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FOREWORD

There was a time, not too long ago, when most specialists were pessimistic about the future of the European Union.

Nowadays, the European Union has become a powerful economic, politic and social entity able to assume the role of world leader. Practically, Europe begins to identify with the European Union.

For Romania, the adhering process was a great challenge and the future complete integration represents the greatest challenge too.

So, we consider that it is the time of a greater implication in order to support the conceptual framework and to improve the scientific approach in our country.

We consider that an efficient public administration and a dynamic regional policy are the key elements in order to achieve a sustainable development in Romania.

As a result, we try to build a bridge between Romanian and foreign specialists in public administration and regional sciences in order to propose solutions for improvement using this new publication.

We want to express our gratitude to our international advisory board for having honoured our initiative named PARS.

PARS invites you to send articles for consideration in order to support our approach.

**DIRECTOR,
Ph.D. Professor ROMEO IONESCU
Dunarea de Jos University, Romania**

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TRAFFICKING IN WOMEN: BORDER CONTROL, GENDER AND
CRIMINAL POLICY

Agustina Iglesias Skulj¹

Abstract: *In Europe the issue of trafficking has been quasi-invisible until the 1990s. More recently the visibility of trafficking has been raised as a problem of numbers. Millions of people were reported to be enslaved, forcefully moved across borders and exploited. Yet, numbers were felt to be misleading, insufficient and incapable of speaking the truth about trafficking. This article will analyze the incidences of statistics and numbers in the design of criminal policies in the European Union from a governmental and gender perspective that look for counterpart the abolitionist statements in prostitution.*

Keywords: immigrants risk and control, human trafficking, illegal migration.

1. INTRODUCTION

In the last decades there was an instrumentation of the borders and control. There have been several changes in the regulation and frameworks of migration, involved in an expansion of the punitive dimension. In many cases, this culture of control has resulted in behaviours that were not criminal becoming criminalized. In this context, it is important to analyze the problematization and the management of feminine immigration in the way that Foucault has called governmentality².

Borders have been identified as a key site where control is played out. Border is at the same time an external border that sanctions and maintains the difference between “us and them”, “citizens and aliens”, and also an

¹ Postdoctoral researcher- Universidade da Coruña, Spain. This article is part of my research work in the Project *Medidas Alternativas á privación de liberdade: riscos e beneficios*

² M. Foucault, “On Governmentality”, *Ideology and Consciousness*, (Autumn) 6, 1979; P. Marinis Cúneo, “Gobierno, gubernamentalidad, Foucault y los anglofoucaultianos (un ensayo sobre la racionalidad política del neoliberalismo)”, in Ramos Torre/García Selgas (eds.) *Globalización, riesgo y reflexividad. Tres temas de la teoría social contemporánea*, CIS, Madrid, 1999, p. 96; J. Donzelot, “The mobilization of society” in Burchell/Gordon/Miller (eds.), *The Foucault effect: Studies of governmentality*, Hemel Hempstead, Harvester Wheatsheaf, 1991, pp. 169-179. The governmentality framework can also allow for local variation and careful empirical testing, can help us understanding what may appear to the absence or excess of regulation.

internal border that confines undocumented migrant women to the low-end service sector of the economy³. Indeed, the hegemonic construction, product of the heterosexist and patriarchal model, influences in the determination of the migratory status and in the design of the technologies of control. In this sense, the contemporary analyses of the feminine migrations are dealing with categories that no longer fit with the paradigm of control in the present time. The model of “guest-worker”, during the 1950-1970 mass labour migrations in Europe functions with some myths like the men are “primary” migrants while women are just “secondary”.

The women work in sectors of the economy such in domestic and caring sectors where the temporality and the informality of employment relations, the level of income and the type of living arrangements make it difficult to fulfil the requirements for the legal status, or family reunification according to the law. Indeed, young single women’s migration is subject to immigration regulations that enforce norms around gender and sexuality⁴.

Furthermore, although migration is a fact of a globalized economy, this movement has yet to be adequately addressed with the discourse of market management or international migration or labour law. It is addressed primarily through the international legal order by initiatives dealing with trafficking, human smuggling, law and order, border controls, security and sexual morality. A premise that still underpins many national anti-trafficking laws and policies is that not only is trafficking for work in sex industries a transnational crime, but sex work itself is a criminal act. In this context, many of the claims about trafficking are unsubstantiated and undocumented, and are based on sensationalist reports, a problem that extends to wider international discourses on transnational crime⁵.

The migrations policies display series of welfare, legal and criminal devices that depends on the specialized development of knowledge (statistical, doctor-psychological profiles, treatments, European and local measures, guides, etc.). Moreover, we are attending to the transformation of the perception and the ways to approach the relation between the

³ R. Andrijasevic, “Sex on the move: Gender, subjectivity and differential inclusion”, *Subjectivity Issue* 29, 2009, p.393; N. De Génova, “Migrant illegality and deportability in everyday life”, *Annual Review of Anthropology* 31, 2002, pp. 419-447; S. Mezzadra/B. Neilson, “Border as method, or the Multiplication of labour, 2008, available in [HTTP://eicpcp.ent/transversal/0608/mezzadraneilson/en](http://eicpcp.ent/transversal/0608/mezzadraneilson/en).

⁴ *Compass Irregular Migration, Research, Policy and Practice*, Annual International Conference, 7-8 July, 2005.

⁵ Kempadoo K., “From Moral Panic to Global Justice”, in Kempadoo K., (ed.) *Trafficking and prostitution Reconsidered. New perspectives on migration, sex work, and human rights*, Paradigm Publishers, London, 2005, p. XXII

women and the state⁶. In this sense, migration policies are grounded in the simples' dichotomies that organize this kind of perspective, that identifies men with activity, production, and the public sphere, and female subjectivity identified with passivity, reproductive and private space. Such a hierarchical scheme heavily influenced women migrant position as dependent with derived wrights and their exclusion from fully citizenship⁷. Nowadays there has been a partial shift in this model, because of the increasing number of migrant women. Meanwhile formal immigration laws treats equally men and women, gendered and radicalized coding of the labour markets still impacts differently on migrant women⁸.

Since the 1990s a growing number of women from Eastern Europe new and no-UE member states have migrated to the UE for work in the domestic and entertainment sector, agriculture and sex industry⁹. In the context of the policies in migration we came across too the problematization of human trafficking. It refers to how human trafficking becomes an object of regulation, what elements constitute it and what ordered procedures for the production, regulation, distribution, circulation and operation of statements' about human trafficking are given as truthful. As Claudia Aradau points out "by being derived from social phenomena that are problematized in terms of security, human trafficking is subjected to the same ordered procedures of production, regulation and circulation of statements. These ordered procedures do not only make visible human trafficking as an object of knowledge they also obscure contradictory statements in the regulation of the "truth" about human trafficking"¹⁰.

This current framework in the regulatory control has been strengthened in the UE context -but not only-, by a strong "trafficking" discourse that

⁶ B. Marugán/C. Vega, "Acción feminista y gubernamentalidad. La emergencia pública de la violencia contra las mujeres", 2008, http://casosmosis.acracia.net/wp2pdf/texto_de_caosmosis.pdf

⁷ H. Afshar, "Mujeres y desarrollo: una introducción", in P. Villota (ed.) *Globalización y Género*, Ed. Síntesis, Madrid, 1999; N. Alonso Rodríguez, "Emigración y Desarrollo: implicaciones económicas", *La Insignia*, octubre y noviembre, 2004, www.lainsignia.org; H. Askola, *Legal Responses to trafficking in women for sexual exploitation in the Europe Union*, Hart Publishing, Oxford-Oregon, 2007; Y. Azize, "Empujar las fronteras: mujeres, migración internacional desde América Latina y el Caribe", in R. Osborne (ed.), *Trabajadores del sexo. Derecho, migraciones y tráfico en el siglo XXI*, Bellaterra, Barcelona, 2004.

⁸ See A. Girón, "Género, globalización y desarrollo, CLACSO, Buenos Aires, 2009, pp. 77-97; B. Neilson, "The world seen from a taxi: Students-migrants-workers in the global multiplication of labour", *Subjectivity Issue* 29, 2009, pp. 425-444; Southern Poverty Law Center, *SPLC Close to Slavery: Guestworker Programs in the United States*, 2007.

⁹ G. Nicolás Lazo, "Migraciones femeninas y trabajo sexual. Concepto de trabajo precario versus tráfico de mujeres", in Rivera Beiras et.al. (eds.) *Contornos y pliegues del Derecho. Homenaje a Roberto Bergalli*, Anthropos, Barcelona, 2006.

¹⁰ C. Aradau, *Rethinking trafficking in women. Politics out of Security*, Palgrave, New York, 2008, p. 3.

oversimplifies links between women, traffic, victim and sexual work. What began in the mid 1990s as a campaign against sex trafficking has steadily expanded over time. In addition, over time the focus of the moral crusade links sex trafficking to prostitution. The central premise is that sex trafficking is inseparable from prostitution, and prostitution is evil by definition¹¹. Not only are the two conflated, but the policies and some feminist theorist also claim that “most” sex workers have been trafficked. Sex work migration in particular is always identified with forced migration and classified with under the heading of trafficking. The trafficking rhetoric, however, conceals women autonomous migration and their migratory projects behind the term “victims”. Trafficking rhetoric depicts organized crime as slaving women in prostitution by means of force or debt bondage¹².

Until recently, prostitution was not a prominent public issue in Europe. Law and public policy was relatively settled. The past decade, however, has witnessed a growing debate over the sex trade and the growth of an organized campaign committed to expanding criminalization. Some scholars begin to study the “mainstreaming” of sex industry¹³. Both media and academic research note a shift in the social classes typically associated with the sex industry. Media increasingly highlight the growth of both middle-class consumers and workers in adult markets, and with that a subtle shift in the perceived respectability of those involved in the industry. The changes in late-capitalism culture and economies encourage and normalize the growth of sexual commerce. Studies are also demonstrating an increasing commercialization or commodification of intimacy and a heightened sexualisation of gendered forms of work. Thus, sexuality has become a central component of late-capitalism consumer culture¹⁴.

Regarding the discourses in migration and in prostitution, in Europe the phenomenon of trafficking was fuzzy and slippery and needed to be pinned down by being carefully derived from other social problems to which it was contiguous or similar. If counting people who are trafficked is an insufficient strategy, human trafficking is made visible in relation to the larger spectrum of urgent social and political problems. Since the policies highlight the trafficking as an issue that needs urgent solution, with neo-liberal orientation of the policies, visibility of trafficking has been

¹¹ **R. Weitzer**, “The movement to criminalize sex work in the United States”, *Journal of Law and Society*, vol. 37, n°1, March 2010, p. 71.

¹² **C. Aradau**, (op.cit., note 10) p. 48.

¹³ See **B.G.Brents/T.Sanders**, “Mainstreaming the sex industry: Economic Inclusion and Social Ambivalence”, *Journal of Law and Society*, Vol. 37, n°1, March 2010, pp. 40/60. The mainstreaming thus involves two interrelated factors, economic and social integration.

¹⁴ **Brents/Sanders**, (op.cit. note 13), p. 45.

raised as a problem of numbers. We do not know how many persons are trafficked across borders every year. The grand claims made by abolitionist groups that the magnitude of the problem is huge and growing are entirely unsubstantiated, but quite strategic. The size of a social problem matters in attracting media coverage, donor funding and attention from policy makers. The anti-trafficking crusade claims that there are hundreds of thousands or millions of victims worldwide, and that trafficking has reached an “epidemic” level. How do you count something that is all underground? Rather than numbers what counts is the way human trafficking is seen as linked with other phenomena of concern.

2. BUILDING UP THE VICTIM. RISK AND CONTROL

Why the image of the immigrant sex workers as victim is so powerful? Once again, appears the “popular myth” that a century ago accompanied the policy making: the simplifying idea of “young” women, “foreign” innocents” and dealers, under whom to many fears and anxieties are hidden, the fear to immigrants that invade the nation, the unstoppable capitalist expansion and the terror to the independence of the women and its sexuality, that seem necessary to deny the women their capacity of action and its autonomy, specially its sexual autonomy. In addition, it is necessary to count with “the colonial glance” of the western feminist oriented to perpetuate the presumption of infantilism and helplessness of the woman of the third world. This frame makes sense in the government technologies unfolded by the EU around the migrant sex-workers. To the arguments of oppression are added that ones that come from the class: poor women who are in irregular situation. Maqueda¹⁵ concludes that “behind these moral grounds of the crimes without victims is frequently a social group that is to be controlled”.

By placing human trafficking within the social and political context from which it is derived –that of illegal migration, organized crime, prostitution and human rights abuses- there is security construction that holds together these apparently contradictory elements. The contradictions that subtended the description of trafficking and the measures taken to tackle it emerge from the very location of the phenomenon of trafficking, at the intersection of illegal migration, organized crime and prostitution.

Although presented as a new phenomenon, the reality of trafficking exists by being derived from the reality of other social phenomena. These phenomena have already been problematized as specific security issues¹⁶.

¹⁵ M.L. Maqueda Abreu, *Prostitución, Feminismos y Derecho Penal*, Comares, Granada, 2009, p. 89.

¹⁶ C. Aradau (op.cit., note 10) pp. 36 ff.

The European Union and local interventions in this field are not intended to put an end to trafficking and violence against women, but limit those most brutal, i.e. those that represent the most striking aspects of an oppressive gender order. These interventions are held at the symbolic level articulated with the semiotics of emergency and exceptionality. Through this problematization, the governmentality articulates a design of risk-control devices, while this semiotics produces segmentations. The migrant sex-worker who comes to define a specific profile, more and more determined by ethnic components and class, is thus separated from the rest of the women. In this line we can enrol – one of the preferred fields of institutional intervention - campaigns that spread victimization images¹⁷.

Indeed, standardization of the state of emergency becomes a governmental practice for the integration of differential and flexibly conflicts and shapes with short-term interests. Organized around the victims-criminals discursive binary, trafficking rhetoric also engenders and relies on the dualism between forced and voluntary prostitution, identifying migrant women as victims of trafficking¹⁸. It also simplifies the identification of free *vs.* voluntary prostitution that leads to the identification of “western” sex- workers as being incapable of self determination and of migrant women as being passive victims¹⁹.

This particular paradigm of control draws a fuzzy border between human trafficking and illegal migration. The distinction between victims of trafficking and illegal migrants appears as an unstable one, and the suspicion of illegal migration will continue to cover stories of exploitation and abuse. Trafficking is solely related to those who are illegally resident²⁰. The remaining women appear as free-choice workers in the sex industry. Trafficking becomes an issue in relation to illegality. Illegal migrants are under suspicion of having been trafficked; legal residents are “uninteresting” for the states in this situation²¹.

Moreover, the rhetoric of trafficking simultaneously closes down and opens up many actions, measures and policies. What is close down is the artificial character of the categories that remain artificially delimited. The women can be exploited in the irregular migration process, which is why the trafficked women emerge through the practices and technologies that the states deploy towards migrants²².

¹⁷ Marugán/Vega (op.cit., note 6) p. 8.

¹⁸ R. Andrijasevic (op.cit. note 3)p. 394.

¹⁹ Maqueda Abreu (op.cit. note 15) pp.97ff.

²⁰ A. Iglesias Skulj, *Los delitos contra los ciudadanos extranjeros: cambio de paradigma en el estatuto de la ley penal y en los mecanismos de control*, Universidad de Salamanca, 2009, pp. 689ff.

²¹ Aradau (op.cit., note 10) p. 5.

²² *Ibidem*.

This frame makes sense in the government technologies unfolded by Spain around the migrant sex workers. Indeed, the Plan against Trafficking (2009-2011) assumes the character of priority policy of the Ministry of equality of the Spanish government recently transferred as a Secretary to another Ministry²³. This programme focuses in the work of NGOs and victims assistance, where "trafficking" rhetoric is charting the protection against trafficking without empirical data to enable a quantitative and qualitative assessment of the phenomenon. In this regard, Minister Bibiana Aído in an interview²⁴ refers to the plan of the Government as the first time that there is an instrument to fight against sexual exploitation. Continues to claim that migrant women represent the 90% of the prostitutes, and the situation of these women is similar to slavery. However, these statements are different of the data brought by the United Nation (UN) quoted by the journalist. The statistics of the Anti-trafficking Unit estimated that only 1 of 7 of migrant women is victim of trafficking.

In spite of the certainty of the data, while the UN reports indicate inability to produce accurate statistics on the characteristics of the phenomenon, the Minister is not only unable to rebut the studies presented by the journalist who interviewed her, but UN information also. The Ministry of Equal is not requiring any quantitative or qualitative data to set up gender policies; they are based and simultaneously reinforce a ploy repeated *ad infinitum* since the fight against the "white slavery" in the 1950s of the last century. Also asked about the regulation of the prostitution as work, the Minister argued that it wasn't worthy, because the priority of the policies are fighting the slavery, not to regulate the situation of the women that dedicates to prostitution because they are not a priority. Facing the data that the Minister handles, the prostitutes just represent a 10%. What is missing from this discourse is recognition that prostitution and trafficking differ substantively: prostitution is a type of labour, whereas migration and trafficking involve the process of relocation to access a market. Both, empirically and conceptually, it is inappropriate to fuse the two. The slippage between trafficking and prostitution is facilitated by the abolitionism.

3. POINTS, LINES, BORDERS: NEW GEOPOLITICAL PERFORMANCE

The classical take on immigration conceptualizes borders in terms of external edges of the state, labour in terms of gendered division between

²³ The competence of this Ministry was added to the Ministry of Public Policies and Equality in October of 2010.

²⁴ Published in El Pais, 7/8/2010.

productive and reproductive work and sovereignty in modern conception of the state²⁵. This modern take is becoming theoretically inadequate as it defines another form of state and power. Nowadays, we cannot study this phenomenon with old knowledge tools; we cannot still remain attached to old conceptions as they sanction the distinction between outside and inside, the borders as lines that divides two territories and two nations. Such representations of the borders are misleading as they obscure the transformations that are reshaping borders.

Recently the processes of globalization, especially the case of EU enlargement, have shown great changes in the rationale of the borders. Mezzadra and Neilson point out the ways in which borders have been diffused, dispersed and networked. These authors stress how the borders become spots, zones, nodes, and a whole “deterritorialization” process²⁶. All of this geopolitical changes are referred in terms of the proliferation of borders and “delocalization of control” in order to indicate that control, once located at the borders, is now exercised by a variety of means and in a variety of location²⁷. Another characteristic of the governmentality refers to the externalization of the policy measures. The current treatment of immigration and trafficking in women are an example of the new political rationality and the technologies of government that organize and reduce its own exercise of power through the mobilization and expansion of their understanding of individuals, of monitoring at distance and the observation by the deployment of forces that operate from a true departure.

The governmentality deploys techniques that create an apparent distance between the institutions and other sectors of social policy decisions. All this points to a new way to regulate and control conflict gender, stressed by deregulation, the decline of resources and existing public policies, destabilization and crisis reactivates the dominant sexual imagery and insecurity and vulnerability to which women are subjected. So it has been a reinterpretation of the feminist liberation in neoliberal key which at the time that aspires to produce legitimacy messages on trafficking in women and gender policy, reinforces the segmentations and stigmatization that feminism had begun to break. It implements a flexible

²⁵ S. Mezzadra, *Derecho de fuga. Migraciones, ciudadanía y globalización*, Traficantes de Sueños, Madrid, 2005, pp. 57 ff.; Mezzadra/Neilson (op.cit., note 3); E. Rodríguez, *El gobierno imposible. Trabajo y fronteras en las metrópolis de la abundancia*, Traficantes de Sueños, Madrid, 2003, pp.17 ff.

²⁶ Mezzadra/Neilson (op.cit., note 3)

²⁷ D. San Martín Segura, “El riesgo como dispositivo de gobierno”, in Brandariz García et.al. (eds.), *La globalización en crisis. Gubernamentalidad, control y política de movimiento*, Universidade Invisíbel, Málaga, 2009, pp. 51-68.

administrative logic that is not entirely a technology of control *stricto sensu*, it is the administration and management of power.

The mechanisms of control of immigration, like the Frontex Agency, centres for illegal migrants, visas, are all instances of relocation of power. That is why, the image of the fortress Europe is just a misguided metaphor. Borders do not establish a demarcation between states; on the contrary, nowadays the geopolitical space is re-organized in the form of discontinuities, tensions that are moving through the territory, abandoning the idea of border line, to spread in intensive control points²⁸.

Indeed, this do not imply that borders not play an important role at this time, but it shows a change in the sovereignty of the State that calls the intervention of public and private actors to set up a network for the control of immigration. Parallel to these developments we see the gendered division of labour affected by the changes in the productive model. Both planes overlap in a third mutation: citizenship.

The terms “feminization of work” and “becoming-women of production” suggest that the postfordism incorporates a new being central the type of work previously undervalued and delegated to women under the heading of “reproduction of labour”²⁹. Consequently, the distinction between work and no work and between public and private has changed too. As Andrijasevic³⁰ points out “this do not imply that the dualism of production/reproduction no longer exist, but rather reading it exclusively in terms of gendered division of labour does not fully capture the contemporary forms of labour arrangements”³¹. The break in the correlation of subjectivities of the employee and the citizen is the product of changes in production models and migratory flows. This generates different types of citizens and, on the other hand, in the field of labour we can talk about new subjectivities. These changes occur at the same time, but below a centripetal movement of mutual reinforcement.

Thus, connecting with changes in sovereignty, we should redefine the terms of the migration, because borders do not forbid migrants to enter and find work in the states. The postfordist production and bio-political technologies of control can display borders to operate as mechanisms that produce deportability, i.e., stipulate the conditions for the integration of migrants in the labour market and in the black economy. It breaks with the assumption of states that illegality is something that comes from outside of the control systems, and can be controlled and managed from strict laws and the establishment of quotas for jobs. Migrants are predetermined to

²⁸ *Ibidem*, p. 47; Iglesias Skulj (op.cit., note 20), pp. 290ff.

²⁹ Nicolás Lazo (op.cit., note 9), p. 44.

³⁰ (op.cit., note 3) p. 397.

³¹ Mezzadra/Neilson (op.cit., note 3); Rodríguez (op.cit., note 25) pp. 85 ff.

labour recruitment schemes, however under this legal frame, the admission to a State does not guarantee the stability and permanence of the legal status, since the postfordism is characterized by cause ripples that make the migrant moves between legality and illegality in the same migration process.

In this sense, transnational sovereignty does not operate along the inclusion/exclusion model, as it regulates flows not populations. It attempts to decrease the flow of migrants and regulate its intensity following the crisis and the emerging reconfiguration of the labour markets. While populations can be included or excluded or differentially included in the states, migration flows are “organically” related to the inner workings of labour markets and core elements of production process. In a nutshell, transnational sovereignty works together with a transnational reorganization of labour that can only in part be regulated by the nation State³².

4. POLICIES, PROFILING, WOMEN, VICTIMS

The international instruments set in place to counter trafficking (such as the Palermo Protocols) have been criticized for actually facilitating the cooperation between states to prevent irregular migration, rather than protecting or giving restitution to the victims of crime or migrants in situation of labour exploitation. Building on this critique of immigration control and its challenge to the category of the “victim”, we try in this paper to develop a more nuanced reading of the anti-immigration/sex-trafficking nexus in order to broaden the understanding of anti-trafficking policies beyond merely being tools for the straightforward exclusion of migrants, or for their inclusion under the respective headings of “agents” an “victims”.

Accordingly, policy measures are devised to assist victims of trafficking, but not those sex-workers who find themselves in exploitative working conditions. Several UE states have long or short term victim protection schemes. These are commonly embedded in the normative concept of victimhood comprised of forced migration, coercion and prostitution and economic exploitation. Consequently those women who fall out from the category of the “proper” victim are denied legal protection and became vulnerable to deportation³³.

³² Iglesias Skulj (op.cit., note 20) pp. 336 ff.

³³ Andrijasevic (op.cit., note 3) p. 394; In relation to this, see K. Bumiller, *In an abusive State*, Duke University Press, 2008, pp. 64 ff. The author grasps the importance of the growth of administrative control and its relation the feminist campaign against sexual violence, which could be transplanted to the trafficking, under the neoliberal government the focus of the penal welfare apparatus is on victims. All of these governmental technologies contributed to

Castel underlines that in these policies there is no longer a relation of immediacy with a subject *because there is no longer a subject*. What the new preventive policies primarily address are no longer individuals but factors, fluids instead of individual, showed as statistical correlations of heterogeneous elements. They build up the subject of intervention, and reconstruct a combination of factors that produce risk, using a rank of probabilities and profiles; that is to say, it is enough to display whatever characteristics the specialists responsible for the definition of preventive policy have constituted as risk factors³⁴.

This is a system that deals with partial aspects that are required to “*construct the objective conditions of emergence of danger, so as then to deduce from them the new modalities of intervention*”³⁵. This construction indicates the shift from dangerousness to risk entails a potentially infinite multiplication of the possibilities for intervention.

Furthermore, an analysis of the *dispositif* of security allows us to see this changing political landscape. Trafficking policies normalize the hierarchically organized access to EU labour market and citizenship. The trafficked women become integrated with preventive strategies of risk and women are constituted as specific categories of victims, pathological beings that are themselves risky rather than exposed to risks³⁶. The representation of the victim and of the abuse of rights made possible by her vulnerability activates technologies of prevention. Preventing trafficking relies on interventions that delimit and categorize “high risk” groups, groups which are at risk of being trafficked. Trafficked woman are profiled for preventive purposes, and it is these specific profiles, developed in conjunction with psychological knowledge, that make possible the constitution of these women’s identity as a subject of governmentality of human trafficking.

This representation of vulnerability is at first sight consonant with the unifying representations of victims as suffering bodies, as the risk of trafficking is taken to be a risk to women’s well being. Yet, the representation of trafficked women insidiously mutates into a risk to the state/society, as a group at risk thought to embody a permanent virtual danger that could irrupt in the future. The identification and calculability of risk depend on the construction of risk profiles. Studies of risk practices have emphasized the construction of biographical profiles of human populations for risk management and security provision³⁷.

the growth of administrative power exercised over clients who experience violence to turn these women in successful survivors.

³⁴ R. Castel, “From dangerous to risk”, in Burchell et.al., *The Foucault effect*, University of Chicago Press, Chicago, 1991, pp. 281-298.

³⁵ Ibidem, p. 288

³⁶ Aradau (op.cit., note 10), p. 98.

³⁷ Aradau (op.cit., note 10), p. 98.

In this sense, short-term resident permits, and the return to the country of origin, and the psychological therapies only can be read as the risk management of illegal migration which subverts the humanitarian approach and subsumes de the NGO's discourse to the logic of security practices. The potential risk of women migrating and being re trafficked is to be contained and prevented; they will be surveyed and disciplined, subjected to trauma therapy with the purpose of turning them into subjects able to monitor their own risk. Risk technologies have made possible the specification of the victim – previously object of pity- as inherently and continuously “risky” and have modified the emotional promise of pity into an abstract suspicion of risk. Based on the aggregate of risk factors, vulnerability is traversed by imputations of dangerousness³⁸.

The trafficked women represent a paradoxical category where converge three different technologies of government. As illegal migrants, trafficked women are still to be deported. As delinquents, they are to be subjected to disciplinary technologies. As victims of trafficking, women still have to abide by restrictive criteria defined as part of their “reintegration and rehabilitation” programmes. As psychological vulnerable, women are to be helped through education and various forms of physiological counselling to become self-sufficient autonomous subjects who acts in accordance with governmental premises. Victims of trafficking are expected to develop a new image of them, testify against their traffickers, return to their origin countries and undertake productive work.

Women as traumatized are the second depoliticizing move in the governance of trafficking. As they are traumatized and disordered subjects, their actions cannot be- considered as endowed with political meaning³⁹. It is precisely their status as victims that differentiate them from migrant women's mobility and the EU's attempt to regulate migrants' circulation as a way of governing spaces no longer enclosed by its external borders. Women's bodies and migrant women's sexuality in particular, are sites of struggle over redefinition of citizenship that accompanies the formation of the enlarged European space.

Trough a biopolitical perspective the disjuncture between the State and citizenship are resulting in the proliferation of subject positions that no longer fit the inclusion/exclusion dichotomy. If important features of citizenship have changed, then there is a need to consider that its subjective dimension has also changed. As this paper tried to highlight through the trafficking in women, the relevance of emerging migrant subjectivities lies in their importance in redrawing the borders, not only of the nation states but gender norms.

³⁸ Ibidem, p. 103.

³⁹ Ibidem, pp. 108-113; Marugán/Vega (op.cit., note 6) p. 4.

5. CONCLUSIONS

Although presented as a new phenomenon, the reality of trafficking exists by being derived from the reality of other social phenomena. These phenomena have already been problematized as a specific security issues. By placing human trafficking within the social and political context from which it is derived – that of illegal migration, organized crime, prostitution and human rights abuses – there is a security construction that holds together these apparently contradictory elements. The contradictions that subtended the description of trafficking and the measures taken to tackle it emerge from the very location of the phenomenon of trafficking.

Human trafficking and migration are seen here as inseparable realities. Subsuming human trafficking under illegal migration has been challenged by the accession of Central and Eastern European Countries to the EU. Within the migration framework, the understanding of human trafficking is driven by a process of categorization. Categories of illegal, irregular, undocumented or simply deceived migrants overlap and are refined to adequately express the “reality” of trafficking. The debate concerning the conceptual distinction between smuggling and trafficking is based on such attempts at categorization. This approach takes as given the security concerns that inform the representations of illegal migration and the interventions to manage the phenomenon. Anti-trafficking policies are just subcategories of those targeting illegal migrants. Indeed, this framing operates in a binary sense: victims against traffickers. In Spain, just a 15% of the cases of trafficking involved criminal organizations. Organized crime is already located in a securitized discourse which vectors human trafficking and establishes logic of suspicion for trafficked women of not being genuine victims.

Human trafficking has also provided a new place for debates about prostitution. Can prostitution be freely chosen? For some institutional feminist as prostitution is deemed to be a degradation that no normal women would consider, the question of voluntary or forced prostitution becomes irrelevant. These statements are based on the assumption that a woman’s consent to undertake sex work is meaningless, that prostitution can never be a matter of personal choice and a form of work.

Through this problematization, the governmentality articulates a design of risk-control devices, while this semiotics produces segmentations. The migrant sex-worker who comes to define a specific profile, determinate by ethnic components and class, is thus separated from the rest of the women. In this line we can enrol – one of the core fields of institutional intervention- campaigns that spread victimization images. In Spain, anti-

trafficking measures have so far incurred more harm than good to sex workers. Repeated raiding by the police has led to detention of all foreign prostitutes under the suspicion of having been trafficked.

The subjective positions of sex workers and victims of trafficking become incompatible in a discourse of security. The police are dangerous for sex workers; anti-trafficking measures have dangerous effects. Turning trafficking into a problem of prostitution actually creates vulnerabilities and insecurities for sex workers and those irregular migrants that are being sent to a detention centre waiting for deportation.

The current treatment of immigration and the trafficking in women are an example of the new political rationality and the technologies of government that organize and reduce its own exercise of power through the mobilization and expansion of their understanding of individuals, of monitoring at distance and the observation by the deployment of forces that operate from a true departure.

The governmentality deploys techniques that create an apparent distance between the institutions and other sectors of social policy decisions. All this points to a new way to regulate and control conflict gender, stressed by deregulation, the decline of resources and existing public policies, destabilization and crisis reactivates the dominant sexual imagery and insecurity and vulnerability to which women are subjected.

All of these characteristics make possible the constitution of these women's identity as a subject of governmentality of human trafficking.

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**THE RECENT REFORM OF THE GREEK SYSTEM OF INTERLOCUTORY
JUDICIAL PROTECTION IN PUBLIC PROCUREMENT PROCEDURES¹**

1. The hitherto transposition of the requirements of interlocutory judicial protection into the Greek legal order: A brief introduction;
2. New regulations and their objectives;
3. Conclusion.

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Keywords: global crisis, economic recovery, trade deficit, privatisation policy.

1. Law No 3886/2010, entitled “Judicial protection during the awarding of public contracts – harmonisation of the Greek legislation with Directives 89/665/EEC³ and 92/13/EEC⁴, as amended by Directive 2007/66/EC⁵ of the European Parliament and of the Council of the European Union of 11 December 2007” replaces Laws No 2522/1997⁶ and

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³ Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

⁴ Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

⁵ Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

⁶ Entitled “Judicial protection during the stage prior to the conclusion of public works, supplies and services contracts in compliance with Directive 89/665/EEC”.

No 2854/2000⁷ introducing in the Greek system of interlocutory judicial protection in public procurement Procedures against decisions of the awarding authorities the provisions of the Directive 2007/66/EC. Within the scope of the new Law fall all disputes arising from the application of the regime that governs, by implementing the EU public procurement Directives 2004/18⁸ and 2004/17⁹, the procedure before the conclusion of awarded contract¹⁰.

The domestic system of interlocutory judicial protection can be briefly described as follows: Any person who has or has had an interest in obtaining a particular contract and has been or risks being harmed by an infringement of Community or national law can apply for interim relief, the annulment or declaration of the nullity of the unlawful act of the awarding authority or the grant of damages (Articles 2 and 7 § 1 of Law No 3886/2010). Any affected party in the procurement procedure can apply for the suspension of application of the contested decision, until a judgment is reached in the main proceedings in order to correct the alleged infringement or to prevent further damage to his interests (Article 5 §§ 1 and 5 of Law No 3886/2010). Before lodging the application for interim relief, the interested party must, within a time limit of ten days from the day he was informed in any way of the unlawful action or omission, bring a recourse before the awarding authority referring to the act against which interim measures are sought, in which he defines precisely the legal and factual arguments that justify his claim (Article 4 § 1 of Law No 3886/2010)¹¹. The awarding authority examines both the lawfulness of the

⁷ Entitled "Judicial protection during the stage prior to the conclusion of contracts of entities operating in the water, energy, transport and telecommunications sectors according to Directive 92/13/EEC".

⁸ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

⁹ Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

¹⁰ The relevant rules are dispersed in numerous legal instruments, mainly governed by Law No 2286/1995 giving the authorization for the issuance of the Presidential Decree No 118/2007, which enacts the Regulation of State Supplies and is by analogy applicable for the awarding of services. The provisions of Presidential Decree No 60/2007 incorporate EC Directive 2004/18. The conclusion of public procurement contracts in the fields of EC Directive 2004/17 is governed by Presidential Decree No 59/2007. As for public works, the applicable framework legislation is Law No 1418/1984, as amended and in force.

¹¹ The only, as far as I can see, detailed and systematic introduction to the Greek system of interlocutory judicial protection in public procurement procedures is Pachnou, *The effectiveness of bidder remedies for enforcing the EC public procurement rules: a case study of the public works sector in the United Kingdom and Greece*, Thesis/University of Nottingham 2003 pp. 157-234, with case studies in pp. 334-395.

act and the facts on which it is based and assesses whether the authority's decision was correct¹² and has to issue a reasoned decision; if it considers that it has merit, must take all necessary measures. If the time limit passes without any action on the part of the authority, the complaint is presumed to have been rejected. While the time limit for the recourse is running and, if it lodged, until a decision is reached the contract cannot be concluded. The same applies in case of an application for interim relief (Article 5 § 2 of Law No 3886/2010), except for the case that the conclusion of the contract has been explicitly allowed by a provisional order of the court (Article 5 § 4 sentence 2 of Law No 3886/2010). The authority can go ahead with the award only if the continuation of the procedure is in line with the principle of fair administration. The application for interim relief is accepted, if there is a serious probability of infringement of a EU or national rule and the measure is necessary to eliminate the harmful results of the infringement or to prevent harm to the interests of the applicant (Article 5 § 5 sentence 1 of Law No 3886/2010).¹³ Applications for suspension are inadmissible, unless an application to annul the decision in the main proceedings has been lodged within a month.¹⁴

Especially considering that under Greek law there is no separate public or private body charged with the overall supervision of the

¹² The decision must stay within the limits of the complaint and be based on an assessment of the legal and factual arguments invoked by the complainant, otherwise the authority would exceed its material competence and be judging *ultra petita*.

¹³ It may, in particular, suspend acts, documents or the conclusion of the contract, prohibit the authority from taking legal or material acts and order the authority to take positive action, such as keeping documents related to the award procedure. The court may also order the suspension of the procedure as a whole, if the court finds that there are several serious breaches, which cannot be corrected by less restrictive measures (like the suspension of a specific act or the change of the terms of the notice) and which render the continuation of the award inadmissible (Article 5 § 1 sentences 1 and 2 of Law No 3886/2010).

The application can nevertheless be rejected if, after balancing the harm of the applicant, the interests of third parties and the public interest, it is decided that the negative consequences of the award [of relief] are more serious than the benefit to the applicant (Article 5 § 5 sentence 2 of Law No 3886/2010).

¹⁴ The award procedure constitutes what is called a "composite administrative action", comprised by several stages; at the end of each stage a separate act is provided for, the issuing of which of each is, at the same time, a condition for the issuing of the next. Each successive act depends for its legality on the prior acts and the award decision incorporates all of them. Contrary to the basic Greek model of annulment proceedings before the administrative courts (according to which only the final act can be challenged as it is considered to incorporate all the preceding acts and, therefore, to develop enforceability), each act of the tender procedure, as considered "separable", can be challenged by an application for annulment on its own.

application of public procurement rules, the task of their effective application and enforcement is entrusted to the courts and to the initiative of the individuals concerned¹⁵.

2.

I. Unification of Jurisdiction

A unified jurisdiction to settle disputes within the field of Law No 3886/2010 law has been consolidated – except for certain cases (see below sub III 2). The administrative appeal courts (in three-judge formation) have become competent in that of appeal (Article 3 § 1 of Law No 3886/2010), regardless of the legal structure of the contracting authority as a public law entity or public “undertaking” (the latter being defined as bodies set up by the state but governed by private law, often taking the form of a commercial law company, established to cover public utility needs which are funded or managed in their majority by the State or by any public law entity¹⁶). Under the regime of previous Law No 2522/1997, the jurisdiction was dependent on *the qualification of the contract as private or administrative*: If the contract was concluded by public law bodies, that means administrative, the supreme administrative court, the Council of State had jurisdiction upon acts leading to its conclusion (as administrative acts), while civil courts reviewed acts taken to conclude a private law contract as contracts awarded by public undertakings (although these are qualified as public contracts in the meaning of the procurement Directives). This is, according to the relevant explanatory memorandum, aiming at the hitherto interpretation and application of the same rules in a unified way in view of several deviations that have been observed between the jurisprudence of the Council of the State and the civil courts (First Instance Courts)¹⁷. This fact had already led some theoreticians to suggest that it is not wise to split the jurisdiction of the courts for contracts concluded under

¹⁵ Michalopoulou, in *The International Comparative Legal Guide to Public Procurement 2009*: Greece, pp. 102/106, <http://www.iclg.co.uk/khadmin/Publications/pdf/2228.pdf>.

¹⁶ Whether a specific undertaking constitutes a “public undertaking” for the purposes of the application of the pertinent legislation is an issue on which no independent ruling may be obtained. It is rather depended on political choices of different governments that might or might not consider it opportune to create them.

¹⁷ Moreover, in the preamble of Law No 3886/2010 is submitted that consolidation of jurisdiction was necessary because of controversies repeatedly expressed by agents of the Commission on the adequacy and quality of legal protection afforded by the First Instance Courts, obviously because of the sometimes lesser expertise of the civil judge in administrative law matters (comp. Pachnou (op. cit. note 10 above), p. 165).

the same rules¹⁸. It had been submitted, that there is a risk of unequal or conflicting judgments between the two branches of courts in identical cases, since jurisdiction of the courts was split for procurement contracts concluded under the same substantive law, depending on the nature of the contracting authority, meaning that different remedies and procedural rules will be applied to disputes based on the same provisions and often the same facts¹⁹.

II. Unification of applicable law

The new provisions introduce in the national legal order a single piece of legislation in order to provide interlocutory legal protection in the field of public procurement. In addition, the legislator has explicitly limited the application of any organizational regulations for certain contracting authorities regarding procurement or any other relevant administrative provisions in procedures within the application field of the Remedies Directive to the extent that these usually entail provisions for interlocutory protection (mainly concerning recourses or other general remedies, see below sub V 3).

III. Judicial Economy

1. *The application for interim relief is heard as a rule by an individual judge, the Chairman of the competent administrative appeal court or another judge designated by him, instead of the Suspensions Committee, which was a special three-judge formation of the Council of State. The same was the rule in the interim proceedings before civil courts, as applications for interim measures before the civil courts were heard by only one first instance judge²⁰. However, a three-judge formation of the court may be used when the case is considered to be of particular importance (Article 3 § 2 of Law No 3886/2010).*

2. Under the jurisdiction of the Council of State remain cases of awarding contracts of particular economic importance, in relation to public works concessions or service contracts covered by Directive 2004/17/EC and contracts with a budget of more than EUR 15,000,000 (Article 3 § 3 of Law No 3886/2010). The removal of large volumes of cases from the

¹⁸ Compare Pachnou (op. cit. note 10 above), p. 171.

¹⁹ Pachnou (op. cit. note 10 above), pp. 160-162.

²⁰ The respective remedies before the civil courts were actions for interim relief, for declaration of nullity (to have contracting decisions declared void) and for damages. These are all brought before the Civil Court of First Instance of the area where the contracting authority is based or where the contract was or would be concluded or the undertaken obligation was or would be delivered.

Council of State is expected to relieve the court of its work and contribute to the acceleration of justice, particularly as now an extensive jurisprudence on almost all issues of procurement has been developed, which facilitates the effective implementation of interlocutory protection.

3. The new rules provide, in the same formulation as the previous regulation (Article 3 § 2 sentence 2 of Law No 2522/1997), that a recourse lodged with a contracting authority is to be notified of the applicant's care in informing each affected party by a total or partial acceptance of the recourse. Since then, it has been specified that in cases that the recourse is explicitly or implicitly rejected, any failure to notify does not involve the admissibility of the application for interim relief (Article 4 § 2 of Law No 3886/2010). The failure to notify the recourse, *a contrario*, although not explicitly stated, should be, in our opinion, classified as a prerequisite of the admissibility of the recourse. This assessment has been supported by the relevant case-law which has been changing in recent years²¹. This is valid both on grounds of public interest, so that the awarding authority is capable of taking into consideration the views of all parties (it is induced to assess the case on points of fact and law) in order to achieve the earliest possible settlement of the issue raised, and, on the other hand, to ensure effective protection of any affected parties²².

4. Unlike the previous provisions, that the lodging of recourse is facultative and not a procedural requirement of the application for interim relief was contested as an acceptance in whole or as part of an application of another competitor (Article 3 § 2 sentence 3 of Law No 2522/1997), the legislator can now *exclude the recourse* in this case (Article 4 § 3 of Law No 3886/2010). The ratio legis for the previous provision was that the recourse was aimed at enabling the administration to respond to specific allegations of an applicant, so if the decision results from recourse of another competitor, the above mentioned reason ceases²³.

We believe, however, that a recourse can serve (in a global procedural perspective) the economy of the judicial proceedings in this case, as it can be presumed that the administration would be capable of providing reasons that may even result in the acceptance of a decision by the affected party²⁴. This is valid, because recourse, as an administrative procedure, is aiming essentially at allowing for an amicable solving of the dispute, as well as at helping clarifies the dispute for the parties and,

²¹ Council of State, Suspensions Committee, Decisions No 1407/2007, 9/2008.

²² Critical before the above mentioned recent case law Pachnou (op. cit. note 10 above), p. 181: Uncertainty of the conditions of the recourse regarding the consequences of lack of notification.

²³ Comp. Tomaras, *The Administrative Contract*, Athens 2008, p. 84 (in Greek).

²⁴ Details on this issue Wuertenberger, *Die Akzeptanz von Verwaltungsentscheidungen*, Baden-Baden 1996.

eventually, for the judge who will hear the case if no solution is found and the complaint proceeds before the courts²⁵.

5. The time limit for issuing a reasoned decision on the application for interim measures is *extended* for the awarding authority from a (calendar) ten-day (from the lodging of the recourse (Article 3 § 2 sentence 1 of Law No 2522/1997) to fifteen days (Article 4 § 1 sentence 1 of Law No 3886/2010), paving the way for better response. We believe that the previous period often proved too short, especially in cases where the collective body which had jurisdiction over the action was different from the body conducting the competition.

IV. Effectiveness of judicial protection

1. In the new Law the minimum “standstill” period²⁶ of ten calendar days provided for in Directive 2007/66/EC²⁷ to be applied between the award decision and the subsequent conclusion of the contract is laid down for the contracting authority, with effect from the day following the date on which the tenderers were made *fully aware* of the contract award decision (coordinating application of Articles 4 § 1 sentence 1, 5 § 2 sentence 1 and 8 § 1 of Law No 3886/2010). At the same time, by the new regulation in Article 5 § 2 sentence 1 a gap was fulfilled which was stated under the regime of Law 2522/1997, in which only the time limit for the application for interim relief prevented the conclusion of the contract, while for the recourse the suspensive effect was maintained after it was lodged and until a decision has been reached or the recourse tacitly rejected, this was not the case for the application for interim relief, where the suspensive effect ceased after it has been lodged (Article 3 § 3 sentence).

In order for the challenge of the award decision to be realistically possible, it is true, all bidders should be notified of it and there was no

²⁵ Analytical to this issue **Christonakis**, *Sog. Bürgerverurteilungsklage? – eine prozessrechtliche Analyse mit sozialrechtlichem Bezug*, Die Sozialgerichtsbarkeit 2002, pp. 309/313-314; Meier Die Entbehrlichkeit des Widerspruchsverfahrens. Eine rechtswissenschaftliche Untersuchung unter besonderer Berücksichtigung der Rechtsprechung des Bundesverwaltungsgerichts, Muenchen 1992, p. 76.

²⁶ **Golding/Henry**, *The New Remedies Directive of the EC: Standstill and Ineffectiveness*, 17 Public Procurement Law Review (2008), pp. 146/148-149. A practice which was observed in several EU Member States on the part of a contracting authority to conclude the awarded contract within a very short period of time after the award decision has been taken in order to make the consequences of that decision irreversible, deprived the Remedies Directive 89/665/EEC of an important part of its effect and has led to a situation in which rejected tenderers were not effectively protected; see European Court of Justice, *Alcatel Austria AG and Others, Siemens AG Oesterreich and Sag-Schrack Anlagentechnik AG v Bundesministerium fuer Wissenschaft und Verkehr* (C-81/98).

²⁷ Article 2a § 2 of Directive 2007/66/EC.

provision for that in Greek law. However, under the previous regime of Law 2522/1997, according to established case law, the principle of *fair administration* required that authorities refrain from taking any action endangering the outcome of a judicial procedure, as they are aware of the possibility of an application for interim measures against the awarding decision for at least fifteen days after the expiry of the time limits set for the recourse and the application for interim relief; this period of time was considered reasonable in view of the provision of Law No 2522/1997 which stated that the hearings in the summary proceedings should not be later than fifteen days from the lodging of the application for interim relief (Article 3 § 3 sentence 4). During this period of time the contracting authority had to be informed by the administration of the court if there is a proceedings pending.

2. The validity of a public contract under the previous legal regime would not be affected, if the court annulled or recognized the invalidity of an act or omission of the contracting authority after the conclusion of the contract (unless prior to the conclusion, the awarding procedure that would be suspended by an interim measure or by a provisional order of the court). The protection of the affected party was limited to claiming damages (Article 4 § 2 of Law No 2522/1997), which had become a matter of criticism by practitioners²⁸ and was one main reason for the issuing of Directive 2007/66/EC²⁹. Under the new rules, the affected competitor may seek an *annulment of the contract* within thirty days from the issuance of a reasoned awarding decision (and, in any case, not later than six months after the conclusion of the contract³⁰), in specific cases referring to issues of transparency, equal treatment, management, formality in some types of competition procedures and effectiveness of judicial protection. That is when the contract was assigned either i) without prior notice published in the Official Journal of the European Union or ii) under violation of the “standstill” period or of any suspension on grounds of an interlocutory measure of a court or iii) under violation of certain obligations in case of a framework agreement³¹ or a dynamic purchasing system³² (Article 8 §§ 1 and 6 of Law No 3886/2010). Further, the new Law states that the time

²⁸ **Berends**, *Judicial Protection in the Field of Public Procurement: The Transposition into Dutch Law of Directive 2007/66/EC Amending the Remedies Directives*, Merkourios/Utrecht Journal of International and European Law - Volume 27 (2010), p. 17/18.

²⁹ See **European Court of Justice**, *Stadt Halle and RPL Recyclingpark Lochau GmbH v. Arbeitsgemeinschaft Thermische Restabfall- und Energieverwertungsanlage TREA Leuna* (C-26/03).

³⁰ Both time limitations are equal to the minimum periods contained in Article 2f § 1 of Directive 2007/66/EC.

³¹ Article 32 of Directive 2004/18/EC.

³² Article 33 of Directive 2004/18/EC.

limit and the application for interim relief in such cases have no suspensive effect as well as that the procedure for issuing a decision on a provisional order applies (Article 8 § 8 sentences 2 and 3).

However, these provisions do not give a direct answer to the question of whether competitors who participated in the bidding process prior to the conclusion of a contract can be seen as authorized by law to seek the annulment of the contract for reasons of competition, mainly because of changes in conditions that might be made in relation to the tender notice³³.

3. Opposite to the general rule, that, when the claim which constitutes the object of an action in damages stems from an unlawful administrative act or omission, the action for compensation is not dependent on an application for annulment or another recourse against the act³⁴, in the application field of the judicial protection during the stage prior to the conclusion of public contracts the prior annulment or declaration of nullity of the act is required as a precondition for the admissibility of an action for compensation for damages (Article 9 § 2 sentence 1 of Law No 3886/2010). However, the new provisions state that if the annulment is not possible for reasons not attributable to the applicant *compensation can be directly claimed*³⁵.

4. The time limit for a recourse has been extended for the applicant from five to ten calendar days, after he was made fully aware of the act that may harm his legal interests (Article 4 § 1 of Law No 3886/2010). By extending the time the legislator has corrected his assessment of the reasonableness of the time needed to draft a detailed and fully reasoned

³³ This is crucial, because a deficit of judicial protection in these cases can arise. Lodging an application for annulment by third parties against an act relating to the implementation of administrative contracts is generally inadmissible in the Greek system of judicial protection before administrative courts, so that consequently the application for suspension would be dismissed (see Article 52 of Presidential Decree No 18/1989 on the organisation and proceedings before the Council of State and Article 200 et seq. of Law No 2717/1999 ("Administrative Court Procedure Code"). Furthermore, the chances of success of an application for suspension of the performance of a contract by a court regulation is considered rather unlikely, because the alleged need for servicing the public interest (Article 210 § 4 alternative (a) of Administrative Court Procedure Code) by the performance of the contract may exclude the above measure, to these issues very critical Giannakopoulos, *The Protection of free competition during the implementation of public contracts*, Athens 2006 (in Greek), pp. 688 et seq., especially regarding the necessity of a regulation of a balancing procedure to protect both competition and the need for continuation of the performance of a public contract.

³⁴ Article 78 sentence 1 of Law No 2717/1999 ("Administrative Court Procedure Code").

³⁵ According the previously applicable provision (Article 5 § 2 sentence 2 of Law No 2522/1997), the action can be lodged and heard together with the main remedy (which was, however, applicable only in the trial before the civil courts where the action for declaration of nullity and the action for damages might be joined, since the competent court was the same). This is stated now in the explanatory memorandum to Law No 3886/2010.

complaint, although competitors are usually expected in practice (depending on each specific market) to be acquainted with the problems that might arise and be ready to react promptly.³⁶

5. According to new provisions, the court in adjudicating the application and having assessed the circumstances in each specific case may *impose a financial penalty* on the contracting authority, if it considers that the failure to reason the rejection of the recourse against an act, or a delayed filling of it makes it particularly difficult to provide effective judicial protection (Article 4 § 5).

6. Once an application for interim measures has been filed, the applicant should notify the contracting authority by any appropriate means such as electronic or fax, within ten calendar days after exercising the application (Article 5 § 2 sentence 2 of Law No 3886/2010). It is in the best interests of the party affected to defend his interests by contributing to a more effective operation of the system of interlocutory protection.

7. The court *imposes, in binding competence*, on the contracting authority, a *fine* which accrues to the applicant (up to 10% of the value of the contract), if the court assesses that the effects of a contract that should be declared void, for reasons of overriding public, require the fulfillment of its performance (Article 8 § 5 of Law No 3886/2010).

8. The new provisions refer to an analogy of the provisions of the Council of State Court Procedure on a previous settlement of the dispute in both cases, if the competitor did not lodge an application for interim relief at all or he did so unsuccessfully and the contract has already been concluded and executed before the hearings of the main case and if the contracting authority, in compliance with the contents of the court order which had accepted an application for interim measures, has amended or revoked the act that caused the dispute (Articles 5 § 8 sentence 2 and 7 § 3). The applicant may then request the court in the main proceedings the *continuation of the hearing in order to declare, by judgment, that the administrative act was unlawful* if the plaintiff had a specific justified interest in this finding³⁷. In my opinion, such an interest, contrary to established case law of the Council of State³⁸, must be assessed as legitimate in cases that the applicant declares his intention to prepare a redress³⁹.

V. Acceleration of Procurement Procedures

³⁶ Comp. Pachnou (op. cit. note 10 above), p. 180.

³⁷ Article 32 § 2 of Presidential Decree No 18/1989.

³⁸ Council of State, Decisions No 1103/2009, 542/2010, 3667/2009, 2610/2002.

³⁹ See the analysis in **Christonakis**, *Feststellungsinteresse* (§ 113 Abs. 1 S. 4 VwGO) und *Prozessökonomie bei der sog. „vorbereitenden“ Fortsetzungsfeststellungsklage*, Bayerische Verwaltungsblätter 2002, pp. 390-396.

1. The expiry of the time limit for the contacting authority of fifteen days from the lodging of a recourse, to the issuing of a decision, will be presumed to be a rejection (Article 4 § 4 sentence 2 of Law No 3886/2010). Then, the time limit for an application for interim measures commences. Though the contracting authority can issue a *decision accepting the recourse*, even in part, after that point in time, *until the first hearings before the court* of the interlocutory proceedings and in this case the trial is settled (Article 4 § 4 sentence 3 of Law No 3886/2010).

2. According to new provisions, the contracting authority can *provide*, if it rejects the recourse, *additional reasons* to the act which have been challenged by the application for interim measures or deficient or insufficient reasons. The time limit for filling is six days before the original or adjourned hearing of the application (Article 4 § 4 sentence 4).

This provision is a remarkable innovation in the Greek system of judicial protection against administrative actions in which the strict control on observance of these so-called substantial requirements of the administrative procedure is of fundamental importance as an essential part of the control of legality. This control seeks to serve the purpose of making a more sound decision possible, particularly in cases of technical operation, exercise of discretion, and acts as a guarantor of the interests of participants in the administrative procedure. However, the formulation of the above mentioned provision raises questions. Then, there should have been exceptions to this rule, as in cases in which reasons may not be supplemented if they lead to change in the nature of the challenged decision of the awarding authority or if such reasons because a disadvantageous procedural position of the applicant⁴⁰.

3. The legislator introduced, under the new rules, the *recourse as a special and exclusive remedy* against the acts or omissions of contracting authorities and thus regulated its relation to any domestic administrative remedies (Article 4 § 6). Under the previous regime of Law No 2522/1997 the introduction of a specific recourse was not hereby touched by any special provisions on the exercise of any domestic procurement remedies. The legislator clearly did not intend to resolve the issue on the relation or prevalence between any domestic procurement remedy or any general administrative remedy that are often provided by applicable law or by any organizational regulations for certain contracting authorities and the

⁴⁰ See about the comparable problems arising from the implementation of controversial Article 114 sentence 2 of the German Law on Administrative Court Procedure (Verwaltungsgerichtsordnung) regarding supply of considerations which led to discretionary decisions R. P. Schenke, *Das Nachschieben von Ermessenserwägungen* - BVerwGE 106, BVerwGE 106, 351, Juristische Schulung 2000, pp. 230/231-233.

recourse against decisions on public procurement proceedings⁴¹. Therefore, an affected party had often the possibility either to raise an administrative remedy provided by another law and, in case of rejection, to lodge the recourse of Law No 2522/1997, which was in his favor to extend the period within which he has to apply for an interim measure before the court, or to refrain from that and lodge a recourse⁴².

4. In the new Law it is defined that an act that could be subject to a recourse or, subsequently, to an application for interim protection so as any evidence of its reasoning may be sent to any party concerned by fax or electronic means (Article 4 § 1 sentence 3 Law No 3886/2010)⁴³.

5. The hearing of a case brought before a court has not to be more than thirty days after lodging an application for interim relief and the notice of the summons cannot be less than fifteen days before the hearing (Article 5 § 3 sentence 2 Law No 3886/2010), instead of twenty and fifteen days, respectively, as in force under the previous law (Article 3 § 3 sentence 4 of Law No 2522/1997). The time limit is certainly indicative, however, that this provision is, in our opinion, setting a more realistic timetable, which is an evident expression of the legislative intention to emphasize the urgency of keeping time up which contributes to the acceleration of the administrative procedures (the usual length of summary proceedings in public procurement cases in Greece until the decision is, as far as I have experienced, three to five months).

VI. Regulations on Court Discretion

1. The measures set by the judge, as content of a decision on a provisional order, can include the *cancelling of the prohibition to award the tender and to conclude the contract* (Article 5 § 4 sentence 2 of Law No 3886/2010). This is a manifestation of a constant case law jurisprudence according to which the contracting authority had been able to conclude the contract, in case that an application for provisional order had been rejected or such an interim measure had been already revoked by a court⁴⁴. This was a common case if applications had been assessed obviously

⁴¹ Compare the views of the Chairman of the Committee that was commissioned to draft Law No 2522/1997 Geraris, *The interlocutory judicial protection in public works, supplies and services* (Law No 2522/1997), Athens 1999 (in Greek).

⁴² Council of State, Suspensions Committee, Decision No 785/2004.

⁴³ In addition, the case law jurisprudence has suggested that the sending of e-mails by the administration is a lawful way to notify the contents of the relevant decision but did not move a time limit for respective administrative action, Council of State, Suspensions Committee, Decision No 803/2004.

⁴⁴ Council of State, Suspensions Committee, Decisions No 339/2003, 915/2005.

inadmissible (eg. time limit or if there had been no recourse lodged with the contracting authority).

2. In applying the provisions of enrichment without just cause (Article 904-913 of Greek Civil Code), the court may order a partial payment in the amount owed, or not award any amount at all after taking into consideration that the contractor knew or should have known of the invalidity of the contract signed (Article 8 § 2 sentences 1 and 3 of Law No 3886/2010).

3. The court may either declare the contract partially void (*ex nunc*) after assessing any particular circumstances. This includes, without limitation, the time of the implementation stage, the severity of the offense and the conduct of the contracting authority. Or, it may alternatively shorten the contract period (Article 8 § 3 of Law No 3886/2010).

4. The court may, even in a case where it has registered an unlawful award of contract, not to declare it void if it assesses the existence of an overriding public interest requiring the preservation of results and performance is set. However, the presence of financial interests alone does not constitute such an overriding reason in a performance of a contract, unless the annulment would lead to disproportionate consequences. In any case, such reasons cannot explicitly be constituted by increasing burden of the awarding authority at the expense of a delay in implementation of the contract to conduct a new procurement procedure. Neither the changing of the financial institution that is performing the contract or the obligations arising from the annulment of the contract be cited (Article 8 § 4 of Law No 3886/2010).⁴⁵

3. Law No 3886/2010 introduces in the transposition of the Remedies Directive 2007/66/EC in the Greek system of interlocutory judicial protection for public procurement in four major innovations that serve both the economy of the administrative procurement procedure and of the court proceedings while on the other hand they satisfy the requirements of the Directive for effective protection of competitors. The dualism of the previous regime of Law No 2522/1997, according to the legal nature of the contracting authority has now ceased and the Council of State should be relieved since protection measures have to be ordered by the administrative appeal courts. A “standstill” period has been introduced. A possibility to challenge the contract has been given to affected parties under conditions related to a breach of the fundamental principles of transparency and equal treatment and a possibility for the awarding authorities to provide grounds for rejecting a recourse in the

⁴⁵ See to this issue further **Goebel**, *Gesamtwirtschaftliche Aspekte im vorläufigen Vergaberechtsschutz*, Baden-Baden, 2009.

proceedings before the court which establishes a deviation from the principle of formality of the Greek system of application to annulment has been granted. The new regulations incorporate case law jurisprudence, whereas the issue of interlocutory measures against a contract on grounds of protection of competition so in case of changes in certain conditions, in relation to the tender notice, remains open.

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ANALYSIS OF THE SOCIO-ECONOMIC MEASURES IMPLEMENTED
IN POLAND AND ROMANIA DURING 2007-2010

1. The impact of the global crisis on the European economy;
2. The comparative evolution of Polish and Romanian economies;
3. The recovery governmental packages in the Polish and the Romanian economies and their viability;
4. Conclusions.

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Abstract:

The paper realises a comparative analysis between the Polish and the Romanian economies in order to find out the main elements which supported Poland to face successfully to the crisis. The analysis is based on the neutral statistical bases and covers the main economic indicators. A distinct part of the paper deals with the recovery governmental packages in the Polish and the Romanian economies and their viability. Important is the part connected to the relation of these two economies with the international financial institutes.

The main lessons from Poland to Romania about the crisis management are: policy matters, macroeconomic disequilibrium at a minimal level and an optimal privatisation policy.

The main conclusion of the paper is that the human society will be divided only into very rich or very poor people and both above economies are not able to stop this process.

Keywords: global crisis, economic recovery, trade deficit, privatisation policy.

JEL Classification: O57, R11, R59.

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1. Across a Europe where crisis stroked even economies considered as stable, Poland gave an example of financial surviving and became a model of economic growth.

The analysts mistook when consider that whole Central and East Europe will collapse under the crisis. The economic reality divided the latest 12 EU member states into three categories of economic models, which were connected to heritages of development, economic principles and different risk profiles. These models are connected to three types of economic transition: Baltic model, neoliberal model and gradual transition model. The differences between these models reflected the impact of the global crisis on every national economy and the governments or international institutes' options for economic recovery.

Practically, these models presented the winners and the losers. The winners are Poland, Czech Republic and Slovenia, which were able to control their current account deficits and to maintain low borrowing rates in the private and public sectors. Slovakia and Slovenia succeeded in keeping stable the exchange rates as a result of their recent adhering to the Euro.

The present global economic crisis is characterised by the specialists as a "perfect storm". No other previously crisis was as severe as the present one.

On the other hand, the previously crisis has a regional or national impact, not a global one.

The economic crisis started in USA and extended rapidly around the whole world. The present subprime crisis is a financial one caused by the slump of the liquidities of the credit global markets and in the banking systems, as a result of the set-back of the companies which invested in the subprime mortgages with high risk.

The causes of the present crisis could be founded at the end of 20th century, but its peak was achieved during 2007-2008. The crisis brought to light serious deficiencies in the global financial system and in the regulation framework.

The present recession's origins are in the monetary expansion supported by the Federal Reserve System, which grew the USD supply on the financial markets during 2001-2008. The results of this action were the artificial cheaper credits and the economic development without investment prudence. Moreover, the monetary policy interest rate has a systematic zero band and negative evolution.

The same cheaper money policy was implemented by the Bank of Japan, which used zero nominal interest.

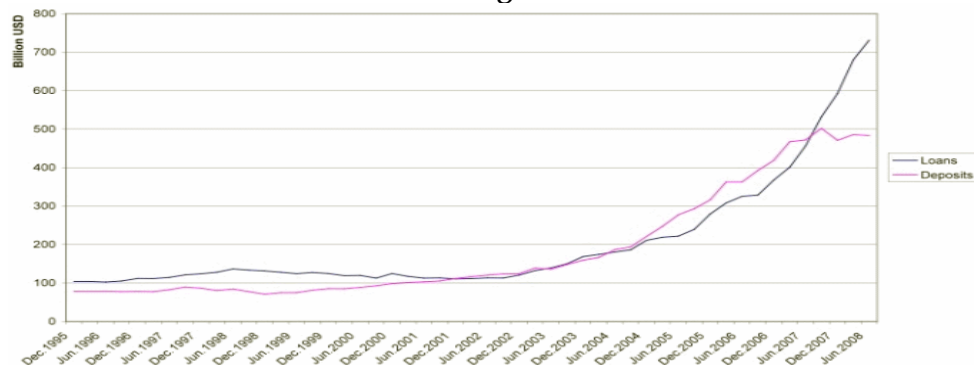
The European Central Bank made the same procedure, using an interest rate of 2%.

Nowadays, the effects of these actions are significantly negative. 40% of the Americans are in unemployment and 50% from the Afro-American young men have no first job. The average wage in USA decreased above 4% during 2000-2008, even that the American government injected more than 180 billion USD as public aid for the AIG Company (equivalent of 25 years aids for Africa).

The credit explosion in the developing economies from the Eastern Europe was supported by the permissive monetary policy of FED, Japan and EU from the beginning of 2000 (Marinescu C. et al., 2010, p.8).

From 1997, the moment when the subprime panic started, the banking sector accumulated 250 billion USD liabilities, especially on short period. Above 90% of these liabilities are held by the European banks (see Figure 1).

Figure 1: Deposits and foreign loans evolution across the East Europe banking sector



Source: Eurostat (2009, p.57)

The present world crisis will be long and the financial markets demonstrated their limits and “stupidity”. Moreover, the official statistics don’t reflect the reality, because the imperfect markets give asymmetric information (Stiglitz J., 2010).

2. Poland became a model of economic growth because it was able to survive financially. Even that the Polish economy was weak in 2004, when it adhered to the EU, Poland was the only one which achieved a positive economic growth in 2009: 1.7%.

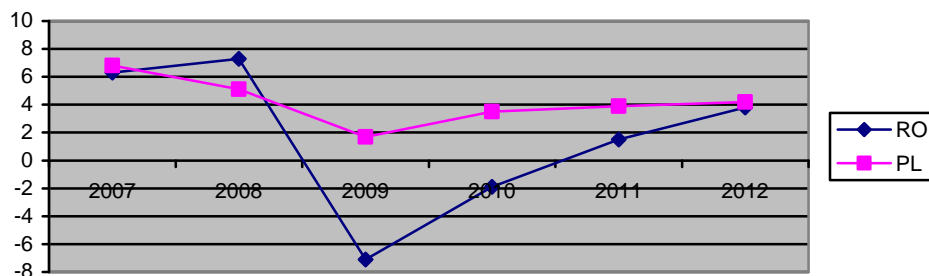
2.1. GDP

During the latest 14 years, Poland performed a continuous economic growth, and its GDP/capita grew, from 3200 Euros to 9500 Euros

in 2009. In 2010, the GDP/capita achieved 8500 Euros as a result of the 20% zlot depreciation.

The nominal GDP of Poland grew from 153 billion Euros in 1998, to 362 billion Euros in 2008 and 310 billion Euros in 2009. The Romanian nominal GDP was 37.4 billion Euros in 1998, 139.7 billion Euros in 2008 and 116 billion Euros in 2009. Practically, the Polish economy grew by 102% during 1998-2009 and the Romanian economy by 210%. The problem is that the Polish economic growth was a “healthful” one, but the Romanian economic growth was the same with a cake (see Figure 2).

Figure 2: GDP growth rates in Poland and Romania during 2007-2012



Source: personal contribution using European Commission (2010, pp. 135, 141)

It is interesting that the GDP growth rate trend is the same for both countries. Moreover, the growth rate will be almost the same in 2012.

2.2. Budgetary deficit and public debt

The budgetary deficit is a comparable indicator for Romania and Poland. The Poland’s budget balance was permanently negative and it achieved values less than 3% of GDP only in three from the latest 13 years.

On the other hand, the budgetary revenues as % of GDP are 40% in Poland and only 31% in Romania.

The public average debt in Poland was 40-50% of GDP during 1997-2009 and 55.5% in 2010. The same indicator achieved 30.4% of GDP in 2010 in Romania (see Figure 3).

The government gross debt trend is identically for Poland and Romania during 2009-2012. But the Polish Constitution stipulates that the public debt may be less than 55% of GDP, excepting exceptional situations when it can achieve 60%. Practically, the Polish government may not enter the financial slippage under the constitutional stipulations.

Figure 3: General government gross debt (% of GDP) in Poland and Romania



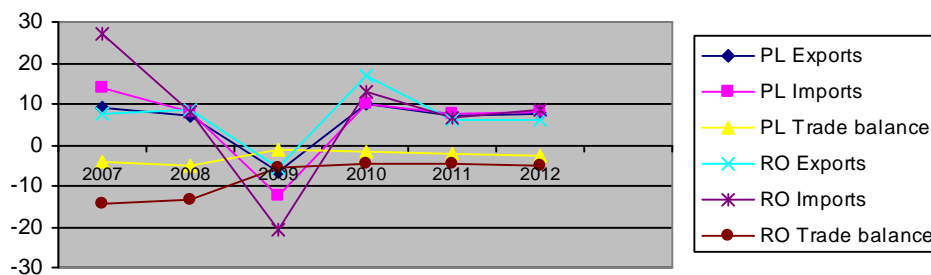
Source: personal contribution using European Commission (2010, pp. 135, 141)

2.3. Trade balance

During the latest 10 years, the growth of the Polish economy didn't support a high trade deficit growth, excepting 2007 and 2008. This evolution was the result of the Polish goods' competitiveness growth on the international markets. In 2009, for example, Polish exports achieved 100.2 billion Euros and the imports 103.4 billion Euros. The result was a trade deficit decrease from 26.1 billion Euros in 2008, to 3.2 billion Euros in 2009 (-88%).

In 2008, Poland achieved a "historical" trade deficit of 4.9% of GDP while Romania's trade deficit was 13.6% of GDP (see Figure 4).

Figure 4: Foreign trade trend in Poland and Romania



Source: personal contribution using European Commission (2010, pp. 135, 141)

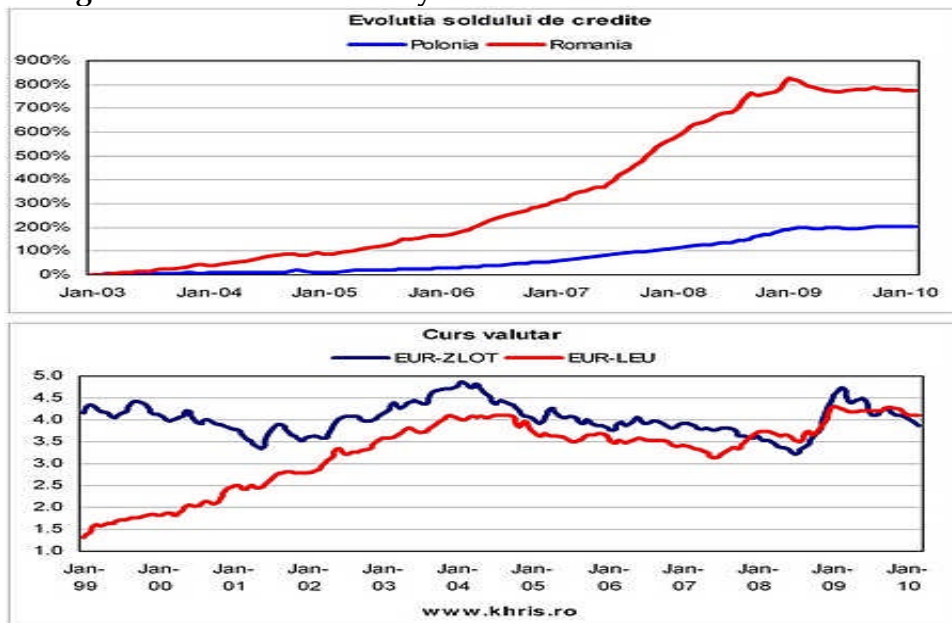
The Polish and Romanian trade evolution was the result that the Western export markets faced to the global crisis quickly than the Eastern import markets. This is why the imports grew, but the exports decreased.

2.4. Credit process and the currency course

The National Bank of Poland operated on the market, in order to stop the zlot's appreciation. On the other hand, during 2003-2009, the loans balance grew by 772% in Romania and only by 203% in Poland.

Nowadays, the Polish banks have a total balance of loans of 162 billion Euros (52% of GDP), but the Romanian banks robed 54.7 billion Euros (47% of GDP). The evolution of the loans sold and currency course in Poland and Romania is presented in figure 5.

Figure 5: Loans and currency course trends in Poland and Romania



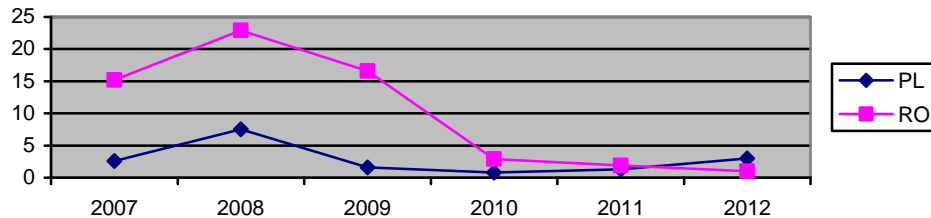
Source: www.khris.ro

2.5. Labour costs and productivity

In 2009, the average wage in Poland was about 800 Euros, greater than in Romania (478 Euros) but less than in Czech Republic (865 Euros).

During 2000-2010, the unit labour cost grew by 79% in Poland and by 500% in Romania. The labour productivity increased by 28% in Poland and 87% in Romania during the same time period (see Figure 6).

Figure 6: Unit labour costs whole economy in Poland and Romania



Source: personal contribution using European Commission (2010, pp. 135, 141)

3.

3.1. Poland vs global crisis

The economists are divided when they talk about the Polish “miracle”. Some of them consider that it was hazard, other talk about the Polish government which was able to manage the financial crisis from 2008 and which refused the economic recovery plan.

On the other hand, the consumption was able to support the economic growth even in 2009. Poland is a great market with 38 million inhabitants. The Polish economy is less opened and less dependent on exports. This was why the Polish economy didn’t face the dramatically decreased of the world trade.

The present results of the Polish economy balanced the poverty from Poland, which remained one of the poorest EU member states.

Poland is not a member of the Euro area and it seems to be an advantage. In 2000, the Polish authorities allowed the zlot under a variable exchange rate, which supported the Polish exports, especially of Fiat and Ford cars, which are made in Poland. Moreover, Poland benefited from the scrapping premiums from Germany and France.

The Polish government establish a new deadline for adhering to the Euro area: 2015. Poland doesn’t want to hurry as Greece and to support negative effects then.

Nowadays, Poland faces to new challenges. The budgetary deficit achieved 7.3% of GDP in 2010, regard 3% allowed by the European Stability Pact.

The unemployment rate achieved 9.5% in 2010, and the forecasts for 2011 and 2012 are not optimistically (Eurostat, 2011, p.3).

On the other hand, the infrastructure is not good. Poland has old roads, few speedways and railways, as well. As a result, the public investment programs in infrastructure cover 20 billion Euros until 2012.

Moreover, the National Agency for Highways from Poland financed the road infrastructure with 13.3 billion Euros during 2009-2010.

The European Commission financed Poland (67.3 billion Euros in 2009) in order to support the economic development as investment until 2013. The European Funds' absorption in Poland is not a problem, because the Polish government has a very good practice in it. Nowadays, Poland supports the EU budget by 22 billion Euros, but it receives 87 billion Euros from the same budget.

The Polish government consider that there will be two important events which will be able to support the economic growth: the EU27 Presidency by Poland in the second semester of 2011 and the Co-organiser of the European Football Championship in 2012.

Poland is the country with highest European identity. As member of NATO and EU, Poland feels safe for the first time during its history.

An important component of the Polish economic recovery is connected to the difficult economic changes from the latest 20 years.

Unlike other European economies, the Polish exports didn't decreased so dramatically, the consumer credits growth rate was low (especially in foreign currencies), the domestic consumption grew and the GDP growth rate was positively in 2009. Even the national currency (zlot) recovered and grew its exchange rate.

On the other hand, the Poland's success was based on the domestic consumption market's power. As a result, the Polish people spent in the country when the national currency exchange rate decreased and the Euro exchange rate grew.

A successful domain for Poland is the FDI. During 2009-2010, the FDI financed 75% of the Polish deficit. Poland became one of the most attractively countries in the world for the FDI (Ernst&Young, 2010, pp.11-13).

In the table 1, Poland succeeded to achieve the 6 rank in 2010, a performance improved by 16 positions.

Table 1: FDI top destination in the world

Country	Rank in 2010	Rank in 2007	Variation
China	1	1	0
USA	2	3	+1
India	3	2	-1
Brazil	4	6	+2
Germany	5	10	+5
Poland	6	22	+16
Australia	7	11	+4
Mexico	8	19	+11

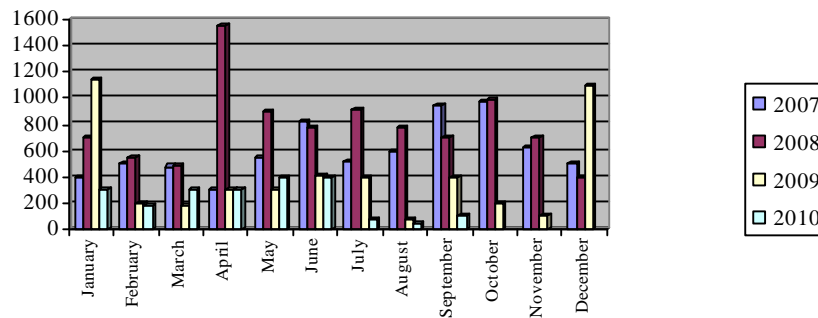
Canada	9	14	+5
UK	10	4	-6

Source: personal contribution after Ernst&Young’s 2010.

During the first semester of 2010, for example, the FDI in Poland achieved 160 million Euros. They were focused on R&D, equipments, vehicles, electronics and metallurgy. The most important investors in Poland are: Germany, Japan, Korea and China.

The FDI’s evolution in Romania during 2007-2010 was jumpy and the situation was worst in 2010 (National Bank of Romania, 2010, p.2)

Figure 7: FDI trend in Romania (mill. Euros)



Source: personal contribution using NBR (2010, p.2)

3.2. Polish lessons for Romania

There are at least three important lessons for Romania. First is that policy matters. That means that the powerful public institutions, the viable democracy, the responsibility and the transparency have an important role as the adequate economic policies for the economic development. These elements provide confidence to the citizen. Romanian government was not able to do the same thing.

As a result, the Polish people supported powerfully the domestic consumption and the FDI. It was not simple, especially in 1989, when the Polish government implemented an economic shock therapy. This therapy prosecuted the public budget financing of the National Bank and the concessional lending of the public companies, limited the state employees’ wages introduced the single tax and allowed the public companies’ insolvency. The cumulated effects were the economy’s remediation and a healthy economic development. Moreover, Poland was really prepared for entry in the EU in 2004.

Romania had not a professional with enough political power able to manage the economic recovery. The problem is that Romania didn’t

achieve the depression yet. The only way for the Romanian government to face the crisis was to grow exponentially the public debt, in order to pay the current expenditures, not to invest in economy. Moreover, the Romanian government has a strategy which consists in the continuous decreasing of the public employees' number.

The second lesson for Romania is connected to the ability to maintain the macroeconomic disequilibrium at a minimal level and to access preferential loans. For example, Poland used a flexible credit loan of 20.5 billion Euros from IMF. This facility was used by IMF only for those countries which have powerful economic basis.

Romania, with a high foreign debt (17.1 billion Euros), was forced by IMF and the World Bank to adopt strict austerity measures.

Both lessons will have long term effects on Romanian economy, including the economic recovery success, the Euro implementation and the alignment with EU principles.

An important lesson for Romania would be the Polish privatisation policy. At the beginning, Poland was criticized for its slow privatisation policy. The Polish privatisation plan was adopted in 2008 and it brought about 8.9 billion Euros during 2008-2010. During the latest 18 years, Romania obtained only 4 billion Euros from the privatisation process.

Moreover, Poland received more than 6 billion Euros from the IPO in 2010. Romania listed only Transgaz and Transelectrica and received 100 million Euros in the same year.

On the other hand, even some Romanian officials consider that Romania has to face to a deep economic crisis till 2015. We must remember that Romania will start to pay back the loans from IMF and other international institutes in 2012. As a result, the budget will be very restrictive. This new crisis can be connected to the debts which will achieve 5-5.4 billion Euros yearly.

Other specialists consider the Romanian state a money vacuum. It aspirates money continuously, in order to reassign on pensions, wages, high expenditures, public works and acquisitions. This mechanism is not able to generate own revenues.

3.3. The connection between both above economies and the international financial institutes

The Romanian economy decreased by 7.1% in 2009 (NBR, 2010, p.20). The GDP decreased by 2.0% in 2010, but the budgetary deficit was 6.6%, less than that of 6.8% imposed by IMF (IMF, 2010, p.27).

Romania signed official agreements with IMF, EU and other international financial institutes which cover about 20 billion Euros. These financial institutes financed 12.2 billion Euros by the end of 2010. IMF

approved the 7th loan tranche (about 900 million Euros) and sent its official Jeffrey Franks to Bucharest at the end of January 2011, in order to evaluate the agreement and to approve or not the 8th tranche of 1 billion Euros.

On the other hand, Romania has a Common Memorandum with the European Commission regarding a loan (5 billion Euros) for the cash flow. The conditions of this grant cover specific measures connected to: fiscal consolidation, fiscal administration, structural reforms, and financial sector regulatory and monitoring.

Moreover, Romania asked for financial and technical assistance from the World Bank. The World Bank asked Romania to continue the structural reforms, in order to support the financial sustainability (Peter Harrold, 2011, p.1). The Romanian government is interested into a partnership with the World Bank, connected to the administrative reforms, sectoral policies' monitoring, social sector's reforms, economic growth and agriculture.

The first loan from the World Bank (300 million Euros) was approved in the 3rd quarter of 2009 and it was focused on the development policies. These development policies influence the public finances management, the social sector and the financial sector, as well and support the structural reforms connected to the economic recovery.

The World Bank supported Romania to adhere to the EU and to recover the economic disparities. During 1991-2009, the World Bank financed 55 operations with 6 billion USD. Nowadays, the World Bank's portfolio for Romania has 13 active projects and 1.13 billion USD.

On the other hand, Romania has is a member of the Black Sea Trade&Development Bank (BSTDB). The BSTDB will focus in the next four years on providing financial support to large and medium sized companies engaged in particular in export generating activities, infrastructure and financial sector. Also BSTDB will strive to mobilize both foreign and domestic financial resources for investments in Romania. In this respect, possibilities to organize suitable financial syndicates will be utilized under BSTDB's co-financing facilities or in any other adequate ways. With BSTDB committing to raising the level of commitments (signed operations) for 2007-2010 it is estimated that an indicative number of about 17 operations for SDR 100 million (about SDR 25 million per annum on average) will be approved by the BoD. Of these, about 14 operations are expected to be signed (BSTDB official website).

Romania received financial support from the European Investment Bank (EIB). It became a member of EIB in 2007, when it adhered to the EU. During 1991-2007, Romania signed 70 loan agreements with EIB with a cumulated value of about 5.11 billion Euros.

According to the latest Corporate Operational Plan 2010-2012, EIB offers financial support in Romania for: implementation of the Knowledge Economy (previously known as Innovation 2010 initiative (i2i)); development of Trans-European Networks (TENs); protecting and Improving the Environment and Promoting Sustainable Communities; SMEs, and sustainable, competitive and secure energy (EIB, 2010, p.3).

Poland asked for a loan from the IMF in order to fix its economic position. IMF changed the flexible credit line for Poland to a new two years agreement of about 30 billion USD. This new agreement replaced the loan of 21 billion USD approved on July 2010.

The main interest of Poland connected to the new agreement with IMF is to protect the economy of new effects of financial turmoil in other parts of Europe. This new agreement will be considered as a "stand-by" one.

The World Bank approved three 1 billion Euros loans for Poland to support the government to face the global crisis. Practically, Poland has to improve the public finances and the business environment and to grow the employment, in order to ensure a powerful economic growth.

The latest loan from the World Bank will finance the services' improvement and the social reforms.

During the present global crisis, Poland had economic contraction (-0.33%) in a single month. As a result, Poland had the greater economic growth rate in 2010 (about 4%). Moreover, the European Commission forecasted economic growth rates of 3.9% in 2011 and 4.2% in 2012.

The specialists identified the elements which supported these economic performances, as the following: the low banking loans and a relative little mortgage loans market; the recent elimination of the trade barriers to the EU, which supported the growth of the demand for the Polish goods, during 2004-2010; the lack of economic dependence of the exports; the good tradition connected to the Polish government fiscal responsibility; the relative great domestic market (about 38 million inhabitants); the national currency, which was not affected by Euro or USD; the lowest labour costs, which supported the FDI; the implementation of the specific economic austerity measures before the start of the global crisis; and the refraining from printing money.

Poland will maintain its public debt less than 55% of GDP until 2013, according to the four years plan of the Polish government which is based on the expenditures decrease and higher taxes (Dorota Bartyzel, 2010, p.1).

The same plan forecasted GDP growth rates of 4.8% in 2011 and 2012 and 4.1% in 2013. Poland orients 80% of its exports to the EU and depends on the Western member states' economic recovery. The Polish

authorities talk about an economic growth rate of 2.0% across the Euro area in 2012 and a stabilisation in 2013.

4. Romania had a positive economic evolution during 2000-2008. Unfortunately, the positive evolution from 2008 was only a good fortune and it wasn't followed by real economic development.

Many specialists consider that the present crisis could be a chance for Romania's modernisation and development, but it was loosed.

The realistic forecasts talk about a real economic recovery in 2016. This is why, the Romanian president consider that the welfare from 2007-2008 will be achieve again in 2014-2015.

On the other hand, Romania had not competent governments in the latest three years, the money didn't manage wisely and the public budget looks like a sieve.

The problem is that Romania has no tradition in technocrat governments as Leszek Balcerowicz's government in Poland.

Moreover, the specialists' ideas are eliminated and the neighbours' good practices are forgotten.

After 6 years of continuous decline, the 2009 crisis in Poland resulted in only a moderate rise in the unemployment rate, amid increasing labour supply benefiting inter alia from recent structural reforms.

The sharper-than-anticipated downward adjustment of real wages mitigated the effects of the downturn on employment. Thus, employment kept growing during the crisis (by 0.5% between the first quarter of 2008 and the first quarter of 2010), especially in the services sector (except transportation), while manufacturing and agriculture experienced substantial falls in employment.

Overall, employment growth is expected to remain in positive territory (0.7%) in 2010. Hiring is muted due to the effect of labour hoarding during the crisis. Increasing labour market participation resulted in unemployment peaking at 9.5% in 2010.

Going forward, employment growth is projected to accelerate gradually, leading to a moderate decrease in the unemployment rate to 8.5% in 2012. Against this improved outlook and mounting demographic pressures, further reforms favouring dynamic employment creation and higher labour market participation focusing on the extreme ends of the age distribution would help sustain a permanent recovery of domestic demand without undermining the competitiveness of the economy (European Commission, 2010, p.126).

On the other hand, the present crisis is the result of the global tendency of promoting the unsustainable growth, without goods and

services. This growth is based on papers, which are not in the taxpayers pockets.

Maybe the most important negative effect of this crisis is the disappearance of middle class society. Step by step, the men with a decent welfare will disappear and the human society will be divided only into very rich or very poor people.

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SOME CONSIDERATIONS ABOUT URBAN PLANNING AND
URBAN LANDSCAPE RELATIONSHIP IN ROMANIA

1. Short introduction;
2. About city/urban planning and urban landscape;
3. Stages and evolutions;
4. Conclusions.

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Abstract:

The article aims to reveal some aspects concerning planning (with its derived urban/city planning) considered a relatively recent discipline and created to deal with a vast and complex array of contemporary urban problems. Some of its dimensions are very used in all systems even their name changed. By this it became relevant both for geographers and for civil servants public administration. The paper purpose is to advocate in a diachronic manner the inter-relationship between the city planning and urban landscape in Romania . The content starts with a short presentation of the subject in local and the international literature, as a basement for understanding of actual urban landscape approach. The different stages are identified according to political and phisical planning. Planning objective appears to be implemented with a wide variety of tools including traditional planning, zoning and subdivision regulations, and some newer concepts such as urban growth boundaries and conservation easements. The article deal with the response to the question about what type and stages of planning was in Romania and how it works to influence on the urban landscape and the value of urban coherence.

Key words: planning, urban, landscape, Romania.

JEL Classification: R14,R19.

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1. Although the subject isn't new at all, since many studies have been written about urban planning (with its colateral city/town planning) and urban landscape in academic and professional western publications, its approach can be different when the analysis aims at the counties from the ex- communist area. The first main specificity of such a study comes from the fact that the references about the historiography of the problem, as required by the methodology of research, can be difficult. This is due either to the absence of studies or to the way of working out of the existing ones, using distorted, ideologized even utopian information. As a matter of fact, to be more specific, the two key collocations - city planning and urban landscape - have different histories. "City planning" is much more controversial and politicized as compared to the expression "urban landscape" which can be, at most, subject of controversial discussions in the academic world.

The second compulsion refers to the perspective of the research. The specialists' opinions upon the same subject are sometimes so different that they seem to deal with different things. The city is a subject for geographers as well as for architects, sociologists, economists or urban planners but the way they dwell on it makes communication impossible more particularly as they had been given different education that changed their way of thinking. The present paper draws attention to those two aspects as an argument in favor of accepting diversity, gaps and failure that can occur when trying to impose some inadequate patterns, no matter the cardinal direction they come from.

2. The expression "urban landscape" has different definitions, depending on the purpose had in view, inherently on the speaker's affiliation to a certain education, school or level of perception and understanding (Moles, 2000).

No science can claim it entirely but one can see the dominance of the French urban geography (as R. Blanchard, J. Bastie, M. Roncayolo, G. Chabot, J. Tricart), of the German and English schools (as Stubben, M.R.G. Conzen, J.W.R.Whitehand) or of the Italian School of Architecture (as S. Muratori, C. Aymonino). Generally, it is a concept that suggests a spontaneous and emotional-subjective perception of space, still generated by a cultural-social structure (Tudora, 2005), representing, at the same time, the visual context of the daily existence. (Relph,1987).

The Romanian geographers consider the urban landscape a result of a cumulative sequence of interventions upon an urban territorial organism (Turnock, 1987). According to Vintilă Mihailescu, the landscape (the urban one, too) is the totality of external characteristics specific for a territory, the human society being a part of the geo-system as a product and an active

integrated factor that generates change in a landscape (Mihailescu,1968). Urban landscape is the seen face of invisible territorial system that self organizes at any settlement level and so why the landscape change is a law that becomes one of the elements of his definition (Ianoş, 2000).

For Roncayolo the urban landscape is subject for aestheticism and view in its totality: "When speaking about the relation between society and urban morphology (landscape), two main arguments come in opposition. One of them, that is trying to find the reasons and the laws of development of the city into the city itself, is compared with a structure that develops or stagnates, sensitive, of course, to its environment (the exogenous elements) but following its own logic, the same way as the human being is behaving. (...). The second argument replaces the urban patterns in the historical situation that imposed them; it invites to a research and to an identification of successive layers that compose the city, and it is ready to use the techniques of an urban archeology that, paradoxically, lives on the most violent episodes of demolition and restoration ..." (Roncayolo, 2002).

In our opinion, this one could be the point of relation between urban landscape and city planning. "Town planning, as a series of measures that aims at town transformation, was invented to defend us from our worst tendencies to exploit the others or to put into practice our utopian visions concerning the town by imagining some social, aesthetic and economical solutions."(Relph, 1987).

That definition seems to meet the case of the Romanian system of urban planning. Conceived as an instrument of control and organization of the entire post-war society, the Romanian urban planning has some distinctive features. The first and the most important one, by its effects, is in connection with the very constitution of this field of activity at national extent: the town-centered planning comes after land planning crystallization (Puşcaşu, 2005).

In fact this is a specific difference from the western urban planning. The second main feature is represented by the relation between the two inner planning dimensions: the social and the economical one. The economy subordinates the society although, theoretically, it is quite opposite. The social argument is a means not a purpose of planning. By this reversal of priorities comes out the third feature of Romanian urban planning relevant for the considerations about sustainability: from side-effect of centralist planning, sustainability turns into cause-object of the contemporary planning. The arguments of these sentences are the following.

3.

3.1 The stage of centralized planning

The evolutive trajectory of urban planning from the past century is inserted into the already outlined path of the Romanian spatial planning system whose major constitutive part is. The origins of land planning are situated in the middle of the 19th century while urban planning becomes visible only after the Second World War.

The first stage that was going on between 1948 and 1989 corresponds to the centralized planning period. In the late 40's, following the newly installed communist ideology, one of the post-war national priorities was the building of a national industry based on socialism that could generate an accelerated urbanization. The nationalization of the private property is the first support that the new system uses. As this action starts shortly after the end of the Second World War and the urban reconstruction was also a priority in some of the great cities, these two processes started almost simultaneously. Both of them were carried out without a previous planning exercise because of two main objective reasons: there wasn't a planning survey (for lack of urban planning tradition, consequently of urban planners) and the new system wanted the installation of its own patterns and techniques so quickly that wouldn't offer the opportunity to fill this gap. The urban architecture *is apt to be confused with urban planning. The master plan keeps being a theoretical concept though the idea had been spread since the 30's with reference to an urban master plan of Bucharest (Sfințescu,1930).*

Sketching the relations between architecture, urbanism and spatial planning, Gustav Gusti suggests the rapidity used by the politic system to build up the working concepts and even a law for spatial planning (Gusti, 1974).

In the 50's most of the new buildings are of Soviet inspiration. For the next decades the sources of inspiration vary and the French functionalism mingles with the North Korean megalomaniac pattern. What was left from the old historical buildings was often almost completely destroyed.

In the early 70's the process is intensified by means of a clearly stated law. In 1974, the Law no. 59 concerning territorial and urban planning came with new technical, urban and architectural concepts. The outline of micro-territorial planning and the planning detail (corresponding approximately with the current zonal urban plan and the detailed urban plan establish at a minimal level the urban regulations. But the argumentation is revolutionary: "City planning must deal with the limitation of built perimeters to no more than necessary and with the best use of the land which is a national treasure. Territory and city systematization must take place according to prognosis and on the basis

of specifications given by the national and unique socio-economic development planning and must conduce to the best development of the entire territory, to the superior use of human and material resources, to the rational and well-balanced distribution of manpower, aiming at the organic union between the norms of economic efficiency and the social ones" (Law no.59/1974, art.1).

The text seems flawless. If time could run back some ideas would seem taken from European Spatial Development Perspective (ESDP, 1999). But the action put in practice was devastating.

After the 80's, this progress gets grotesque dimensions. Entire villages are demolished; historical centers are mutilated following the application of the same law ("places of residence will be built particularly from downtown to uptown, building high-density residential complexes" art.9).

The industrialization process brings in towns a great number of people from the villages. A solution had to be found in order to balance this phenomenon and an extensive program of building collective blocks of flats was started. This is the case of more than 40 towns with mono-industrial profile whose functional weakness led to their socio-economic failure immediately after the dissolution of socialist organization.

Table 1: Number of towns in Romania during the 20th century

Year	1912	1930	1948	1956	1968	1989	2008
Number of towns	119	142	152	171	183	237	314
Out of which with over 100.000 inhabitants	1	4	3	8	13	19	25

The number of towns will witness a continuous growth (table.1) but their dimensions continue to be small.

The 10th Congress of the Romanian Communist Party and the National Conference from 1972 settled the objectives and the main directions of systematization that had to "ensure harmonious organization of Romanian territory, of all territorial-administrative units, to contribute to the rational and well-balanced distribution of manpower, combining organically the norms of economic efficiency and the social ones, to ensure a plan-based organization and management for cities and villages, according to the general economic and social progress. It must also be concerned with the limitation of built perimeters to no more than necessary and with the best use of their territory, with the transformation of some villages with prospects to become economic and social centers with urban characteristics, with the promotion of the entire socio-economic and cultural life in the villages and with the gradual change of

living condition in villages to meet the city standards" (Law no.59/1974). This is the referential framework for what will happen between 1974 and 1989 in the form of hard political city planning.

3.2 The second stage

Although, politically and historically we consider it as only one stage, a democratic one after 1990, the analysts divide it peremptory into at least two stages according to the dynamic of the legal planning system.

The urban landscape after 1990 is dominated by two opposite directions (Granqvist,1999). The first one is the centrifugal disposition that spreads the town to the periphery generating residential areas of low or medium density (urban sprawl).

Land and real estate retrocession correlated to the industrial decline and the shortage of legal mechanism (planning is still an under-regulated field) generated an impetuous organic evolution. The rigid urban landscape created during the decades of the centralist planning gradually de-structures and it is replaced with a mosaic of urban forms. The city goes beyond its limits by unprecedented suburban forms. A certain urban and architectural indiscipline makes cities development unsustainable.

But the lack of public service infrastructure leads to a sense of frustration among inhabitants that live in that new Romanian suburbanism.

The other disposition is centripetal, producing a hypertrophy of downtown caused by the search of the central place and by the maximum exhibition, following a traditional logic. The same indiscipline insufficiently controlled bursts into the public space generating social and administrative tensions. Day after day the uncontrolled insertions in a frail urban complex change the urban morphology. New buildings force their way through limited and rigid spaces, suffocated by the sameness of the blocks of flats. Thus, new churches, rows of garages and minimarkets are crowded together. During these first years of democracy, the parks and the green areas are the sacrificed in the name of the new urbanism, the same as it had happened with the patrimonial estate in the days of communism.

The regulations are put into practice together with the obligation to draw the master plans /LUP (Local Urban Plans) and the requirements for integration in the European Union. New concepts as sustainable development are formulated (again) together with the law concerning regional development (1998) and with the national spatial planning laws. After 2007, Romania becomes a member of the European Union and thus, it has the obligation to apply the European policies regarding the urban planning and the sustainable development.

Among the most frequent reasons of actual urban landscape, there is some indirect phenomenons that explain its contemporary monotony.

The transformation of the bipolar relationship city-rural area.

This phenomenon is specific to contemporary society and is based on the following observable causes:

- Modern agriculture makes geography and territory design illegible: the local, traditional techniques were given up after the industrialisation process, and as a consequence the shape of the landscape, the roads between properties, the trees on the boundary line, the whole cultural mosaic becomes dull and poorer everyday. The (once) rural territory is taken over with methods and tools that are motivated by economic reasons, but have nothing to do with the culture of place and of setting in place. The villages turn into urban satellites or settlements with secondary residences and holiday houses.

- Tourism (in full progress as a result of the improvement of the living standard, of the development of conveyances, of people having more spare time and not ultimately because of its success as business) changes the geographical space into a consumer product, especially in sub-mountain and mountain areas.

- The traditional big city undergoes changes, engulfed into the agglomeration; the classical hierarchy of social functions and classes vanishes away. The urban management stays under the sign of 'promotion' / economic efficiency (public and private); it becomes a 'market of places' and not a 'place for market'. One can remark that another consequence of these changes is the growing instability of concepts like the 'urban shape' and of the known glossary of public space terms (markets, streets, boulevards, alleys, promenades, squares, parks, quays, bridges, banks etc), which proved to be a very useful vocabulary connecting the city with the history and geography of the territory. Their place is taken by a collection of more or less independent and conflicting programmes having as their primary target the economic efficiency on the real estate market. Moreover, the increasingly independent modern networks cause the levelling out of the arsenal of urban devices, by their measures and requirements.

- The dissolution, compression or expansion of the urban universe, with the correlative phenomenon of the disappearance of the rural landscape – the erasure of the characteristics that differentiated these two worlds give birth to a 'fuzzy' city, to a monotonous scenery. Generally speaking, one may say that the hegemonic outlook of our modern world leaves no place for the elaboration and the development of a set of principles that could maintain distinct the two domains: the city and the rural area.

Suburban and rural co-existence

As compared with the familiar, canonical landscapes of our Imaginary – built up/city- nature/rural area ('in the countryside') – the suburbs/the outskirts of today represent a sort of 'a third world' in which both the city and the rural territory are no longer distinguishable. The 'rururban' is a neologism used to render the result of the insidious urbanisation process of the rural space, a process that mixes up the rural area and the urban peripheral zones.

The specialists in the field sustain that there are differences between the concepts of 'rurbanisation' and suburbanisation (that refers to the continuous development of the areas surrounding the city) as well as between 'rurbanisation' and 'periurbanisation' (referring to the constant process of urbanisation at the fringes of agglomerations)

Certainly, *rurbanisation* (the same way as the other two concepts) is related to the process of the constant expansion of urban areas and of the growing dependence to the city (or a group of adjacent cities). But rurbanisation is a process that is organised around cores of rural habitat, without developing into a new continuous area.

The urbanised areas represent a new stage in the development of the peripheral zones. The population carries out activities connected with the town, often in the town, and settles in these areas by a movement of dispersion which almost always materialises in the building of individual houses. The construction of these houses takes place at the periphery of the traditional village usually by dividing the land into lots that make possible the gathering together of a limited number of families (up to a few hundreds, case in which 'new villages' may appear). The rural area remains the dominant, but the majority of the population adopts an urban life style.

3.3. Urban growth poles – Urban development poles – Urban centers

The identification of cities - urban growth poles and cities - urban development poles was based on the analysis of the relevant socio-economic fields and on the extent that they met the following requirements:

- The economic development potential (the functional specialization degree);
- The capacity of research-innovation (universities, research institutes, excellence centers, scientific centers providing an important amount of high-quality research studies that can keep up with scientific and technologic progress);
- Adequate business infrastructure (industrial parks, incubators, scientific and technologic parks that are in charge of marketing for the results of research);

- Entrepreneurial environment and culture based on the diversity of business relation and on social connections;
- Accessibility (road, railway, airport, harbor);
- The available public departments (health and cultural infrastructure).

The existence or the inexistence of some structures related to the territorial-administrative units in the strategic areas as the example of metropolitan areas, inter-community development associations etc were taken into account.

The 7 cities - urban growth poles (Iasi, Constanta, Ploiesti, Craiova, Timisoara, Cluj-Napoca and Brasov) correspond to some concentrations of dynamic industries where investments have important results on the development of the regional economy. They also have intra- and interregional effects as they are capable to influence not only the economic structure of its own region but also the extent and the intensity of interregional fluxes including territorial distribution of population and of economic activities.

The cities - urban development poles (Bacău, Suceava, Brăila, Galați, Pitești, Râmnicu-Vâlcea, Arad, Deva, Oradea, Satu-Mare, Baia-Mare, Sibiu, Târgu-Mureș) are important administrative centers, connected to the national or the European transportation network, with significant extent of economic development and with important cultural and university functions. On one side, the urban development poles make the connection between urban growth poles and the other small and medium towns comprised in the country's urban system and on the other hand they counterbalance the development of big cities in each region and create favorable conditions for a polycentric regional development, preventing or reducing an unbalanced development within the regions in the context of some regional urban systems pre-eminently mono-centric.

The urban centers are cities of municipal town with more than 10,000 inhabitants, excepting the urban development poles and the urban growth poles.

In this new system of urban distribution and a new urban planning structure, the urban landscape will change rapidly.

4. Ideologists of the past century overlapped their conception about city with some former urban frames, by modifying them, sometimes radically, by juxtaposing new districts or even by creating brand new towns. The new ideology makes no exception. The principles are different but the urban landscape is in a continuous change. During the last two decades, Romania witnessed a change from the quasi-total domination of collective residences consisting of buildings designed on an industrialized

way to luxurious uptown residential complexes, architectural cosmopolitanism and downtown dilapidation.

The dissolution of the socialist regime didn't wipe completely the urban stains, otherwise hard to manage, and the streets uniformity determined by the penury of the commercial network was reduced by the new activities and the high competition. The transition from one mechanism of urban landscape creation to another one became possible first of all due to the adoption of a brand new one. The current urban landscape is cosmopolitan in the big cities and keeps being provincial and unpretentious for the working class for the rest of them.

The relation between city planning and urban landscape is in the planners' hands. The planner can't be anymore a simple professional that makes changes in the site with the only purpose to make the urban or the natural landscapes more beautiful. One of the strong needs of present days is a professional planner, able to generate patterns (theoretical and practical), representative for some organization and planning territorial policies, for some urban development, estate, rehabilitation or modernisation policies.

Therefore he is the professionalized image of institutions or persons that stay behind political decisions. It is a fact that brings into consideration the problem of urban landscape institutionalization. But up to this wish, the urban landscape will change permanently with or without sustainable urban planning.

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**BORDER COOPERATION AND NEIGHBOURHOOD
AN IMPERATIVE FOR THE REGIONAL DEVELOPMENT.
CASE STUDY: REPUBLIC OF MOLDOVA**

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1. Introduction
2. Foreign trade activity of Republic of Moldova
3. The role of regional cooperation
4. Euro regions
5. Joint Operational Programme Romania-Ukraine-Republic of Moldova 2007-2013
6. Romania and the European Integration of Republic of Moldova
7. Conclusions

Abstract:

While a further extension is not a priority for the EU financial assistance to EU, EU accession to financial assistance is a top priority for Republic of Moldova. Romania and Ukraine can contribute significantly to this goal, given the experience of three states in the border cooperation. We propose that through this approach to identify the solutions that may underlie a wider cooperation given the principles and priorities in the EU neighborhood policy.

Keywords: border cooperation; neighborhood policy, strategic regional partnership, project finance, euro region.

JEL Classification: P48, R58

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1. Introduction

In the development cooperation process in Europe, participation in projects carried out through regional initiatives is a precondition for the European integration.²

The legal framework of the policy and regional development is provided mainly by the Law No. 438-XVI regarding regional development, setting objectives, institutional framework, specific skills and tools to achieve regional development policy in the Republic of Moldova. This law corresponds to Moldova's European integration aspirations, and foresees the creation of two European regions of level NUTS II (North, Centre), as well as smaller regions NUTS level III (South, Gagauzia³, transnistrian region and Chisinau), taking in the account the number of people in the region.

The general objectives of regional development policy relates to reducing the existing regional imbalances, stimulating balanced and sustainable development across the Republic of Moldova, revitalization of "disadvantaged areas", the prevention of new imbalances, strengthen the financial opportunities, institutional and human resources for socio-economic development of regions, stimulation of interregional and international cooperation that contributes to economic and social⁴.

In order to implement the regional development policy, six regions have been established, which cover the entire territory of Moldova. The main areas that can be targeted by regional policies are: enterprise development, employment, attraction of investment, technology transfer, SME sector development, infrastructure improvement, environmental quality, rural development, health, education, education, culture.

2. Foreign trade activity of Republic of Moldova

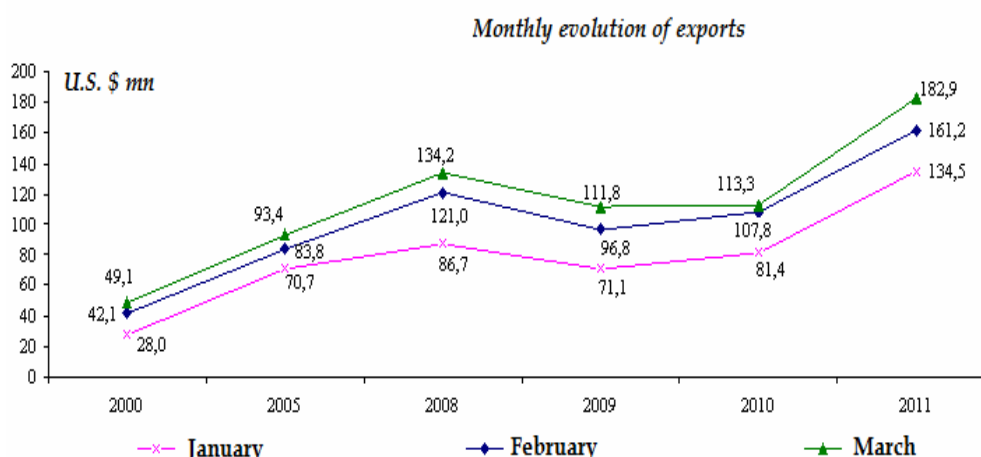
² See Europe and the Transition Process in the Republic of Moldova, Südosteuropag Gesellschaft Conference Report, Berlin, 2-3 July 2004, p.7.

³ Gagauzia is an autonomous territorial entity with special status as a form of self-determination of the Gagauz, is an integral and inalienable part of the Republic of Moldova. Under art.111 of the Constitution of the Republic of Moldova, Gagauzia settle independently, within its competence, in the interest of the entire population, issues of political, economic and cultural. Within the Gagauz autonomous territorial unit all the rights and freedoms are guaranteed under the Constitution and laws of the Republic of Moldova.

⁴ For details see Law no. 438-XVI from 28.12.2006, the Government Decision no.127 from 08.02.2008, in which was decided to create the institutional framework and regulations and were approved Regulations for the operation of those institutions.

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According to official statistics, exports of goods in the Republic of Moldova in March 2011 totaled U.S. \$ 182.9 million, by 13.5% more from the previous month and by 61.5% more - compared to March 2010.



Source: <http://www.statistica.md/newsview.php?l=ro&idc=168&id=3392>

In January-March 2011 exports totaled U.S. \$ 478.6 million, higher volume achieved in the corresponding period of 2010 with 58.2%.

	January-March 2011		Structure,%		The degree of influence of groups of countries to the increase (+), decrease (-) of exports and imports,%	
	million dollars	In % of January-March 2010	January-March		January-March	
			2010	2011	2010	2011
EXPORT - TOTAL	478,6	158,2	100,0	100,0	8,1	58,2
of which:						
European Union countries (UE-27)	243,1	158,1	50,9	50,8	-0,2	29,5
CIS countries	175,9	152,2	38,2	36,8	7,4	19,9
other countries	59,6	180,2	10,9	12,4	0,9	8,8
IMPORT - total	1099,2	144,0	100,0	100,0	1,3	44,0
of which:						
European Union countries (UE-27)	445,4	145,6	40,1	40,5	4,3	18,3
CIS countries	411,2	143,1	37,6	37,4	-4,7	16,2
other countries	242,6	142,6	22,3	22,1	1,7	9,5
TRADE BALANCE - TOTAL	-620,6	134,7	100,0	100,0	x	x

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	January-March 2011		Structure,%		The degree of influence of groups of countries to the increase (+), decrease (-) of exports and imports,%	
	million dollars	In % of January-March 2010	January-March		January-March	
			2010	2011	2010	2011
of which:						
European Union countries (UE-27)	-202,3	133,1	33,0	32,6	x	x
CIS countries	-235,3	137,0	37,2	37,9	x	x
other countries	-183,0	133,5	29,8	29,5	x	x

Source: <http://www.statistica.md/newsview.php?l=ro&idc=168&id=3392>

Exports of goods destined for EU countries (EU-27) totaled U.S. \$ 243.1 million (58.1% more than in January-March 2010), holding a 50.8% share in total exports (50,9% in January-March 2010).

CIS countries were present in Moldova's exports, accounting for 36.8% (January-March 2010 - 38.2%), which corresponds to U.S. \$ 175.9 million. Exports of goods to these countries rose by 52.2% compared with January-March 2010.

Top 26 partner countries for exports, which had 95.0% of the total, were:

	January-March 2011		Structure,%		The degree of influence of groups of countries to the increase (+), decrease (-) of exports and imports,%	
	million dollars	In % of January-March 2010	January-March		January-March	
			2010	2011	2010	2011
EXPORT - TOTAL	478,6	158,2	100,0	100,0	8,1	58,2
of which:						
Russian Federation	116,7	155,4	24,8	24,4	7,9	13,7
Romania	75,0	152,5	16,2	15,7	-2,9	8,5
Italy	45,8	136,1	11,1	9,6	1,5	4,0
Ukraine	32,5	170,6	6,3	6,8	1,7	4,4
Germany	28,8	180,3	5,3	6,0	-0,1	4,2
United Kingdom of	23,4	140,4	5,5	4,9	1,7	2,2

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	January-March 2011		Structure,%		The degree of influence of groups of countries to the increase (+), decrease (-) of exports and imports,%	
	million dollars	In % of January-March 2010	January-March		January-March	
			2010	2011	2010	2011

Great Britain and Northern Ireland						
Turkey	22,0	171,5	4,2	4,6	2,3	3,0
Belarus	19,9	125,8	5,2	4,2	-1,7	1,3

Source: <http://www.statistica.md/newsview.php?l=ro&idc=168&id=3392>

The analysis of exports by country reveals that the increase in deliveries to the Russian Federation (55.4%), Romania (52.5%), Ukraine (70.6%), Germany (80.3%), Italy (36.1%), Poland (2.4 times), Turkey (71.5%), United Kingdom of Great Britain and Northern Ireland (40.4%), United States of America (2, 8 times), Greece (61.9%), Belarus (25.8%), Bulgaria (2.6 times), Lithuania (3.0 times), Hungary (3.4 times).

Structure of merchandise exports, according to Standard International Trade Classification, indicating a continuous growth of traditional activities for the Moldovan economy.

Exports of miscellaneous manufactured articles were on the first place, with a share of 22.6% of total exports. In this section a significant share in exports held clothing and accessories goods (59.2% of total section and 13.4% of total exports), furniture and its parts (14.3% and 3.2% of the total section of total exports) and footwear (12.3% of total section and 2.8% of total exports).

Exports of crude materials inedible, except fuels were ranked third with a 16.4% share of total exports. In this section of goods seed and fruit oil represented 69.8% of total section and 11.4% of total exports, and metalliferous ores and metal waste 22.8% and 3.8% respectively.

Exports of machinery and transport equipment were ranked fourth, representing 14.0% of total exports. In this section held a significant share in export the goods of electrical machinery (48.0% of total section and 6.7% of total exports), machinery and general industrial applications (16.5% of total section and 2.3% of total exports), machinery specialized for particular industries (13.3% of total section and 1.9% of total exports), road (8.6% and 1.2% of the total section of total exports).

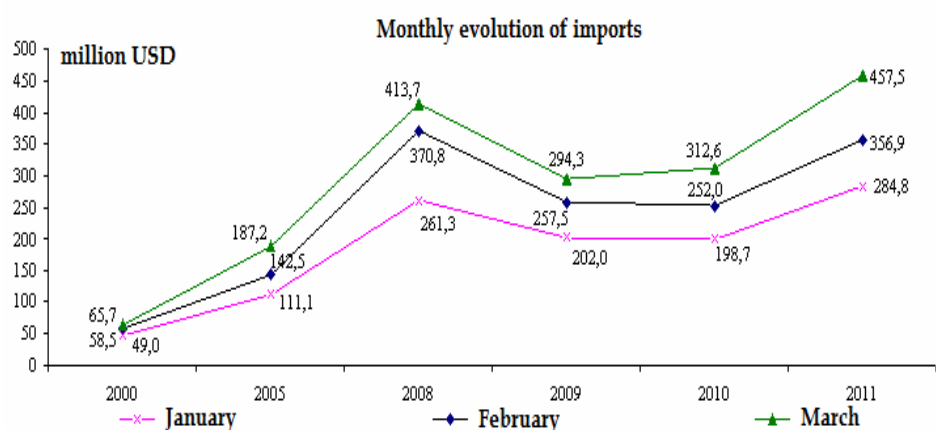
Imports of goods in March 2011 totaled U.S. \$ 457.5 million, up 28.2% from the previous month and 46.4% - compared with March 2010.

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In January-March 2011 imports totaled U.S. \$ 1099.2 million, higher than the volume achieved during the previous year with 44.0%.

Imports from European Union countries (EU-27) amounted to U.S. \$ 445.4 million (with 45.6% more than in January-March 2010), holding a 40.5% share in total imports (40.1% in January-March 2010).

Imports of goods from CIS countries had a value of U.S. \$ 411.2 million (with 43.1% higher than in January-March 2010), which equals a 37.4% share in total imports (37, 6% in January-March 2010).



Source: <http://www.statistica.md/newsview.php?l=ro&idc=168&id=3392>

Top 36 partner countries for imports, which had 97.0% of the total, were:

	January-March 2011		Structure,%		The degree of influence of groups of countries to the increase (+), decrease (-) of exports and imports,%	
	million dollars	In % of January-March 2010	January-March		million dollars	
			2010	2011	2010	2011
IMPORT - total	1099,2	144,0	100,0	100,0	1,3	44,0
of which:						
Russian Federation	235,1	133,3	23,1	21,4	17,1	7,7
Ukraine	128,6	139,2	12,1	11,7	0,8	4,7
Romania	107,2	157,9	8,9	9,8	1,8	5,1
Germany	78,2	148,2	6,9	7,1	0,4	3,3
China	77,7	121,1	8,4	7,1	1,8	1,8
Turcey	71,1	179,5	5,2	6,5	0,2	4,1
Italy	64,6	135,8	6,2	5,9	1,0	2,2

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	January-March 2011		Structure,%		The degree of influence of groups of countries to the increase (+), decrease (-) of exports and imports,%	
	million dollars	In % of January-March 2010	January-March		million dollars	
			2010	2011	2010	2011
Belarus	36,8	de 2,3 ori	2,1	3,3	-0,8	2,8
Greece	25,3	159,6	2,1	2,3	1,3	1,2
Polond	22,9	133,1	2,3	2,1	0,2	0,7
France	21,0	150,7	1,8	1,9	-0,1	0,9
Hungary	20,5	179,1	1,5	1,9	0,0	1,2

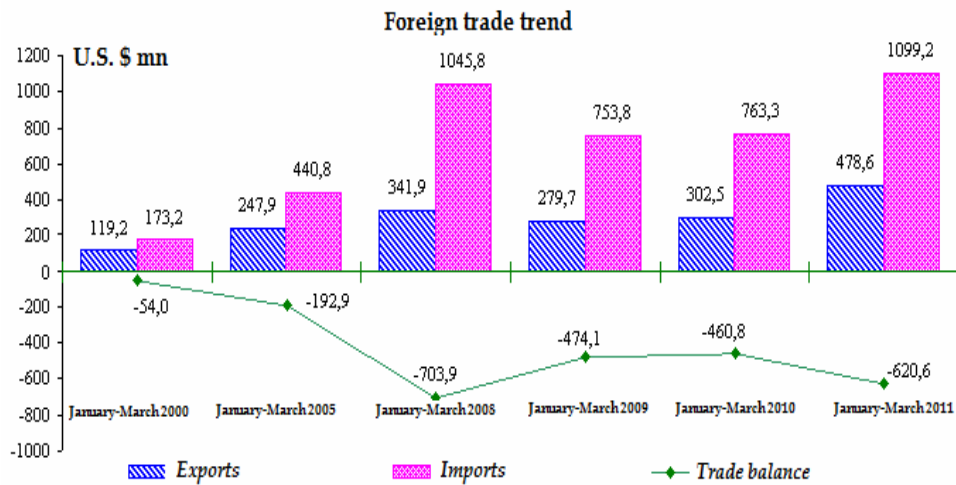
Source: <http://www.statistica.md/newsview.php?l=ro&idc=168&id=339>

The analysis of imports by country reveals that the increase in deliveries of Russian Federation (33.3%), Romania (57.9%), Ukraine (39.2%), Turkey (79.5%), Germany (48.2%), Belarus (2.3 times), Italy (35.8%), China (21.1%), Greece (59.6%), Hungary (79.1%), France (50.7%), United States of America (+ 49.7%), Poland (33.1%), India (76.0%), Switzerland (2.1 times) Kazakhstan (3.7 times), Bulgaria (48.0%).

Structure of imports of goods, according to Standard International Trade Classification, indicating continued leadership in products necessary for the functioning economy as well as those intended for human consumption.

Imports of machinery and transport equipment had a 19.3% share in total imports. In this section of goods a major share in imports have held electrical machinery (26.7% of total section and 5.1% of total imports), vehicles (25.1% and 4.8% of the total section of total imports), machinery specialized for particular industries (16.0 and 3.1% of the total section of total imports), machinery and general industrial applications (13.4% of total section and 2.6% of total imports), machinery and equipment and telecommunications and sound recording and reproduction (12.5% of total section and 2.4% of total imports).

Imports of manufactured goods classified mainly by raw material held a 16.9% share in total imports, mainly yarn, fabrics and textiles (28.9% of total section and 4.9% of total imports) iron and steel (15.1% of total section and 2.6% of total imports), paper, paperboard and articles of paper pulp, paper or paperboard (12.7% of the total section and 2.1% of total imports), fabricated metal articles (11.6% of total section and 1.9% of total imports), non-metallic mineral articles (11.5% of total section and 1.9% of total imports).



Source: <http://www.statistica.md/newsview.php?l=ro&idc=168&id=3392>

3. The role of regional cooperation

Republic of Moldova is a member of United Nations, Council of Europe, Organization for Security and Cooperation in Europe, World Trade Organization, International Monetary Fund, World Bank, European Bank for Reconstruction and Development.

However, the integration of the Republic of Moldova in the context of the multilateral international cooperation has been completed in the last 20 years by drawing more and more obvious regional dimension through participation in:

Central European Initiative, the Stability Pact for South Eastern Europe Cooperation, The Process in Southeastern Europe Cooperation, Initiative in South Eastern Europe, the Danube Cooperation Process, Black Sea Economic Cooperation Organization and GUAM / GUUAM.

In the context of the law developed in Republic of Moldova, the main objectives of the regional development are:

- reduction of the existing regional imbalances by stimulating a balanced development, through the accelerated recovery of the delays in the development of disadvantaged areas as a result of historical conditions, geographical, economic, social, political, and preventing the emergence of new imbalances;
- correlation of government policies and sectorial activities in the regions by encouraging initiatives and by building local and the regional resources in order to develop sustainable socio-economic and cultural development of these;
- stimulation of interregional, domestic, international and border cooperation, including the Euro-regions and development regions

participation in the structures and organizations that promote these economic and institutional development for the purpose of projects of common interest.

4. Euro regions

According to the vision of the Council of Europe and of the European Union, a key to economic prosperity and political stability in Southeast Europe is the cooperation.

Thus there been adopted many programs that have supported cross-border cooperation projects. One of the most common forms of cross-border cooperation in Central and Eastern Europe are Euro regions. Republic of Moldova is party to three cross-border initiatives such as Euro regions:

- Lower Danube (1998) - composed of Cahul (Moldova), Braila, Galati and Tulcea (Romania) and Odessa (Ukraine);

- The Upper Prut (2000): composed of districts Balti and Edinet (Moldova), Botosani and Suceava (Romania) and Chernivtsi region (Ukraine);

- Siret-Prut-Nistru (2002): composed of districts Ungheni, Chisinau Lapusna and Orhei Soroaca (Moldova), Iasi, Piatra Neamt and Vaslui (Romania).

The three countries involved in the Euro region have concluded numerous economic and cooperation agreements, most of them benefiting from the existence of trilateral Romania - Republic of Moldova - Ukraine, which was established by Romania's involvement in the plan of the regional and subregional cooperation more than 15 years ago⁵.

5. Joint Operational Programme Romania-Ukraine-Republic of Moldova 2007-2013.

The Joint Operational Programme Romania-Ukraine-Republic of Moldova 2007-2013 is financed by the European Union through the European Neighborhood and Partnership Instrument. The program aims, in the context of secure borders, to stimulate the development potential of the border area, by encouraging contacts between partners on both sides of the border, in order to improve the social and economic environment.

⁵ Romanian European Institute, The impact assessment apud Leland Conley Barrows III/2005 (eds.), South East Europe - The Ambiguous Definitions of of the Space / L'Europe du Sud-Est - Les definitions ambiguës d'un espace, UNESCO-CEPES, Publisher Encyclopedic, Bucharest, 2002, p. 177-198.

The program area consists of parts of three neighboring countries, namely Botosani, Galati, Iasi, Suceava, Tulcea and Vaslui of Romania, Odessa and Chernovtsy regions of Ukraine and the whole territory of Republic of Moldova.

Joint Operational Programme Romania - Ukraine - Moldova for the six years mentioned has a total budget of 137.4 million euros, of which grant funds provided by the European Union through the European Neighbourhood and Partnership Instrument is approximately 126 million euros, while the Partner States should participate in financing projects with approximately EUR 11.4 million euros. The program aims to support projects that promote economic and social development, environmental protection, emergency preparedness, and infrastructure investment projects in transport, energy, drinking water supply plan, and local community's actions to promote educational, cultural and sport exchanges, the development of civil society. The projects have a transboundary nature and are developed in partnership between organizations in the one side of the border. To be eligible, in the projects must be involved at least a Romanian partner and a partner from Ukraine or Moldova. Beneficiaries of this program may be the regional and local public authorities, non-governmental organizations, associations, universities, research institutes, educational organizations / training.

6. Romania and the European Integration of Republic of Moldova

Beyond the specific elements, the three regions mentioned above establish cooperation in the fields of environment, agriculture and land management, sustainable development and employment, transport and telecommunications, tourism, civil society, media, development and implementation of new technologies; education, research and culture; contacts "people to people", border security.

Cross border cooperation programs were both numerous, but their impact remains small. The most important factors limiting the effectiveness of Euroregions are the lack of an integrated approach of Euroregions, as an instrument of foreign policy of the three countries and their sustainable development strategies; lack of action plans with clearly defined objectives and priorities; relatively low economic potential of the regions involved, lack of experience and relatively weak competence of the local authorities and regional administrative structures, the excessive focus placed on programs rather than the information and consultation in programs for the development; and limited financial resource.

However, the Euro regions have promoted good neighborly relations and encouraged the accumulation of experience in cross-border

cooperation, experience that can be an important support in the implementation of the Neighbourhood Policy. Also, as a member of the EU the regional policy instruments can be used to complement the New Neighbourhood and Partnership Instrument, to enhance the activities of the three regions.

In order to support the European aspirations of Republic of Moldova, Romania, can occur distinctly through at least two strands: bilaterally by providing direct aid and at European level, through their approaches undertake as a member of the EU.

World Bank's rating on International Trade Indicators

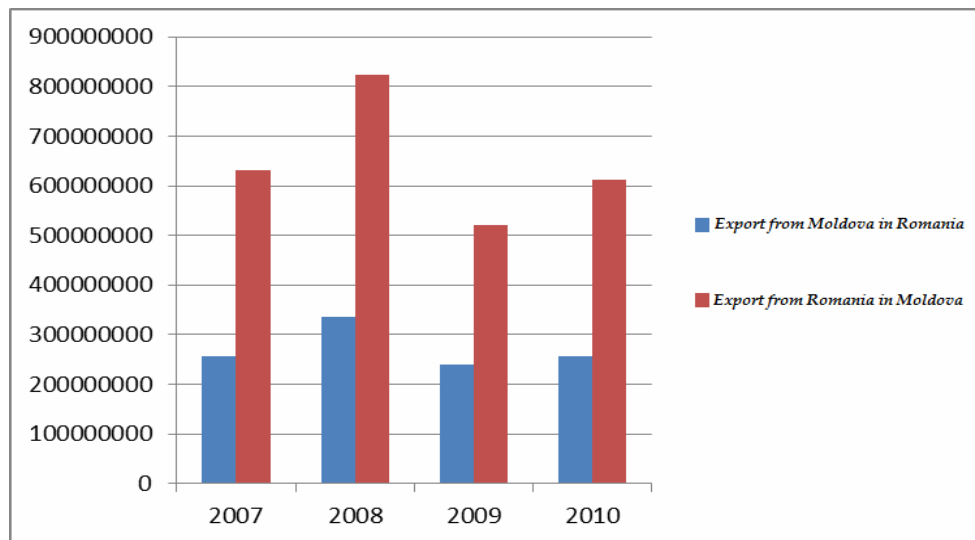
	Total countries	Romania	Moldova
Trade policies	125	25	11
External conjuncture	125	82	27
Institutional situation	183	55	94
Trade facilitation	155	59	104
Trade result	157	17	20

Source: World Trade Indicators 2009/10

http://info.worldbank.org/etools/wti/docs/Moldova_taaq.pdf

http://info.worldbank.org/etools/wti/docs/Romania_taaq.pdf

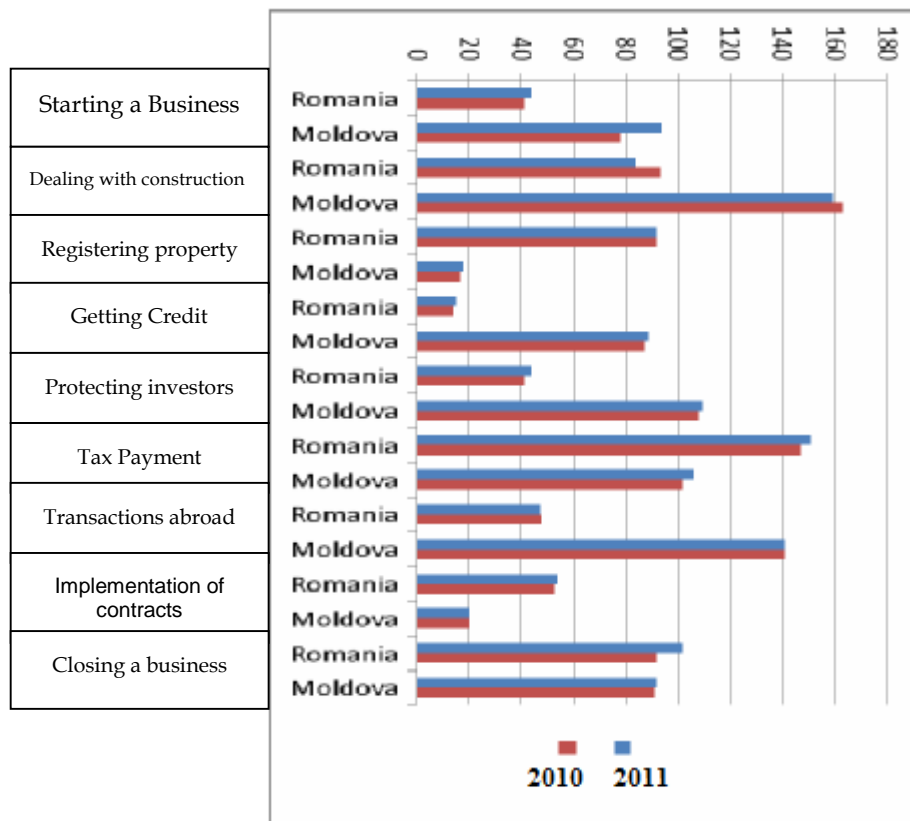
Bilateral trade between Romania and Moldova (U.S. \$ million) under the HS-1992



Sursa: Comtrade

<http://comtrade.un.org/db/dqBasicQueryResults.aspx?px=S4&r=498&y=2006,%202007,%202008,%202009,%202010&p=642&rg=2&so=9999>
<http://comtrade.un.org/db/ce/ceSnapshot.aspx?px=H0&r=642&y=2005,%202006,%202007,%202008,%202009,%202010&p=498&rg=2&so=9999>

Comparative evolution of the indicator in 2009 and 2010 Doing Business in Moldova and Romania



Source: <http://www.doingbusiness.org/data/exploreeconomies/romania>
<http://www.doingbusiness.org/data/exploreeconomies/moldova>

Seen from another perspective, we believe that in order to global improve the economic situation and the social environment of the two countries, having as model the Lower Danube Euro region⁶, also should be finalized the status of the Autonomous Region of Gagauzia and Transnistria's as well.

⁶ http://www.adevarul.ro/locale/galati/MaineIncepe-targul-Euroregiunii-Dunarea-Jos_0_452954856.html.

Gagauzia constitutional stated, is a region where the regional authorities are determined to correct imbalances in the regional economy. It is a region where a lot of investments are made, and has a strong industrial and agricultural potential. Agro-climatic conditions are extremely favorable for the cultivation of a variety of crops, especially for thermophilic species of cereals, legumes, industrial crops, vines, vegetables and fruits⁷. Republic of Moldova would have a different economic size if Transnistria would be part of a sovereign and independent State. Short and medium term, Romania should redefine its priorities in the neighborhood, given that Transnistria will eventually be part of Moldova and the European community.

7. Conclusions

In order to convert the Euro regions into effective structure for achieving the objectives of the Neighbourhood Policy, both Romania and Moldova should urgently adopt specific measures to develop cross-border cooperation, which consist of decentralization, regional planning and administrative organization in favor of increasing the role of the regional and local authorities structures, policies budget to support initiatives at regional and local communities, flexible border policy, etc..

We also believe that for the achievement of these goals is necessary to adopt a general legislative framework conducive to promote cross-border cooperation, in accordance with the principles of the Madrid Convention and of adjacent Protocols.

Finally, to strengthen the capacity of local communities and to develop cross-border cooperation is necessary to develop the human resource, the information structures, the institutional consultation and the dialogue that would support the various initiatives of the Euro regions.

⁷ For details see the Guide „Găgăuzia: oportunități pentru investiții” developed by the Institute for Social Development "The Future" and the authorities of Gagauzia: <http://www.gagauzia.md/newsview.php?l=ro&idc=403&id=534>

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Guide Gagauzia: „Găgăuzia: oportunități pentru investiții” developed by the Institute for Social Development „The Future and the authorities of Gagauzia:

<http://www.gagauzia.md/newsview.php?l=ro&idc=403&id=534>

Law No. 438-XVI from 28.12.2006; Law no. 438-XVI from 28.12.2006, the Government Decision no.127 from 08.02.2008, in which was decided to create the institutional framework and regulations and were approved Regulations for the operation of those institutions.

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