductive, has known an extraordinary development in the past few years, under the impulse of two factors: the globalization and its uniformity, on the one hand, and the dangers and menaces that threat the environment, on the other hand. This special type of patrimony or heritage (depending on the legal system of reference) introduces an element both moral and legal, in the preservation of cultural and environmental values, as collective heritages, egalitarian and solidary, transgenerational, and non-economic. Moreover, they all serve three main functions: common usage, preservation, and passing over to the future generations.*

The protection, the preservation in view of passing over, and ensuring a fair access to their benefits make up the contents of a bulk of regulations that are about to be structured into both a new branch of law, and an original scientific field: cultural and natural heritage protection law. We are also witness to the emergence of a right to fair access to these heritages. The specifics of this new branch of law are revealed by the proximal genus (administrative law, cultural law, environmental law, urban planning law) and the expression of the specific difference.

Keywords: *right to culture, common heritage, cultural heritage, natural heritage, world heritage, access to common heritage, the right to a healthy environment.*

JEL: K32.

Introduction

The expression "cultural and natural heritage law" has recently appeared in comparative law, as the works dedicated to this subject are still rare both in search of completing its own regulatory and research object, and in capturing and expressing its specificity. In any case, this involves a set of regulations whose formal structuring, in a new branch, is under way, if not autonomous, at least identifiable through its singularity. As a first defining dimension, the new law has a specific object of protection and conservation, *the* (natural and cultural) *heritage*, otherwise a fundamental, founding notion.

It is complemented by the emergence of a right to a fair access to (natural and cultural) heritages, the materialization of specific principles or the fine-tuning of the existing ones, as well as other elements marking the next higher genre and the specific difference (*genus proximum et differentia specifica*).

1. Heritage – the Underpinning Concept

Stemming from the ancestral complex of "Noah's Ark" of peoples, an expression of the natural instinct of conservation and survival of each individual, *heritage/patrimony* is a polysemic term, a concept in movement, one of the oldest, the most persistent and intangible concepts of culture, history, and law. From an etymological point of view, it comes from the Latin *patrimonium* and it evokes the idea of legacy, more specifically, it initially signified the "asset passed on from the father", however, without embodying a legal concept, whereas *res patrimonio* represented the properties likely to be subject to private appropriation, but constituting the Roman public domain. Hence, the very etymology of the term (something which comes from parents) makes us think of transmission [Babelon, Chastel, 1994 p. 49].

At its origins and beginnings, in Roman law, *heritage/patrimony* referred to the properties of a person, but in an "objective" or "objectivist" approach, i.e. a property-centred one. At the same time, it was conceived as being collective; it consisted in all the properties necessary for the common use of a group (mostly, a family) and it existed, consequently, during this use. Also, in archaic Greece, it represented "all the land useful for family survival".

Following this vision, during the feudal period, the goods donated to Church represented the "patrimony of the poor". In 1694, *Dictionnaire de l'Académie française* defined it as "a property coming from one's father and mother, which was, in turn, inherited from one's father and mother", and for *l'Encyclopédie d'Alambert* it was "a family property; something transferred by succession or donation in direct line". More recently, the *Littré* dictionary considers it, in general, "an inherited property coming, according to law, passed on from fathers and mothers, to their children". By extension, the term has come to designate properties of the Church, of the Crown, and then, since the 18th century, properties having a national significance and value, on the one hand, and a universal significance and value, on the other hand (scientific heritage, plant and animal heritage…).

2. Metaphysics of a Concept

As indicated above, in terms of primary significances, any *patrimonium* implies a *pater*, and for jurists, any *pater* originates from *pater familias*: the main player in the Roman private law, the one who legitimately exerts a *potestas* over family members, some of them acquiring the *patrimonium*, through inheritance. Thus, speaking about patrimony/heritage means, before referring to the so-called patrimony matters (in everyday language: which can be assessed in money), speaking about *legitimate power* and about the patrimony holder as a legitimate *inheritor* of a *pater*, who, in his turn, had inherited the patrimony in question: so, speaking about patrimony as an object of a *tradition*, more precisely: of a *paternal* tradition. Could this mean that mothers are left aside? Certainly not, as long as, by excellence, legitimate families are established nowhere else but within a *matrimonium*, where the inheritors of the *patrimonium* are born, i.e. within a marriage, which, by no coincidence stands under the sign of maternity, so, of the mother, described by the Spanish novelist Alvaro D'Ors as a "protagonist of the human species perpetuation", which is a distinct and complementary function to the one held by the father, as an "administrator of the land entrusted by God to the human species for its administration"[D'Ors, 2011, p. 13]. As such, the *land* itself stands out, by excellence, as the *archetype* of *patrimony/heritage,* being, at the same time, as Carl Schmitt wrote in the first phrase of an epochal work, the „mother of law" [Schmitt, 2011, p. 13]. In so far as it is true that, as Savigny wrote, the law of a people "develops in the same way as its language", and that the language that

defines from a cultural point of view the identity of each individual is the *mother* tongue (and not the paternal one), then the *legitimate* exercise of power cannot be separated from the *legitimate* transmission of law [Duţu, 2013, p. 164 et seq.].

Although, at first sight, they seem self-evident, nowadays, these truths prove to be more than ever subject to attack, and this is due to the correlation – systematically concealed – between legitimacy and family, a correlation overly highlighted in the concept of "mother country", today more defied than ever. Just like the French Revolution explicitly intended to separate legitimacy from paternity ("plus de pères!"), similarly, the separation of law from the maternal dimension of land and language which form together the existential determination of a people, is due to the fundamental mutation operated by Modernity whereby man becomes autonomous in relation to God, his own people and family, and society transforms itself from a family of families into a collectivity of individuals. "This is the heir. Come, let's kill him and take his inheritance" (Matthew 21, 38); today mother tongue tends to become for the identity of individuals as irrelevant as their own country *(ubi bene ibi patria*!); the patrimony/heritage which was inherited and meant to be passed on is replaced by a profit-generating capital, which is in turn guaranteed by the technique of legality which replaces the legitimacy based on family and inheritance. Thus, one can still say today, along with Alvaro D'Ors and Carl Schmitt, that "disclaiming legitimacy by virtue of moving away from a legitimate society organized in families" and the "indissoluble link among the three institutions of family (marriage), inheritance, and patrimony/heritage represent the most important concern of today's jurist" [Schmitt; d'Ors, 2004, p. 190-191]. It is from this perspective that we are going to approach, for instance, the cultural and environmental heritage understood not as a capital meant for a profitable appropriation and use, but as a "vineyard" (Matthew 21, 38) entrusted to a mankind differentiated by peoples, families, and successive generations of co-workers.

3. Differences and Essences

On a certain scale of history development and of law progress, the concept of legal person arises and, along with it, the concept of legal personality; the patrimony/heritage will be associated to a person and will represent his/her economic pendant, his/her material facet on the legal scene. Thus, it came to be

understood as a "subjective" or "subjectivist" approach and it was conferred a specific role: that of being economically liable for all the actions of its holder.

Hence, two visions, two meanings, with different functions and significations, which coexist and mutually reinforce one another: the "civilian" one, which is individualistic, as an obvious imprint of the economic liberalism, and the other one, related to common (cultural and natural) heritages, which is much more conservative and non-productive, but which continues to develop the original approach, with progress according to the imperatives of our times [Turianu; Duţu, 2016, p. 247 et seq.].

For the "civilian" approach, patrimony/heritage is "a mass in movement, whose assets and liabilities cannot be dissociated", and where all future elements are called to attach, whereas patrimonial property implies a monetary assessment, an onerous transfer and transmission *mortis causa.* In other words, "All the properties and obligations of a person, seen as a universality of right …"

Beyond the transition from an objective approach to a subjective one, today, the concept deals with two phenomena which will strongly mark its significations and legal status: on the one hand, disclaiming the idea of a unique patrimony/heritage, associated to an individual and responsible for all his/her acts, and the separation into several patrimonies, depending on the individual's major moments of life: private, professional, specific responsibilities etc., and, on the other hand, the resurgence of its primary, ancient, and persistent significance, which has known an extraordinary impetus, that of common collective heritages, to be preserved and passed on to future generations. Indeed, the integrating and unifying character of virulent globalisation, seen over the last decades, has generated, as a necessary response, by virtue of the instinct of conservation, the need to protect historical traditions and identity values, pertaining to the cultural heritage and the reassessment of its meanings and legal regime. At the same time, the global environmental imperative and collective needs, dependent upon certain natural resources: water, air, biodiversity, ancestral knowledge etc. have generated a new hypostasis, that of natural heritage.

By capturing, acknowledging, and legally expressing the interdependencies generated by the primary unity between natural and cultural, the emergence of a new concept was favoured, a concept, by excellence, of our present times, but especially of the future: that of cultural and natural heritage.

Although the new concepts do not entirely fall within the traditional definition of patrimony/heritage, they are characterized by the fact that, on the one hand, they are based on a paradox: they tend to regroup into elements (resources) which can have an economic value, but whose aggregation within the patrimony/heritage is organized precisely to avoid their valorisation and market play, thus becoming "non-patrimonial heritages", and, on the other hand, they are no longer associated to an individual, but to a collective holder (thus referring to a common heritage of mankind, of Europe or of every nation).

Hence, the "publicist" concept of patrimony/heritage moves on to a new stage, that of a heritage ensuring the conservation, preservation, and passing on of the cultural and natural legacy of collectivities, the solidarity of communities and their future sustainability.

4. Emergence of Common Heritages

The expression "common heritage" appeared and spread in the legal language in the 1960's; the concept, as such, was meant to mark the collective importance of certain natural-cultural elements and to express the need to preserve common character, and to protect and conserve their status. Gradually, the concept separated into several hypostases, however keeping its defining essence.

Thus, in international law, *common heritage of mankind* appeared and asserted itself as a way of internationalising certain areas, justified by its global interest for mankind, with its own legal regime, applicable to specific areas: the Antarctic (by virtue of the Treaty of Washington, of 1 December 1959), the cosmos (under the Outer Space Treaty of 27 January 1967), the Moon (Treaty of 1969), sea-beds and ocean floors and their resources, beyond the national jurisdiction of countries (according to the Convention on the Law of the Sea signed in Montego Bay, on 10 December 1982). Then, it extended to nature, regarding landscape, biodiversity, monuments, and, in a symbolic way, to the human genome (according to the Universal Declaration on Human Genome and Human Rights, UNESCO, 11 November 1997). Therefore, the international environmental law dedicated the concept of heritage to the environments which need to be preserved or jointly managed.

At the EU-level, the "European Union common heritage" appeared; it refers, for instance to "migratory species" (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora) or to architectural achievements (Convention for the Protection of the Architectural Heritage of Europe signed in Granada, on 3 October 1985).

Finally, the concept of "nation's common heritage" or "national heritage" started to be used as of 1980's with reference to a national collective interest. Thus, in comparative law, water, language (French language), land, natural areas, resources and environments, sites and landscapes, air quality, animal and plant species, environmental diversity and balance etc. are acknowledged as such.

The emergence and diversification of the range of common heritages are the result of the action and pressure of several factors. First of all, we deal with the scarcity and quality degradation of certain environmental elements (natural resources) such as water, pure air, some animal and plant species. Legally, the concept of *common* (natural or cultural) *heritage* replaced the concept of *res nullius,* which had become inappropriate, and which referred to a regime according to which the items in question were considered ownerless property and belonged to the first taker. Gradually, the resources in question became vulnerable and limited, even exhaustible, which implied their integration within "common heritages", in order to preserve them and organize their use to everyone's benefit.

Then followed, in the same direction, claims of an economic nature and with an ideological touch, for the access and use, to everyone's benefit, of certain resources, and for the profit they can generate. This is the reason why, for instance, more and more resources have important economic or vital interests and are inappropriately granted through private appropriation: this is the case of water or of vital medicines, some populations not having the necessary means to provide them. Similarly, other resources, especially immaterial, such as information, research results, ideas etc. are claimed to be accessible for all, on behalf of the public interest. For these reasons, law fostered the categorisation into *res communis* (common goods), i.e. appropriated goods for collective use, with a regime ensuring this common appropriation and use. Then, from this perspective, the concept and status of common heritage evolved, to add the ideas of aggregation of these resources into a whole, into the interest of a specific community of beneficiaries (nation, the

European Union, mankind) and to insist upon the function of passing it on to future generations [Rochfeld, 2011, p. 389 et seq.].

Finally, in recent times, the concept of heritage tends to be complemented by the concept of *global public assets,* which comprise: environment, health, food security, financial stability, and dissemination of knowledge [PNUD, 2002].

In its turn, in the *Laudatio si* Encyclical of 18 June 2015, Supreme Pontiff Pope Francis makes a global call for the protection of the "common home" and envisages an "integral ecology" to this effect.

4.1. Genus Proximum et Differentia Specifica. Common heritage is not an ordinary heritage, seeking to introduce an element, both moral and legal, in the preservation of cultural and environmental values and distinguishes itself from its traditional concept at least from four reasons. First of all, we speak of *collective heritages,* which are not associated to an individual, but to a community; its holders are a group, of a different coverage: a local collectivity, a nation, mankind in its entirety or even future generations. Certainly, from a legal point of view, what matters is the capacity as a subject, as a holder, as a representative of the rights and obligations related to this status, which have to be exercised and asserted as such. Then, they are characterized by being *"solidaristic and egalitarian",* in the sense that they allow the consideration of juxtaposed interests which go beyond the interests of individuals; they lead to solidarity among the people integrated within that community, in relation to the use and management of the elements comprising it.

These heritages are deemed as *transgenerational;* there must be solidarity both among present generations, and especially between present and future generations.

Finally, they are seen, to a certain extent, as "anti-economical", by the fact that they are established to avoid the use of the resources they incorporate (natural, cultural resources etc.) in a disorganised way by everyone – in the case of *res nullius* – but also to avoid an ordinary movement of goods. Thus, the establishment of these heritages aims at making the elements comprising them unappropriable or, at least, at setting up certain terms and rules in relation to their movement as goods.

4.2. Legacy, Preservation and Transfer of the Collective Usage Right. Another major difference for this type of heritage as opposed to the "classical" genus proximum refers to its common and rational use, to the benefit of the members of those communities, of its component elements, the protection, the preservation and,

as much as possible, the enrichment of its defining data and ensuring its passing on to future generations. The concern for the future, the prospective and redistributive character are the mere essence of this concept. Therefore, regrouping component elements into such a heritage implies, *per se,* ensuring their passing on to future generations; those components – be they biological, natural, cultural, architectural, rural, or landscape heritages etc. – must be able to be passed on to these generations and used for their benefit. This dimension objectively implies the function of preserving this heritage; so that they could be transferred, its elements must be preserved and fostered. In fact, such a concern justifies the exclusion of these resources from the exchange of goods and the ordinary legal trade.

In addition to the fundamental requirement of *legacy and preservation,* common heritage implies ensuring the collective use of resources in the interest of the community in question. A valuable example is, in this respect, the international, EU, and national legal regime related to water.

4.3. A Sort of Conclusions. As a somewhat "sketchy" conclusion, we believe that three paradoxes should be highlighted, as they mark the significations of *common heritage,* express its power to assert itself and the future it can enjoy. Firstly, it is to be noted that the resources it integrates thus become non-patrimonial assets! Therefore, in order to fulfil its functions of preservation, transfer and collective use, this type of heritage implies the need to be subject to a legal regime which excludes it from the ordinary exchange of goods, or at least, which places it under strict rules. With the integration of a natural or cultural element into one of these common heritages, its traditional asset value disappears or is minimalized and its value as a merchandise disappears. So, paradoxically, by characterising it as a heritage, its patrimonial nature disappears, as it absorbs elements which, whether patrimonial or not, in the classical understanding, are meant to become non-patrimonial.

Secondly, by integrating those elements into a common heritage, they become indifferent to things and goods in their "civilian" sense; their way of appropriation is insignificant and the existence of an owner is not essential. The link with a certain person is no longer relevant.

Finally, this type of heritage, both primary and renewed, comprises a single asset, organized in a universality affected by a common interest. Thus, under the double action of the rising historicism and, especially, of awareness of the dangers and threats stemming from industrialisation, urbanisation, and collective harms, the

term has come to designate all the goods inherited from the past, which have to be kept intact and passed on:

- either cultural (a wide range, from books and paintings, to human-organized landscapes);
- or natural (resources, sites or natural "monuments").

5. A Definition of the (Global) Cultural and Natural Heritage and the Universal Obligation to Protect it and Pass it on to Future Generations

Among the various types of common heritages, the world (cultural and natural) heritage has a specific place and legal status. Facing the threats of destruction and alteration, in the context of an insufficient action at national level and its exceptional importance, through the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, adopted on 16 November 1972, the concept of "cultural and natural heritage of outstanding universal value" was legally acknowledged, being subject to a special protection regime, where "collective assistance" complements the action of the State concerned. The document also provides a definition "in its own spirit", both of the *cultural heritage,* and of the *natural heritage* which generate, on the regional (for instance, European) or national level, important appropriate conceptualisation criteria.

Thus, the following shall be considered as *cultural heritage:* a) *monuments* (architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; *groups of buildings* (groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; *sites* (works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view) (Article 1). Also, in the same spirit, the following shall be considered as *natural heritage: natural features* consisting of physical and biological formations or groups of such formations (which are of outstanding value from the aesthetic or scientific point of view); geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and

plants of outstanding universal value from the point of view of science or conservation); *natural sites or* precisely delineated *natural areas* of outstanding universal value from the point of view of science, conservation or natural beauty) (Article 2). Each State recognizes the duty of ensuring the identification, protection, conservation, presentation, and passing on to future generations (Article 4).

Despite these clarifications, we are still far from a precise definition which would consequently trigger the application of a well-established legal regime, at all regulatory levels. As a principle, natural heritage is still generally considered as a resultant of natural forces, without man's intervention, except that "it is often difficult to identify a pure nature where man has not taken any action to organize, assign its destinations, and even enhance its value". After all, between environment and cultural heritage there can certainly be only a false opposition and, in any case, a very real complementarity even if we only consider the legal texts in the field.

Certainly, the UNESCO Convention had an important influence on the development of this concept, as expressed in the subsequent international and national texts; thus, it had a real influence on the creation of a shared vision and the establishment of the new law.

6. Towards a Law for (Protecting) the Cultural and Natural Heritage?

It is a question which implies both a challenge and, especially, the search for an answer and for underpinning considerations. Indeed, the tremendous development of legal regulations in the field and the obvious specificity of their object raise the issue of a possible establishment of a new law branch or, at least, of a novel field of concerns and specific regulations, which is about to be set up under the form (name) of "law of the natural and cultural heritage". In order to have a clear, appropriate and comprehensive response, we need, first of all, an analysis of the conceptual and positive law prerequisites.

Without being able to find a final and indisputable solution to the problem, firstly, it should be noted that, although heritage protection was first provided for in national law, there was a relatively fast need for an international protection, maybe even more important and more appropriate; in its turn, EU law on the free movement of goods and environment protection did not disregard this issue. As such, common (cultural and natural) heritage law is strongly related to *culture law*

and *environment law,* can even be confused in some respects, and has important connections with *urban planning law, rural law, civil law etc.*

6.1. Thus, the international protection of cultural heritage is subject to the first specific rules in the texts relating to the law of war, namely The Hague Convention of 1907 with respect to the laws and customs of war on land or concerning bombardment by naval forces, and then The Hague Convention of 1923 on the air warfare. The Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict, and its protocols, as well as those of 1977 to the Geneva Convention of 1949, adopted under the auspices of the International Committee of the Red Cross, have reinforced the relevant legal arsenal. Important documents in the field have been adopted under the auspices of UNESCO, a specialized institution within the United Nations; in this respect, in addition to the Convention concerning the Protection of the World Cultural and Natural Heritage of 1972, one should mention the Convention adopted in Paris on 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, supplemented by the UNIDROIT Convention adopted in Rome in 1995 on Stolen or Illegally Exported Cultural Objects and by the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat, adopted on 2 February 1971 (as amended in 1982 and 1987) [Bories, 2011, p. 283 et seq.]. In its turn, the Council of Europe developed specific policies in the heritage field, both in terms of technical issues, and within the legal and institutional cooperation. Under the European Cultural Convention of 1954 each state is entrusted to safeguard and to encourage the development of its national contribution to the common cultural heritage of Europe. The European Charter of the Architectural Heritage, adopted on 26 September 1975 in Amsterdam, aims at an integrated conservation of heritage. A resolution of 14 April 1976 concerning the adaptation of national laws and regulations to the requirements of integrated conservation of the architectural heritage sets out provisions in the field of integrated protection and commits to promote policies for public information and awareness-raising. Other significant international documents in the field are: the European Convention on Offences relating to Cultural Property, signed in Delphi, on 23 June 1985, the Convention for the Protection of the Architectural Heritage of Europe signed in Granada, on 3 October 1985, the Convention on the Protection of the Archaeological Heritage (signed in La Valetta on 16 January 1992). The European Landscape Convention, adopted in Florence, on 20 October 2000, aims

at highlighting the importance of all landscapes, without confining to a sectoral approach of patrimonial sites, or even of cultural landscapes. Finally, the Framework Convention on the Value of Cultural Heritage for Society, adopted in Faro (Portugal) on 27 October 2005, contains an important and representative definition of the cultural heritage [Frier, 2004, p. 137 et seq.]. These documents put forward and use concepts such as: "Europe's cultural heritage"; "common property for all Europeans"; "architectural heritage"; "European archaeological heritage".

6.2. In EU law, the Treaty on European Union, Article 3 (3), specifies that the Union "shall ensure that Europe's cultural heritage is safeguarded and enhanced", whereas the Treaty on the functioning of the European Union, Article 167, refers to a "common cultural heritage", but in accordance with the principle of subsidiarity, with EU action confined to overlapping the action of Member States, especially by using labels such as "European Capital of Culture" and "European heritage". More precisely, the text of the article in question paragraph (1) specifies that the Union "shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore"; among the fields of EU action, alternatively, the "conservation and safeguarding of cultural heritage of European significance" are also to be noted.

Moreover, in the *Preamble* to the Charter of Fundamental Rights of the European Union the "spiritual and moral heritage" and the respect of "the diversity of the cultures and traditions of the peoples" are put forward.

As concrete EU actions, we may refer to specific programmes such as: *Raphael* (covering the heritage's immovable, bookish, archive, archaeological, and architectural dimension), *Culture 2000* (covering all cultural policies) or *Creative Europe*, in conjunction with the structural funds developed within the economic and social cohesion policy.

Finally, the Romanian Constitution requires the State's obligation of "protection and conservation of the cultural heritage" [Article 33 (3)].

6.3. In the light of the traditional separation between public and private law, a real "collection" of special administrative prescriptions, heritage law belongs, firstly, to public law, as it is "a sovereign right of administrative easements, basically relying on powers pertaining to derogatory procurement procedures" [Frier, 1997, p. 28].

To ensure the best possible protection of the (cultural and natural) heritage, fiscal instruments are an important incentive, whereas incriminations and (contravention and penal) sanctions have, obviously, a deterrent effect. Last but not least, civil law cannot remain indifferent to the field, as it provides the general legal regime where the common patrimonial particularities and the specificities of their object of protection are rooted.

6.4. At the crossroads among different types of law, *cultural and natural heritage law* borrows components from *culture law,* but treats them in a particular way, in terms of the cultural heritage, which must be preserved, enriched, and passed on[1]. The connections with *environment law* mainly focus on nature conservation, in relation to the protection of species, areas, and aesthetics. In environment law, the concept of heritage does not necessarily pertain to property, in the sense that it designates a set of goods, which do not necessarily have an economic value. Even if they can have a market value, when patrimonialized, they have mostly a symbolic interest: in terms of history, culture, art, science, identity, and often ecology. From this perspective, it is important to "preserve the elements which are deemed essential and which must be passed on intact to future generations" [Chamard, 2004, p. 557] because, according to the European Charter of the Architectural Heritage (1975) "Each generation has only a life interest in this heritage and is responsible for passing it on to future generations". In terms of environment law, "heritage" was considered to go beyond the concept of property, since there are environment elements which must be preserved and managed as a "bon père de famille" and calls for the idea of a legacy inherited from previous generations, that we have to pass on intact to future generations [Prieur, 2016, p. 100]. Thus, properties and areas considered as "heritage" in environment law require a special attention, not only from their legal owner (if any), but especially from the entire community. Considering the privileged relationship with urban planning law, both in terms of land use, and of the requirement that planning documents should include, among others, the protection of historical monuments, of their surroundings, and of the sensitive natural areas, urban planning authorizations have

[1] *Culture law* is the law related to cultural goods, activities, and services, a specific law, whose object is the cultural creation, the access to culture, cultural diversity, common heritage protection. From this perspective, cultural heritage law is a component of culture law, which also comprises the law on performing arts and cultural creation, literary and artistic property, freedom of expression.

important particularities. There is even talk about the existence of a so-called *protective urban planning,* developed and established as a heritage law [Monnier, 2013, p. 125]. Certainly, urban planning law has not consistently aimed at protecting heritage and fostering architectural quality, but it has gradually undertaken them. Thus, during the first half of the 20th century, it moved away from the cultural and aesthetic concerns, in order to focus on economic and social concerns related to urban development, distinguishing itself from heritage law by 1970; after that date, life quality requirements tend to impose on quantitative urban planning. Heritage protection becomes more and more essential insofar as it represents one of the aspects of heritage policy aimed at safeguarding cultural identity and protecting aesthetics. Combining its primary, defining aim of governing land use with the aim of protection, the latter took on a new scope at the beginning of this century, being included in the larger issue of societal responsibility which also covers the concept of sustainable development.

As a branch primarily of public law, urban planning law allows to ensure the protection of a heritage designed as a property, beyond the ownership rules, a property which represents a collective asset and allows, especially to the State, to act in the public interest. Protective urban planning is based on a set of rules stemming from various legal acts, to meet the economic, social, and ecological expectations. Therefore, such a law would rearrange the set of legal protection rules, applicable to urban planning, setting out the available means of intervention and protection by the State and public authorities on the immovable heritage, with their own management regimes. There were also significant developments in relation to other types of law, such as rural law, spatial planning law, or even architecture law. Indeed, as far as the latter is concerned, law becomes the guardian of “Beauty, of the beautiful monument, of the beautiful heritage, of the beautiful town” [Huet, 2001, p. 6].

7. All these rules form a specific system, stemming from the indissoluble unity of cultural and natural heritage, the fact that they are common heritages, meeting collective requirements of utmost importance, which, by their intrinsic value, must be conserved, preserved, and passed on to future generations. Moreover, whereas, in comparative law, the issue is covered by a code or a special framework law, by a specific doctrinaire presentation and didactic approach, the acknowledgement of an independent regulatory area for cultural and natural heritage becomes self-imposed. Through their multiplicity and diversity, national, EU and international

sources reveal both the existence and the essence of the new law. It includes all the rules of law and the institutions which contribute to the identification, demarcation, protection, conservation, preservation, and passing on of common natural and cultural heritages to future generations. In this regard, the new regulatory and doctrinaire reflection area encompasses significant sectors horizontally and vertically governed by legal rules pertaining to international, EU, and national law, to public and private law, culture law, environment law or to urban planning law [Guillot, 2017, p. 15]. From that point of view, cultural and natural heritage law is part of the so-called "mixed disciplines", namely of the branches of law which have been set up to bring together, into a single body of rules, having one and the same object, without taking into account their private or public, internal or international nature. Furthermore, this involves a "segmented" law, in the sense that its object, the "cultural and natural heritage", besides having common principles and rules, touches several legal fields, mainly governed by other law branches, starting with culture law and environment law. In relation to the other overlapping types of "law", *common heritage,* like a chameleon, takes on the colour (especially the tinge!) of the traditional branch it refers to. In any case, by acknowledging and fostering the thesis of setting up a *cultural and natural heritage* law, there is a strong impetus towards the development and adaptation of the positive law to the specificities of the field, and towards the deepening of the doctrine.

8. Right to a Fair Access to the National, European, and World Heritage

By their very definition, common heritages, such as the cultural and natural heritage, imply a legal action aiming at conserving and organizing their use to everyone's benefit, i.e. precisely to ensure everyone's access to an essential resource for life, welfare, and biodiversity preservation, so that the collective cultural and spiritual identity should be preserved and perpetuated in general. The establishment of common (national, European, and world) heritages also aims to allow each individual to benefit from an "asset" which can only have a collective existence, being established through everyone's contribution, previous and present generations, an asset from which everyone should benefit and which everyone must preserve, enrich, and pass on to future generations. In this perspective, access to common national, European or world heritages gradually materializes into a new fundamental human right, by excellence of solidarity and survival. There are

arguments in favour of acknowledging and guaranteeing everyone's equal and fair access to common heritage. Among others, its legal existence would allow the establishment of rights and procedures which would ensure the preservation, passing on, and the sustainable and inclusive management of common heritages. Until then, the two fundamental rights significant in this field, the right to culture and the right to environment, indirectly accomplish this role.

Moreover, it would constitute an important pillar, around which the new law branch would be structured.

9. Conclusions

The acknowledgement and development of the idea of establishing a cultural and natural heritage law, as a new regulatory field and an innovative area of dogmatic reflection, and of the emergence of a new fundamental human right to access, to solidarity, the right to a fair access to common national, European and world heritages are required by the obvious developments of social realities and of the relevant legal regulations. Accepting and promoting such actions would firstly contribute to the strengthening and appropriateness of the legal response to phenomena such as cultural globalisation and its adverse, standardising effects, or the degradation and large-scale depletion of the natural resources essential for life and for the individual and general well-being. This would foster the concerns regarding the development, rationalisation, appropriateness and modernization of the legislation on the cultural and natural heritage preservation, including in terms of a codification process and the development of a Romanian Heritage Code. The existence of such a complex regulatory act and of sufficient and effective regulations in the field would promote a better integration and presence of the Romanian cultural and natural values on the European and world scene. At the same time, the need for a specific field and the efforts to set up an innovative fundamental right would foster and lead to significant theoretical developments, and to concerns related to the establishment of professionals or, at least, to the provision of a complementary training in an increasingly important area.

All these legal progress issues would lead to a better identification, valorisation, conservation, preservation, and enrichment of the Romanian cultural and natural heritage, and to its higher presence and visibility at European and world level.

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Accountability and Delegation of Regulatory Powers to Agencies

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Abstract. *The problem of delegation of powers in the EU framework has become one of the main issues legal scholarship has to deal with. In its broader meaning delegation could address different phenomena: to the extent of this paper, we will deal with just one of these phenomena, namely the delegation to EU agencies of regulatory powers. The aim of this paper is to highlight some critical issues in this matter: first of all we will recall the evolution of the delegation in the case law; secondly, we will try to briefly draw a pattern for the accountability of EU Agencies' rulemaking, in the light of the US model contained in the Administrative Procedure Act. Eventually, we will address some of the problems of participation in the rulemaking and we will see how to improve the EU system in order to avoid them.*

Keywords: *Delegation – rule-making – European union – participation – agencies.*

JEL: D73, H83.

1. Introduction

Delegation constitutes a key-concept encompassed in the principal-agent theory: through delegation, the principal confers a certain number of powers upon the agent. However, this transfer of powers entails several problems related to the way the principal may be aware of the behavior of the agent and, consequently, to contrast him whether the agent acts in the interest of himself (instead of the one of the principals).

This problem is typical of all the modern democratic States experiencing the proliferation of independent agencies entrusted with regulatory powers. But this problem is faced in a supranational organization, such as the European Union (hereafter, EU), as well. In the EU context we should consider that since delegation implies an alteration of the institutional balance provided by the Treaty, it requires a very deep consideration of the constitutional implication it could raise (Türk, 2011).

In order to evaluate in a proper manner, the constitutional repercussion of the way we conceive the delegation we should begin by reflecting on the evolution in the case law of the European Court of Justice (hereafter, ECJ).

2. The fundamental core of the delegation doctrine: Meroni and Romano

The requirements in order to legitimately delegate powers originally attributed to an Institution are notably specified in the *Meroni* judgment (ECJ, 9/56 and 10/56, ECR 1957-1958, *Meroni & Co, Industrie Metallurgiche v. High Authority*, 133). In this case, the complainant contested the decision through which the High Authority delegated the powers for the financial implementation of the ferrous scrap regime to two bodies (governed by Belgian private law), assuming that this type of delegation was not foreseen in the European Coal and Steel Community (hereafter, ECSC) Treaty.

The ECJ allowed the appeal, nonetheless its reasoning was quite different from the complainant's one: the Court, having preliminarily stated that the delegation requires the transfer of the responsibility from the delegator to the delegate, held that the High Authority was entitled to delegate its powers to private bodies, in accordance with art. 3 and 53 of the ECSC Treaty. Furthermore, this delegation was subject to some limits. Firstly, the delegate cannot be entrusted with different powers from those attributed to the delegating Institution by the Treaty: so, as a corollary, all the rules governing the powers of the delegator must be applied even to the powers conferred upon the delegate. Secondly, the delegation cannot be

presumed, but it needs to be explicit. Eventually, the delegation is permissible only whether it regards powers deprived of any margin of discretion. The three just mentioned elements constitutes the fundamental core of the so-called *Meroni* doctrine, established to prevent the institutional balance provided by the Treaty from being endangered through the delegation of powers from the Institution that was empowered with them to another body. Hence, to perform a delegation compatible with the *Meroni* doctrine, only clearly defined powers may be conferred upon a private body. And more importantly, those powers should not enjoy a wide margin of discretion.

In 1980, in the Romano case (ECJ, 98/80, ECR 1981, *Romano v. INAMI*, 1241), a similar issue about delegation occurred, but with two prominent differences: the delegate was a public body and the content of the power consisted of the possibility to adopt acts having the force of law. The Court did not mention the *Meroni* judgment and, in accordance with the opinion of the Advocate General, held that the only type of delegation of powers provided by the Treaty was enshrined in art. 155 of the European Economic Community (hereafter, EEC) Treaty, whilst, on the contrary, the delegation at stake did not fall within the scope of application of this norm. Moreover, the Court significantly ruled that the delegation of the power to adopt acts having the force of law was consistent neither with art. 155, nor with the judicial system enshrined in articles 173 and 177. To put it in a nutshell, the Romano's findings led to a more restrictive approach to the delegation of powers. However, it was not clear if this judgment was meant to forbid the delegation of the power to enact legally binding acts or acts of general scope. The court used the expression "*acts having the force of law*" and this expression was interpreted in different ways. Even if the just mentioned acts have been intended as legally-binding acts (Türk, 1996), referring to the wording of the judgment in other languages and taking into account also the subsequent case law and the opinions of the Advocates General the acts having the force of law should be intended as legally-binding acts of general application (Chamon, 2016).

3. Further evolution of the delegation doctrine

At any rate, the above mentioned approach could not last forever and in fact it was gradually tempered in the late 1990s. In this regard, we should consider three phenomena facilitating this change. Firstly, the agencies began to have an increasing role in the organization of the EU due to their proliferation during the so-called second and third wave of agency formation (Egeberg and Trondal, 2017). Secondly, the powers to adopt binding decisions (or to play at any rate a central role

in institutional decision-making) have been conferred upon many agencies (Chiti, 2013). Thirdly, the ECJ has softened its standard of review with reference to those technical and discretionary powers agencies are entrusted with (Türk, 2011), implicitly admitting the conferral of such powers. Therefore, from the late 1990's jurisprudence, even if the *Meroni* doctrine was still considered fundamental, the limit of the discretionary powers began to be conceived in a less rigid manner.

The last stage of the delegation doctrine is represented by the ECJ findings in *UK v. Parliament and Council* (ECJ, C-270/12, *United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union (ESMA)*, ECLI:EU:C:2014:18). Hereby, the Court dealt with the delegation of powers conferred upon an agency, the ESMA (European Securities and Market Authority), established within the new financial system, together with the EBA (European Banking Authority) and the EIOPA (European Insurance and Occupational Pensions Authority). These three agencies (also known as ESAs) have been entrusted with normative powers of non-legislative nature. This delegation, in UK's view, was in breach not only of both the *Meroni* and *Romano* doctrines, but even of the articles 290 and 291 of the Treaty on the Functioning of the European Union (hereafter, TFEU). Nevertheless, the UK's view was not accepted by the Court. First of all, both the AG and the judges held that the Treaty has been modified several times since the *Meroni* and Romano judgments: in particular, the integrated system of review has been entirely revised, since - after the ratification of the treaty of Lisbon - even agencies' acts may be challenged before the ECJ. Indeed, this modification has several repercussions in the delegation doctrine. At the beginning, the delegation was conceived as a means to attribute both to private and public bodies only implementing powers of non-discretionary nature, instead of the power to adopt legally binding decisions (at least the ones of general application). Nonetheless, the Court noticed how these apparently settled principles governing delegation have been partially altered over time. As regards the *Meroni doctrine*, the Court preliminarily pointed out that there were two differences between *Meroni* and the case at issue: firstly, the ESMA is a public body created by the EU legislature, whose powers are conferred according to ESMA Regulation and, secondly, those powers are bounded by various conditions and criteria. It is interesting to note that the Court had not address directly the issue of discretionary powers: however, from the ruling it emerges that the powers conferred upon the ESMA imply a certain margin of discretion and, notwithstanding this, the delegation at stake is immune from any sort of criticism. As regards *Romano*, the Court stressed out that the judicial system has been modified over time, to the point that both articles 263 and 277 TFEU "*expressly permits Union bodies, offices and*

agencies to adopt acts of general application" and, in particular, articles 263, 265 and 277 TFEU provides that acts adopted by the 'bodies, offices' and 'agencies' of the Union may be subject to judicial review by the Court: with the result that the Romano doctrine had been partially overturned (Scholten and Van Rijsbergen, 2014) and now it is self-evident that agencies could be entrusted with the power to adopt acts of general application.

4. The lack of legitimacy. A glance to the us model

We are living in an emergent politico-administrative system changing constantly and permanently in order to be adapted and to resonate to rapidly transforming environment, and in order to achieve better results, the politico-administrative systems and rule makers are opening up policy and law-making and listening more to the people it affects (Berceanu, 2019). This evolution allows us to make some remarks. Undoubtedly, the ECJ correctly pointed out that a change within the EU legal framework has occurred since 1958. This shift was probably due to the different way the institutional balance principle was conceived, turning from a static to a dynamic vision of it (Chiti, 2010): in this regard, Simoncini (2015) stated that this change in the way to conceive institutional balance happened "*by adjusting it to the need for specialization of administrative tasks within the division of competences between EU institutions in the framework of the EU multilevel governance*". However, we must consider that the expansion of the regulatory competences provided within the European Union legal framework, in defect of a parallel alignment on the institutional level, has led to the emergence of a legitimacy *deficit* (Chamon, 2011). To put it another way, the rise of this legitimacy issue derives from the simple observation that the institutional balance (even intended in a dynamic way) provided by the Treaties is stressed too much whether agencies are entrusted with too wide powers. As it has been correctly noticed by Craig (2015), wide powers – even of a technical nature – may imply the balancing of public interests, but the technical expertise of the agencies "*does not translate into specialist skills in balancing broad public interests*". Yet, it is quite clear that those public bodies different from the Institutions are not entitled to make such a balance, since the former have not the same legitimacy of the latter: hence, as long as the institutional framework provided by the treaties remains the same, we should think about a way of increasing the legitimacy of these bodies when they are entrusted with new and, moreover, wider powers in order to preserve the institutional balance of the EU. In this regard, since the problem faced in the EU is anything but new, we could refer to the experience gained in the USA. As is widely known, in the years after the crisis of 1929 we witnessed a proliferation of agencies (to a certain

extent similar to the one faced by the EU) and, consequently, an enhanced recourse to the delegation of powers to these bodies in order to manage – within the framework of the New Deal policy - the problems raised after the crisis. The increased wideness of powers conferred upon agencies led the American Bar Association (hereafter, ABA) to think about a way to limit agency's discretion, making them consequently accountable in the US system. The work of the ABA was transfused into the report of 1936, whose content warned against some risks, such as the problems linked to the combination of judicial, legislative and administrative functions in the agency and the lack of an effective judicial review against the agency action (Marchetti, 2005). The final solution was found out through the enactment of the Administrative procedure act, a statute introducing several procedural guarantees (such as participation, duty to give reason, access, etc.) applicable both to rulemaking and adjudication procedure: in other words, the ABA decided to shift from the classical democratic legitimacy to a procedural one. Granting procedural guarantees is relevant even with regards to the judicial review (Caranta, 2009), because whether these guarantees are violated, it could be possible to challenge the decision or the rule before a Court. It is perhaps worth noting that there is another argument in favor of the enhancement of participation in an attempt of reaching a procedural legitimacy. The art. 11 of the Treaty on European Union (hereafter, TEU) provides that the all the EU institutions should take into account the "voices" of both citizens and representative association, with the result that "*participation is now one of the pillars of EU democracy*" (Mendes, 2011). Hence, it is the Treaty itself that indicates participation as a means to enhance the democratic legitimacy of the entire EU.

5. The shortcomings of the US model

Having briefly mentioned the pros of a model based on procedural legitimacy such as the US one, we should take into account even its shortcomings. In this regard, it should be preliminarily noted that there are some issues to address very carefully. First of all, we should highlight that the attention given to procedural rights may lead to a particularly negative phenomenon such as the regulatory capture, *i.e.* the process by which the agencies become dominated by the companies they are supposed to control and regulate. In fact, the improvement of procedural guarantees for the participation in the administrative rulemaking of the agencies could advantage the business groups more than the civil society, since the former could organize themselves to exert their influence on the agencies, whilst the latter – being not well organized – could not be organized as well. The American political science literature is aware of the existence of this problem (see Shapiro, 2009). With respect

to the EU context, it is sufficient to take into account a field research carried out with reference to open consultations that took place in 2011 (Marxsen, 2015): from the data collected, the Author has deduced that the most active actors in the European field are business groups and, moreover, that this situation is due to the difficulty in bringing together all the voices of the EU citizens.

Another very complex issue to deal with is linked to the so-called phenomenon of ossification: more precisely, there is the risk that the excessive improvement safeguards in the procedures held before Agencies may lead to the ossification of the procedures themselves (Marchetti, 2009). In this regard, from the 90s legal scholarship has underscored that the procedural guarantees developed in the US system provided by statutes of the Congress and executive orders of the President, on the one hand, and, the hard look test developed by the American Courts (see McGarity, 1992), on the other hand, have led to a meaningful increase of the time required to enact a rule following the notice and comment procedure. However, we should draw attention to the fact that the existence of the risk of ossification is still contentious among legal scholars (see Yackee and Yackee, 2010).

Eventually, the problem of ossification have another effect, namely the increased use of soft law measures such as guidance documents instead of legally binding rules, due to the fact that the former do no fall within the scope of application of the procedural guarantees typical of the second acts, so that the use of guidance documents (or even individual decisions: see Marchetti, 2009) could represent a way to circumvent the notice and comment procedure. This problem has been detected in the USA (see e.g. Manning, 1996), even if someone has denied its relevance (Raso, 2010): in any case, it is better not to underestimate this problem and to act *ex ante*, in order to avoid that it could realize. It is worth noting that the same problem has been identified in the EU context, looking the asymmetry between the procedures for the adoption of legally-binding rules and the ones for the enacting of soft law measures (Chiti, 2013).

6. Some issues de Lege ferenda

Bearing in mind the pros and the cons of the US model and without claiming to be exhaustive, we will try to the just mentioned shortcomings taking with regard to the EU context. Actually, it has been noticed that all the agencies have an almost uniform regime of participation, even if a too rudimental one (Chiti, 2013). It is worth noting that the ReNEUAL research group have drawn up the so-called “model rules” for the administrative procedure in the EU: in particular, the Book II of these rules is dedicated to the administrative rulemaking. Unfortunately, the

drafted rules encompassed in Book II related to the administrative rulemaking do not fall within the scope of application of the resolution of the European Parliament (*Resolution 2016/279 of 9 June 2016 on a regulation for an open, efficient and independent European Union administration*). At any rate, considering the *status quo*, we should consider which elements should be enhanced in order to avoid that participation itself can shift from a tool of improving accountability to an instrument aimed at undermining the efficacy and the legitimacy of the Agencies' action. As regards to the problem of regulatory capture, a reform of the system of participation is desirable. More precisely, it could be expected an establishment of rules for every stakeholders' group participating in a procedure, especially regarding representation and democratic requirements, on the one hand, and transparency, on the other hand. Moreover, it could be necessary to hold the consultation of the participants respecting a certain proportion and so avoiding that there could be procedures participated only by interest groups in which the civil society is not represented. Paying more attention to the implementation of the principles of representation and transparency we could shape a model in which civil society organization could play a central role in the European arena (see Obradovic and Alonso Vizcaino, 2006; Smismans, 2014).

As regards ossification, the possible solution could consist of avoiding the provision of trial-type procedure (*i.e.* procedures similar to the US formal adjudication and rulemaking) and introduce a discipline more similar to the informal rulemaking based on the model of "notice and comment", to balance both speediness and legitimacy. In addition, it could be interesting the provision of expedited procedures such as the ones provided in the Model rules of ReNEUAL at article II-6. The *ratio* of this provision is to allow to address exceptional situations in a quick manner. One could think that in this way it is possible to bypass the procedural guarantee, but it is worth noting that "*an act adopted by means of the expedited procedure is valid for a maximum duration of 18 months after its adoption*" (article II-6 Model Rules ReNEUAL). Yet, this norm is important even with regard to the need to prevent EU agencies from adopting norms of soft law instead of hard law, overriding procedural guarantees.

Lastly, another point should be emphasized: as Mendes (2011b) has rightly pointed out, it is necessary a reconsideration of the way to conceive participation in the EU rulemaking, suggesting to converge towards a rights-based approach. This rights-based approach consists, briefly, in conceiving participation as a right that can be wielded and even enforced before a judge. In this way, it is possible to build an ideal bridge between both the procedures (before the Agency and before the Court), so that the participants and the judges may have materials, records, information in

order to, respectively, challenge or verify the tenability an act adopted by an Agency.

In conclusion, insofar as the accountability of the EU Agencies is considered as a target, it is necessary to shape in a new way the right of participation in the administrative rulemaking procedure before Agencies.

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Creating Collaborative Infrastructure for Inclusive Urban Innovation

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Abstract. *Cities are becoming actual innovation centres, mainly regarding products and services industries, processes and roles taken by actors involved. Societies' expectations are increasing and, along with the ICT technologies use, they can drive normative and cultural change, thus increasing collective resources and growing social and economic infrastructure performance. This paper aims to present a framework of developmental backgrounds with great impact on collaborative infrastructure that can be used to enhance social inclusive urban innovation. The methodology used for this research is both bibliographic – opting to study the work of specialists in the field, and empirical – the theoretical approach is supported through global case studies. Creating a collaborative infrastructure will become an important element in the context of developing smart and inclusive cities. The results of this paper will show that collaborative practices have an important role regarding this issue, therefore the collaboration between public and private sectors could improve citizens' life quality. Although technology is a main element in all activities, we have identified that the capability and willingness of individuals and institutions to cooperate and innovate is also important, not only by using electronic means, but also through traditional ways of participating in the social developing process.*

Keywords: *collaborative infrastructure, inclusive, innovation, smart cities.*

JEL: P25, R51.

1. Introduction

Cities have been, since many years ago, centers for developing commerce, innovation and culture, being a boost for human creativity (C40 Cities, 2012). Thus, as cities' growth increases quickly, urbanization becomes a fundamental concept for achieving sustainable development (Fukuda).

According to the United Nations, more than half of the world's population (55%) lives in urban areas and this number is predicted to rise to 68% by the year 2050, the overall growth being expected to add 2.5 billion people to urban areas, almost 90% of it taking place in Africa and Asia (UN-DESA, 2018).

As cities' importance increases, they become fundamental for addressing current social challenges, such as inequality, population growth and so on. Moreover, urban areas are responsible for 2/3 of the world's energy consumption, which makes them contribute to climate change. Therefore, it is easy to understand that cities have to be leaders in regard to the innovation concept, their management being vital in meeting goals of new global sustainable development (Zweynert, 2016, a).

Following this thinking, Seoul's Mayor Park Won Soon, winner of the prestigious Gothenburg Award for Sustainable Development in 2016, said that "citizens play an integral role in making policies and implementing them" (Won Soon, 2016).

Park Won Soon also said that cities are "the original platform for sharing" (Won Soon, 2016), thus future cities must meet the needs and requirements of current and future generations, by being more collaborative and inclusive (Zweynert, 2016, b).

In order to improve the decision making process in collaboration with the citizens living in the urban areas, a more efficient data collection regarding the needs of the urban residents considered the most vulnerable from certain points of view is needed (Eskelinen, cited by Zweynert, 2016, b).

Therefore, for building both the urban vertical and horizontal infrastructure and the spaces in between, a data-driven decision making culture must be created and embraced by all actors of the development process, a process that can be achieved by collecting data, sending it to the relevant platforms and also processing and analyzing it in order for the information to be useful to entities that need it. Only after all parties are aware of the current situation, their interventions and investments can contribute at making an actual difference (Beck, 2016).

Establishing cooperative and collaborative relationships between different actors of both the public and the private sector can lead to great collaborative impact, by sharing knowledge and finding the best action plans and strategies.

For a better understanding of the purpose of this paper, we consider it necessary to provide a proper definition of collaboration. Thus, it can be understood as "two or more organizations working together to achieve an agreed goal. This could be two public sector organizations or could be the public sector working with the private or third sector or with the public to achieve a common outcome. In addition to this, collaboration is also a way to build on cross-sectors strengths, share knowledge, pool resources, share accountability and aligned incentives" (Collaborate Foundation, 2018, p. 8).

As for the majority of the world's population will live in urban areas in the near future, we can easily understand that a better future can and must be achieved, either at national or global level, through urban actions and innovation (C40 Cities, 2012).

Most innovations have an ICT element in their composition which has a great importance because information and the possibility of sharing it are fundamental for offering public services, putting into motion public policies and developing projects and programs (Matei, Săvulescu, Antonovici, 2015, p. 7). Thus, such goals for development can be met with strong collaboration relationships (Birch, 2018) by using proper tools.

Such multi-stakeholder partnership references are mentioned as being necessary to be started even in the Agenda 2030, which has to be implemented "through a revitalized Global Partnership for Sustainable Development, based on a spirit of strengthened global solidarity, focused in particular on the needs of the poorest and most vulnerable and with the participation of all countries, all stakeholders and all people" (Sustainable development, 2015).

Moreover, in the New Urban Agenda it is stated that the "global commitment to sustainable urban development [is] a critical step for realizing sustainable development in an integrated and coordinated manner at the global, regional, national, subnational and local levels, with the participation of all relevant actors" (Habitat III, 2017).

Therefore, this process of developing efficient and well-functioning partnerships must start, as for multi-stakeholders groups, formed by different organizations with various purposes, operating modes, organizational cultures, knowledge levels and structures for decision making, are fundamental in finding solutions for actual urban problems and needs (Birch, 2018).

In this regard, we can give as examples various groups that have the purpose of discussing these issues, such as the Global Task Force of Local and Regional Governments (GTF), the General Assembly of Partners (GAP) and other coalitions, they though being in need of member states that can put the ideas collected into practice.

At a local level though, municipalities play a very important role in the development of collaborative urban infrastructure, being the authority for both planning and building, and also a fundamental public developer. Therefore, local entities have a great importance in enhancing the citizens' involvement and establishing the general objectives and plans for developing urban areas, enabling the applicability of ideas by discussing with partners, these being the private developers and other actors (The Danish Government, 2014, p. 25).

Through this paper, we had the aim to present a developmental backgrounds framework that can have great impact on collaborative infrastructure, this being useful for increasing the social innovation issue of inclusive type at an urban level.

In the ending part of this paper, we will see that creating such an infrastructure will become a fundamental issue in the process of creating and developing smart, citizen-inclusive cities.

This paper will show that cooperative and well-functioning relationships between different actors, both from the public and the private sector, can contribute to improving the life quality of citizens living in the urban areas, thus collaborative practices have an important role in this regard.

2. Materials and methods

The main empirical data for this paper was provided by supporting the theoretical approach through global case studies on the topic in discussion.

The smart cities movement has already generated a series of solutions to various social problems that urban areas are dealing with, by creating approaches and applications for a smarter environment. The benefits of putting this movement into practice can be seen by applying intelligent infrastructure and technology and also through data achievement and various analyses. Strategies for smart inclusive cities are being applied in developing and established countries (Beck, 2016).

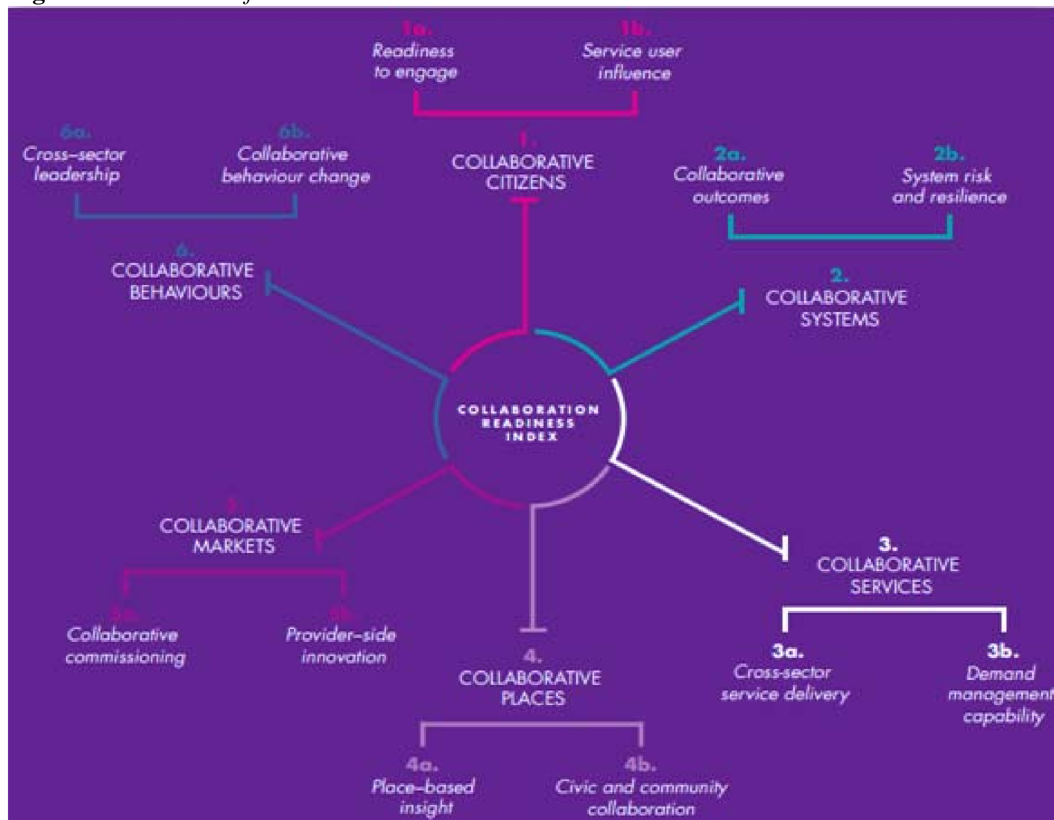
As an example in this context, we can mention Gabon, a West African area that has, as the fundamental basis for the development of Libreville's urban land, a Smart Code model which represents the governing planning system. It is a new and practical approach to meeting the area's municipal objectives within a flexibility framework, thus providing the possibility of integrating new ideas in terrestrial planning and also smart technologies in services of transport and water (Opticos Design, Inc).

But firstly, we want to mention why there is a need for collaborative infrastructure in an urban area approach. The problem regarding this aspect can be divided into two parts, namely (Randle, Anderson, 2017, p. 5):

a) Social problems causes are complex and interconnected, this implying that addressing them involves the contribution of various actors;
b) Problems and their solutions have a geographical dimension, this implying that numerous parts of the solutions and problems can be found at a local level (individual, family, community, neighborhood, town or city).

In this context, citizens and communities, local organizations which are non-statutory and governmental authorities are fundamental actors in achieving better results, being the main local viewpoints of the system that supports these challenges and changes. Thus, even if the contributions are different, citizens and institutions are empowered, through these collaborative places, to work together in order to obtain positive change, needing the creation of new collaborative infrastructure (Randle, Anderson, 2017, p. 5).

Figure 1. *Indicators of collaboration*



Source: Kippin, Billiald, 2015, p. 19.

Actors involved in collaboration processes have been provided with an important tool, namely the Collaboration Readiness Index – CRI. It is a starting point in the direction of adaptation at a local and conceptual level, being focused on organizations that deliver public services. Its interpretation is formed by six categories, from collaborative citizens to collaborative systems, these categories having two indicators that help create a basic analytical assessment, then also offering a framework for readiness creation in time (Kippin, Billiald, 2015, p. 12).

As previously mentioned, each category presented in the figure above has two indicators of collaboration (Kippin, Billiald, 2015, pp. 22-27):

1) **Collaborative citizens:**
   - 1a) Readiness to engage → to what extend do providers of public local services feel ready to engage with citizens and share power with them;
   - 1b) Service user influence → to what extent the instruments for delivery and processes for commissioning are both independent to and influenced by the needs and requirements of the users;
2) **Collaborative systems:**
   - 2a) Collaborative outcomes → to what extent a collaboratively developed system vision puts results for citizens ahead of those for institutions and other actors;
   - 2b) System risk and resilience → the systems approach to a risk situation and the approach of individuals and institutions parts of the system in such a situation;
3) **Collaborative services:**
   - 3a) Cross-sector delivery → to what extent practitioners can work across service lines in order to provide incorporated interventions with citizens;
   - 3b) Demand management capability → to what extend understanding and managing demand is used as a service reconfiguration strategy;
4) **Collaborative places:**
   - 4a) Place-based insight → it determines if civic leaders feel they have the accurate level of making decisions and priorities regarding issues of cross-economy and cross-sector;
   - 4b) Civic community collaboration → it assesses if public service partners are able to create the proper conditions in order for communities to collaborate and determine change;
5) **Collaborative markets:**
   - 5a) Collaborative commissioning → it measures if commissioners and providers have the accurate conditions for joining competitive share and for creating a better social goods' market;

5b) Provider-side innovation → it determines if public services' providers at a large scale actually contribute in enabling innovation, steadiness and better results for citizens in the market space;

6) **Collaborative behaviors:**

6a) Cross-sector leadership → it assesses if this role is a valued skill set and if there are any rewards and boosting comportments towards collaborative practice;

6b) Behavior change → it measures if the behavior change conditions and motivations are seen as being prepared for both supply-demand sides, namely the service and the citizen.

Figure 2. *The nine building blocks of collaborative infrastructure*

Source: Randle, Anderson, 2017, p. 18.

There have been identified nine elements considered fundamental for creating a collaborative infrastructure, for creating interconnected relationships between citizens and organizations and for contributing in the creation of a gravitational tool towards collaboration for common and shared results (Randle, Anderson, 2017, p. 6):

1) **Place-based strategies and plans** → these are constituted by a vision for place that can be achieved if there is a shared understanding of the local challenges that exist or may arise, being created by the actors involved in the process;

2) **Governance** → this element refers to the need of existing a collaborative structure for leadership governance that has the characteristics of being cross-sector, cross-cutting and has the system accountable;
3) **Outcomes and accountability** → there is a need of shared responsibility among actors for the existing elements in the collaborative space and future possible results;
4) **Funding and commissioning** → this means that there should be platforms for collaborative commissioning and social values and principles based on asset should determine local budgeting;
5) **Culture change and people development** → ability to create collaboration readiness and change within organizations;
6) **Delivery** → the delivery of service is important, but network building and connecting in a social matter are just as important;
7) **Data, evidence and evaluation** → this building block suggests that there should exist a collaborative learning and evaluation that is supported by shared data of statutory and non-statutory co-working actors;
8) **Digital and physical collaborative platforms** → online or physical spaces should be created by public entities in order for actors to meet and find better solutions or improve outcomes;
9) **Communications and engagement** → feedback is fundamental for supporting collaborative relationships in a real-time manner and, thus, adapt the delivery of service to the real needs and requirements of the citizens.

In respect to the nine elements mentioned above that are considered to be essential for building a collaborative infrastructure, we consider it important to mention how can such an infrastructure support local collaboration between different actors of the process of developing smart and inclusive urban areas.

Table 1. *How the infrastructure supports local collaboration*

System perspective and actors	Roles	Example	Collaborative place-based infrastructure
Statutory agencies and public service providers	▪ leaders of the system ▪ lead work to determine the vision and behavior of the system ▪ identify, organize and invest in building a local system ▪ provide collaborative public services	▪ the police can connect citizens with public services, meet their needs and requirements and work with other organizations.	▪ strategies and plans ▪ governance ▪ outcomes and accountability ▪ funding ▪ culture change and workforce ▪ delivery ▪ data, evidence and evaluation ▪ communications and engagement
Local non-statutory organizations	▪ the so-called "juction boxes": organizations, groups, associations, businesses that contribute to a better existence of a place ▪ attract people for shared purpose or interests, provide interaction spaces and opportunities ▪ connect social capital and networks elements	▪ support local businesses in order to be responsible employers in their area	▪ strategies and plans ▪ governance ▪ outcomes and accountability ▪ culture change and workforce ▪ data, evidence and evaluation ▪ platforms ▪ communications and engagement
Citizens and communities	▪ joint help, networks, neighbors who know each other and offer help, casual "self-organizing"	▪ residents have the tools, relationships and platforms that let them impact decisions on the area in which they live ▪ residents can know people in their area via networks of formal and informal nature	▪ culture change and workforce ▪ delivery ▪ platforms ▪ communications and engagement

Source: Randle, Anderson, 2017, p. 38.

The table above shows that each element is important, but the actual power of collaborative infrastructure at an urban level comes from the manner in which these components are combined and how they related to one another. Another essential perspective is to understand that this kind of infrastructure empowers actors involved in the process to contribute to local change, either we refer to citizens or various groups of people (Randle, Anderson, 2017, p. 37).

But in order to better understand the concept discussed in this paper, it is important to see how it was put into practice in different part of the world, through various projects that have the aim of contributing to more inclusive urban innovation and development, through the use of collaborative infrastructure systems and tools.

A first example in this context is the one given by Essex, a county in the East of England. Even though **The Future of Essex** project is made for a larger scale than the urban one, it is important to be mentioned because its content comes from all parts of the area, referring here to local citizens, community groups, institutions of education, public sector, private sector, the voluntary sector – all these actors have participate and share information and knowledge through different means, such as: activities, interviews, meeting sessions, surveys and conversations, everyone working together for better results of social nature in Essex. Thus, the project's purpose is to provide to all the different actors of Essex a way of collaborating regarding the process of planning their future (Future of Essex, a).

Its vision is going towards the following focus points: to unite behind a sense of identity; to enjoy life long into old age; to provide an equal foundation for every child; to strengthen communities through participation; to develop the county sustainably; to connect individuals to each other and to the world; and to share prosperity with everyone (Future of Essex, b).

Another good example is **Birmingham Impact Hub**, a collaborative workspace described as "a place to collaborate and discuss, challenge and be challenged" where different people and organizations can innovate for finding solutions to challenges that arise within the city (Birmingham Impact Hub), thus bringing change and developing the urban area. The platform is now collaborating with the Improvement Team of Birmingham's City Council in order to contribute at creating and supporting culture change work streams within the council (Randle, Anderson, 2017, p. 34).

In Sweden, an institution of higher education, Örebro University, has a great developed relationship of collaboration with the authorities of the public sector in

fields such as healthcare, education and welfare, also establishing collaborative networks with the private sector, mainly regarding engineering, manufacturing, IT and logistics. Örebro is the country's first university to conduct recruiting programs for senior lecturers with external collaboration, the role of each lecturer being to collaborate with the community, to conduct self-initiated research which can also include a collaborating relationship with the industry sector (Örebro University, 2017).

Denmark has put into motion **DK2050**, a striving project that brings together four ministries, ten municipalities, three regions and numerous private companies and foundations with the purpose of supporting innovation and design scenarios for how citizens will live in 2050 in the country's cities, towns and other urban regions (Danish Architecture Center, a). Being created as a national experienced debate on the creation of a sustainable society and urban life by the year 2050, it will gather possible future directions for designing healthy and sustainable environments (Danish Architecture Center, b).

Remaining at a European level, we want to mention some initiatives of the European Union that we consider relevant for this paper. The first one is represented by **The Collective Awareness Platforms for Sustainability and Social Innovation (CAPS)**, which brings new models of creating awareness regarding challenges of sustainability that are currently emerging and also regarding the role that European citizens have in finding solutions for those challenges through collective activities. Its objective is to create design and pilot plans for digital platforms as a collaborative place to foster solutions based on different people, ideas and sensor networks that can support new social innovation forms of online nature (European Commission, 2015).

The European Cluster Collaboration Platform provides modern tools to cluster organizations, one of those tools being the possibility to develop collaboration within and beyond Europe, this collaboration also being a way of sharing knowledge and information regarding many topics, among which the development of inclusive urban innovation can be included. The collaboration cluster's purpose is "to become the leading European hub for international cluster cooperation, building cluster bridges between Europe and the world" (ECCP).

Bringing the discussion to the USA, San Diego has an example of such an initiative, **The Urban Collaborative Project**, which is "an inclusive effort through community outreach, by neighborhoods, town councils and other neighborhood stakeholders to make safety, civic engagement, health and beautification, a

neighborhood practice, making […] communities more vibrant, informed and connected" (The Urban Collaborative Project). The starting premise of the project is that "vibrant neighborhoods are critical to the overall success of [the] city", its organizers establishing connections with owners of commercial properties (The Urban Collaborative Project), this emphasizing even more the importance of developing a collaborative infrastructure for community development.

These are only a few projects and actors that have started focusing their attention on the importance of creating and being a part of a collective infrastructure for the development of communities and cities.

3. Results

This paper presents some important insights regarding the elements that are fundamental to an efficient and successful collaborative infrastructure that can help create and develop inclusive smart cities and urban innovation.

Joseph Stiglitz, awarded in 2001 with the Nobel Prize in economics, believes that markets, the government and individuals are the three pillars of an effective development strategy. The community would represent the fourth pillar (Stiglitz, 2008, p. 57) in this context, therefore the importance of the human resource can easily be understood not only here, but in every life activity. Stiglitz considers that development means both the transformation of economies and of people's lives, education being the key element in facilitating the awareness that it is possible to achieve change (Stiglitz, 2008, p. 55).

In order for a society to be able to successfully develop itself, it must go beyond a simple vision and plan, its members' ideas must be transformed into projects and strategies (Stiglitz, 2008, p. 59). In the educational context, all this helps us understand the importance that institutions of higher education have in stimulating the creative and innovative character of the individuals.

Education can thus be considered a catalyst for efficient development. Therefore, in order for the objective of education to be properly accomplished, there must be acknowledged the importance regarding the level of understanding and making use of the link created between collaborative work and urban innovation. Particularly in this case, physical and digital platforms can be used as instruments for helping the actors involved in the collaborative process get the benefits that this link provides.

Thus, education institutions, the public and private sector and other non-governmental organizations have to build common spaces adjusted to assist the community learning and connecting. These actors can accomplish this purpose by using user-friendly platforms or any other spaces to which individuals interested in the issue discussed are provided with free access. By using these tools, they can organize common interest meetings and thus be able to create new innovations that will help develop the urban areas that these individuals live and work in.

4. Discussion

This paper has the aim to present a framework of developmental circumstances which can play a very important role and have great impact regarding the collaborative infrastructure. Such a frame is useful for developing the inclusive urban innovation that is so important in the context of smart cities.

As we have seen in this paper, building an infrastructure of this type will become an important element in the creation and development of smart inclusive cities.

Collaborative and efficient networks between different public or private participants of the development process can be of help regarding the upgrading of citizens' life quality, this meaning that collaborative practices have a fundamental role in this regard.

In the urban development process, either if it is a physical or a digital platform of communication, using a collaborative infrastructure has a great importance in generating the awareness and willingness among individuals interested in these civic actions and supporting them to access information in a cheaper, easier and quicker manner. Through such a platform, they can connect with public institutions, private companies and other interested parties and, moreover, with the community they live in.

These kind of social actions boost the creation of virtual or physical spaces used by individuals for sharing information, collaborating, exploring already existing ideas and generating or contributing to creating new ones. By using the tools of such actions, people are supported in developing a creative and innovative thinking.

Practices that benefit from collaborative interaction are highlighting the type of education and training focused on cooperation, information and knowledge sharing, problem-solving abilities, communication and risk-taking methods, this eventually

resulting into a greater commitment and participation of individuals, these being fundamental elements of development.

Even though technology is an element of great importance and usability in individuals' life activities, their willingness and skills to collaborate with public institutions, private companies and other community groups, thus generating social innovations, should not be forgotten. There is no key procedure in handling these kinds of activities and comportments, but there should be a balance between using both electronic and traditional means of participating in the development of a society.

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Administrative and Financial Reforms in the Nigerian Public Sector

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Abstract. *The paper x-rays administrative and financial reforms in the Nigerian public sector. The intention is to study numerous programs and policies introduced in Nigeria and analyse the impact of these reforms as it fosters revolutionary change of public sector in the country. This is important given noticeable professional change amongst government and the staffs on one part and between professionals on the other part. This article embraced an exploratory method in carrying out the study. Findings of the study reveal that there was numerous literature on public sector reorganization with a low review on administrative and financial reform programs in the public sector. Hence, the study concludes that reform programs are key and indispensable in ensuring efficient service delivery in the Nigerian public sector as well as national development. It finally recommends inter alia: a continuous and systematic review of programs and policies of government to ensure alignment with national objectives; mobilization of adequate resources for successful execution and implementation of programs; and collaboration among all tiers of government and professionals.*

Keywords: *Administrative, Financial, Reforms, Restructuring, Nigerian Public Sector.*

JEL: E60, H83.

1. Introduction

The incorporation of Nigeria into the world economic and political organizations necessitates the strengthening of transformation a revolution procedures. An imperative task in this procedure is the revival of the real action and upsurge in the competitiveness of economy basis relations– public sector initiatives, greatest of which are speedily overwhelming the effects of the world economic crisis. In the past few years, the crisis has shown very sensitively to undesirable revolutions in the economic condition. Then, there is an actual necessity to build effective etechniques of reintegration (reorganization, restructuring, and reformation) for public sector initiatives challenging, and for the revival of its financial prospects.

Reform from points of contemporary scientific study is one of the techniques in restructuring public sector (Tovazhnyanskiy, 2010). Therefore, if public sector reformation has any potentials of transformation and change, subsequently restructuring is one of the tangible technique of improving public sector by the structural reform of its main subsystem. In some instance, the word "restructuring" is understood unclearly. Occasionally, restructuring is comprehended as the basic part of a big enterprise into element parts. Dismantling/disassembling the structure then building independent enterprises from the unique entirety. A change of administrative structure, division, dismantling and the process of choosing the financial embodies subdivisions are only the basics of restructuring, but essentially not its components or aim. Structural amendment which would be or would not be executed rely on the goals of the restructuring and the techniques selected to accomplish this objective.

Public sector reformation has only currently become a general and political discussion. For a long period, the public sector has been viewed as a steady sphere with its own technique of employing, hiring, handling human resource and social discourse. Nevertheless, things have been modified, then the restrictions amongst the non-profit and profit economy and amongst private and public sectors have distorted. Reformation is currently on the program of the third world states' public sectors such as Nigeria and is determined by a variety of issues but not solely with the crisis and the public liability. Austerity, decreases in spending of the public, rationalization of resources and externalization of services are at risk in numerous states. They influence, at times radically, not only public occupation in an assessable manner but also in the nature of the public sector.

When speaking about public sectors the dissimilarities are enormous from one state to another. In many states, public sectors are mostly operated by civil servants while

in other states civil servants hired is considered lesser. The environment of the institute can also vary largely as the sector of the public could comprise "public owned companies, central administrations, local authorities, education, hospitals, railways, services of general interest, delegated to private entities, etc". The Nigeria public sector has developed greatly over the centuries. The part of the government in the economy is excessively big since consolidated government expenditures increased from twenty-nine percent (29%) of GDP in 1997 to fifty percent (50%) in the year 2001 (Makinde, 2003).

The decentralized government structure in Nigeria regarding the three (3) tiers of government frequently overlays in many parts of finances actions and main service delivery. Nigeria government is identified as a supplier of contracts and a large employer of labour although this is in the setting of public service that has been generally de-professionalized and seems to be lowest intense (Dada, 2003). The public sector have over the centuries been declined with the overextended public spending outline/profile, continual shortfalls funded by local and outside borrowing with subsequent high debit service liability, failure of old apparatuses of regulatory lending to misappropriation of funds and corruption, incidence of ghost employees, poor estimate of projects and programs, a numerous folder of abandoned projects specifically inefficient and extravagant parastatal (Aduke, 2007). Therefore, many states and agencies of government at federal are starting to accrue pay arrears and expenditures due to supplier and contractors. Moreover, the traditional involvement of rolling strategy has become questioned and barely notifies the preparation of the financial plan and really major rules. The period of complete arrangement details had become uncontrollable and resources hostage with political involvement in placing priority had furthered rendering the strategies powerless.

The inconsistent contain here that administrative and financial reform in the sector of public has been subjugated by the terrible condition of public finances leading to the fiscal crisis of the year 2008. This was due primarily to the banking crisis. As the disaster further impended survival of numerous currencies, the condition of public finances becomes significance at international level and numerous law-making initiatives fortified international governance in this setting. However, public sector restructuring is not a fresh occurrence for numerous states of the world. Restructuring of public sector has been continuing for several periods with the intention of downsize structures and rise cost efficiency (Naumann & Naedenoen, 2013; Demmke & Moilanen, 2013). Though, the responses of government and advancement on fiscal restructuring have varied significantly. Thus, restructuring of the public sector has an extensive program to address.

Subsequently, insufficiencies of fiscal, mechanical and managerial resources strictly limit the capability of Nigerian administration to maintain a complete public sector reform agenda. Even once the resources are there the issues of the sensitivities and complexities of a number of the public sector restructure procedures remains. Regrettably, the beginning of the newerasaw numerous appearances of displeasure in the parts of resource control, wages and salaries, education, privatization, deregulation etc. These appearances of displeasure were proved with growing rate/occurrence and intensity closest on inefficiency, ineffectiveness, and losing of the state resources (Abdullah, 2007). In spite of the rising interest, the major concern of scholars is primarily concentrated on the examination of restructuring factors, however, only a little scholars assessed the impacts of administrative and fiscal restructuring on how to successfully execute the transformational program and how to assess the influence this development has on the public subdivisions in Nigeria.

Resultant upon the overhead reasons, the need for reorganization public sector management abilities with an opinion to the increasing challenges became inviolable. The intention of this article is to analyse the administrative and financial reforms in the Nigerian public sector since it's intended to renovate and change the financial prudence progressively.

2. Theoretical framework

This paper is attached to the theory of NPM (New Public Management). The theory is a method for managing public service establishments that are employed in government and agencies of public service at both national and sub-national stages. The theory has been applied to reform public sector, its rule and agenda. It was recognized as the "golden standard for administrative and financial reforms". The main principles of the theory of new public management according to Hood (1991) could be well be explained as management, performance standard, output controls, decentralization, competition, private sector organization and cost reduction. However, the basic postulation of the philosophy is the stressed change from the old public administration toward public management, then drives the government into managerialism. Invariably, the theory is comprehended as a form of administrative concept established on thoughts brought from the sector of private and introduced into the sector of the public (Pillitt, 1995).

The significance of the theory toward the reforms of public sector in Nigeria might be linked to the evidence and principle that it covers important mechanisms of

thoughts and issues that only not underlined administrative development and structural reform but also entails philosophies and matters that stress about administration devolution in public service and finally includes thought and issues that speak on motoring and honesty in discharge of responsibilities in public organization.

3. Conceptual discourse of public sector restructuring

Numerous efforts have been done by researchers to identify the nature and meaning of restructuring in public sector. Basically, many researchers have contended that public sector in the developing nations is an entity and the greatest challenges of development is an efficient service delivery, also its inefficiency creates the substantial indicators of any nation (Borin, 1994; Bangura, 2000; &Ayeni, 2002). To many, restructure implies a careful and deliberate adjustment (Lam, 1997; Halligan, 1997; & Denhardt & Denhardt, 2000). According to them, every single interference which collapses to provide essential transformations in the manner public service conducts and operates its enterprise is not restructuring. Therefore, restructuring of the public sector is a methodological interference designed to refine the structure, operations, procedures and systems of public services in permitting its change as a comprehensive instrument of transformation and genuine tool for national unity, consistency, and socio-economic growth. Equally, restructure desires emphasis on developing the benefit foundations of public sector occupation and adjusting the inducements that different public servants confront, arranging them with the general rule and objectives of administration. Invariably, it is concentrated on governance matters, professional roles and decision building process (Hallinger, Murphy & Hausman, 2013).

Instinctively, public sector restructure attempt to attain an effective stability between the monetary liability of public service and the desire to offer incentives that entice competent personnel. Therefore, it is intended at developing the trust of public and of business that civil employment is both authentic and useful. It is against this framework that the restructuring is centred on the desire to discourse the serious issue such as decrease of public spending, development on strategy responsiveness and execution, and to increase service provision and develop private and public sector trust since Obasanjo (2000) rightly confirmed the principle and reasoning for restructuring in Nigeria thus:

At certain epochs in the history of a people, they must pause, reflect, take stock and resolve to do some things differently or to undertake certain projects that would

make a significant difference in their lives. Such institutions, relationships, policies and programmes, and the identification of negative coalitions, contradictions, challenges, and crises points that have mediated the ability to make progress. If they tell themselves the truth, they also have the courage and sense of mission to map out viable solutions to their problems.

Kwiatkiewicz (2013) centers on her study of the “Main drivers of change affecting Public Sectors” on human capitals. Kwiatkiewicz affirms that civic facilities comprising facilities of FGI (Facilities of General Interest) are very much pertinent for the people in broad (as suppliers of basic services) and as owners (providing occupations to huge figures of employees). She classifies the succeeding key drivers of transformational change as: “Liberalisation, technological change, financial uncertainty, changing nature of demand, and climate change”. She also recognizes a variety of main outcomes that could be structured in four (4) sets: “(a) Job reduction, changed contractual arrangements and increased workload, (b) Flexibility, work organization,(c) New challenges in relation to skills and training, (d) Customer orientation”.

4. Programs of public service restructuring in Nigeria

“Instead of progress and development which we are entitled to expect from those who governed us, we experienced in the last decade and a half, and particularly in the previous administration but, one, persistent decline in the quality of our governance, leading to incapability and the weakening of all public institutions NEPA, NITEL, Education, Roads and Railways, Housing and other social institutions were permitted to decay and collapse” (Obasanjo,1999, p.132). The statement describes the circumstance of confusion and close depression that typified majority of federal institutes subsequently to the Ayida reform (1994). Beyond the inbuilt ambiguities connected with board’s report and its application later, there were multitudes of issues that additional compounded the problematic of central government apparatus and more to the federal public service (Abba, 2008; Adebayo, 2004). The association amongst government bureaucrats, civil servants and people was obscured with suspicion, dishonesty and inexperience (Jega, 2007; Okorie, 1995), “inefficiency in the delivery of social services, insensitivity to general welfare, and indifference to the norms guiding the conduct of public official and rampant corruption” (Olaopa 2008, p. 157). This is in line with the findings of Nwede (2013) that bad management affected the efficient execution of the public sector restructuring in Nigeria.

Nigeria's mechanism of the civil establishment from the previous mistake of the military government was typified with capitalist officials whose curiosity is relatively whatever they will benefit and not essentially what they will insert into the scheme. It is very informative to state that the stipulations of Ayida's panel report departed the civil service with numerous misperception, cadre battle, and disrespect to the philosophies of impartiality and non-partisanship which is the basis of existence in the public service. Amid the forty-two (42) suggestions for the board which sustained as the foundation before Obasanjo's government, there were key defects (Nwizu, 2002). The defects ruined what was departed of the public service before Obasanjo initiated various public service restructuring programs in the nation between the year 1999 to 2007.

Bayo (2012, p. 18) recapitulated Obasanjo's restructuring revival in the following comprehensive methods which comprise: "monetization policy, pension reform, restructuring of pilot Ministries, Departments and Agencies (MDAs), Down-sizing and payroll reform". "Others are public service procurement and due process, wages and salaries adjustment and awards" (Public service rules, 2010). However, the restructuring tendencies of Obasanjo government was exclusively piloted with the beliefs of change to the total capitalist economy. In order to attain the basics of the revival program, the existence of Bureau for Public Enterprise (BPE) came into being and was perceived to be tactical in accomplishing there structuring program. It has the order for guaranteeing easy change toward the capitalist economy.

5. Repositioning and restructuring of ministries and offices in Nigeria

The administration of Obasanjo was largely devoted to attaining public service that is built on global best practice, initiate technically driven workers via Information and Communication Technology (ICT) approachable and professionalism to settle the difficulties of over-bloated workers and reinstate the trust of Nigerians in civil organizations, settle the difficult of replication and overlapping works amongst agencies and tiers of government. This was perceived to be unique of the major principles that would reposition the central public service. This part of restructuring would resolve the difficult of ghost labours syndrome, verify the significance of agencies, departments and parastatals, the real figure of workers required of each ministry, the job organize for each post and cadre, and classify kinds of training needed for the individual ministers.

In the year 2004 precisely in the month of September, the establishment of Bureau of Public Service Reform (BPSR) came into existence in the presidency as the

autonomous bureau. This aspect of the scheme was the reaction in the re-assigning and re-organization of all Ministries, Departments and Agencies (MDAs) of all divisions and segments of the central government. The agency suggested that particular ministries should be reorganized between four to eight (4-8) departments subject to the capacity and duties. Each reform and restructuring were depended on the endorsement of the FEC (Federal Executive Council).

6. Policy of monetization in Nigeria

Incapability to give stopping against corruption and dishonesty in the public service was the one of the displeasure that surrounded Ayida board of 1994. In order to give the desired guild for fighting against corruption, the government was composed to tidy up the civil sector from dishonesty by offering what it regarded as the road map for the policy of monetization. The important emphases for the plan were to decide the real expense of governance so as to avert extravagates and monetary outflow in all government enterprises, and to mend the remuneration package of civil personnel. The plan was initiated in the June of the year 2003 beginning from governmental office holders and shortly stretched to main civil servants. The plan was aspired at measuring in terms of money, those fringe assistances providing for staff as the share of the conditions of their service and compensation, several of which comprise utility bills like water, telephone services and electricity. It was also covered the cost of retaining chains of home servants, ward-rope and furniture allowances. The official car was also monetized by acquiring the car when the staff properly repays on a monthly base. The plan further allowed the auction of official accommodations to occupants. The reason for this was to end windows of monetary leakages and dishonesty, develop maintenance culture with attitudinal adjustment. The policy likewise monetized the allowances and salaries of entire central civil servants that were officially remunerated in kinds (Stephen, 2011). It increased the general minimum wage from two thousand five hundred (#2,500) to three thousand five hundred (#3,500) each month commencement from 1st May 2000 and later raised to seven thousand five hundred (#7,500) and presently increased to eighteen thousand (#18,000) Naira as approved by senate in the year 2011 during the Jonathan administration (Shaibu, 2011). Therefore, in order to settle the dissimilarities of salaries and wages, a committee was set up to match matters of disparity in pay and consolidation of pays and wages. This was done to ease the suffering of staff and avert the difficulties of resources mismanagement and corruption.

7. Downsizing in the Nigeria public sector

Public organizations saw an immense rise in the workers strength soon before the administration of Obasanjo. In the year 1988 the workers was two hundred and thirteen thousand, eight hundred and two (213,802) and in the year 1990, they were about two hundred and seven-three thousand, three hundred and ninety-two (273,392) personnel (Otobo, 1999; Adamolekun, 2008). One of the difficulties confronted by the administration of Obasanjo was over-bloated workers intensity and the figure of MDAs. This raised the rate of recurrent spending without conforming to output in relations to service delivery. Additionally, in downsizing the staff, many of the parastatals were scrapped, combined and restructured. For example, in the Ministry of Finance the number of departments was restructured from thirteen to ten (13-10), National Planning Commission reorganized from eleven to seven (11-7), National Power Board was joined together with the NISER (Nigeria Institute of Social and Economic Research), and the NCEMA (National Centre for Economic Management and Administration) was combined with CMD (Centre for Management and Development) (Olaopa, 2008).

The plan led to removal of the staff. Standards for disengagement was established and put into operation to contain; "(a) officers appointed without due authorization, (b) officers with case of service misconduct; (c) officers that are medically unfit (d) staff in jobs which services are monetized, outsourced or abolished e.g. drivers, cleaners, cooks, messengers, security men etc., (e) staff that have become redundant/jobless owed to the scraping or restructuring of their organisation/ department (f) officers without entry qualification or mandatory skills for their jobs (g) staff found to be inefficient or have unsatisfactory character and (h) officers wishing to proceed on voluntary retirement" (Olaopa, 2008, p. 176; Eme & Ugwu, 2011, p. 48).

These ideologies reply to the important issues of how many persons do we require to perform the work? And by what abilities, and suitable technique to find this job accomplished.

To relate the above ideology, the government involved in biometric statistics certification and head tally workout. This was aspired to decrease the ghost staff syndrome, offering a perfect representation for the real personnel strength and measure the financial worth. The FEC authorized the launch of IPPIS (Integrated Pay roll and Personnel Information System). This was considered relevant to establish pre-retirement program especially for the category of scrapped group like cleaners, security, drivers and home servants. Following the policy and the

determination of the government about thirty-five thousand, seven hundred (35,700) personnel were provided with letters of retirement by the Civil Service Commission at Federal level.

8. Anti-corruption rule and financial regulations in Nigeria

Before the government of Obasanjo, there wasn't powerful monetary rule to end corruption and financial mismanagement. Although, there was a movement of financial regulation before the government, but it suffered the required power to sue defaulters. An effort by earlier restructurings was helpless and the system of the judiciary was not dependable enough to give a speedy release of justice. The earlier government specifically the military junta established corruption indirectly and directly. There was a noticeable tendency for corruption through the whole sectors in the nation. Public servants combined the trend to become capitalists officials. This was the main task confronting the recent government and must be appropriately controlled/defeated. Just after Obasanjo got into office an anti-corruption proposed law was forwarded to the National Assembly. By the year 2000, the National Assembly legislated a Law and consequently, EFCC (Economic and Financial Crimes Commission) and ICPC (Independent Corrupt Practice and other related offences Commission) were founded. The institutions were combined together in the fighting against corruption and dishonesty in the nation. They were to reinstate trust in handling government business, install judicious and effective running of the public account.

Table I. *Public Sector Restructuring Arrangement in Nigeria*

Year	Administration involved	Issue (result)	Recommendations	Chairman
1946	The instituted workforce two-structured of four West African Colonies: Nigeria, Sierra Leone, Ghana and Gambia	Structure, guiding terms	Two-structured service-junior and senior	Sir Walter Harragin
1948	The whole administration of Nigeria	Conditions of service and training	Training and recruitment of Nigerians for its senior civil service posts	Sir H. M. Foot.
1954 to 1955	The whole administrations of the Federation	Re-structuring, grading, terms and conditions of service and training; production of five cadres in the service	Reviewed wages and General condition of service	Mr. L. H. Gorsuch
1958	Western Region administration	Review of wages and salaries	Reviewed salary and organization of the service and noted absence of middle category and established five(5) major grades	Mr. A. F. F. P. Newns
1959	Federal Administration, Northern Regional Government and the Government of Eastern Region and Southern Cameroon's	Integrity ministries and Departments to end the era of ministers without portfolio	Recommended amalgamation of ministries and departments.	Justice I. N. Mbanefo
1963 – 1964	The whole Administrations of the Federation	Review of salaries and wages and conditions of junior staffs in both public and private sector.	Reviewed wages and salaries of the junior federal workers, announced minimum on geographical base.	Justice A. Morgan.
1966	All the governments of the federation	Grading of post in the public service	Examined irregularities in the grading of posts to suggested uniform salaries for officials doing same duties	Mr. T. Elwood
1970 to 1971	All the Governments of the Federation	Review of salaries and wages, structure, organization and management	Recommended setting up of a Public Service Review Commission to study the function of the Public Service Commission	Chief S. O. Adebo
1972 to 1974	The whole Administration of the Federation	(Public Service of the Federation Review Commission) organisation, structure and management, Recruitment and conditions of Employment Programmes and superannuation's regarding of all posts and Review of Salaries, introduction of result-oriented Management in the Public service.	Concentrated on the matters of effectiveness and efficiency, made design to enhance the structure and system, establish open reporting scheme for performance evaluation, A unified grading and salary structure for all covering all posts.	Chief J. O. Udoji

Year	Administration involved	Issue (result)	Recommendations	Chairman
1976	The Federal Government of Nigeria	Investigated into complaints and extent of implementation of accepted recommendations	Suggested full application of received recommendations	Chief S. Olu Falae
1985	All the Government of the Federation Nigeria	The structure, staffing and operations of the Nigerian Civil Service in the mid-80s and beyond, attempt at professionalizing the service.	Eliminated the office of Head of service and permanent secretary	Professor Dotun Philips
1986	The Federal and State Governments of the Federation of Nigeria.	Worked out guidelines for implementation of the civil service reforms as embodied in Udoji's and Philips Reports.	Proposed efficiency and effectiveness, and professionalism.	Vice Admiral Patrick Koshoni
1994	All governments of the Federation	To provide guideline on implementation of Dotun Philips Reform. Introduced reversals of novelties that turned out as failures.	Abrogation of civil service re-organisation Decree No 43 of 1988	Chief Allison Ayida.
1999	All Government of the Federation	The Charter for Public Service in Africa	Established professional values for public service, prescribed code of conduct for public service employees.	

Source: Adegoroye, (2005) and Abdullah, (2007).

Table II. *Other Reform Initiatives in Nigeria*

Year	Administration involved	Issue (outcome)	Introduced by
2003	Federal Administration of Nigeria	Public Service Reforms (PRS), National Economic Empowerment and Development Strategy (NEEDS), Service Delivery and Due process	Obasanjo Administration
2004	Federal Administration of Nigeria	Pension Reform	Obasanjo Government
2004	Federal Administration of Nigeria	Bureau of Public Service Reforms: to act as secretariat or engine room to all public service Reforms	Obasanjo Administration

9. Current public service reforms since 1999

The aim of many public service restructurings is to convert unfit civil sector into a knowledge-based, specialized and responsible scheme, rendering timely, industrious and efficient service delivery to the people. With the establishment of the reform in public service, the apparatus of the state government is reorganized and strengthened so as to improve the efficiency and performance of the nation.

10. Methodology

The methodology is the process for searching for a detailed, understanding and full explanation of difficulties under research. It includes a careful examination to realize fresh relation and facts to enlarge current understanding. In any given research, it could be essential and required to employ more than one of the general forms of investigation methods. One could search the answer of a specified difficult by learning its past via an investigation of records which has been regarded to as secondary sources, and defining the current position by field investigation this is referred to as a primary source.

This study adopted the secondary method of data gathering which comprise extraction of applicable data from conference papers, public records, textbooks, journals, magazines etc. However, the study adopted exploratory research design. This is due to the fact that it pleases the researchers' interest and yearning for proper comprehending of the subject matter. This allows the researchers to get contextual facts on the findings.

This study is limited with certain limitations which subsequently affect the findings, such difficult and limitation is interval restraint. This is due to fact that the period for this research is not enough to perform an explanatory study of this kind. Another challenge of this study is the financial limitation, this is due to inadequate of finance

to subscribe to numerous international journals to gain access to materials from a global context. Though, the researchers made use of available publications in the other journals and textbooks. Therefore, the study only covered public sector reforms in Nigeria.

11. Conclusion and recommendations

The reform programs are key and indispensable in ensuring efficient service delivery in the Nigerian public sector as well as national development. Reform in the Nigerian Public sector is a requiring duty and must not be perceived as a hasty solution for difficulties affecting/confronting development of our state. Developing state alliance in the promotion of civil sector reform to embrace all interested party and collaborators like public service, civil servants, labour unions, civil group societies, political parties, the media and the researchers are essential if the reform is to be relevant and devoid of disruption.

It is likewise conceivable to end that many of the policies carried out by the Nigerian government to reform her public organization have not been capable of attaining its needed results mostly due to institutional, historical, political, cultural, economic and other ecological restrictions. The chances of public sector reform are doubtful in the execution of such restructurings.

The public organization as the major channels via which the possibilities of a valuable existence could be attained must be obviously the focus of public consideration then, its transformation must be a basic rule essential of the government in authority.

However, there should be a continuous and systematic review of programs and policies of government to ensure alignment with national objectives, mobilization of adequate resources for successful execution and implementation of programs, and collaboration among all tiers of government and professionals.

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Thinking Global: Factors and Challenges Influencing the Audit Function

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Abstract. *Over the last decade, the desire to find solutions, achieve objectives and add value to increase performance has led to a focus shift towards programmes, projects and strategic instruments among policy and decisions makers, auditors, researchers, external consultants and why even every employee who bears responsibility in implementing processes and activities. There is also a need to improve the image of audit processes regarding strategic thinking in accordance with new and global directions. Yet society and the environment in general have become over the past decades less and less predictable, increasingly unstable, and dynamic. Therefore, the objective of this research is to understand the factors that have an impact on audit system capacity and to explore opportunities and challenges affecting this strategic resource in the Romanian public administration. The combined research methods of this analysis corelated with our findings represent the basis of this study.*

Keywords: *decisions through sustainable development (DSD), audit, modern instruments, strategic thinking.*

JEL: M41.

1. Introduction and literature review

From reviewing the literature, it is possible to see the two directions for the image of what does it means this global system. First, we have the global perspective, and the evolution of the society is connected to the functioning of the organizations and public entities within, and, therefore, their efficiency and effectiveness contribute to the working of the society. Therefore, the process of modernization in the sustainable development era is focus on resource allocation, investment direction with institutional changes adapted to technological development orientation (Nechita et al., 2020) and according with the 17th Sustainable Development Goals from the the 2030 Agenda for Sustainable Development (UN, 2015). And in this first direction, there is an instrument which ensures the good functioning of an entity and grants its success: auditing, whose original objective was to detect and prevent errors and frauds (DeAngelo, 1981, Dobroteanu & Dobroteanu, 2002). Second, the improvement of performance in an organization heavily relies up on specific technics of the internal audit function.

Relevant literature in the field of audit includes published works which over time shoe the effectiveness of the audit function, which increasingly reflect up on its independence and work quality (DeAngelo, 1981, Casterella et al., 2014, DeFond and Zhang, 2014, Cho, 2020).

The 18th century was marked by the industrial revolution, which contributed to the growth of the audit. Due to business development and the separation of the ownership and management within the joint stock companies, there was an increase in the need for a uniform accounting system with the aim of obtaining more accurate financial statements and to prevent fraud. During the 19th century, the business owners became more interested in the way their invested money is used and therefore, they tried to verify themselves the fairness of the managers, but only managed to conclude that the accounts verification needs to be made by qualified personnel, independent from the management of the verified company. This was the moment when the auditor profession started to be regarded more importantly, due to the great demand of independent professionals (Dobroteanu & Dobroteanu, 2002).

The appearance of audit in the United States of America in the 20th century was of great relevance. It was highlighted the importance of internal control and there were established the links between the effectiveness of internal control and the extent of the audit procedures.

The audit profession is based on a flexible frame of reference, recognized worldwide, which adapts to the legislative and specific regulatory of each country, in compliance with different rules of governing from various sectors and specific organizational culture. In the context of auditing, organizational culture facilitates the provision of optimum services, effective decision-making to achieve the maximum results (Salih and Hla, 2016).

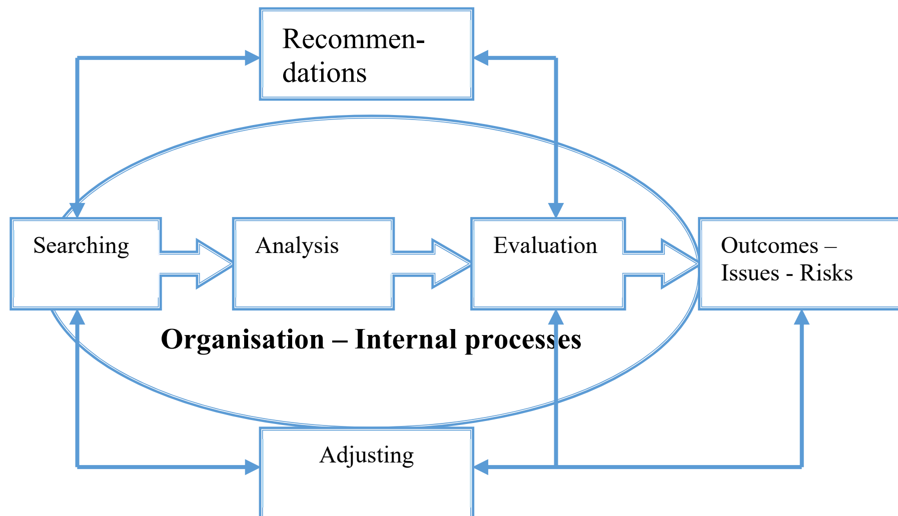
In Romania, the audit work is relatively recent and is included in the reform of public management, whose requirement is improving the performance of public entities activity, increase effectiveness and efficiency in the use of resources and also efficacity (Arens and Loebbecke, 2006).

Evaluations of activities according to these principles must consider other aspects beside public utility. Activities have to be asserted in accordance with their effects on the national economy and it is the role of public audit to maximize the benefits as such. A first attempt to enrollment in this trial was made by drafting Government Ordinance no. 119/1999 on internal audit and financial control, the term of internal audit is linked to financial control, thus creating confusion between the concept of internal control and internal audit. If in terms of defining concepts have succeeded in settling the two terms, currently there is a problem in understanding the internal control system which is the object of the internal audit, includes all activities of internal control conducted within the entity and their associated risks (later on, public internal audit in the public entities was founded, under the law 672/2002 and Government Decision no. 1086/2013).

Internal audit will reach its targets, if there is an organized system of internal control, formalized, consisting of procedures, procedural guidelines, codes of ethics. From this point of view the internal audit provides assurance that operations carried out, the decisions taken under control and in this way contribute to the objectives of the institution.

Nevertheless, in practice, audit is regarded as a process of information searching, analysis, evaluation and adjusting and a better view is presented in the following figure:

Figure 1. *The process of audit mission*



Source: own elaboration

The above figure illustrates the environment in which the internal processes are evaluated according to the specific variables from the audit methodology.

2. Scientific approach of the research

The research uses a variety of methods and correlated perspectives to develop the exposé by utilizing a series of working principles and rules to collect and interpret data, as well as theoretical construction and deconstruction strategies. In this regard a series of research methods and instruments has been selected which can offer the proper methodologic support to compare realities, experiences, and visions at national and international level. The expose is based on two research dimensions: a comparative dimension and a qualitative one, based also on a sociological questionnaire.

Also, the analysis of documents and relevant literature has been used as an alternative research method to establish both a starting and a reference point for the comparative analysis. Interpretations of specialists and theoretical works published in national and international indexed journals have been used to follow the evolution of the approached topic from the past towards the present and from its global dimension to the national realities.

Internal public audit undergoes a vast development process which targets not only uncovering irregularities and infringements, but also perfecting and optimizing

processes within public institutions. Therefore, public auditors take over the role of consultants by getting involved in the organizational management.

The scope of the analysis is to form an image about the perception of public institution personnel both managers and execution functions regarding:

- The role and importance of internal public audit;
- Public audit team experience;
- Auditor's independence and objectivity;
- Type of missions carried out in public institutions.

The working hypotheses which stand at the base of the research are:

1. Internal public audit is not perceived by managing personnel as a valuable resource for management performance.
2. Public audit function significantly contributes to the improvement of internal processes and to the increase of institutional performance through its objectives, actions and recommendations.

3. Findings

The questionnaire has been presented to a sample of respondents belonging to all relevant hierarchy levels, from the central and local public administration. It contained 16 closed multiple choice questions, with only one valid option. Out of the 16 questions 10 were content questions, addressing the role of public audit in public entities and how this role is seen by employees in different hierarchical positions. The other questions are closer defining the sample. The questionnaire required independent, unattended answer by checking the answer which best reflects the opinion of the respondent. There is one exception to this rule, a question where the respondent must grade from 1 to 5 a series of characteristics regarding internal public audit.

Table 1. *Structure of the respondents to the questionnaire*

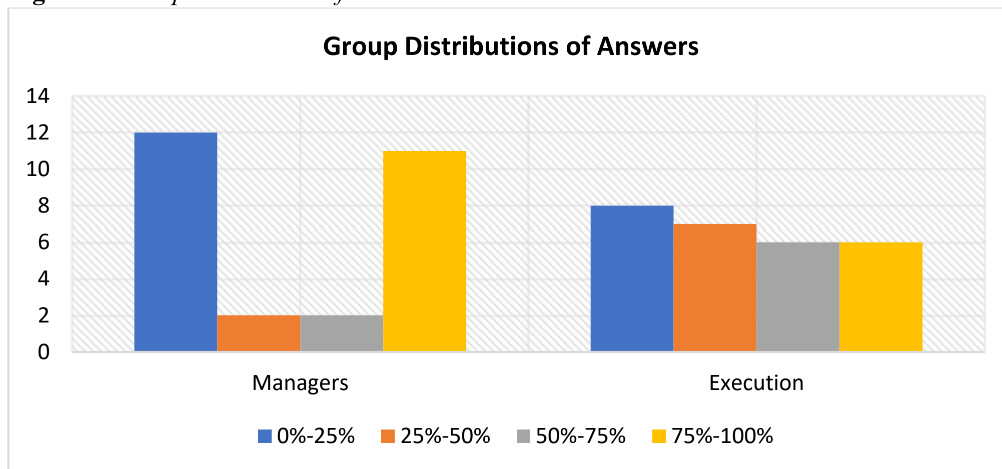
	Central public institution	Subordinate central public institution	Local public institution	Total
Execution position	23	33	27	83
Managing position	3	4	2	9
Total	26	37	29	92

Source: own elaboration, data collected through the questionnaire

According to table 1, the questionnaire has received 92 valid answers, from which 9 were managers and 83 employees with execution positions. Since there is a big gap between the two populations, the data had to be normalized before actually

performing the correlation analysis. The normalization of the data also reduces the influence of the population bias deriving from the small population of managers.

Figure 2. *Group distribution of answers*



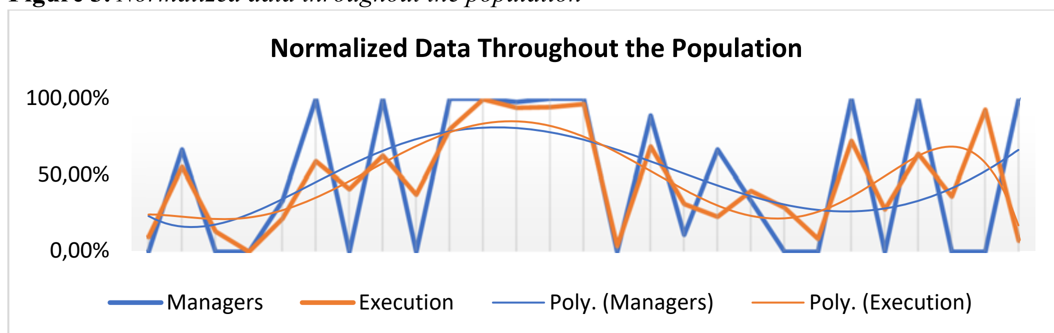
Source: own elaboration, data collected through the questionnaire

As can be seen from figure 2, the data is not distributed according to a gaussian law, which means, that most statistical tests, which presume a normal distribution cannot be performed here. For example, a mean value analysis, correlated with a standard deviation analysis would have misleading results. However, by using normalized data, simple coefficient analyses can be performed. In this regard, the following questions arise:

- Do managers and execution positions have the same opinion about internal public audit;
- Where are the biggest differences in the opinions of these two categories?

The following correlation analysis will offer relevant information for the two questions mentioned above.

Figure 3. *Normalized data throughout the population*



Source: own elaboration, data collected through the questionnaire

Using the Bravais-Pearson coefficient, the correlation between the answers of managers and of employees in execution positions has been evaluated. The value of the coefficient has been determined to be 0,656, which is moderately high[1], denoting a mild resemblance between the answers given by members of the two groups. However, the small number of managers who answered to the questionnaire leads to a reduction of this coefficient. In reality the value of the correlation coefficient can be bigger. Out of the 10 content questions of the questionnaire, 7 are closed, two choice questions (yes/no). This leads in the case of the smaller population of managers to the occurrence of concentration phenomenon in the answers. If this phenomenon were to be reduced, a slight increase of the correlation would be felt.

The general mild correlation can also be observed when drawing the polynomial trends of the 6-th order for the two populations. From both trendlines and actual curves, it can be observed, how the answers tend to differ in the second part of the questionnaire, which addresses the role of internal public audit in public institutions in Romania. Thus, a certain disagreement between managers and execution personnel can be observed, even with the concentration phenomenon present, which leads to the general conclusion, that the efforts of auditors in public entities are being misperceived.

In opposition to the general mild consensus, there are two questions where opinions strongly differ between managers and execution positions:

- The question regarding importance of certain characteristics of internal public audit;
- The question about the value added by internal public audit to public institutions.

Regarding the question about the importance of certain characteristics of public audit, the focus has been laid on:

- Correlation with the institution strategy;
- Internal public auditor’s experience;
- Uncovering and preventing fraud;
- Identifying and evaluating risks.

Internal audit is not a key function of economic entities, but rather a complementary one with a management support function. Admitting that internal auditor “councils” “assist” and “recommends”, but **never decide** (Dumitrescu Peculea, 2015, IIA,

[1] By default, the value of the Bravais-Pearson correlation coefficient must be between -1 (denoting a strong correlation in opposite directions) and 1 (denoting a strong correlation in the same direction). A value equal to 0 means that there is no correlation exists between the two populations.

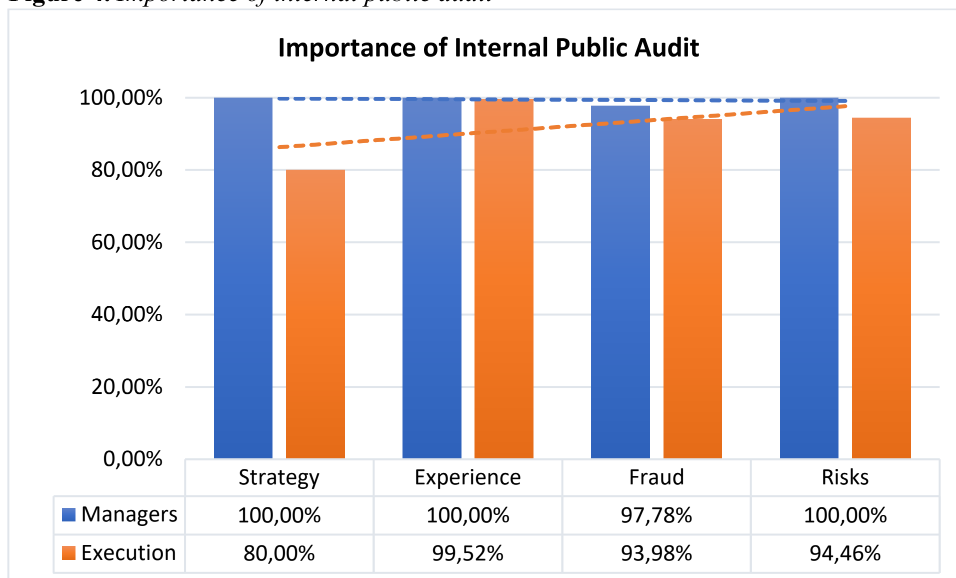
2017) it is obvious that it represent a mean for improving management control one activities thus reaching the objectives (Dumitrescu and Dumitrescu Peculea, 2014). However, internal public audit has a set of advantages over the management in assessing the activities (Dumitrescu, 2014):

- It has reference norms conferring it the authority to verify;
- Has methods and instruments to guaranty efficacy;
- Has independence of thought and autonomy to conceive all working hypotheses and formulate best recommendations;
- Does not have the constraint and obligations of a permanent activity.

Thus, internal public audit is best suited for supporting public management by giving an objective opinion on the activities within the organization. To formulate such an opinion, time and highly trained specialists are necessary.

Respondents had to grade the importance of the above-mentioned characteristic from 1 to 5. The points have then been added together, for managers and for execution positions and divided to the maximum achievable result (45 points for managers and 415 pints for execution positions). The Results are shown in figure 4.

Figure 4. *Importance of internal public audit*



	Strategy	Experience	Fraud	Risks
Managers	100,00%	100,00%	97,78%	100,00%
Execution	80,00%	99,52%	93,98%	94,46%

Source: own elaboration, data collected through the questionnaire

The value of the Bravais-Pearson correlation coefficient for this set of data is -0,158, which is extremely low, and denotes random opinions, especially between execution positions. By checking the evaluation of managers, one can observe a certain uniformity among the answers, while those of execution positions are mor

heterogenous. The low value of the correlation coefficient comes from this difference – uniformity vs. heterogeneity. This is also the lowest value of the correlation coefficient throughout the questionnaire. Also, the same low value can be attributed entirely to the big gap in grades given by managers and execution positions.

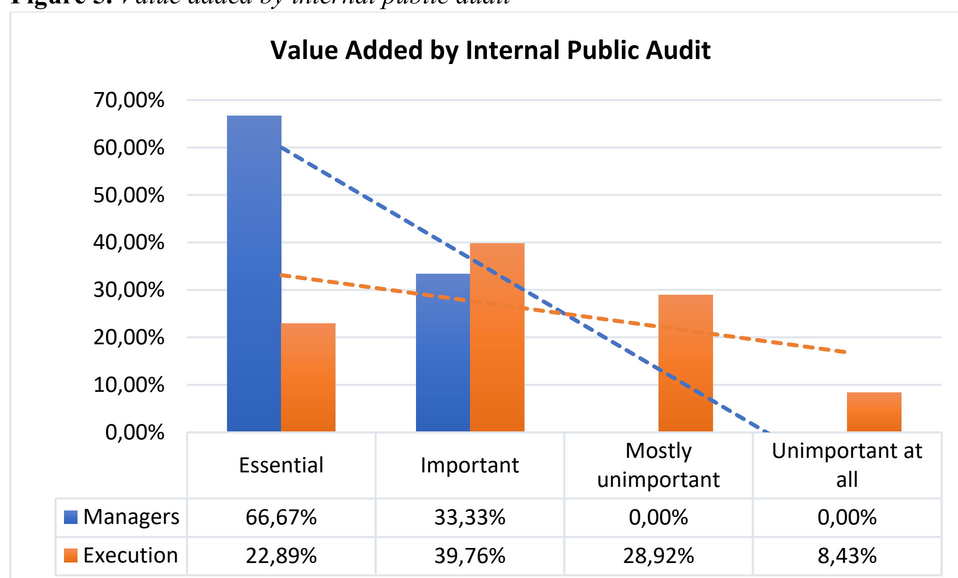
While a certain politically correct approach from the managers responding to the questionnaire cannot be excluded at this moment, the answers being consistent with both the general approach at the level of the European Union, as well as with the literature studied cannot be regarded anything else but correct. However, it must be mentioned, that would the grades for "Strategy" have been just 2% lower, the value of the Bravais-Pearson coefficient would have had risen by 0.7.

The second important question of the questionnaire is about the perception of the value added by internal public audit to the institution. Here the respondents had to choose between four values:

- Essential;
- Important;
- Mostly unimportant;
- Not important at all.

The respondents had to choose the value that best expressed their personal opinion. The responses are shown in figure 5.

Figure 5. *Value added by internal public audit*



Source: own elaboration, data collected through the questionnaire

The value of the Bravais-Pearson correlation coefficient for this set of data is 0,280. This is also confirmed by the down sloping linear trend lines of the two sets, even if the slopes greatly differ. And while trend lines of the second order also would have been applicable, since the answers of responders in execution positions show maximum at the second group, the results of the analysis would not have been different. This denotes slightly divergent opinions of managers and execution positions, even if, as well as for the previous question, a politically correct approach cannot be excluded.

4. Conclusions

In conclusion, while at a global look, there seems to be a mild consensus between managers and execution positions regarding internal public audit, at an in-depth analysis of the situation, we can observe, that in important issues, like value added or the role of internal public audit in a public institution, opinions differ greatly. In this regard, the challenge is to strengthen the position of internal public audit through:

- Improvement of the general image of internal public audit between employees of the public sector;
- Greater involvement in strategic processes;
- Shift of focus from prevention to counselling;
- Better communication throughout public institutions;
- Increased independence and objectivity.

Therefore, internal audit function is considered to be an attribute of leadership internal audit represented by the internal auditor must be closed to management as well as management has to let itself be assisted by the internal auditor in matters that concern decisions in order to have a better control on the activity. Assistance and consulting are attributes of audit while control (Ghita et al., 2009) is and attribute and obligation of management. An Anglo-Saxon principle regarding the necessity of control sais that “people do what they have to do when they are aware they will be controlled” (Zecheru and Nastase, 2005). While audit is an activity meant to ensure the functioning of the organization according to standards, laws and regulations.

Further development opportunities for the study revolve around expanding the study to more public institutions, in order to exclude the bias of the small sample of managers and, if possible, approach the population to a gaussian distribution, this allowing more tests to be carried out, thus increasing the expressivity of the data.

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