1-2018

# PUBLIC ADMINISTRATION & REGIONAL STUDIES

**DUNĂREA DE JOS UNIVERSITY OF GALATI, ROMANIA**
**FACULTY OF JURIDICAL, SOCIAL AND POLITICAL SCIENCES**
**DEPARTMENT OF PUBLIC ADMINISTRATION AND REGIONAL STUDIES**

# *PUBLIC ADMINISTRATION & REGIONAL STUDIES*

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# EUROPEAN INDUSTRY POLICY IN THE CONTEXT OF THE NEW GLOBAL CHALENGES: A REGIONAL APPROACH

**Romeo-Victor IONESCU**[*]

**Abstract**
*The paper deals with the idea that at present, the EU is more a region which faces great challenges and disparities. Such disparities are those related to the EU industries and industrial policy. The analysis in the paper is focused on the main EU industries and points out the disparities across the region.*
*The analysis is carried out in three steps: first, a comparative analysis, second, a regression one, in order to quantify disparities, and, third, a cluster analysis. The main conclusion is that currently, the EU is divided in countries with three speeds of industrial development.*

**Keywords:** *regional industrial disparities, regional industrial clusters, regional industrial dispersion, impact of innovation on industry*

## 1. General approach

According to the EU's point of view, the European industry faces the following challenges related to: competitiveness, R&D, production under sustainable and socially responsible way, environment protection, better internal market, enterprise and industrial goods internationalization and protection of intellectual property rights (European Commission 1, 2016).

The European industry covers 80% from the EU' exports and supports the greatest number of jobs. According to Europe 2020 Strategy, the industry contribution to the EU GDP has to increase from 15.1% in 2015 to 20.0% in 2020 (see Figure 1).

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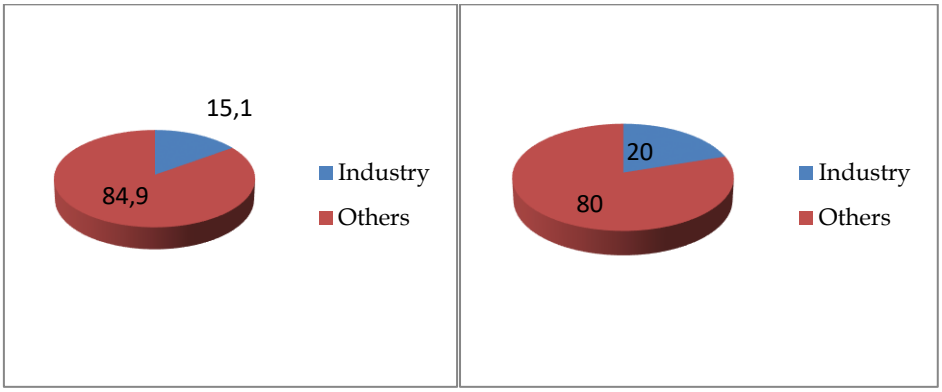



**Figure 1: Industry's contribution to EU GDP (%)**

The above positive trend of the industry will be possible only with the support of R&D inside the new Innovation Union. This Innovation Union asks for 3% of EU GDP for R&D in 2020 and forecast annual GDP increase by 795 billion euros by 2025 (European Commission 1, 2015).

On the other hand, the industry development across the EU has to be realized in a sustainable way with the support of innovation and R&D. The innovation impact on the EU industry is pointed out using the connections between national and supranational involved actors (Ionescu & Moga, 2011).

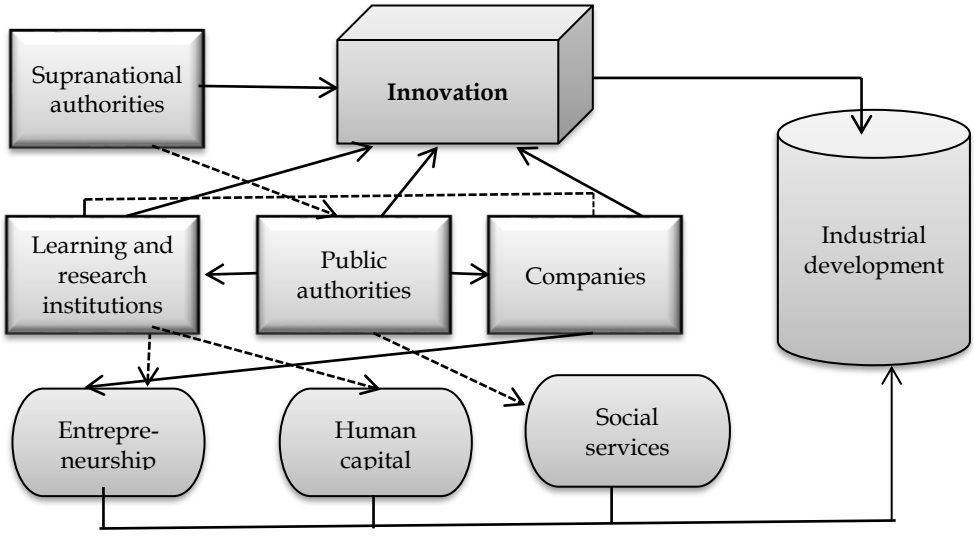



**Figure 2: Innovation's impact on EU industry**

Unfortunately, EU faced lower allocations for R&D compared to USA, Japan and South Korea during 2007-2014 (Eurostat, 2017).

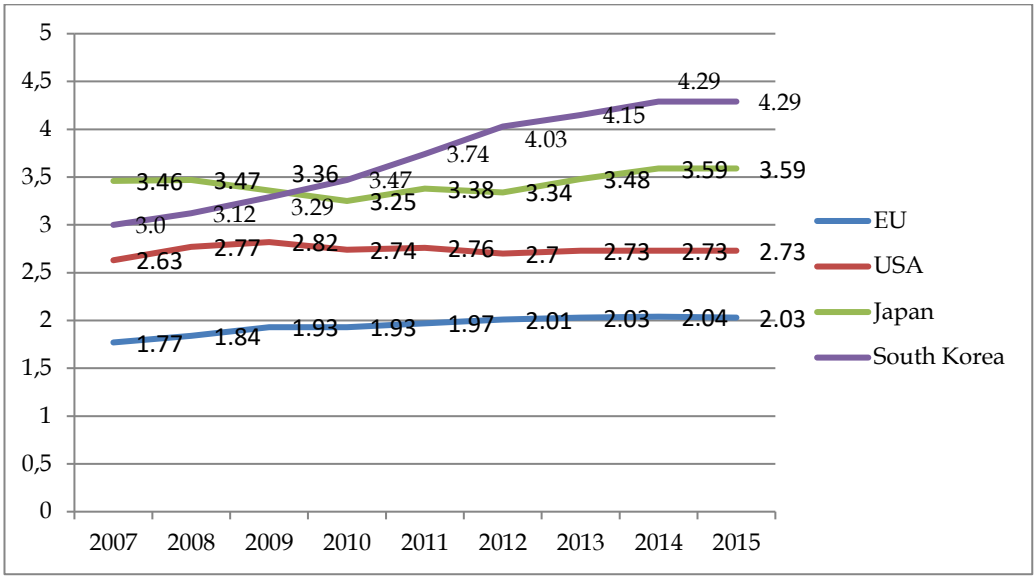



**Figure 3: Innovation allocation trend (% of GDP)**

According to Figure 3, EU's allocations for R&D are the lowest compared to the other three global economic actors. South Korea achieved the 1st world rank related to this indicator. It is followed by Japan and USA.

On the other hand, the R&D financing flows achieved the same level in 2015 as in the previous year, excepting EU where decreased by 0.01%.

Moreover, the target (3%of GDP) for 2020 is not realistic for many Member States. As a result, only 10 Member States reached this target for 2020. The other 18 asked for lower levels (see Figure 4).

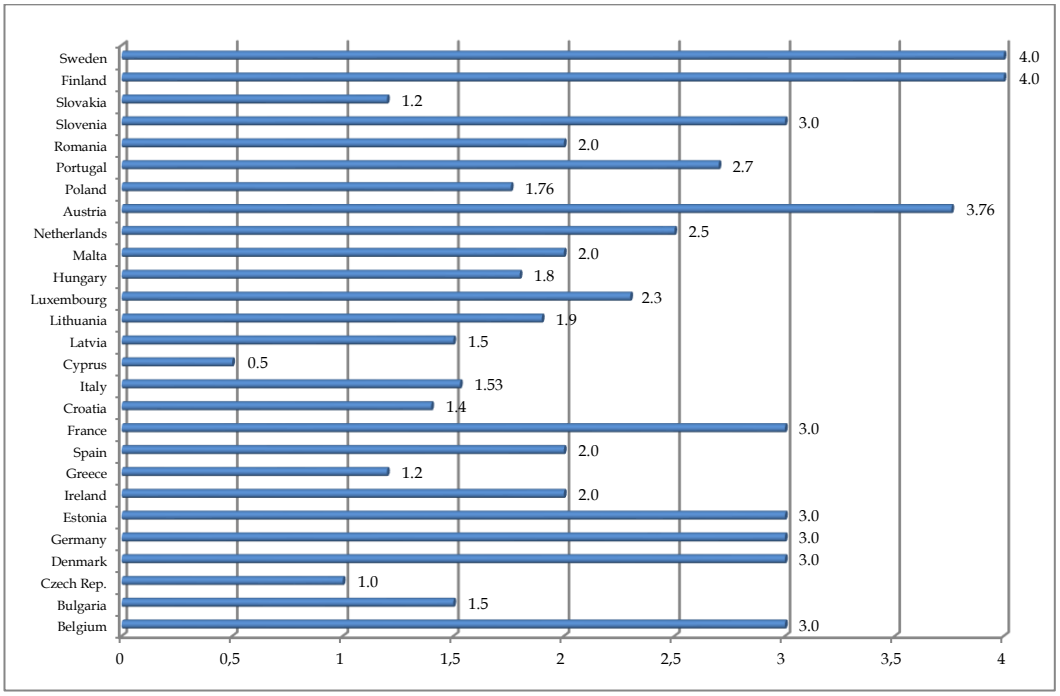



**Figure 4: Innovation's allocation targets in 2020 (% of GDP)**

On the other hand, the Euro area achieved better results in financing R&D than the EU during 2002-2016, even that some economies as Greece, Spain, Cyprus were subjected to economic recession (Eurostat, 2017).

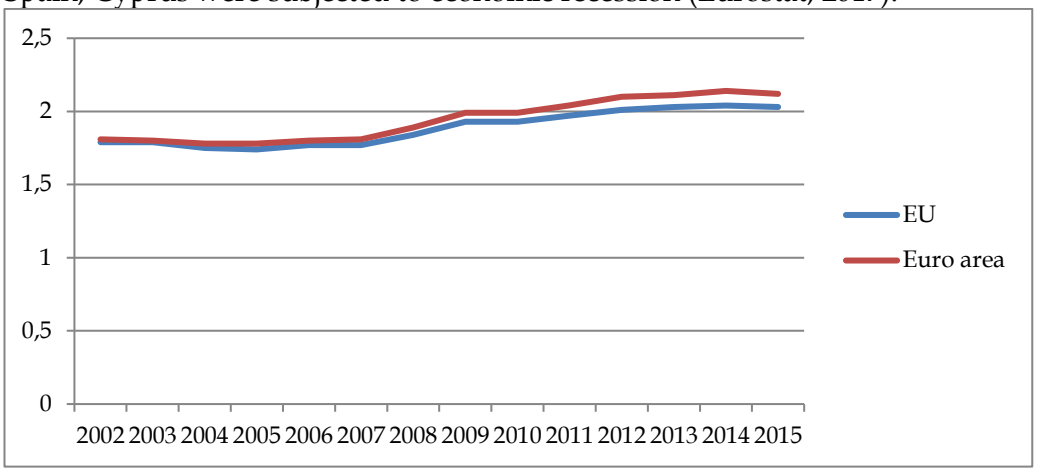
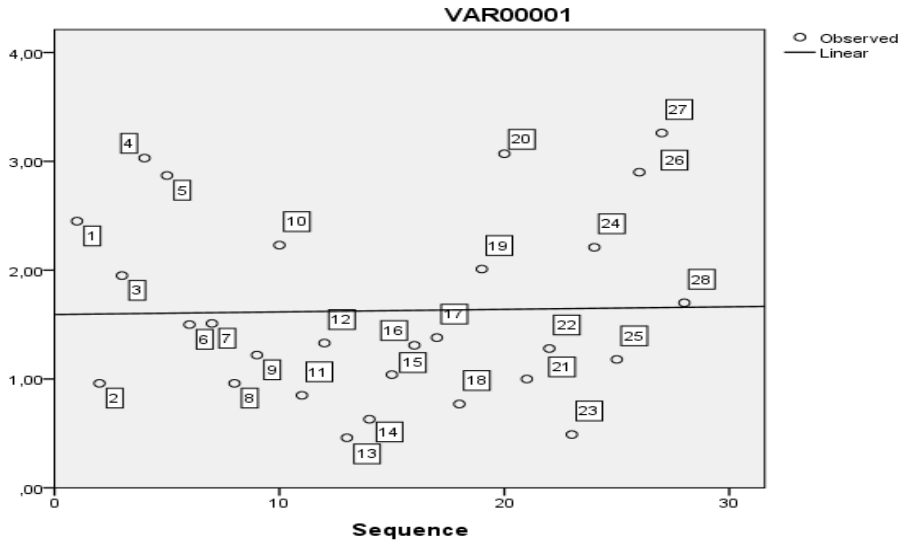



**Figure 5: Innovation's allocation trend (% of GDP)**

There are great disparities related to R&D financing between the Member States. A regression analysis is useful in order to point out these disparities (Figure 6).




1. Belgium; 2. Bulgaria; 3. Czech Republic; 4. Denmark; 5. Germany; 6. Estonia; 7. Ireland; 8. Greece; 9. Spain; 10. France; 11. Croatia; 12. Italy; 13. Cyprus; 14. Latvia; 15. Lithuania; 16. Luxembourg; 17. Hungary; 18. Malta; 19. Netherlands; 20. Austria; 21. Poland; 22. Portugal; 23. Romania; 24. Slovenia; 25. Slovakia; 26. Finland; 27. Sweden; 28. UK.

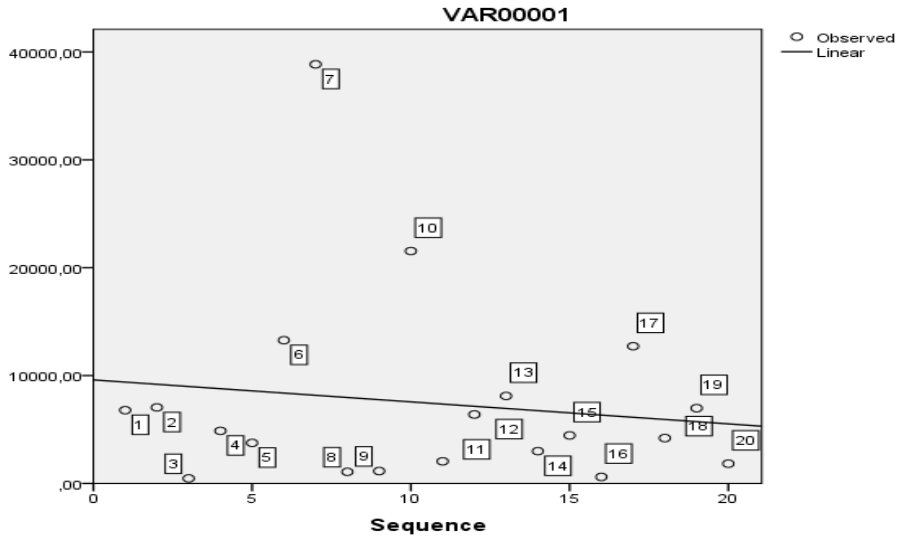
**Figure 6: Innovation's disparities across the EU in 2016 (% of GDP)**

According to Figure 5, two well defined clusters can be built using the innovation allocations. These differences have direct impact on European sectorial industries' development, as well.

## 2. EU steel industry in the new global context

EU succeeded in maintaining the 2nd rank in the world steel production. The first world steel supplier is China. On the other hand the EU's steel output has dealt with many difficulties, especially in the latest five years. This is why the European Commission adopted a dedicated action plan (European Commission, 2013).

This action plan was not enough to support a positive trend in the EU steel output. As a result, the latest official statistic data talk about a decrease in the steel output during 2015-2016. Moreover, the contributions of the Member States to the EU steel output vary a lot (see Figure 7).




1. Austria; 2. Belgium; 3. Bulgaria; 4. Czech Republic; 5. Finland; 6. France; 7. Germany; 8. Greece; 9. Hungary; 10. Italy; 11.Luxembourg; 12. Netherlands; 13. Poland; 14. Romania; 15. Slovakia; 16. Slovenia; 17. Spain; 18. Sweden; 19. UK; 20. Latvia+Portugal

**Figure 7: Steel output's disparities across the EU in 2016 (% of GDP)**

Only 21 Member States produced steel in 2016. Croatia stopped its steel production in 2016, as well. Six countries succeeded in achieving great steel outputs in 2016: Germania, Italy, Spain France, Poland and UK (EUROFER, 2017). These countries can form a separate cluster. The two clusters approach for the EU steel industries is supported by a two-step cluster analysis (see Figure 8).

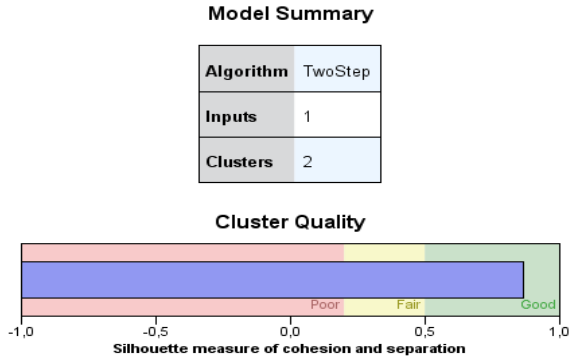



**Figure 8: Steel outputs' cluster approach for 2016**

The cluster quality is very good (0.9). This means that the approach focused on two clusters for the steel outputs is fair.

As a result, the European Commission has taken into consideration the need of recovery for the EU steel industry. On the other hand, the same Commission analyzed the challenges for the EU steel industry: unfair trade practices, global overcapacity, increasing competitiveness, modernizing the steel industry by investing in people and focused policies in areas like competition, energy, emissions trading (European Commission, 2016).

## 3. EU shipbuilding industry in the new global context

120000 people are employed by approximately 150 EU shipyards. 40 such shipyards are active on the global market.

On the other hand, the EU shipbuilding industry faces great competition, especially from China and South Korea. This EU industry suffered from the absence of effective global trade rules and state supported over investment (European Commission 2, 2017).

The world trend of this industry is not stable. More stable seems to be the industry's trend in EU (see Figure 9), even that the specific output represents less than 10% compared to the global output (Sea Europe, 2016).

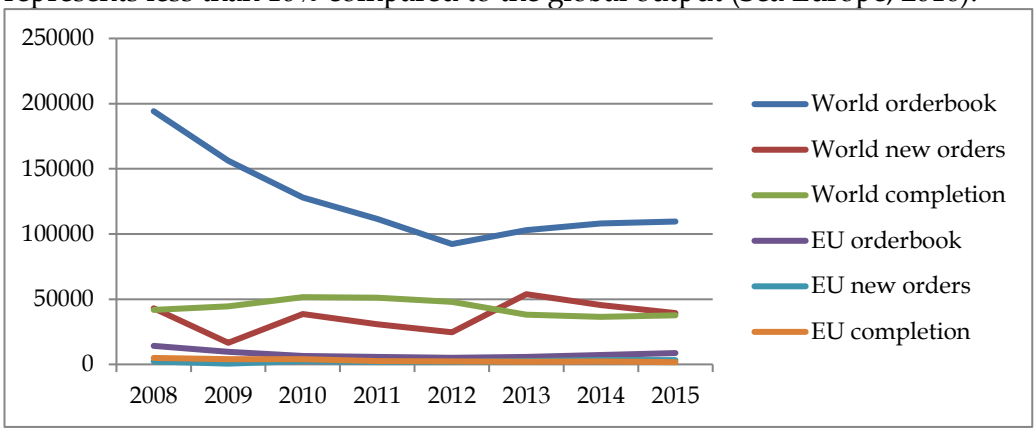
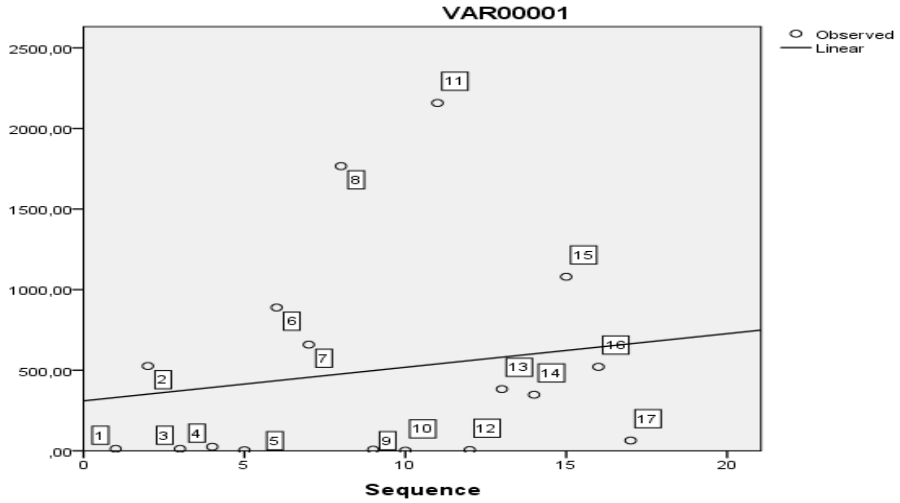



**Figure 9: Global shipbuilding industry's trend (CGT)**

The impact of the global crisis is still present across the EU shipbuilding industry. This is why the EU orderbook (441 vessels) covered only 7.3% from world total orderbook (6039 vessels) in 2015.

Moreover, there are great disparities between Member States related to shipbuilding output. Using the above orderbook criteria, the regression analysis leads to the following situation (see Figure 10):




1. Bulgaria; 2. Croatia; 3. Czech Republic; 4. Denmark; 5. Estonia; 6. Finland; 7. France; 8. Germany; 9. Greece; 10. Ireland; 11. Italy; 12. Latvia; 13. Netherlands; 14. Poland; 15. Romania; 16. Spain; 17. UK

**Figure 10: Shipbuilding output's disparities across the EU in 2016 (1000 CGT)**

It is more than obvious that the "classic" two clusters approach can be used in the analysis of the EU shipbuilding disparities, as well. Moreover, the quality of such cluster approach is good (0.8), as in Figure 11.

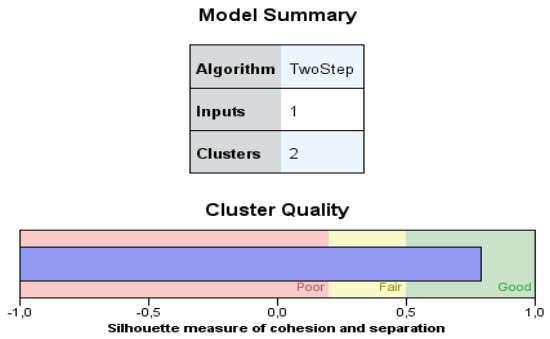



**Figure 11: Shipbuilding outputs' cluster approach for 2016**

In order to improve the policy related to the shipbuilding industry, the European Commission carried out analyses and studies focused on specific components of the market, companies and customer bases (European Commission, 2014).

On the other hand, the European Commission implemented LeaderSHIP 2020 Initiative, which was focused on: improving leadership in

selected maritime market segments; continuing to drive and protect innovation; strengthening customer focus; improving industry structure and implementing a network driven operating model; emphasizing production optimization and shift towards a knowledge based production (European Commission, 2013).

Moreover, the reviewed Initiative defined in 2015 asked for new maritime technologies able to support the achieving of the Europe 2020 Strategy (European Commission 2, 2015).

## 4. EU textiles and clothing industries in the new global context

Both industries are important because they cover 1.7 million jobs which and a turnover of 166 billion euros. Moreover, these industries belong to SMEs, especially with less than 50 employees.

The greatest challenges for these industries come from powerful competition from the Asian companies and other developing countries and the production price index increasing in the EU companies.

Despite these, the EU textile and clothing exports covered 30% of the world market in 2015 (EURATEX, 2016).

The European Commission supported the implementing of the World Trade Organization agreements regarding textile and clothing trade. The Free Trade Agreements (with USA, Japan, Vietnam, Canada, South Korea, Ukraine and Moldova) were implemented, as well.

In order to attenuate the competition from Mediterranean countries, the Euro-Mediterranean Dialogue on the textile and clothing industry was extended.

Nowadays, EU faces a negative trade balance for textile and clothing goods. In order to decrease this balance's deficit, EU started bilateral dialogues with China and Columbia.

Moreover, the production indexes in 2015 represented 94.7% (textiles) and 84.5% (clothing) compared to 2010 (see Figure 12).

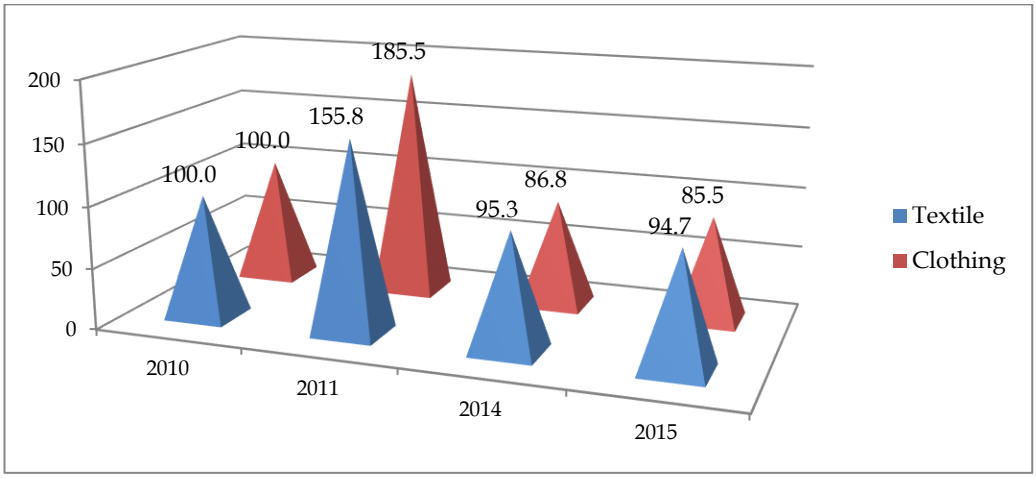



**Figure 12: EU textile and clothing industries' production indexes (2010 = 100%)**

Starting from 2012, the European Commission did not analyze these industries' output on Member States as a result of the great disparities between them. The latest official statistical data related to textile and clothing industries' output in million euros lead to the following disparities (see Figure 13):

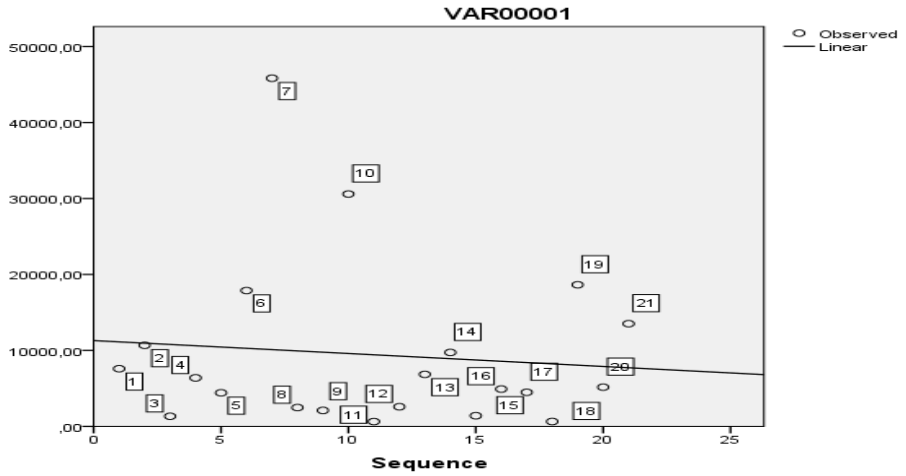



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**Figure 13: Textile and clothing output's disparities across the EU (million Euros)**

It is obvious again that at least two clusters can be built using the Figure 13. This is the result of the greatest disparities between Member States

related to these two industries. A two clusters approach is based on a good cluster quality (0.8) (see Figure 14).

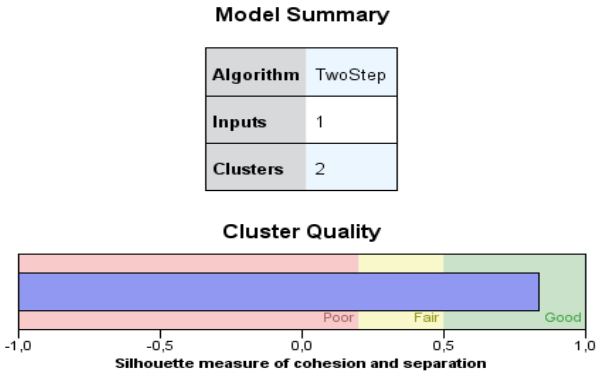



**Figure 14: Textile and clothing outputs' cluster approach**

## 5. EU aeronautics industries in the new global context

EU28 achieved the 1st world rank as production of civil aircrafts and the 2nd world rank as revenues and employment in airspace industry in 2015 (AeroSpace and Defence Industries, 2015).

The optimistic forecasts for these industries lead to the idea of important positive changes on the global aircraft market (see Figure 15).

The EU is interested in maintaining its position on this market and started to build a new approach able to ensure a continuous positive trend of the industry until 2050. As a result, the development of the EU aircraft industries will be based on five targets: meeting societal & market needs; maintaining and extending industrial leadership; protecting the environment and the energy supply; ensuring safety and security; and prioritizing research, testing capabilities & education. These five objectives cover specific goals (European Commission, 2011).

On the other hand, EU will continue to introduce new standards for environment protection, safety and security. Basically, the introduction of the latest R&D activities' results in aircraft production becomes the main EU competition instrument on the global market.

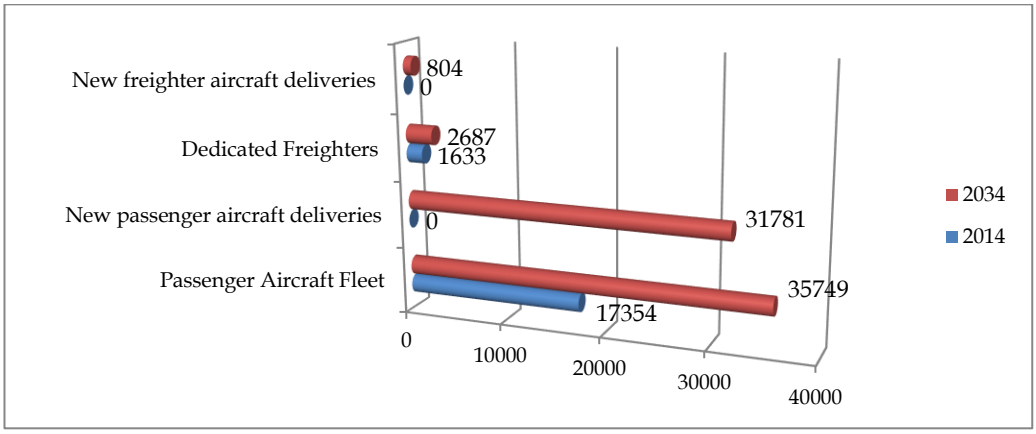



**Figure 15: Global aircraft market's forecast**

Nowadays, the disparities between Member States related to the air fleets increased (General Aviation Manufacturers Association, 2015). Only 20 Member States are taken into consideration as actors in the EU air fleet (see Figure 16).

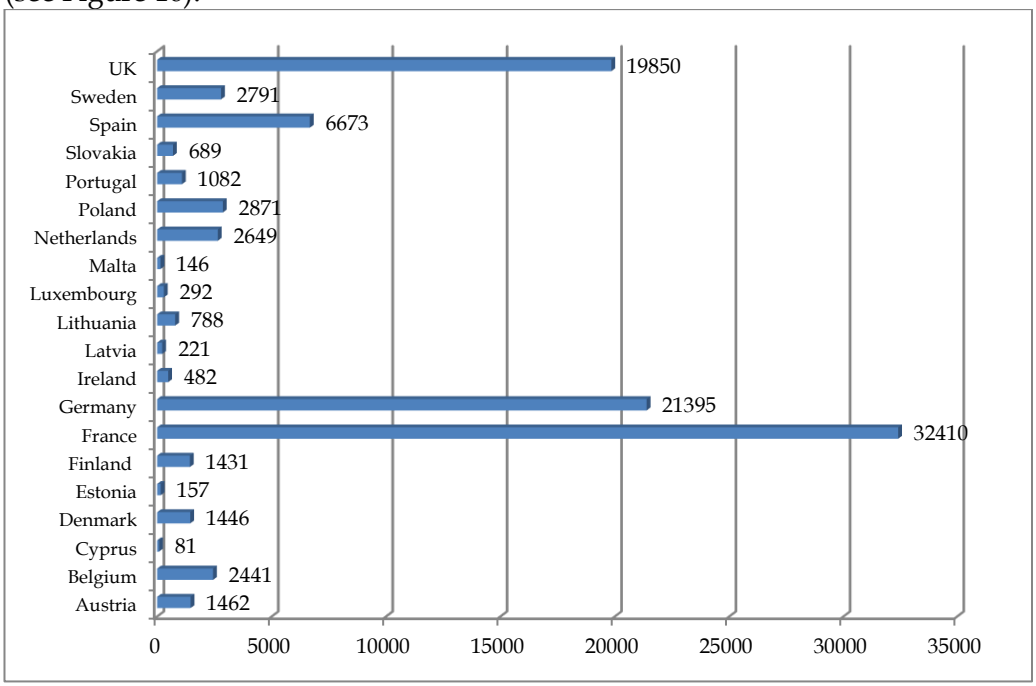
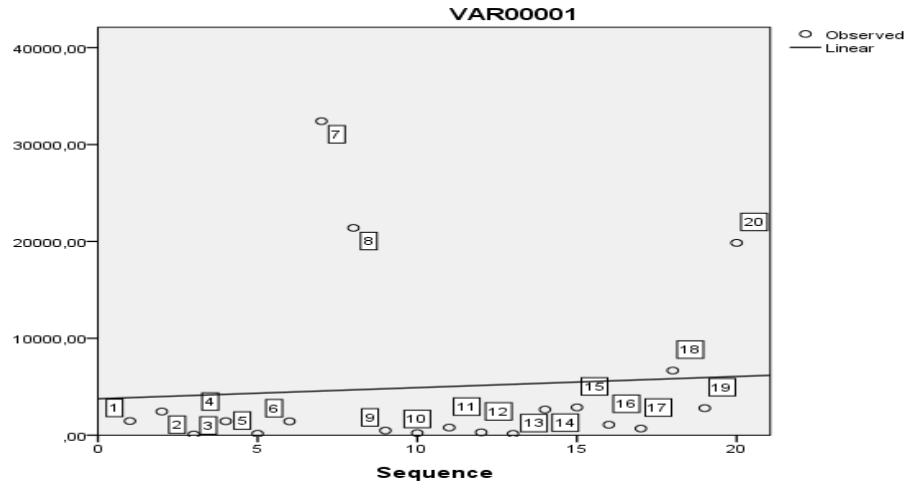



**Figure 16: EU aircraft fleet**

Figure 16 supports the data for a regression analysis, in order to point out the disparities between the Member States (see Figure 17).




1. Austria; 2. Belgium; 3. Cyprus; 4. Denmark; 5. Estonia; 6. Finland; 7. France; 8. Germany; 9. Ireland; 10. Latvia; 11. Lithuania; 12. Luxembourg; 13. Malta; 14. Netherlands; 15. Poland; 16. Portugal; 17. Slovakia; 18. Spain; 19. Sweden; 20. UK

**Figure 17: Aeronautics industries output's disparities across the EU**

The Member States in the figure above have positions able to support again the two clusters approach. Such approach is characterized by a very good cluster quality (0.9) as in Figure 18.

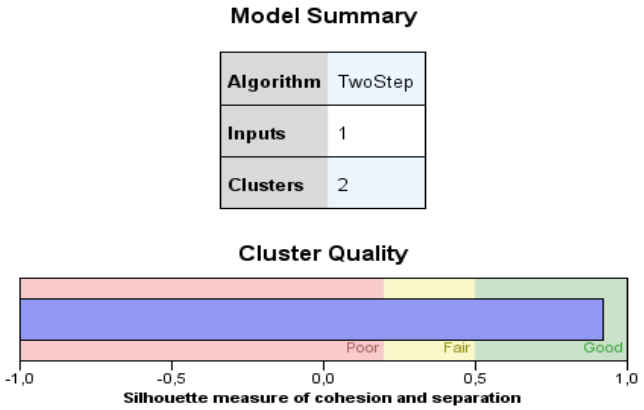



**Figure 18: Aeronautics outputs' cluster approach**

## 6. EU automotive industry in the new global context

EU covers 21% of the world car output (15 million units). 17 Member States are listed as main automotive producers in the world. There are great disparities between Member States related to the different outputs for cars

and for commercial vehicles (Organisation Internationale des Constructeurs d'Automobiles, 2016).

EU automotive industry supports the trade balance surplus (95.1 billion euros) and 5.6% of whole EU employment. Moreover, an important component of the R&D is defined and implemented in the EU automotive industry.

In order to maintain high efficiency and jobs in this industry, EU decided to keep the car manufacturing base in the EU, as an effect of the recent global crisis.

The output of cars and commercial vehicles varies between states, across the EU (see Figure 19).

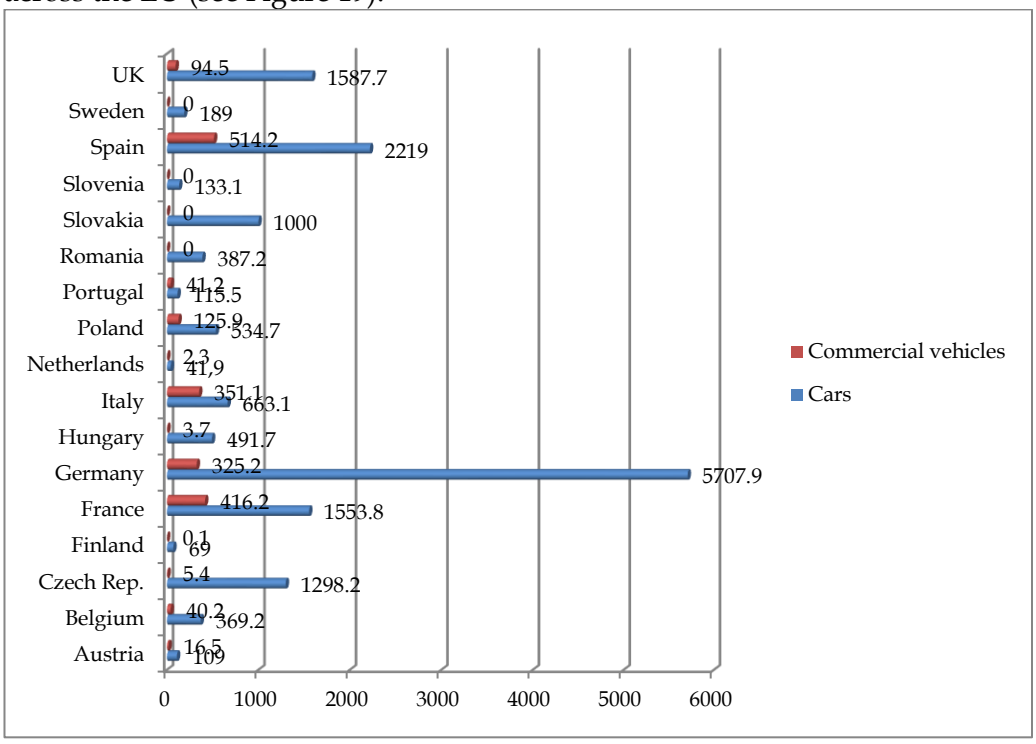
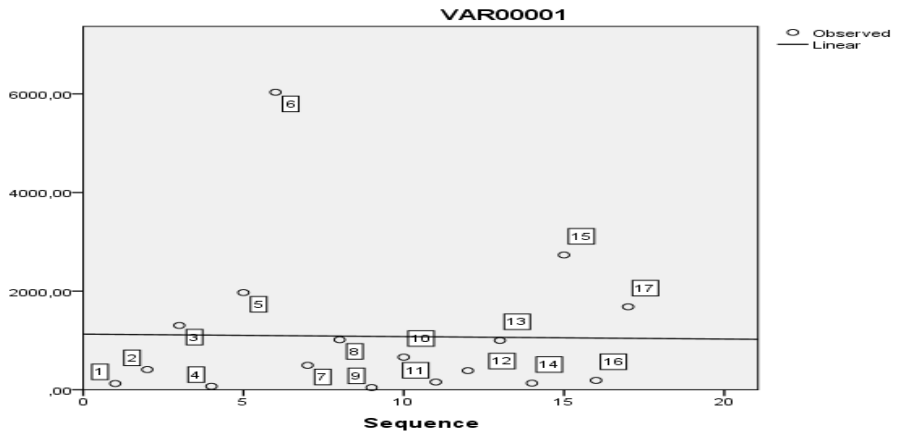



**Figure 19: EU vehicles producers (1000 units)**

The regression analysis of the EU vehicles output on Member States is presented in Figure 20.




1. Austria; 2. Belgium; 3. Czech Republic; 4. Finland; 5. France; 6. Germany; 7. Hungary; 8. Italy; 9. Netherlands; 10. Poland; 11. Portugal; 12. Romania; 13. Slovakia; 14. Slovenia; 15. Spain; 16. Sweden; 17. UK

**Figure 20: Automotive industry output's disparities across the EU in 2015**

It is no doubt that the EU automotive producers can be easily grouped into two clusters. This industry supports the above two clusters approach (see Figure 21). The cluster quality is very good (0.9).

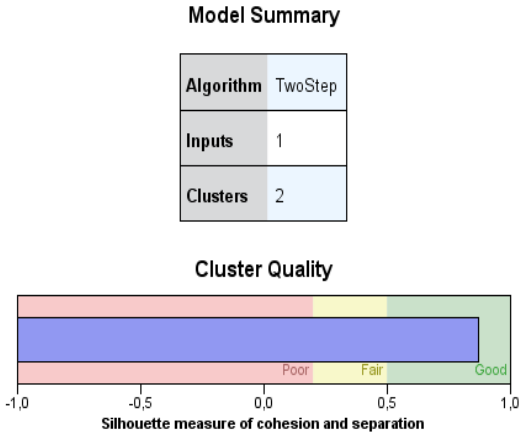



**Figure 21: Automotive outputs' cluster approach**

## 7. EU pharmaceutical industry in the new global context

EU is one of the greatest world pharmaceutical suppliers, which covers 85% from the market (World Health Organization, 2016).

The most important European pharmaceutical retail sales companies are presented in Figure 22 (The Statistics Portal, 2016).

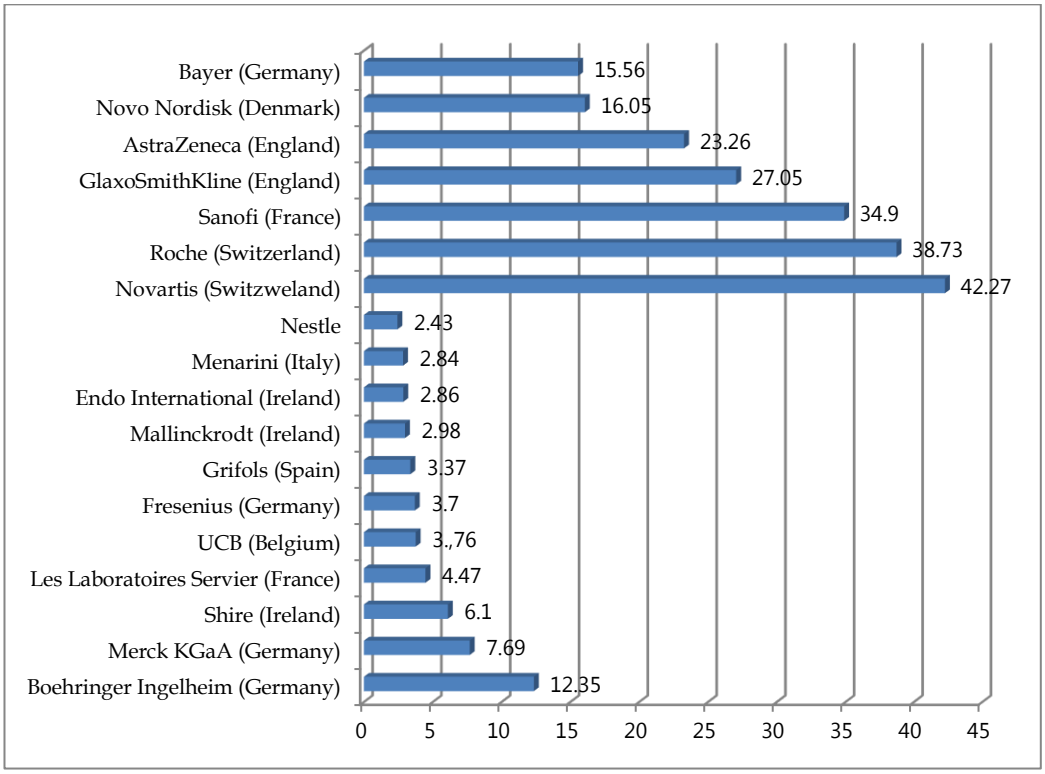
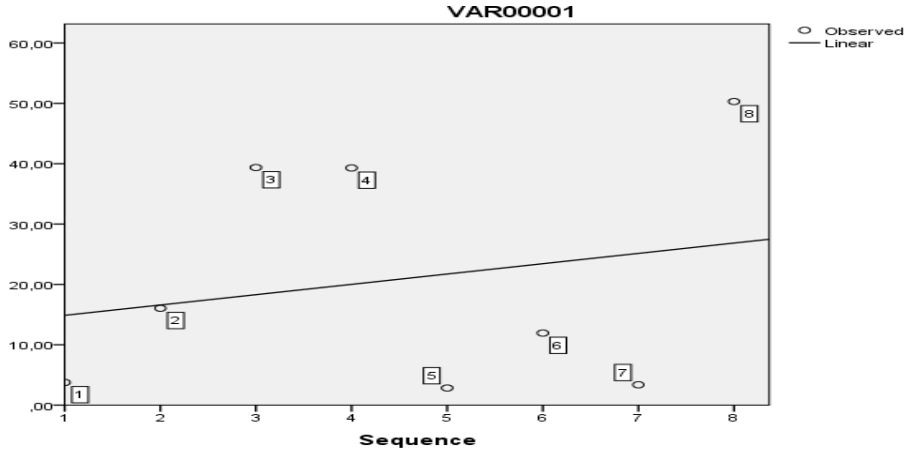



**Figure 22: European pharmaceutical companies by retail sales (billion USD)**

15 companies from Figure 22 belong to Member States. UK, France and Germany are the most important actors on the pharmaceutical market. Even if a few Member States are involved in this industry, the disparities between them are huge (see Figure 23).




1. Belgium; 2. Denmark; 3. France; 4. Germany; 5. Italy; 6. Ireland; 7. Spain; 8. UK

**Figure 23: Pharmaceutical industry output's disparities across the EU**

The pharmaceutical sector analysis covers only 8 states, but the disparities lead again to the classic two clusters. Moreover, even the cluster quality's value is the classic one: 0.9 (see Figure 24).

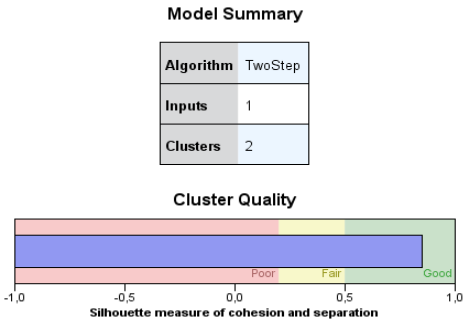



**Figure 24: Pharmaceutical outputs' cluster approach**

## 8. EU energetic industry in the new global context

EU is not a major actor on the world energetic market. It covers only 5.8% from this market and manifests an important energetic dependency on the imports of gas, oil and solid fuels.

Moreover, the EU energetic output decreased constantly during the latest two decades (see Figure 25).

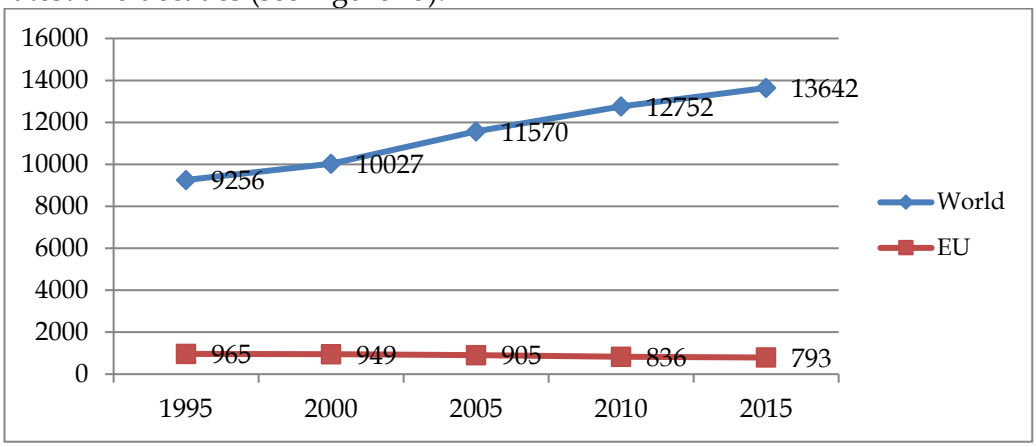



**Figure 25: Energy production's trends (Mtoe)**

On the other hand, there are great disparities related to energy output between Member States (see Figure 26).

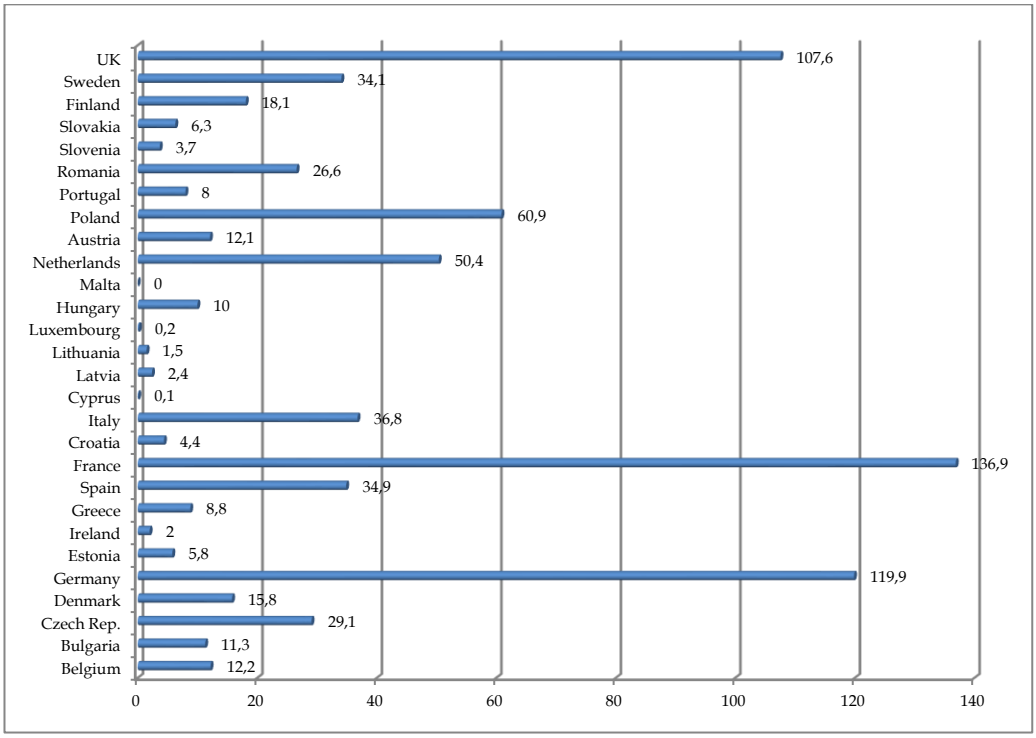
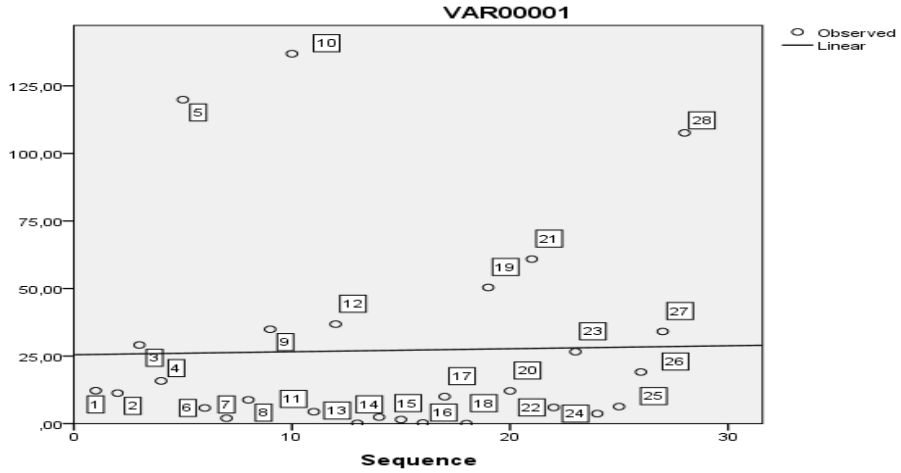



**Figure 26: Energy production on Member States (million tons of oil equivalent)**

According to Figure 26, France, Germany and UK are the greatest energy producers (Eurostat, 2016). There is a huge gap between energy production in Malta and France, which supports the idea of disparities between Member States (see Figure 27).

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Luxembourg; 17. Hungary; 18. Malta; 19. Netherlands; 20. Austria; 21. Poland; 22. Portugal; 23. Romania; 24. Slovenia; 25. Slovakia; 26. Finland; 27. Sweden; 28. UK

**Figure 27: Energy output's disparities across the EU in 2016**

Figure 27 covers all Member States and points out the same two possible clusters. This is why the cluster quality is high 0.9 (see Figure 28).

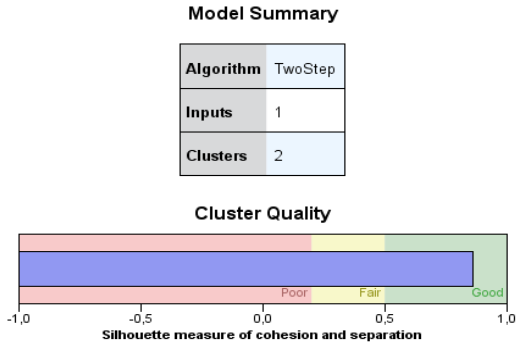


**Figure 28: Energy outputs' cluster approach**

In order to decrease these energetic disparities, the European Commission defined and started implementation of the new Energy Union Strategy (European Commission 3, 2015). This strategy supports the partial integration (10%) of the EU energy market until 2020 and promotes increasing electricity from renewable energy sources.

## 9. Discussion and conclusions

The above analysis covered the most important industrial sectors. It leads to the conclusion of the existence of industrial leaders and peripheral Member States.

This situation makes possible the grouping of the Member States into specific clusters. These clusters point out the great disparities between Member States related to their industrial development.

Using the results of the previous analysis, the next step is to make up a top list of the Member States according to their industrial development. All 28 states will be ranked in this top, using value 28 for the 1st rank, 27 for the 2nd rank and so on. The results of this new analysis are presented in Table 1.

**Table 1: Member States' ranking according to their industrial development**

| State | Inno-vation | Steel | Shipbuil-ding | Textiles | Aeron a-utics | Auto-motive | Pharm a-ceutical | Energy | Σ |
|---|---|---|---|---|---|---|---|---|---|
| Belgium | 23 | 21 | | 23 | 21 | 19 | 23 | 16 | 146 |
| Bulgaria | 7 | 9 | 17 | 10 | | | | 14 | 57 |
| Czech Republic | 19 | 19 | 17 | 19 | | 24 | | 20 | 118 |
| Denmark | 26 | | 4 | | 19 | | 25 | 17 | 91 |
| Germany | 24 | 28 | 27 | 28 | 27 | | 26 | 27 | 187 |
| Estonia | 16 | | 13 | | 11 | 28 | | 9 | 77 |
| Ireland | 17 | | 12 | | 14 | | 24 | 5 | 72 |
| Greece | 7 | 11 | 15 | 13 | | | | 12 | 58 |
| Spain | 11 | 25 | 22 | 26 | 25 | 27 | 22 | 22 | 180 |
| France | 22 | 26 | 24 | 25 | 28 | 26 | 27 | 28 | 206 |
| Croatia | 5 | 8 | 23 | | | | | 8 | 44 |
| Italy | 14 | 27 | 28 | 27 | | 23 | 21 | 23 | 163 |
| Cyprus | 1 | | | | 9 | | | 2 | 12 |
| Latvia | 3 | | 14 | 9 | 12 | | | 6 | 44 |
| Lithuania | 9 | | | | 16 | | | 4 | 29 |
| Luxem-bourg | 13 | 14 | | 14 | 13 | | | 3 | 57 |
| Hungary | 15 | 12 | | 12 | | 20 | | 13 | 72 |
| Malta | 4 | | | | 10 | | | 1 | 15 |
| Nether-lands | 20 | 20 | 21 | 20 | 22 | 12 | | 24 | 139 |
| Austria | 27 | 22 | | 21 | 20 | 14 | | 15 | 119 |
| Poland | 8 | 23 | 20 | 22 | 24 | 21 | | 25 | 143 |
| Portugal | 12 | | | 11 | 17 | 16 | | 11 | 67 |
| Romania | 2 | 15 | 26 | 17 | | 18 | | 19 | 97 |
| Slovenia | 21 | 10 | | 10 | | 16 | | 7 | 64 |
| Slovakia | 10 | 18 | | 16 | 15 | 22 | | 10 | 91 |
| Finland | 25 | 16 | 25 | 15 | 18 | 13 | | 18 | 130 |
| Sweden | 28 | 17 | | 18 | 23 | 17 | | 21 | 124 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| UK | 18 | 24 | 19 | 24 | 26 | 25 | 28 | 26 | 190 |

The EU Member States are characterized by great disparities related to their industrial development. The most industrialized countries are those which achieved a general score greater than 150 in Table 1. They can create a distinct cluster which covers: France, UK, Germany, Spain and Italy. This cluster represents the most developed industries.

The second cluster is formed by countries with industrial scores between 100 and 150. It covers: Belgium, Poland, Netherlands, Finland, Sweden, Austria and Czech Republic. These countries have some developed industries, but not all.

Finally, the third cluster covers economies with less developed industries: Bulgaria, Denmark, Estonia, Ireland, Greece, Croatia, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Portugal, Romania, Slovenia and Slovakia. Unfortunately, this last cluster has the greatest number of economies.

As a result, at present, the EU covers economies with three speeds in their industrial development. This conclusion contradicts the goals of the Cohesion and Regional Policies. EU is a Europe of industrial disparities and has to solve many challenges, on both short and medium terms.

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# NEW DIMENSIONS OF SOCIAL INNOVATION: COLLABORATIVE PROCESSES AND INNOVATION IN THE PUBLIC SECTOR

**Cristina PĂTRAŞCU***

**Abstract**

*The importance of the concept of 'social innovation' and the attention it has gained seem to be ever growing. The scientific literature in the field has expanded accordingly, insisting upon the necessity of developing a specialized terminology and methodology of research. Elaborating from the categories of innovation established by the Oslo Manual, researchers have advanced another notion, that of 'public innovation' or 'innovation in the public sector', making efforts at providing a conceptual framework, finding methods of analysis and research, and at establishing its particular features.*

*The present paper intends to offer an analysis of the new trends of the scientific research in the field of social innovation, with a special interest in the category of public innovation. This newer topic of research is considered as necessary by many theoreticians and professionals alike, in the current context in which the public administration is confronted with a wide range of complex issues.*

**Keywords:** *social innovation, public innovation, collaborative innovation, public administration*

## 1. Introduction

Social innovation has become, over the past decades, a much-debated topic, raising the interest of many researchers and professionals all over the world. Its importance and the attention it has gained seem to be ever growing. The scientific literature in the field of social innovation has made great progress accordingly, insisting upon the necessity of developing a specialized terminology and methodology of research.

Elaborating from the categories of innovation established by *The Oslo Manual* (OECD, 2005), researchers have studied the phenomenon of social innovation and its impact on the various spheres of society at large. As a result, many studies have offered in-depth analysis of the process, typology and methods of social innovation, which has been established among the fundamental notions of social sciences. In recent years, new studies have

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advanced another concept, that of 'public innovation' or 'innovation in the public sector', making efforts at providing a conceptual framework, finding methods of analysis and research, and at establishing its particular features. Explicit references to public innovation may be found in newer studies which place the emphasis on the ways in which networks, partnerships and interactive forms of governance enhance the innovation of democracy through transformative solutions targeted at changing former patterns of behaviour, mentalities, social relations and institutional models. (Saward, 2000; Bevir and Bowman, 2011; Torfing, 2016). Starting from these findings, Jacob Torfing has established and explored the theme of public innovation and the role of collaborative processes in improving the provision of public services and public policies.

The new challenges that 21st century public administration has to face are global and more intricate than ever and this phenomenon has been reflected by the scientific literature in the field by operating the necessary corresponding changes of the scientific theories on social innovation. In this sense, one can remark the numerous ways in which the approaches of social innovation have changed and the current focus on the social character of innovation processes, as well as on their impact and potential for transforming the public sector.

## 2. Dimensions and types of social innovation

In order to analyse the characteristics and dimensions of social innovation, it is necessary to establish a typology or several categories of social innovation, on the basis of the scientific analysis in the field. The qualitative evaluation of the studies carried out by different scholars (Richez-Battesti et al., 2012; Caulier-Grice et al., 2012; Michelini, 2012; Anderson, Curtis & Wittig, 2014; Saiz-Álvarez (ed.), 2016) have led to the classification of the various theoretical approaches of social innovation into three fundamental categories. According to this classification, the first category of theories or approaches view social innovation as a valuable tool that can be used for the improvement of public policies, a view which is sustained mainly by international organizations like OECD or the European Union. The second class of perspectives, applied by many specialists from both Europe and the United States, consider that the innovation has a strong entrepreneurial dimension, and that there is a very close connection between the social entrepreneurs and entrepreneurial activities and the phenomenon of social innovation. Finally, the third category of approaches focuses on the participatory aspects and the participative processes necessary for the innovation to take place. Great attention is paid to the transformative potential of innovation as a result of the active and responsible involvement

of all the stakeholders. This involvement and the increase of the participatory and consultation processes determine a consolidation of democracy, especially at the community level where they take place, having a strong impact, first on the local or territorial communities, and then on the entire society, as a whole.

Despite the fact that they insist on various aspects of innovation, all these theoretical frameworks have a fundamental feature in common: they highlight the social nature of innovation, opening new directions of research in this domain. In this way, the former categories of technological innovation (product innovation, process innovation, marketing innovation and organizational innovation) defined and established by The *Oslo Manual* (OECD, 2005) are expanded, due to the new focus of various researchers on the impact of innovation on the transformation of social relations, cognitive frameworks and institutions in the public space.

This steady progress of research and scientific literature in the area of social innovation determined some scholars to promote the idea of a paradigm shift in the study of innovation. This thesis was sustained, among others, by Tanev, Knudsen, Bisgaard and Thomsen (2011) who authored an article entitled "Innovation Policy Development and the Emergence of New Innovation Paradigms". In their paper, they claim that there are at least three new paradigms of innovation, namely: user-led innovation, open innovation and the co-created value, produced together with the clients and users. Along the same lines, another scholar, Joseph Hochgerner (2011) analyses a different innovation paradigm that he calls 'post-industrial', with two main types of emerging innovation, namely user-led innovation and open innovation (2011, p.4). These researchers give reasons to support the idea that both technological and economic innovation have to be understood as integrated elements of a holistic approach of innovation that has its role to play within a larger transformation process at a global social level (Hochgerner, 2011, p.4). One reason offered by Hochgerner, for instance, is that innovation can no longer be understood and interpreted in strictly economic terms, because there are obviously new categories of innovation that have to be taken into consideration and developed in response to the ever-growing complexity of the social problems that the public institutions and agents have to solve. These new categories of innovation require the complementary development of new scientific concepts and methodology of research. At the same time, Hochgerner emphasises the fundamental role of structural categories, such as norms, values, rules and relations, within any model of social system. By introducing these structural categories in the study of social innovations, new directions of research are established and new categories of social innovation are defined. The notion of social innovation becomes more extensive and open to include new meanings

which cover social structures like roles, values, norms and relationships (Hochgerner, 2011, pp. 9-10).

These aspects and dimensions of the concept of social innovation are also discussed in similar terms by the authors Caulier-Grice, Davies, Patrick and Norman (2012), in their report 'Defining Social Innovation'. In this study, they analyze the existing typology of innovation offering various examples from practice, exploring at the same time concepts like incremental innovation and disruptive or radical innovation (Caulier-Grice et al., 2012, pp.24-25). Incremental social innovation is considered to be the process which takes on and improves the already existing processes, relations, services or norms and is based on the existing level of knowledge and resources. In contrast to it, stands another category of social innovation that is called 'disruptive', because it creates new patterns of thought and new modes of action, marking a radical change as compared to the old ways or older products and services. As a consequence, these older products, services and processes appear outdated when they are correlated with the new ones.

In close connection with radical innovation, specialists discuss another type of social innovation, defined as generative innovation, given its capacity to bring about or to generate new processes and ideas (Caulier-Grice et al., 2012, p. 25). It may be argued that radical or disruptive innovation is also generative of new ideas leading the way towards other innovations, hence the association between these two concepts. The typology of social innovation includes also the category of systemic innovation (Murray, Caulier-Grice and Mulgan, 2010, p. 13, p. 107) which is different from both product innovation and process innovation, because it causes the transformation of the entire system by which social needs are addressed and solved. According to these researchers, systemic innovation determines the changing of an entire system, understood as a set of mentalities, behaviours, power roles, relations and practices. For instance, systemic innovation would cause the entire system of services provided to citizens to be radically transformed by processes that take place across sectors: public, private, civil society. These changes or systemic changes have a profound influence on extremely important services (such as health and healthcare, education, feeding, sheltering, transportation) which are vital for the entire society.

Systemic innovation which is based on profound and extensive transformation may be considered one of the categories of innovation which brings great social value because of its capacity to solve fundamental social needs, so it ensures the public good. As such, systemic innovation could be analysed together with another category of innovation, namely institutional innovation (Nicholls, Simon and Gabriel 2015, p.3; Nicholls and Murdock, 2012). The main goal of institutional innovation is to change social and

economic structures, by reconfiguring the existent patterns, in order to create social value and new effects (Nicholls, Simon and Gabriel, 2015, p.4).

Several types of innovation are also established in a recent study that offers a synthesis of research and methodology in the field of social innovation. According to this study, the themes of innovation, which represent one of the widest exploration fields, may be classified into categories such as: digital innovation, corporatist innovation, public social innovation and community-led innovation (Domanski and Kaletka, 2017, p.8). These categories are newer concepts as compared to those that are defined by the *Oslo Manual*, and these newer trends prove the existence of a growing and relevant scientific community of researchers. Among these newer concepts, analysts of social innovation define also the concept of public innovation and the innovation of services in the public sector. In this line of thought, innovation is viewed as a strategy of reform in the public sector, which determines the replacement of the old conception of the government as unique provider of social services and solver of social problems and causes its replacement with new managers as agents of change (Bekkers and Noordegraaf, 2016, p.139). The emphasis on the innovation in services has grown lately due to the complexities faced by public administrations worldwide in providing them. It is important to remark that the innovation in services is situated at the intersection between several categories of innovation, for instance innovation of product and that of process, and that the distinction between social and technological innovation is not of primary importance in this case, since the use of a new technology may lead to the improvement of a service and thus to the solution of a social need.

Another observation in reference to the innovation in services is the constant pressure exerted on the public services by the increasing social needs of citizens at a global level, pressure that appears as a consequence of important social and economic changes everywhere in the world. This global trend is often described and explained within the broader context of the passage from an industrial society to the society of services.

New, more challenging social problems, together with the effects of the global economic crisis and the changing demographic structure of the population (manifested as an increase of the aging population as compared to the working population) exert a major and long-term pressure on public services and on budgets. This evolution of the public sector requires innovative problem-solving in the management and governance of this sector, given the fact that the welfare state is no longer able to cope with contemporary challenges. In this context, innovation in the public sector and collaborative processes are considered by many scholars to be the needed and appropriate answer.

### 3. Innovation in the public sector

Recent research on social innovation has explored and defined the concept of public innovation or innovation in the public sector, also referred to as collaborative innovation or collaborative innovation in the public sector. Jacob Torfing, a well-known scholar in the field of innovation, suggested that collaborative innovation has to be established as a new domain of interdisciplinary research. The author claims that the collaborative innovation in the public sector can contribute to the transformation or systemic change in the public sector (Torfing, 2016, p. 5).

Other studies on public innovation (Van de Ven et al., 2008; Ansell and Torfing, 2014) underscored the role of collaboration processes in the public sector and as a result they considered that the definition of a new category of innovation is a sign of a new trend in the progress of scientific research in the field. There are also studies that focus on the ways in which new networks, partnerships and other forms of interactive and participative governance contribute to the development of democracy and as such represent public innovation through their renewal and transformative power. This transformative impact has to be felt at the level of the institutions, practices, relations and behaviours that are specific to liberal democracy (Saward, 2000; Bevir and Bowman, 2011; Torfing, 2016).

The newly established category of public collaborative innovation has been authored mainly by Jacob Torfing who paid extensive attention to the study of the importance of collaboration in all the stages of the innovation process, from creation to dissemination of public innovation. Together with Torfing (2016), other scholars (Koppenjan şi Klijn, 2004, Agranoff, 2007) claimed that collaboration ensures an increase of the capacity to correctly formulate and solve problems, to settle down conflicts, to stimulate mutual learning between the partners of the collaborative networks, as well as the transfer of knowledge within these partnerships.

The interest in collaborative innovation in the public sector has been determined by the continuous demand to innovate in the public sector. As already mentioned previously, the public sector has been under increasing pressure because of the complex social needs expressed by citizens who have greater expectations and because of the proliferation of issues that cannot be solved by applying standard solutions. Another important issue is represented by the financial challenges manifested as a consequence of the economic crisis caused by the crash of the credit system (Torfing, 2016, p.11).

All these factors have convinced the governments in many countries to initiate and develop national programs and projects in order to stimulate innovation in the public services and in the domain of legislative regulation of the public sector (Ferreira, Farah and Spink, 2008; Torfing, 2016). At the same time, international organizations like UN or OECD have highlighted, in their turn, the necessity of accelerating the innovation in the public sector, recommending the elaboration of national strategies to sustain the increase of public innovation. A negative aspect is represented by the insufficient or lack of institutionalisation of innovation programs in the public sector, and by the fact that scientific debate is underdeveloped, finding itself only in a beginning stage of development.

Collaborative innovation in the public sector is mainly stimulated by an active involvement of social agents who purposefully act in order to solve specific social problems, by using technological and scientific innovation. The role played by these actors seems extremely important in public innovation, because only by their assuming the responsibility for solving challenging issues through elaborating, testing and implementing innovations, they can bring about the needed change. This change has to influence also the modes of organizing social relations by a constant collaboration with partners from within and outside their organization (Torfing, 2016, p.12).

Many scholars sustain the idea that public innovation is always the result of concerted efforts of numerous actors. This type of innovation is always based on the collaboration between agents in both public and private sectors, including politicians, public servants, experts of private firms, different representatives of organizations, associations and groups of beneficiaries. Collaboration is a key factor which ensures the improvement of activities, organizations and of services in the public sector.

The main categories of public innovation are considered to be collaborative innovation and user-led innovation. The scientific literature presents several categories of public innovation. According to Torfing (2016, pp. 36-37) the main types of public innovation include: ***product innovation*** (the use of new products or instruments in the public sector or the supply of these products that are offered by public agencies to the citizens who need them most); ***service innovation*** (offering educational programs for the unemployed); ***process innovation*** with its sub-categories of organizational innovation or governance innovation (consisting in the innovation of the ways of delivering public services or the innovation of the ways of coordinating and managing public organizations); ***innovation of public policies*** by inventing new ones or re-inventing the objectives, the instruments and methods already used in public policies (for instance free choice of education programs, cutting taxes for electrical cars etc.). Other

categories of public innovation discussed by Torfing are the contrasting pairs of radical and incremental innovation, top-down and bottom-up innovation and local and global innovation.

Public innovation, also referred to as collaborative public innovation, due to the fundamental importance of collaborative processes, represents a multidimensional concept whose approach can only be transdisciplinary in order to ensure an in-depth analysis and the necessary and appropriate insight. One facet of the phenomenon of public innovation, that has enticed researchers all over the world to explore it, is the value added by the process of public innovation. This value is public and serves the general interest or the public welfare having a wider impact on society, due to its social, economic and politic dimensions.

## 4. Conclusions

Social innovation has been studied from a variety of theoretical perspectives and presents several categories established by different scholars who have carried out an in-depth research in the field. One of the main ideas emphasized by new research is that social innovation has expanded over the last decades into a wide range of methods and practices conceived and applied with the aim to solve unmet social needs specific of the 21st century public administration.

Most recent studies focus on the social dimensions of innovation and on its impact on social relations, behaviours, mentalities, norms and values, as well as on power relations between the partners of networks, who become actively involved in solving complex problems that affect individuals or different social categories. Grouping social innovation into several classes facilitates understanding, through the analysis of specific features of innovation. The types of innovation that are most frequently mentioned are: incremental innovation, disruptive innovation, open innovation or user/beneficiary-led innovation. One of the newest categories or concepts investigated in the specialty literature is public innovation, which is often considered to be a collaborative type of innovation, hence the concept of public collaborative innovation.

Public (collaborative) innovation is characterized as a beneficiary/citizen-led innovation, because the active participation of citizens in solving difficult issues that affect them directly is a key factor. Another aspect of innovation in the public sector, is the fundamental role played by collaborative processes, which made some authors, especially Jacob Torfing, consider that public innovation is inherently a collaborative type. Research in the field sustains this opinion, by emphasizing the importance of the interaction of a multitude of actors across sectors (public,

private, tertiary sector). Finally, one of the essential features of public innovation is that it is oriented towards obtaining public value and works for the greater good or public good, also known as general interest. In this respect, public innovation is different from innovation in the private sector where individuals or private organizations act for their own profit. Public innovation seeks answers and elaborates innovative solutions to matters that affect society at large and its objectives are generous, seeking to ensure efficacy, quality, citizens' empowerment and social inclusion, and acting as a catalyst of social solidarity and democracy.

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# CONSIDERATIONS ON THE CONSTITUTIONAL COURT'S DECISION no. 997/ 2008 CONCERNING THE PLEA OF UNCONSTITUTIONALITY OF ART. 20 OF G.O. no. 137/2000 ON THE PREVENTION AND SANCTION OF ALL DISCRIMINATION FORMS

**Elisabeta SLABU***

**Abstract**

*The plea of unconstitutionality, or of non-compliance with the Constitution, represents a constitutional guarantee of the citizens' fundamental rights and liberties, established with the goal to protect people against the possible unconstitutional provisions adopted by the Parliament. The concept of "constitutional control" is more and more often used in the contemporary literature, together with the expression "constitutional justice". The two expressions are fairly similar, meaning the review of the conformity of the law with the Constitution. The constitutional judge has the right to examine and decide on both the ''text'' of the law and on the ''norm'', although the control of the ''norm'' is the prerogative of the legislative power. At the level of the majority of the constitutional courts in Europe, there has been a comparable evolution of the phenomenon of these interpretative decisions. This evolution was marked by a gradual change of the attitude expressed in the scientific doctrine and the jurisprudence, from one of categoric hostility towards one of total openness to this category of decisions. Almost all scholars accept now that the Constitutional Court has the power to establish the unconstitutionality of an interpretation resulting from the unclear or inappropriate wording of the legal provision under control. This conclusion is scientifically supported by the constitutional judge's competence to interpret the legal texts and by the necessity to ensure juridical security.*

**Keywords:** *plea of unconstitutionality, constitutional control, constitutional justice, constitutional court, juridical security*

## 1. General considerations regarding the plea of unconstitutionality

The supremacy of the Constitution represents a fundamental principle and an obligation for all public authorities and all subjects of law. The respect of this principle is guaranteed by the control of the constitutionality of laws that has to be analyzed under its two main aspects, namely: the general control

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of the ways in which the fundamental law is applied and the specific control of the constitutionality of laws (Muraru, 2010; Muraru, Tănăsescu, 2008, p.68).

The constitutional review consolidates the direct applicability of the Constitution, ensuring a stability which is not subject to the fluctuations of the government process (Muraru, Constantinescu, 1997, p.3). The corollary to the constitutional justice may be expressed as: "…all authorities, and mostly the Parliament, have to comply with the limits established by the superior rules of the Constitution" (Selejan-Guţan, 2005, p.1). Nevertheless, the constitutional control is not anymore carried out with the unique goal of ensuring the conformity of the laws with the Constitution, because the constitutional jurisdictions have lately manifested, more and more, the tendency to take on the role of defenders of both the Constitution and of the citizens' fundamental rights (Selejan-Guţan, 2005, p.17-18).

The Romanian Constitution sets up the legal framework of the constitutional control in art. 146, whereas the detailed provisions make the object of Law 47/1992, republished, concerning the organization and functioning of the Constitutional Court of Romania. The Romanian legislation establishes two main forms of constitutional control: the concrete or *a posteriori* form of constitutional review and the abstract form or *a priori.* The constitutional control before its promulgation is exercised through the solution of an objection of unconstitutionality, whereas the control after the promulgation is carried out through the solution of the plea of unconstitutionality.

The plea of unconstitutionality, or of non-compliance with the Constitution, represents a constitutional guarantee of the citizens' fundamental rights and liberties, established with the goal to protect people against the possible unconstitutional provisions adopted by the Parliament. This instrument has been defined in the scientific doctrine as "un incident that may appear over the course of a process taking place before a judge, and that consists in contesting out the constitutional legitimacy of a provision included in a law or Government ordinance on which depends the solution of that cause" (Muraru, Constantinescu, 1997, p. 142).

The plea of unconstitutionality has a special place within the Romanian legal system of procedural exceptions. It represents a specific form of exerting the constitutional control, namely the one known as *a posteriori* or concrete mode of constitutional review. It combines the necessity of the constitutional control with the interest of protecting the individual rights, or in other words, it combines the means of defense specific to the procedural law with instruments which are specific to the Constitutional law, as provided by the Romanian fundamental law (Muraru, Vlădoiu, Barbu, 2009, p. 116-118).

In the French doctrine, the possible introduction of the plea of unconstitutionality as a way of referral addressed to the Constitutional Council has caused a strong debate. This debate has also brought about the problem of the juridical nature of the plea of unconstitutionality as compared to that of the "prejudicial issues". French scholar Louis Favoreu (1992, p. 11; 1999, p. 226) claims that the expression "plea of unconstitutionality" is improper and, in fact, the matter has to be referred to by using the concept of "prejudicial issue" which determines a referral to the constitutional jurisdiction that exerts a constitutional control.

At the same time, specialized literature in the field claims that there is another situation that can be assimilated to the same category of plea of unconstitutionality. It is the situation in which the question of conformity with the Constitution is raised before an ordinary court, during the course of a cause that it rules and that is solved and decided upon by that court. Only if the court cannot rule on that matter and it is forced to send it to the constitutional court, then the matter is not a "plea of unconstitutionality", but it represents a "prejudicial issue" (Favoreu et al., 1999, p. 255). The Romanian specialists, in their turn, sustain that the plea of unconstitutionality represents a prejudicial issue that is limited to the question of the constitutionality of the particular law applicable to the cause and on which depends the solution of that cause (Muraru, Constantinescu, 1997, p.144; Muraru, Vlădoiu, Barbu, 2009, p. 119).

According to the article 146, (letter d), of the Romanian Constitution, the Constitutional Court of Romania decides upon the pleas of unconstitutionality raised before the ordinary courts and the commercial arbitration courts, when the plea concerns the unconstitutionality of the law or ordinance on which depends the solution of that cause. The Constitutional Court can be referred to only by the court that is confronted with the issue of non-compliance to the constitution. This referral takes the form of a hearing report which will include the points of view of all parties to the proceedings and the opinion of the court itself along with all the evidence indicated by the parties. All these requirements have to be respected also when the plea of unconstitutionality is raised *ex officio*. Another institution which can raise the question of unconstitutionality is the ombudsman (Muraru, 2004, p. 82-89).

## 2. Tasks of the National Council for Fighting against Discrimination

Article 2, al. (1) of the Government Ordinance no. 137/2000 (on Preventing and Sanctioning of all Forms of Discrimination) defines discrimination as: " [...] any differentiation, exclusion, restriction or

preference expressed on the basis of race, nationality, ethnicity, language, religion, class, beliefs, gender, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, belonging to a disadvantaged category, as well as on any other criterion aiming at or resulting in the restriction or the non-recognition of the use or exercise of fundamental human rights and liberties or of the rights granted by law[...]".

According to this legislative act, the eradication of discrimination forms can be realized through:

- prevention of all discrimination acts;
- provision and implementation of special measures of protection of disadvantaged persons who do not enjoy of equal chances
- mediation in order to settle amicably all conflicts caused by acts of discrimination
- institution of sanctions for discrimination: any discriminatory behavior may entail civil, contraventional or criminal liability.

The National Council for Fighting against Discrimination is the state authority in the field of discrimination. It is an autonomous authority, with juridical personality, placed under the Parliament's control and it acts as a guarantor of the principle of non-discrimination, in agreement with the national and international legislation.

From the analysis of the provisions of the articles 16-19 of the Governmental Ordinance (G. O.) no. 137/2000, it can be established that the aforementioned authority has the following tasks and duties:

- application and control of the respect of the provisions of the G. O. no. 137/2000, in its domain of activity
- harmonization of the provisions of the normative and administrative acts that are contrary to the non-discrimination principle;
- elaboration and application of public policies in the field of non-discrimination;
- consultation with the public authorities, non-governmental organizations, trades and other legal entities whose task is to protect human rights or have a legitimate interest in fighting against discrimination.

Two articles of the G. O. no. 137/2000, namely article 18, paragraph 1, and art. 20, have determined the establishment of some practices that made the object of referral of the Constitutional Court. Article 18, paragraph 1, establishes that the National Council for Fighting against Discrimination is responsible for the "harmonization of the provisions of the normative and administrative acts that are contrary to the non-discrimination principle", whereas art. 20 states that "the person considering himself to be discriminated has the right to require the annihilation of the consequences of the discriminatory facts and the restoration of the situation preceding the

discrimination". Starting from these provisions, and on the basis of the interpretation of a decision of the National Council for Fighting against Discrimination, it has been considered that this one has the ability to examine and censor the solutions included in normative acts and administrative acts with normative character. As a result, the matter was referred to the Constitutional Court that had to rule on the constitutionality of the provisions of article 20 of the G.O. no. 137/2000.

## 3. Analysis of Decision no. 997/2008 of the Constitutional Court concerning the Plea of Unconstitutionality of Article 20 of G.O. no. 137/2000 (on Preventing and Sanctioning of all Forms of Discrimination)

The plea of unconstitutionality of article 20 of G.O. no. 137/2000 was referred to the Constitutional Court by the Court of Appeal Iasi, through its Section of Administrative and Fiscal Contentious. The plea of unconstitutionality was formulated by the Ministry of Justice, during the appeal made against the civil sentence (no. 16/CAF/ January 10, 2008) of the Court of First Instance of Iasi, in the case no. 7604/99/2007. By this sentence, the Court of Appeal Iasi and the Ministry of Justice were forced to pay salary entitlements resulting from the salary differences established by Decision no. 151/21.06.2007 of the National Council for Fighting against Discrimination.

Article 20 of G.O. no. 137/2000 (on Preventing and Sanctioning of all Forms of Discrimination) states the following:

The person, [...] who considers himself/herself discriminated, may file complaint at the National Council for Fighting against Discrimination, no later than one year after such act had been committed or from the day since the victim had found out about such an act.

The National Council for Fighting against Discrimination will solve the petition by a decision of the Steering Board as provided by art. 23, paragraph (1). In the petition introduced according to paragraph 1 (of article 20), the person who considers himself/herself discriminated has the right to claim damages prorated against the harm they suffered and to end the situation that caused the discrimination.

The decision of the Steering Board, whose object is the solution of the petition, is adopted within 90 days from the introduction of that petition and must include: the full names of the members of the Steering Board, who passed the decision, the names of the parties involved, their residence or domicile, the object of the complaint and the evidence and arguments brought by the parties, a description of the discriminatory act and references to the piece of legislation whereby the contravention is ascertained and punished, methods of payment of the fine, if any, the ways of appeal and the

deadline until which the appeal can be filed. The decision will be communicated to the parties within 15 days from its adoption. Against this decision an appeal may be filed at the administrative contentious sections, according to the legal provisions in the field. If the decision is not appealed within 15 days from its adoption, it becomes enforceable.

The Ministry of Justice referred the matter to the Court of Appeal Iasi, claiming that the provisions of article 20 of G.O. no. 137/2000 are not constitutional, if they are interpreted in the sense that the Council is given the prerogative to retain the breach of the principle of equality through the examination and censure of provisions included in normative acts and in normative administrative acts.

The Ministry of Justice points out that the appropriate interpretation of the legislative text in question has to be the following: the decisions adopted by the Steering Board of the National Council for Fighting against Discrimination are passed only with the aim of investigating and applying sanctions (usually a civil penalty) for the discriminatory acts which may be either illicit actions or inactions that trespass the legal norms and cause damage to a person. At the same time, none of the legal provisions of the ordinance establishes that the Steering Board is competent to pass decisions that would have as a consequence the harmonization of the legislation. An interpretation of this text in a sense that would support the idea, that the National Council for Fighting against Discrimination is competent to apply sanctions in order to correct legal provisions included in normative acts, would be meaningless. In addition, the restoration of the situation existing before the discrimination "created" by a legal provision is not possible by a decision of the National Council for Fighting against Discrimination, because the norms included in laws and ordinances enjoy the presumption of constitutionality, whereas those included in administrative acts benefit from the presumption of legality, until evidence to the contrary.

The Court of Appeal Iasi, through its Administrative and Fiscal Contentious Section, considered that the plea of unconstitutionality was well founded, because on the basis of various articles of the Ordinance 137/2000 (namely art. 2, paragraph 3, art. 18 and art. 20), it can be inferred that the National Council would be competent to correct legal provisions from normative acts. The Court of Appeal motivates that this type of competence would trespass the principle of the separation of powers, since it would give the National Council the prerogative to verify the conformity of the provisions included in normative acts and normative administrative acts with the provisions of article 16 of the Romanian Constitution. The same Court claims that art. 126 of the Constitution would be also breached, because the conditions and the extent of the control exercised by the National Council are not explicitly delimited, and thus the Council would substitute

the judicial courts that are competent to interpret and apply the law. The Court of Appeal appreciates that the provisions of the Ordinance 137/2000 that allow, even if in an indirect manner, the National Council to verify the constitutional character of normative acts are against the Constitution, since this prerogative belongs exclusively to the Romanian Constitutional Court.

The Constitutional Court analyzed the closing court proceedings, the Ombudsman's point of view, the report of the Judge-Rapporteur and the prosecutor's conclusions, as well as the legal provisions under discussion together with the provisions of Law no. 47/1992. On the basis of all these legal provisions and opinions of various authorities, the Constitutional Court (the Court) considers that the interpretation of the article 20, paragraph 3, of the G.O. no. 137/2000, in the sense that they are applicable to discriminatory situations is correct. The Court appreciates that this body is apt to survey the ways in which the non-discrimination principle is respected and applied even by normative acts. Therefore, the National Council has the duty to note the existence of legal provisions that are discriminatory and may express its opinion concerning the harmonization of the provisions, included in normative acts and normative administrative acts, with the non-discrimination principle. It was also appreciated that what are really important are the effects produced by these opinions. As a result, it cannot be accepted the interpretation according to which the decisions of the National Council for Fighting against Discrimination could render some legal texts inapplicable or could determine the application of other legal texts by analogy, because in so doing, the Council would interfere with the competences of the Parliament and the Constitutional Court.

The Constitutional Court stated also that the unconstitutionality of some of the opinions and decisions of the National Council was generated by the fact that the provisions of Section VI from G.O. 137/2000 are not clearly formulated. In its opinion, the role of the National Council for Fighting against Discrimination has to be limited to the ability to note the existence of discriminatory provisions within normative acts and to the formulation of recommendations and referrals to the authorities that are competent to modify the legal texts in question.

Finally, the Constitutional Court decided to admit the plea of unconstitutionality raised by the Ministry of Justice (Case 7604/99/2007, Court of Appeal Iasi, Section of Administrative and Fiscal Contentious). The Court appreciated that the text of the article 20, paragraph 3 from G. O. 137/2000 is unconstitutional, when interpreted in the sense that the National Council, in the exercise of its jurisdictional duties, would be competent to annul texts belonging to normative acts susceptible to cause discrimination, or even to substitute such texts with other provisions from other normative texts. The Constitutional Court also decided to reject the plea of

unconstitutionality of the provisions of article 20, paragraphs 1, 2 and 4 to 10, of the G.O. 137/2000 on the Preventing and Sanctioning of all Forms of Discrimination.

## 4. Conclusions

The concept of "constitutional control" is more and more often used in the contemporary literature, together with the expression "constitutional justice". The two expressions are fairly similar, meaning the review of the conformity of the law with the Constitution. The constitutional judge has the right to examine and decide on both the ''text'' of the law and on the ''norm'', although the control of the ''norm'' is the prerogative of the legislative power (Cimpoeru, 2009, p. 62-74). According to scholar Dan Cimpoeru, the notion of ''text'' designates the exteriority of the juridical norm, while the notion of ''norm'' means a general and obligatory rule of conduct whose fundamental aim is to ensure the social order (2009, p. 62-74).

The right of the judge to control the conformity of the law with the Constitution derives from his prerogative known as "*iurisdictio*". On the basis of this prerogative, the judge has the right to pinpoint what norm from the text is applicable in a real situation on which he has to rule. Thus, the constitutional judge interprets both the constitutional text and the text of the law, and afterwards he establishes by a decision, either the constitutionality or the unconstitutionality of the law. From a formal perspective, the operative part of the judge's decision will indicate as constitutional or unconstitutional only the text of the law, and not the norm that the text contains. Nevertheless, it is known that the declaration of the constitutionality/unconstitutionality of the text concerns also the normative content of the text. There are many interpretative decisions that are produced in this way and that offer further refinement of the solutions adopted by the constitutional judge. This is the case, of the ''*a posteriori*'' control when the constitutional judge will pass an ''interpretative'' decision instead of a ''simple'' one, in order to offer a more nuanced solution and to avoid the creation of a legislative void (Cimpoeru, 2009, p. 74-112). An example of such interpretative decision is the one passed by the Constitutional Court (Decision no. 997/07.10.2008), which admitted the plea of unconstitutionality raised by the Ministry of Justice (Case 7604/99/2007, Court of Appeal Iasi, Section of Administrative and Fiscal Contentious).

The existing practice of the Constitutional Court (that issued such interpretative decisions) drew the attention of many specialists whose reaction has been mixed: some of them have accepted it, some others have contested it. Even the legislative authority itself has hesitated, oscillating

between acceptance and rejection of the possibility to acknowledge the prerogative of the Constitutional Court to pass interpretative decisions. Finally, almost all scholars and the Parliament itself accept now that this court has the power to establish the unconstitutionality of an interpretation resulting from the unclear or inappropriate wording of the legal provision under control. This conclusion is scientifically supported by the constitutional judge's competence to interpret the legal texts and by the necessity to ensure juridical security. In addition, at the level of the majority of the constitutional courts in Europe, there has been a comparable evolution of the phenomenon of these interpretative decisions. This evolution was marked by a gradual change of the attitude expressed in the scientific doctrine and the jurisprudence, from one of categoric hostility towards one of total openness to this category of decisions. At the same time, G. O. no. 137/2000 (on the Preventing and Sanctioning of all Forms of Discrimination) was modified by an Emergency Government Ordinance 75/11.06.2008 and by many of the Constitutional Court's Decisions, such as: 818/03.07.2008, 819/03.07.2008, 820/03.07.2008, 821/03.07.2008, *997/07.10.2008* and 1325/04.12.2008.

For instance, by four consecutive decisions, namely: Decisions no. 818/03.07.2008, 819/03.07.2008, 820/03.07.2008, 821/03.07.2008, the Constitutional Court admitted, several times, the unconstitutionality pleas raised by the Ministry of Justice against article 1 and article 2, paragraph 3 and article 27, paragraph 1 of the G.O. no. 137/2000, republished (on the Preventing and Sanctioning of all Forms of Discrimination). As a result of the numerous pleas of unconstitutionality, the Constitutional Court issued Decision no. 1325/04.12.2008 (published in Monitorul Oficial 872/23.12.2008). This decision established the unconstitutionality of all the provisions of the G.O. no. 137/2000, (on the Preventing and Sanctioning of all Forms of Discrimination, republished), if these provisions allow an interpretation in the sense that the judicial courts have the prerogative to either annul or refuse the application of laws and other normative acts that are considered discriminatory, or to proceed to their replacement with other norms created by the judiciary practice or provided by other normative acts.

Unfortunately, the matter was not definitively settled by these decisions and the pleas of unconstitutionality went on. During the Constitutional Court's session of 4th of December 2008, the issue of the unconstitutionality of the same articles (article 1 and article 2, paragraph 3 and article 27, paragraph 1) of the G.O. no. 137/2000, republished (on the Preventing and Sanctioning of all Forms of Discrimination) was raised again in five cases. The Court proposed *ex officio* to connect all these five cases, on the reason of their identity of object, namely pleas of unconstitutionality of the same legal provisions. The proposal was certainly accepted.

This time, on the basis of the provisions of article 31, paragraph 2, of Law 47/1992 (on the Organization and Functioning of the Constitutional Court) and taking into the account that the articles under attack are indissolubly related to other norms of the G.O. no. 137/2000, the Court decided to examine the constitutionality of the ordinance in its entirety. Analyzing all the critiques raised on the basis of the norms of the Romanian Constitution, the Court remarked that the provisions of the ordinance allow the possibility of interpretation with a meaning that is unconstitutional. This meaning may lead to the inappropriate and unconstitutional assertion that the judicial courts may have the prerogative to annul or refuse to apply the legal norms that they consider discriminatory or to replace them with other norms of general applicability or established by other normative acts that are not applicable in the case on trial. This assertion is considered unconstitutional and thus unacceptable, because it contradicts the principle of separation of powers recognized by the Romanian Constitution (in article 1, paragraph 4) and the principle that the Parliament is the unique authority vested with legislative power (article 61, paragraph 1 of the Constitution). The Court's final decision admitted the plea of unconstitutionality, based on all these reasons.

As a final remark, we must distinguish between two categories of authorities that are directly influenced by the Constitutional Court's decisions on pleas of unconstitutionality of articles from G.O. no. 137/2000, republished (on the Preventing and Sanctioning of all Forms of Discrimination). These two categories of authorities are the National Council for Fighting against Discrimination and the judicial courts. For both categories, the Court considers that these authorities have no competence to annul or refuse the application of legal provisions even if they consider them discriminatory. Furthermore, these authorities have no power to decide the application of other norms of general applicability or resulting from the judiciary practice. As a consequence, any of the provisions of the G.O. no. 137/2000, republished, that may lead to an interpretation in the aforementioned sense, are considered unconstitutional. The main reason of such decision is that only the Parliament, as the unique legislative authority, and sometimes the Government (but only through the delegation of the legislative power), have the competence to elaborate, modify or abrogate a legal norm of general applicability. The judicial courts are not vested with such power. Their mission acknowledged by the Constitution is the administration of justice, which means that they have the responsibility to apply and interpret the law in order to solve the legal disputes between subjects of law. On the other hand, the Parliament's legislative power is not absolute, but limited by the principles enshrined by the Constitution of Romania, among which the obligation to respect and protect the

fundamental human rights and liberties guaranteed by the Constitution and other international juridical acts to which Romania is a party (Ciobanu, 2009, p. 93-94). The Constitutional Court considers that the role of the National Council for Fighting against Discrimination has to be limited to the ability to note the existence of discriminatory provisions within normative acts and to the formulation of recommendations and referrals to the authorities that are competent to modify the legal texts in question.

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# THE RESPONSIBILITY OF THE NATIONAL EDUCATION SYSTEM AS A SERVICE OF PUBLIC INTEREST

**Elena Roxana VISAN***

**Abstract**

*The legislative context, the institutional and organizational framework of education, all have an impact that reverberates across the entire society, as well as at the level of each individual. Being a national priority, due to societal benefits internationally recognized, education is regarded as a fundamental human right. This fundamental process optimizes the overall social system, following a joint involvement on the part of institutional actors and interested organizations, and has a major contribution to ensuring public accountability.*

**Keywords**: *education system, public accountability, public service, priority, responsibility and training of the younger generation*

## 1. Conceptual cues

Considered a national priority, the national system of education is meant to carry out the educational ideal, based on humanistic and scientific values, on the universal values of democracy and on the aspirations of Romanian society. As an integral part of the social system, this important structure has an essential mission, aiming at maintaining and promoting the harmonious growth of people, at the level of both human individuality and national identity.

Education must be regarded as a social-cultural subsystem that works according to principles that are specific to the national legal framework, but also according to rules that belong to the European legal framework. This subsystem has to fulfill its functions in agreement with the socio-political changes foreshadowed by the 21st century, namely the new requirements deriving from Romania's status as a member of the European Union and from the broader context of globalization. In order to do this, it has to become highly competitive and able to operate effectively and efficiently within current and future society. The organization of the education structures and bodies must be addressed in a complex way, starting from the assumption that education must necessarily accomplish its goals.

Such an approach has to be based on multiple dimensions. These dimensions are: 1) the management of the entire process of education, with an emphasis on results and effectiveness; 2) the position of the 'human resources' component within the education system; 3) the social relations

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established between direct and indirect beneficiaries; 4) the ratio between staff and the employer's power of distribution. Another dimension is the political approach, because it refers to the administrative apparatus which rules and coordinates the education system and ensures the policy-making process as well as the execution of laws and policies in the field.

The aforementioned directions call attention to a new concept discussed in the scientific literature. This concept is ''responsibility assumption'', understood as each individual's obligation to take responsibility for his actions and the consequences of his actions. Accountability entails a reasonable, honest behavior of the individual in relation to others, which confer survival solutions to the community through personal commitment. Kanter (1968, p. 66) speaks of ''cohesion commitment'' as a form of emotional attachment to a group. From the evaluation of Anglo-Saxon literature, we found a pragmatic analysis of the concept of responsibility, based on attributes such as competence, effectiveness, responsibility (on whose analysis the next section of this paper concentrates).

Competence is understood and evaluated in close connection with a series of standards and targets assumed by public policies and valued by the administration. 'Standard' in accordance with Regulation 1025/2012, means 'a technical specification adopted by a recognised standardisation body (Moroianu Zlătescu, 2017, p. 69), where the decisions are taken by experts' (but the results are only advisory).

Effectiveness refers to the activities that can be characterized in terms of administrative efficiency and are able to provide value through administration. As such, the obtained results can be measured.

Liability is based on two notions: direction and control (Hyneman, 1950). The direction orients the path that is turning towards responsibility, and takes into account the control action itself which implies checking, inspection and evaluation. These values can be applied to the administration *per se*, as well as to other areas of governance or of the governmental system as a whole (Bălăşoiu, Bacchus, Ildiko, 2007, p. 11). The existence of a new approach, confirms that in public administration there is a tendency to treat the concept of accountability from the perspective of three dimensions: political, legal and administrative. These characteristics include decisions and instructions arising from the development of public policy-making that acknowledges and enables the role of the representation of social groups, the participation of citizens, in order to improve the mechanisms of participatory democracy. Concerns over the citizens' best interest find their way into the public policy process, bringing an element of novelty: that of responsibility, enhanced through the citizen's participation in the administrative decision-

making process. In this way, each individual is entrusted with a mission that is formally and legally established.

It is important to retain, that the existence and manifestation of public accountability is supported not only by the attributes mentioned above, but also by an institutional and legal framework, materialized through a contract with a clear mission (Bălăşoiu, Bacchus, Ildiko, 2007, p. 12). We believe that a way of manifesting public responsibility involves also social responsibility in relation to changes in the political, administrative and economic fields. This type of responsibility has, in its turn, two components: bureaucratic responsibility and civic responsibility. The first component requires the involvement of public authorities through developing and applying the right legislation and acquiring the necessary technological tools for the functioning and organization of the administrative process.

The meaning of civic responsibility converges with the meanings of several philosophical notions, like the notion of citizen (Latin, *civis*), or that of *Citadel* (Latin, *civitas,* with its Greek correspondent *polis*). The concept is based on two fundamental elements which illustrate the indissoluble relationship between authorities and citizens, developed on the basis of the respect for law and the human being. The upraise of civic responsibility today comes to strengthen and re-define each individual's awareness of empowerment as a consequence of his being and acting as a citizen. The citizen behaves as a powerful member of his community capable to carry out his duties and to exercise the rights conferred by that community. Thus, this concept of responsibility is justified, since it refers to the citizens' sense of obligation to defend their personal interests, strongly associated with the authorities' obligation and commitment to maintain the rule of law and to ensure the progress of the community through efficient public policies.

## 2. Dimensions of responsibility in the management of the national education system

The subject concerning public responsibility is one of the greatest challenges that define a changing society which tries to promote a democratic citizen able to influence the decision-making process and to respond to current social problems. It is understood, that our attention concentrates on a priority area of social life, namely the education system. This system intends to integrate new dimensions: one of them, of crucial importance, is that of positive education. Positive education is known to produce well-being by combining tradition with efficiency modernism, with consequences felt on all areas: economic, social and cultural (Vişan et al, 2018, p. 439). The education system as a priority area of social life, cannot or

should not permit failures (Rus C.M., Cârstea L.M., Petrea G.A. et al, 2018, p. 168). In this way, the administration of education should be performed through a complex set of responsibilities, from now on referred to as accountability cycle.

When we talk about accountability in public education, we take into consideration the administrative-institutional dimension and the societal and economic implications, which are very complex and closely connected. The aim is to prove that education is not only a process of transmission and accumulation of information, but also a responsible creative act, with a positive impact on every being. Through education, every individual becomes able to respond to any challenges, removing any barrier in his or her social evolution. Raising the issue of accountability in education is very important, and there are several arguments to sustain this idea. A good education system is based on public responsibility, influencing the quality and equity of social life.

The administrative institutional system, in its turn, influences very much the education system, as well as the existence and manifestation of the concept of public responsibility, through establishing and maintaining a bureaucratic accountability model and high standards of performance. The bureaucratic model refers to the compliance of the whole system of education with the legislation in force, and with a system of standards of performance which should improve and ensure an optimal education act. The application of a consistent legislation, flexible and coherent (Neacşu, Ioan, Ştefan, Rodica, Stanciu, Filip et al, 1997, p.29) is a mandatory requirement.

The main normative act in the field is the National Education Act no.1/2011 (with subsequent amendments) which requires the exercise of (...) the fundamental right to education throughout life. The main body that ensures the application of this law is the Ministry of Education, and the entire school system is subordinated to it. The law establishes the main rules and principles of the education system and the components of public accountability in education by defining and organizing the necessary framework for the educational policies and strategies. The ministry has an important role in the organization of the entire education system, and establishes which are the priorities at local, county and national levels. One of the main issues still remains the involvement of policymakers and their commitment to ensuring the quality and relevance of the education process within the broader context of the European educational reform.

In this sense, Romania, as a member of the European Union, has made efforts to adapt and adopted the Bologna system of education. At the meeting of education ministers of France, Britain, Italy and Germany, it was stated that all European society requires ''a system of higher education to

give young people best opportunities to find their own area of performance''. In another European ministerial statement, it was mentioned: ,, Higher education should be considered a public good and is and will remain a public responsibility'' (Comunicatul întâlnirii miniştrilor europeni, Praga, 2001). Following the decisions taken in the European Union area, the administration system of national education has shifted its approach, stance and decisions, making efforts to apply a reform of the entire education system. One of the directions of this reform is strengthening the relationship between the education system and local administrative authorities. Another direction intends to develop an exercise of responsibility orientated towards an education process that focuses mainly on student as customer, on the quality of education and on the increase of the motivation of beneficiaries.

Measures were also taken to ensure the standardization of jobs, by hiring qualified personnel and by obtaining and improving the material resources (Bălăşoiu C. et al, 2007, p.20). A tool for monitoring the process of education is the use of indicators to measure the performance. The main goal is to ensure outstanding results that affect positively the direct beneficiaries of the education system, materialized on their integration on the labor market, but also in the successful acquisition of skills that are later translated into the improvement of the global social system. Better results have been also obtained in the case of youth with low education levels, by developing plans to improve the methods of education applied for this category.

To monitor and evaluate the quality of the education process, specialized commissions have been founded at all educational levels. An important role in this respect has ARACIP and RAQAHE, both public institutions of national interest, functioning under the Ministry of Education and established by the Government Emergency Ordinance no. 75/2005 on quality assurance of pre-university education system approved by Law no. 87/2006. This legislation establishes the following major functions for the evaluation of the education system:

- the external evaluation of the quality of education offered by schools and a complex process of authorization/accreditation /periodical evaluation of schools
- the assessment of the quality of higher education, by ARACIS that is a public institution, created to supervise the accomplishment of various objectives such as preparing students for active citizenship, a future career, gaining of a vast academic knowledge by stimulating research and innovation. Academic quality assurance becomes an institutional framework adapted to the specific process and establish a mechanism for constantly improved academic performance (www.aracis.ro).

- establishing of a specific structure dedicated to the development, design, monitoring and updating of the policies in the field of quality assurance in higher education, based on the following principles: institutional accountability, institutional diversity, cooperation with all components of the education system, focusing on results, institutional identity, internal self-evaluation, external evaluation, quality improvement, institutional transparency (www.edu.ro.).

Analyzing the scope and extent of administrative and institutional accountability, we can observe a dual model of manifestation, encompassing: accreditation standards (supported by a legal-administrative framework) and performance standards (aiming at developing a culture of quality in education). Analyzing the bureaucratic model, it can be deduced that the accountability for education has multiple sides: on the one hand, responsibility for education seen as a process of knowledge, and on the other hand, the responsibility for implementing performance standards.

The institutional, societal and economic development dimensions may be analyzed in terms of: professional liability, financial liability, and highlighting the fundamental importance of permanent education deriving from the necessity of a lifelong assimilation of values and best practice models by youth and adults. The complexity of social relations within the family, as an institution, and within society is reflected in education which provides ''…a way of being, a way of living, and assuming the rhythm, the size and the content of various forms of change'' (Şoitu, 2016, p.7).

Professional liability focuses on human resources' education, the training and professional development, within a holistic approach, starting with the acquisition of a set of individual teaching skills and tools. The acquired knowledge cannot be only theoretical, but has to be practical, and relevant for the development of cooperation amongst the teaching staff. At the same time, it has to foster the emergence of collaborative research, achieving quality and efficiency in teaching, learning and assessment, by shifting the emphasis on acquisition of knowledge to the development of training skills (Visan et al, 2018, p. 206).

We note therefore that the professional liability is acquired through a permanent professional development, which stems from the exercise of art and science together, associated to the wisdom and knowledge of educational contexts (Iucu, 2006, p. 27). Professional liability is reflected in the art of learning to learn, which has a key role in social development, and is linked to a series of hopes regarding human rights, in general, and education in particular (Moroianu Zlătescu, 2017). Professional development is strongly connected with professional liability and promotes permanent training, in agreement with contemporary innovation and other significant discoveries in education, having a direct impact on the educational process

and on learners. Regarded as a professional tool, development of human resources in the education system values the dignity of the human being in defining and redefining the status of the profession of teacher, while providing social and economic cohesion (Visan et al, 2018, p. 211).

As already stated above, professional liability continued to restructure and ensure social relationships effectively directed towards training which meets the market economy requirements and rules. In this respect, our analysis is sustaining the idea of freely choosing the educational institution by each learner according to the vision of the young beneficiary future profession. So are those who deliberately educated young people benefit from educational programs, in relation to the abilities and skills acquired, but also the labor market.

A model in this respect was used in the national education system in the years 1960-1989, implemented through vocational schools or post-secondary vocational training at school and at work. Today, the Romanian educational community tries to revive such educational programs through the development of national educational policies, trying to establish and develop partnerships between the public institution and private companies willing to form their own labor force. Among the most important principles stands the balance which has to exist between labor demand (represented by employers and owners) and offer. This approach guides education towards the final purpose of ''social satisfaction'' in order to ensure equal opportunities and access without privileges and discrimination at all levels of the national education system.

A final form of liability, as mentioned above is financial liability, that plays a decisive role in valuing and providing other forms of responsibility. Considered by the Ministerial Committee on Education in Bucharest in 2012, a means to overcome any obstacle, education must benefit from public funding through the involvement of policy makers of all European states: ''We must secure the highest possible level of public funding of higher education and identify new sources of funding, as investments in our future''(http://www.ehea.info/).

Data provided by OECD on the investment in education, shows that there is an increase in the percentage of GDP, from 5.2 in 2000 to 5.9 in 2010, suggesting the importance of investing in education, and the growing manifestation of public accountability on the part of European policymakers. The economic crisis has generated, however, austerity measures in most EU states, the GDP allocated to education was subject to a downward trend, falling to 5.5 average allocated in 2009 to 5.3 in 2011 according to Eurostat data. Thus, Romania spent for 2010 - 3.4% of GDP and in 2011 - 4.4% of GDP (www.oecd.org/education/EAG-Interim-report.pdf).

In the context of preventing a new economic crisis, the European Commission launched the document Strategy 2020, which presented the role and importance of education. According to this document, a priority should be to support the EU's economic growth potential and social sustainability: budgetary consolidation programs should prioritize growth-enhancing items ''such as education and skills, research, development and innovation (...)'' (https://adrvest.ro/attach_files/O%20Uniune%20a%20Inovarii.pdf).

Education is considered a national priority of public responsibility, according to art. 222, paragraph (3) of the National Education Law no.1 / 2011. Romania, as a EU member state, has adopted the international provisions on public funding, but it failed to apply them in a satisfactory manner. However, Art. (8) of this law states that education funding is supported by the state budget and own resources, to ensure the quality of education, according to the European principles and standards in this domain. In the National Pact for Education, a document that defines eight priority objectives for education in Romania for a period of five years (2008-2013), was inscribed the decision to allocate at least 6% of GDP to less than 1% for education and research, (Figure 1).

**Data on the percentage of GDP allocation**

| Year | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|
| Level of GPD | 4,2% | 4,24% | 3,53% | 4,13% | 3,5% |

(http://www.cdep.ro/pdfs/ModernizareEducatie.pdf

From studies conducted by specialists (in order to analyze the process of decision and policy-making), it was found, paradoxically, that investment in education has become more important just by promoting unrealistic promises of state actors. Even though, there has been an upward trend from 2001 to 2008, this trend has changed lately and has gone downward. Financial strategies for education are poorly conceived and implemented, which has a strong negative impact on economy market and of course on the entire society. Such an attitude of policymakers towards financial responsibility in education, causes regress and inefficiency, and fails to recognize and promote education as a viable long-term investment (Figure 2).

**Data on the percentage of GDP allocation**

| Year | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| Level of GPD | 2,5% | 3,2% | 2,7% | 3% | 3,1% |

(http://www.cdep.ro/pdfs/ModernizareEducatie.pdf)

Lack of finances for education has negative effects both at undergraduate and university levels, as shown in the following analysis:

| Undergraduate education | University education |
|---|---|
| -lack of investment in technology, material resources, training of teachers;<br>- quality of educational services decreases by a lack of staff that is poorly paid;<br>-inefficiency in performing education;<br>-deficiencies in the professionalization of human resources in line with labor market diversification;<br>- the dropout rate increases;<br>-decrease of the number of high school graduates;<br>-minimum counseling and vocational guidance. | - increase tuition fees and lower budgeted school places;<br>- schooling deficit created by subtracting the number of students paying taxes;<br>- insufficient employee number of students;<br>- understaffed well qualified because of poor salaries;<br>- increasing the dormitory fee<br>-diminishing investment in dormitories and canteens<br>-barriers on access, crossing and graduation;<br>-disadvantaged groups are underrepresented due to financial barriers. |

Given the analysis carried out on the responsibility of financing, we believe that current policies are deficient. The entire social system should be aware of the usefulness of the Romanian education system and understand that education reflects the progress of society. Its urgent needs can only be addressed by prompt, imperative action and by adopting coherent strategies aimed at meeting the goals of the EU 2020 Strategy, but also appropriate to Romanian social system.

## 3. National education system, a service of public interest

The concept of public service has taken root in a democratic society in ancient times, a general utility of the ''common good'' (a concept found in Aristotle's philosophical work) treated as an activity of public administration, which has ideological and political dimensions. Towards the

end of the nineteenth century we find another approach illustrated by the commitment of the State to take responsibility for the collective needs of the public, to meet the ideal of social solidarity (Jacqueline Morand-Deviller, 1994).

Used in very diverse fields, the notion of public service is replete with multiple meanings that overlap and intersect and determine its place in the debate on the construction of the European Union'' (Dâmbu, 2002, p.52). In Romania, according to article 10, paragraph (1) of National Education Law no.1 /2011, education is a public service that is organized and functions according to the juridical regime established by this law. The education process may be carried out in the Romanian language, which is the official language, but also in minority languages, as well as international languages. Analyzing the legal framework elaborated to regulate the ,, public service _ serviciu public'' in Romania, we consider that education is a public service understood as a three-dimensional construction, representing at the same time a social entity, a juridical entity with a legal status and an operator.

Public service as a social entity covers various activities of formal, non-formal and school structures, placed under the coordination of central public administration, and other public communities. Public service as a legal entity, involves the application of specific rules and derogations from the common law; condense and summarize what means particularity of administrative law (Chevallier, 1994, p.3). Its regime is established mainly by the National Education Law no.1 / 2011, other legislative acts, government's decisions and ordinances and orders of the ministers.

Public service as operator calls attention to the ideal of ensuring the common good, through effective management of the educational process, to ensure the training of the younger generation, as an end product of a joint endeavor of all stakeholders. Here there is an interesting element that emphasizes the idea of collective responsibility for the education system in providing the educational ideal. In the French doctrine, the concept of civil service is 'traditionally associated with the idea of a strong state tradition (État is always capitalised) and the concept of service public encompassing an extensive number of public activities (from sovereign functions to industrial and commercial public services) (Bezes, Jeannot, 2011, p.1). In a formal sense, education as a public service was characterized as an organization, a company ran by directors (Vedel, Petrescu, 2001, p.11). In the material sense, public service was considered as any activity which aimed at satisfying a public interest (Vedel, Petrescu, 2001, p.11), but in the case of education this public interest is of great value. This interest includes the full and harmonious development of the human individuality through acquisition of a system of values necessary for personal fulfillment, for the active participation in society and for social inclusion in the labor market.

Another important observation concerns the organization and management of education by private institutions or organizations. This has generated debates and disagreements on the coexistence of private education institutions, as well as on the stage or level of the education (initial and/or continuous training, primary, secondary or higher). In the Romanian scientific literature, the notion of public service is defined as any activity carried out by public authorities to satisfy a need of general interest and that it is so important it should function regularly and continuously (Negulescu, 1994, p.320).

Thus, it may be stated that the concept of public service has two meanings: the first meaning is that of a body (body with structure and legal framework) and the second meaning is that of activity (Lilac, 1994). A good example in this sense, is the Ministry of Education that functions as a body of central public administration, subordinated to the Government (cf. Article 116, paragraph (1) of the Constitution of Romania, republished). It is organized and operates on the basis of the legal provisions of article 40, paragraph (1) of the Law no.90/2001 (on the organization and functioning of the Romanian Government and ministries, as amended and supplemented), of Government Decision No. 44/2016 (on the organization and functioning of the Ministry of National Education and Research). The Ministry is the organizer of the national system of education and supports training for all citizens, to ensure their inclusion on the labor market and develop the competitiveness of national economy and the entire society. The Ministry of Education ensures the execution of government's policies and programs in education, guaranteeing the right to education, training, research and scientific innovation to all Romanian citizens. To achieve these objectives, the ministry fulfills several functions, according to art. 4 of HGnr.44 /2016, namely:

- strategy function, by which it implements the government's program in the field of education;
-function of management, which ensures the implementation of educational policies as well as allocating, monitoring and assessment of resources;
-function of representation, as state authority on behalf of Government which performs activities of monitoring and control of the compliance with the rules applied in the area of the educational process;
-function of communication with other structures at the central and local level of government and civil society;
-function of international cooperation which ensures international agreements in its areas of activity as well as promoting new agreements:
-function of evaluation, coordination and supervision of the implementation of policies in education

-function of regulation and synthesis, which ensures the development of the normative and methodological, functional, operational, institutional and financial framework necessary to achieve strategic objectives in its areas of activity.

In as far as the second meaning of public service is concerned, namely 'public service as an activity', this second sense is closely linked to the idea of general interest. It is important to point out that public authorities are those to decide when and in what way they will satisfy this interest (Dâmbu, p. 59). Mention must be made of the conditions that must be fulfilled cumulatively for the existence of a public service, namely: a body founded by the state, county or another organization to meet the requirements of members of society, through acts of authority; its activity unfolds in realization of state authority; it is invested with responsibilities, powers and competencies to meet public/general interests; it is a legal entity with rights and obligations, and their financial means are either provided through budget support, or from its own funds (V. Investigation Center, 1993).

A preliminary conclusion highlights the importance of considering the educational system as a service of public interest given its fundamental role in the progress of society.

## 4. Conclusions

The study is meant to pave the way to a pragmatic analysis of the concept of public accountability in the national education system, which may lead to new directions of research in the field. The main objective of this article was to call attention to the importance of values and principles like responsibility and common/public interest that have to be integrated and applied in the national educational system of Romania.

Noting that the development of Romanian society can be achieved only through the support of a culture of quality in education, our study also intended to emphasize the importance of the process of learning throughout life, also known as ''lifelong learning''. Our main concern regards the very low level of investment in education existing in our country, seriously affected by the economic crisis of 2008.

Being a very complex concept, public accountability stresses important connections between citizens' involvement and participation in the decision-making process and, for instance, strategies and legal norms that increase their motivation and creates means that ensure their involvement.

In this respect we need collective and lasting determination, to ensure the preservation of cultural identity, fundamental human values requiring information storage, greater and better communication and regular

assessment of skills. Implementing a quality national education system will have beneficial consequences for the whole society and will secure the future for the generations to come.

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# THE EQUAL OPPORTUNITIES OF DYSLEXIC AND DYSGRAPHIC PERSONS TO PARTICIPATE AS CANDIDATES FOR THE DRIVING LICENSE EXAMINATION

**Cătălina Georgeta DINU***

**Abstract**

*Concerning the equal opportunities of dyslexic and/or dysgraphic persons to participate as candidates for the driving license examination, we mention that, besides the law that regulates it, it is circumscribed to the principle of equality enshrined by Article 16 of the Romanian Constitution. According to this article, equality is manifested before the law and the public authorities, without privileges and without discrimination.*

*Along the same lines, Article 1 paragraph (2) of the Ordinance no.137/2000 on the prevention and sanctioning of all forms of discrimination, republished, establishes that the principle of equality between citizens and the exclusion of privileges and discrimination are guaranteed especially in the exercise of several rights, including the exercise of the right of access to all places and services intended for public use, as well as the right to work and the free choice of occupation. Or, it is known that obtaining a driving license is often a mandatory requirement for a job.*

*In the present study, we will try to put forward arguments for the necessity of amending the Romanian legislation regarding the recognition of equal opportunities for dyslexic persons to participate in the examination for obtaining a driving license.*

**Keywords:** *dyslexia, dysgraphia, examination, driving license*

## 1. Introduction

Currently, the Romanian legislation has no working procedure regulating exceptional situations that may appear in the domain of the driving license examination. One exceptional situation, for instance, may be the legal possibility of the presence of a neutral witness while passing the theoretical test (as part of the driving license examination) by a person suffering from dyslexic and dystrophy problems. It results that the exceptional situations are governed by the common legal provisions in force and therefore a person suffering from such a medical condition cannot formulate such a request.

In fact, the question arises as to which solution can be identified for persons suffering from dyslexia and dysgraphia who want to be allowed to

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pass the theoretical test of the driving license examination. According to the legislation in force, it is not possible for a person other than the candidate to be present in the examination room.

Given that at this time, national law does not allow access into the theoretical examination room of a third person, the Directorate of Vehicle Driving License and Vehicle Regime within the Ministry of Internal Affairs (institution coordinating methodologically the activity of the county services) should consider the possibility of modifying the existing regulatory framework in order to allow, in exceptional cases, the presence of a neutral witness to the theoretical test, during the driving license exam.

## 2. National legal framework

According to Article 21 (of Government Emergency Ordinance no.195/2002, republished) as subsequently amended and supplemented:

(1) Drivers of vehicles or trams shall have the knowledge and skills necessary for driving and shall be psychologically and physically fit.

(2) Drivers of cars or trams shall be periodically checked from a medical and psychological point of view, under the conditions established by the regulations in force.

According to Article 22 of the same ordinance, the medical examination is performed for the purpose of certifying the health status and the physical qualities necessary for a driver of a motor vehicle, agricultural or forestry tractor or tram, and medical conditions incompatible with the quality of driver of agricultural or forestry tractors trams are established by the Ministry of Public Health and are approved by order of the Minister, which is published in Monitorul Oficial (Official Gazette) of Romania, Part I.

Medical examination is performed in order to:

a) get approval to participate in the examination for obtaining a driving license;

b) obtain a certificate of professional attestation for drivers of motor vehicles, agricultural or forestry tractors or trams, as established by this emergency ordinance

c) carry out the periodic verification according to the regulations in force.

In the situation when the family doctor finds out that a person in his record, who detains a driving license, presents a medical condition stipulated by the Order of the Minister (of Public Health,) issued according to paragraph (2), will request medical assistance from an authorized unit to perform a specialized examination. The approved healthcare unit will immediately notify the police department on whose territory it operates, if it

has established that the person is unfit to drive a motor vehicle, agricultural or forestry tractor, or tram.

According to Article 6 (1) of the Order no.268 / 2010 of the Ministry of Administration and of Interior (regarding the examination procedure for obtaining the driving license, from now on referred to as 'driving exam procedure') candidates must meet, among other things, the condition of being medically fit, from the date of the submission of the application file, respectively from the date of the exam itself.

The medical and psychological examination in order to obtain the driving license is regulated by the *Minimum Rules for Physical and Mental Fitness Required for Driving a Motor Vehicle*, approved by the Order of the Minister of Health no.1162/2010 (with subsequent amendments and completions).

According to art.18 letter e) of the Order no. 268/2010 (regarding the examination procedure for obtaining the driving license, as subsequently amended and supplemented) during the practical driving test of the vehicle, the examiners must ''ensure the presence in the vehicle of at least one witness during the examination of each candidate''. Also, according to Article 2, letter (j) of the same order, the witness is ''a person from among the candidates who assist in the practical examination of another candidate''.

From the analysis of the legal provisions regulating the procedure for the driving license exam, it follows that the legislator expressly provided the presence of the witness only during the practical test. According to the explanations provided by DRPCVV, the role of the witness is not to help the candidate during the practical test, but his presence is meant in fact to be a solution that ensures the examination itself.

This is not the case for the theoretical test, and from the analysis of Article 11, paragraph (11), letter c) of the examination procedure, it results that the access to the examination room of persons other than the candidates is not possible, due to the bar code registered in the exam software which allows access into the room only for the enrolled candidates.

From a medical point of view, dyslexia and dysgraphia fall into the category of neurological diseases (see Note [1]). Unfortunately, the provisions of point 6.1. of the Norms on Physical and Mental Fitness Required for Driving a Vehicle, approved by the Order of the Minister of Health no.1162/2010 (as amended and supplemented) require the presentation of an authorized medical opinion for the issue of the driving license, only in case of serious neurological disorders, without clearly stating which diseases. *Per a contrario*, dyslexia or dysgraphia are not presumed to be neurological disorders for which the legislation imposes a prohibition on issuing a driving license.

### 3. European legal framework

At EU level, Directive 2006/126 / EC (*OJ L* 403, 30.12.2006, p. 18–60) on driving licenses regulates two groups of candidates:

1) candidates who are required to undergo a medical examination, while preparing the necessary formalities before obtaining the driving license, if it becomes evident that they are suffering from one or more of the medical conditions referred to in this Annex;

2) candidates who have to perform medical examinations, prior to the initial issue of the driving license, and afterwards as drivers they have to be periodically checked out, in accordance with the national system in force in the Member State of habitual residence, whenever their driving license is renewed.

Regarding neurological disorders, paragraph 1 (11.1) of Directive 2006/126 / EC states that driving licenses are not issued or renewed to applicants or drivers suffering from serious neurological conditions, unless the application is based on an authorized medical opinion. Consequently, the neurological disorders associated with diseases or surgical interventions, that influence the central or peripheral nervous system and lead to sensory or motor deficits affecting the sense of balance and coordination, must be considered according to their functional effects and evolutionary risks. In such cases, the issuance or renewal of the driving license may be subject to periodic assessment in case of growing risks.

Although the Directive allows Member States to impose rules that are more restrictive than those regulated at European level, the Romanian state has transposed the provisions of the Directive and has not provided for anything to prohibit or restrict the right of dyslexic or dysgraphia affected persons to apply for a driving license examination.

As a result, we appreciate that the official authority in the field (in this case, the Ministry of Internal Affairs) must develop a working procedure to enable people with these disorders to participate in the examination for obtaining a driving license.

It is understood that the candidate who claims to suffer from dyslexic and/or dysphoric disorders will provide all the necessary documents similar to the other candidates, including the medical opinion ''Fit for Driving Vehicles in the Group ...''. In addition, the candidate will need a recommendation from a doctor specialized in dyslexic and/or dysphoric disorders.

**4. National legal framework in other areas**

The legal framework in the field of education for people with dyslexia and/or dysgraphia is a good example of legislation on driving license examinations.

Law no.1 / 2011 on National Education, as subsequently amended and supplemented, stipulates in art.12 (11) - (12) that education of people with learning disabilities (dyslexia, dysgraphia, dyscalculia) is ensured by established psycho-pedagogical methods and by an appropriate approach, according to the law. People with learning disabilities are integrated into mass education.

Article 475 of the same law provides that, at the recommendation of the specialist, pupils with learning disabilities may use compensatory materials or tools, including computer technology, and will benefit from a tailored assessment during the two semesters. In order to identify solutions to ensure equal opportunities, we consider compensatory instruments to be a case of good practice, not only for their education, but also for assessing people with learning disabilities wishing to take part in the driving license exam.

Compensatory instruments are mentioned in Annex no. 2 of the Methodology for providing the necessary support for pupils with learning disabilities, approved by Order no.3124/2017 issued by the Minister of National Education (hereinafter referred to as Methodology). Among these tools, we exemplify:

| Poor skill | Symptoms | Compensation measures | Dispensing measures | Adapted evaluation |
|---|---|---|---|---|
| Dyslexia | Slow reading Reading is not cursive Read with many mistakes | Computer / tablet with software - vocal synthesizer, which transforms the reading theme into a listening theme. | The dispensation of the autonomous reading of texts whose length and complexity are incompatible with the child's skills level. | Additional time (30-60 minutes) is provided for sample execution; computerized samples are introduced. |

| | | | | |
|---|---|---|---|---|
| Dysgraphia | Slow writing to meet the written task requires an execution time above average; Writing with many mistakes (confuse letters, omit or add letters, syllables, reverse syllables, etc.) | Computer with a video spelling program with a spell checker that allows you to produce texts that are correct enough without extra effort to rectify and correct mistakes. | Deduction of observing times for writing tasks. | Additional time (30-60 minutes) is provided for the execution of the samples or checks are carried out with fewer requirements. Depending on the situation, evaluations will be such as to limit writing; computerized samples are introduced. |

Therefore, in order to ensure equal opportunities, it is important to adopt appropriate forms and tools for education, learning and assessment that are specifically designed for persons suffering from dyslexia /dysgraphia.

According to Article 5, letter (a) to (c), of the same Methodology, learning disorders, referred to as Specific Learning Disorders (TSIs), designate a heterogeneous group of disorders affecting the typical process of acquiring school abilities (reading, writing and mathematical):

a) dyslexia, dysgraphia (including dissonography), dyscalculia. This is not a consequence of a lack of learning opportunities or a lack of motivation for learning, it is not the result of an intellectual disability, or of a liminal intellect, sensory deficit (e.g. auditory, visual, motor), affective and emotional disorders of a psychiatric nature, or any other (neuro) developmental disorders (e.g., TSA - autistic spectrum disorders, ADHD - Attention Deficit Disorder and Hyperactivity Disorder). These are not caused by any form of cerebral trauma or malady of acquisition. Dyslexia, dysgraphia and dyscalculia may appear isolated or may be associated.

b) Dyslexia is a specific disorder of reading abilities (in terms of fairness, fluency, comprehension) that are not developed to the expected level, in terms of intellectual development, schooling stage and age category of the person in case;

c) Dysgraphia encompasses all forms of disruption of the typical acquisition process of written expression (letter errors, syntactic errors and punctuation errors, graphical organization of paragraphs);

Therefore, diagnosis of learning disorder is excluded, according to Article 13 of the Methodology, in the following cases:

a) student Intelligence (IQ) less than 85 (presence of intellectual disability or liminal intellect);

b) uncorrected auditory and visual sensory deficits;

c) psychiatric or neurological disorders;

d) absence of learning opportunities (absenteeism, prolonged hospitalization, belonging to disadvantaged groups, non-attendance of pre-school education, lack of training, poor or insufficient education);

e) psychosocial disadvantages;

f) other external influences relevant to the procurement process.

To ensure the right to participate in the driving exam, it is required that the severity of the disorder to be assessed by the specialist doctor who issues the medical opinion deemed necessary.

## 5. Equal opportunities

Concerning the equal opportunities of dyslexic and/or dysgraphia persons to participate as candidates for the driving license examination, we consider that it is circumscribed to the principle of equality before the law regulated by art.16 of the Romanian Constitution. According to this principle, equality has to be manifested before the law and the public authorities without privileges and without discrimination (Constantinescu, Iorgovan, Muraru, Tănăsescu, 2004, p. 21).

Also, Article 1, paragraph (2), of the Ordinance no.137/2000, on the prevention and sanctioning of all forms of discrimination, republished, establishes that the principle of equality between citizens, as well as the exclusion of privileges and discrimination, are guaranteed for the exercise of several rights, including the exercise of the right of access to all places and services intended for public use, or the right to work and free choice of occupation. It is a known fact that obtaining a driving license is often a mandatory requirement for a job.

In view of the above, we underline that the situation under analysis circumscribes not only the provisions of the national legislation, but also those stipulated in the international documents that Romania has ratified or which have to be transposed into the national legislation.

Thus, according to Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms - an international document adopted by the Council of Europe and ratified by Romania as a member state

- regulates the prohibition of discrimination: ''the exercise of the rights and freedoms recognized by this Convention must be ensured without any distinction based, in particular, on sex, race, color, language, religion, political opinion or any other opinion, national or social origin, membership of a national minority, wealth, birth or any other situation''.

In addition, Article 21 of the Charter of Fundamental Rights of the European Union regulates non-discrimination: ''discrimination of any kind based on grounds such as gender, race, color, ethnic or social origin, genetic characteristics, language, religion or beliefs, political opinions or any other kind, membership of a national minority, wealth, birth, disability, age or sexual orientation''. We mention that this European document is the source of the primary law of the European Union (like the Treaty of the European Union and the Treaty on the Functioning of the European Union), which leads to its direct application on the territory of the European Union Member State, in this case Romania (being ratified by the Romanian State with the Treaty of Lisbon).

In the sense of recognizing the prevalence of international human rights, Article 20, paragraph (2), of the Romanian Constitution states: ''If there are inconsistencies between the covenants and treaties on the fundamental human rights to which Romania is a party and the internal laws, priority is given to international regulations, unless the Constitution or domestic laws contain more favorable provisions''.

## 6. Conclusions

As a result, we believe that it is necessary to amend the legislation in force to ensure equal opportunities for people with dyslexic and/or dysgraphia disorders and to provide rules and methods to enable them to participate in the driving license exam. Persons claiming to be suffering from such disorders will present (in the application file) the recommendation of a specialist physician.

Candidates, with diagnosed dyslexic/dystrophic disorder, will also have access to the driving license exam, using the compensatory instruments and an adapted assessment according to a methodology to be developed by the Ministry of Internal Affairs.

The file of a candidate with dyslexic/dysgraphia disorders should contain all the documents necessary for all other candidates, including medical documents "suitable for the driving of motor vehicles in the group ..." according to art. 6, paragraph (2), letter b), of the Order no.268 / 2010 on the examination procedure for obtaining a driving license, approved by the Minister of Administration and Internal Affairs.

Thus, the Government Emergency Ordinance no.195/2002 (republished, as subsequently amended and supplemented) and the Order of the Minister of Administration and of Interior no.268 / 2010 (on the examination procedure for obtaining the driving license) will ensure equal opportunities for persons suffering from dyslexia and/or dysgraphia, in the case of attending the driving license exam.

**Note**

[1] Dyslexia is the difficulty of knowing precisely and fluently the written and spoken language, a difficulty affecting about 10% of the population. Dyslexia is not a disease, so it cannot be cured. Poor reading or dyslexia is the most common learning disability, although in literature it is considered to be a learning disability resulting from language perception problems. Dyslexic adults can show a good level of comprehension when they read, but they tend to read harder than non-dyslexics, and record much lower scores in spelling or reading meaningless words.
Dyslexia and IQ are not interconnected and, as a result, cognition develops independently.
In conclusion, dyslexia is a learning disorder that is based on a neurological dysfunction that prevents the ability to read and write. Confusing letters, reading slowly, reading syllables in the opposite direction, difficulties in understanding the text read are just some of the manifestations (the official website of the University of Medicine and Pharmacy of Craiova: http://www.umfcv.ro/CCOP-ce- is-dyslexia).

## References

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