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BONNE GOUVERNANCE ET DEVELOPPEMENT DURABLE: MODERATEURS DU SERVICE PUBLIC DE GESTION DES DECHETS SOLIDES URBAINS. CAS DE LA VILLE DE TIZI-OUZOU

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Résumé

Notion étymologiquement ancienne, le service public s'est construit sur la base de choix politiques et idéologiques. Il demeure encore une notion paradigmatique pleine d'ambigüité, mais qui désigne indifféremment une gamme non cernée de services aux attentes des besoins divers de la population.

À la fin du XXème siècle, le monde subissait un tournant qui n'est pas des moindres, suite à l'apparition de méfaits imposés aux écosystèmes et dont la responsabilité nous incombe. Pour y faire face, une panoplie de mesures et de dispositifs a été mise en place par la communauté internationale, d'où des traités ratifiés par les états-nations. La conférence de Rio De Janeiro de 1992 a imposé le concept de développement durable et de gouvernance locale, comme étant l'expression d'un souci de conciliation entre des préoccupations écologiques et socio-économiques, ce qui a permis de donner le jour à un plan d'action, l'agenda 21 qui met l'accent sur la mission et le rôle des collectivités locales pour sa concrétisation.

L'Algérie, et à l'instar d'autres pays, n'échappe pas au courant des réformes politiques et économiques engagées depuis les années 1990 (multipartisme et instauration d'une économie de marché). Elle a manifesté une grande volonté pour la mise en œuvre de réformes relatives à l'administration, notamment par la décentralisation, ainsi que d'une refonte nourrie par l'obligation de moderniser le mode de gestion des services publics, longtemps dévolus aux collectivités locales. La notion de service public n'a pas été négligée par le législateur algérien, elle constitue un des piliers de la souveraineté de l'État et une action de lutte contre tout type de discrimination et de marginalisation. Parmi les services publics qui présentent de grands problèmes, on peut citer la salubrité publique et la gestion des déchets solides qui sont pour l'État une préoccupation majeure.

Notre étude se fixe pour objectif l'analyse du fonctionnement du service public de gestion des déchets solides urbains, qui s'attache à relever des défis afin de répondre à des exigences multiples, comme sa modernisation et sa familiarisation avec l'avènement des concepts de bonne gouvernance et du développement durable. Nous tenterons d'établir un diagnostic de la situation de la gestion des déchets solides au niveau de la ville de Tizi-Ouzou tout en nous enquérant du rôle des acteurs qui la concernent et en décelant les anomalies entravant le bon

déroulement de la mission de service public. Nous aurons, par la suite, à avancer certaines alternatives à sa modernisation.

Une difficulté de définition

Cerner la notion de service public est une mission délicate, elle demeure depuis les temps les plus lointains (activité régalienne, monétaire) une idée construite d'une manière globale dont l'explication évoque systématiquement des concepts tels que l'intérêt général ou public, les prestations fondamentales, le monopole et la souveraineté étatique.

À l'Antiquité*, L'utilitas communis désigne l'intérêt du peuple, la "chose publique*" qui, au-delà des intérêts immédiats de l'État, cède la place par la suite à la notion d'*utilitas publica,* principe général qui justifie l'intervention de la Cité[1].

Léon Duguit (1911) explique que le service public est « *toute activité dont l'accomplissement doit être assuré, réglé et contrôlé par les gouvernants, parce que l'accomplissement de cette activité est indispensable à la réalisation et au développement de l'interdépendance sociale, et qu'elle est de telle nature qu'elle ne peut être réalisée complètement que par l'intervention de la force gouvernante* »[2], pour dire que cette notion de service public, quelles que soient ses formes et ses dénominations, constitue le fondement de l'action publique et le ciment de la cohésion sociale. Par contre, Jacques Chevallier (1997) interprète la notion de service public sous un angle psychologique en affirmant qu'elle est « *Érigée à la hauteur d'un véritable mythe, c'est-à-dire une de ces images fondatrices, polarisant les croyances et condensant les affects, sur lesquels prend appui l'identité collective* »[3], pour l'instauration d'une certaine éthique garantissant la force de l'État et l'exercice d'une égalité au sein de la société concernée, ce qui implique que la notion de service public est une expression à plusieurs connotations, car elle évoque des principes sous-jacents fondamentaux de la société en équilibre (transparence, égalité, continuité, adaptabilité)[4].

I. Le service public en Algérie: idéologie, parcours et contraintes

Depuis l'indépendance, les pouvoirs publics, à travers leurs différentes échelles administratives (centrale, régionale et locale), monopolisent la majorité des activités économiques et sociales, un fait qui

[1] Giraudon, A. « La notion de service public » Mémoire d'étude / janvier 2010, p 12
[2] Duguit L, « ***Traité de droit constitutionnel* »,** (*tome 1, Théorie générale de l'État*, Paris, 1911, p99
[3] Chevallier, J. Le service public, Presses universitaires de France, coll. « Que sais-je ? »,4e éd. 1997 P 3
[4] Mahiou, A. « cours d'institution administratives », collection des sciences juridique et administrative, OPU ,1976. P 321-325

se justifie par l'intention de faire pérenniser la souveraineté de l'État providence.

Pour bien concrétiser cette idéologie, les autorités publiques ont opté, au lendemain de l'Indépendance, pour une économie centralisée et la généralisation des services publics jugés fondamentaux (santé, éducation, hygiène…etc.). Depuis, la notion de service public a souvent été omniprésente dans les discours politiques, mais elle fait couramment l'objet de critiques de la part du citoyen d'une part, et d'autre part, elle n'a eu de cesse de subir des recentrages, parallèlement aux réformes politiques et économiques qu'a connues le pays, ainsi qu'aux remodelages imposés par les nouvelles donnes qui caractérisent la société contemporaine. Au début des années 1990, l'Algérie a subi une série de crises sans précédent, celles-ci lui ont impérativement exigé des réformes politiques (multipartisme), économiques (économie de marché) et sociales (participation citoyenne), d'où l'apparition timide de quelques signes de bonne gouvernance.

À la même période, l'avènement du concept de développement durable a profondément marqué la manière de réaliser les activités économiques et sociales du pays. La collectivité locale occupe une place incontournable dans les missions dévolues par loi au service public, du fait de sa position d'administration locale plus proche du citoyen et de ses attentes.

II. Lecture juridique de la notion de service public

Dans notre propos, nous nous limiterons seulement aux textes constitutionnels, étant donné leur qualité de loi suprême du pays, et au code communal régissant les affaires proches du citoyen. Pour cela, nous tenterons d'appréhender la notion de service public à travers la législation algérienne.

A. La constitution

La constitution de 1976, élaborée à l'époque de l'économie socialisante et du parti unique, a été à l'origine de la consécration du monopole de l'État sur tout ce qui a trait aux services publics et en faisant de lui le seul à être à l'écoute des citoyens et le garant quant à la satisfaction de leurs besoins. Les réformes constitutionnelles de 1989 et de 1996 ont mis fin au cheminement du socialisme doctrinal. Les choix libéraux ont aboli les fonctions de l'État-providence, qui n'est plus tenu de répondre automatiquement à tous les besoins de la population, à l'exception de ceux qui sont de première nécessité et en maintenant sa souveraineté sur la

sécurité des biens et des personnes, la santé publique, l'enseignement, etc.…[1]

B. Le Code communal

1. Une première réforme, l'ordonnance 67-24 portant sur le Code communal

Aux premiers essais de construction d'une administration locale (Code communal de 1967) de l'Algérie indépendante, la notion de service public est définie comme une des assignations de l'Assemblée Populaire Communale (APC). C'est pourquoi l'ordonnance 67-24 autorise aux élus la création de services publics. C'est d'ailleurs ce qui ressort de son article n° 237qui stipule que la commune est tenue d'assurer le bon ordre, la sûreté, la sécurité et la salubrité publique où figure la gestion des déchets.

L'ordonnance en question répartit les services publics en deux catégories, les services publics administratifs* et les services publics économiques** (article n°200), qui doivent être institués par délibération de l'APC, approuvée par l'autorité supérieure. La différence entre ces deux types de services réside dans l'affectation budgétaire. Les services publics administratifs ne sont pas tenus d'équilibrer leurs dépenses par leurs recettes, par contre ceux d'ordre économique le doivent, ce qui s'explique forcément par l'intention de l'État à rationaliser les dépenses publiques. La gestion des services publics se fait en régie communale, et, dans certain cas, en concession. Or, la centralisation des pouvoirs (articles n°42, n°107, n°108, n°219 et n°220) et le système socialiste excluent la possibilité de la concession.

2. Une deuxième réforme, la loi n° 90-08 relative à la commune

Coincées par les avatars de la crise politico-économique des années 1990, les autorités algériennes, avec le concours des institutions financières internationales *(FMI et Banque Mondiale)*, ont introduit de nouveaux éléments dans la gestion des affaires publiques *(libéralisme économique, multipartisme, mouvement associatif...)*, ce qui a entraîné inévitablement une réforme des collectivités locales. Ainsi la promulgation de loi 90-08 régissant le fonctionnement des activités de la commune a-t-elle renforcé

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[1] Constitution de 1996 : articles 24.53.54
Service public se résumant aux activités administratives
** service public englobant les activités industrielles, commerciales, sanitaires, sociales et culturelles

le rôle de cette dernière qui consiste à se préoccuper de l'intérêt de ses administrés, en général, et de tout ce qui est relatif à l'hygiène, à la salubrité et à l'environnement, en particulier (article n°107).
Cette loi a apporté une amélioration timide au fonctionnement des activités communales qui, malheureusement, continuent à être en pleine dépendance de l'administration supérieure (wilaya). En revanche, l'article 19 insiste sur la participation du citoyen à la majorité des délibérations, alors que dans la réalité son application a toujours été boudée. Concernant le fonctionnement du service public, le mode en concession (article 138) a été conçu dans le but de promouvoir l'investissement privé et d'assister les collectivités locales dans leurs missions.

1. Une troisième réforme, la loi n° 11-10 relative à la commune

Cette réforme intervient dans des circonstances politiques particulières, qui ont eu impact sur les prerogatives de l'Assemblée Populaire Communale en les limitant. L'APC est restée dépendante de l'administration de la wilaya (article 55, 56, 57, 58, 100, 101,102).
L'un des apports de cette réforme consiste au renforcement de la participation des citoyens aux affaires publiques concernant leur commune (articles n° 11, 12, 13, 14). Ainsi, l'élu est sommé d'informer ses mandants pour toutes les activités à projeter, ce qui implique que la notion de bonne gouvernance peut être concrétisée si une citoyenneté effective existe.En matière de service public, la nouvelle réforme a élargi la liste et la nature des services publics dont la prise en charge incombe à la commune (article 149).
Cette réorganisation intervient au moment où des réformes à propos de la protection de l'environnement, en général, et de la gestion des déchets urbains, dans le cadre du développement durable, ont été opérées. De même, soulignons que la gestion des déchets solides urbains est depuis très longtemps un des services publics assignés à la commune. La nouvelle législation de gestion des déchets, dans le cadre du développement durable (loi 01-19), permet pour la première fois aux collectivités locales d'initier un programme de gestion intégrée et durable des déchets municipaux (PROGDEM).

III. La bonne gouvernance : un pilier du développement durable

Si la définition communément admise reste encore floue, la réussite d'une bonne gouvernance est d'assurer un développement durable à la communauté. Mais cela nécessite des efforts qui dépassent la responsabilité des autorités à elles seules, parce que requérant un partage

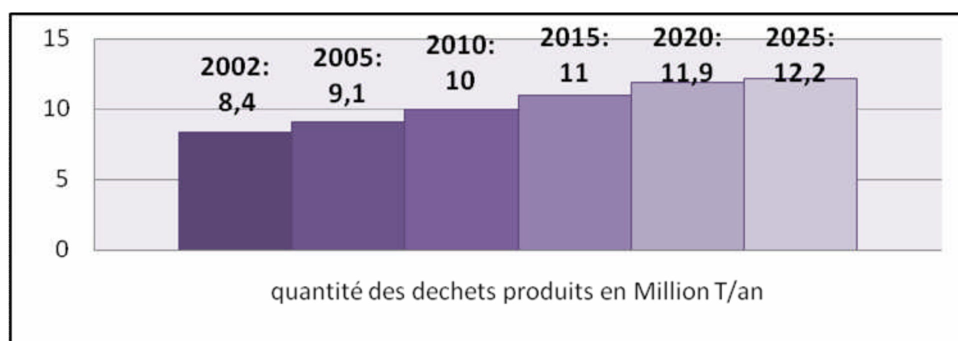
de taches et de responsabilités, ainsi qu'une consolidation de l'action collective. Autrement dit, pour reprendre, à juste titre, la definition de Kooiman J. (2002), la pratique d'une gouvernance populiste apparaît comme *«un complément aux concepts de démocratie délibérative et dialogique en incluant, dans la logique gouvernementale, des dispositifs innovateurs qui permettent une nouvelle dynamique interactive de gouvernance partagée et démocratique …».*

Pour ce qui est du développement durable, le philosophe Hans Jonas (1990) l'interprète de la sorte: *«agis de façon que les effets de ton action soient compatibles avec la permanence d'une vie authentiquement humaine sur terre ». ou encore : « agis de façon que les effets de ton action ne soient pas destructeurs pour la possibilité future d'une telle vie »*, et afin d'y arriver, les Nations Unies adoptent une nouvelle politique en instaurant un dispositif, l'agenda 21 pour affronter le 21ème siècle en mettant l'accent sur la manière dont sont gérées les affaires publiques au niveau local, il met en avant la notion de bonne gouvernance qui se révèle être la condition sine qua non à la mise en œuvre du développement durable.

En effet, le dixième principe de l'agenda 21 explique que *«la meilleure façon de traiter les questions d'environnement est d'assurer la participation de tous les citoyens concernés….et avoir la possibilité de participer aux processus de prise de décision. Les États doivent faciliter et encourager la sensibilisation et la participation du public en mettant les informations à la disposition de celui-ci ».*

IV. La problématique des déchets en Algérie
A. Quelques chiffres clés

Le taux actuel de production des déchets ménagers varie de 0,5 à 1 Kg/Hab./J, soit une moyenne de 0,85 Kg/Hab./J. Avec un taux de croissance estimé à 2%, la production atteindra au-delà de 2015 une moyenne de 1 Kg/Hab/J. Cette croissance s'explique par les effets de la croissance démographique et économique et du mode de vie. Elle nécessite et en urgence un traitement prudent et avec beaucoup d'attentions.



Source: Mediterranean Environmental Technical Assistance Programme, rapport du pays, *Version finale – Algérie, 2004*

B. La politique de la gestion des déchets

Depuis la fin des années quatre-vingt-dix, et malgré la promulgation de la « loi mère »1 sur la protection de l'environnement, la politique de gestion des déchets n'a pas produit les effets escomptés, ce qui a contribué à la prolifération des décharges incontrôlées et la détérioration des écosystèmes. Après avoir ratifié plusieurs conventions internationales à propos de la protection de l'environnement et du développement durable, l'Algérie a manifesté une grande volonté à la valorisation et à la protection des écosystèmes. Cela s'est traduit par une série de lois et de plans, dans le but de rattraper le retard accusé et de s'inscrire dans une nouvelle démarche de durabilité qui caractérise le monde entier. Dans ce même contexte et en matière de déchets, l'Algérie a adopté une stratégie intégrée et durable de gestion des déchets municipaux (PROGDEM).

C. Les instruments de la gestion des déchets

1) Le PROGDEM[2] : notion, fondements et outils

Le Programme National pour la Gestion Intégrée des Déchets Municipaux, qui est le prolongement de la loi 01-19 du 12 décembre 2001 relative à la gestion des déchets, vise à éradiquer les pratiques de décharges sauvages, à organiser la collecte, le transport et à éliminer les déchets solides : « *tout résidu d'un processus de production, de transformation ou d'utilisation, et plus généralement toute substance, ou produit et tout bien meuble dont le propriétaire ou le détenteur se défait, projette de se défaire, ou dont il a l'obligation de se défaire ou de l'éliminer*» dans des conditions garantissant la protection de l'environnement et la préservation de l'hygiène publique par notamment la réalisation, l'aménagement et l'équipement des centres d'enfouissement technique (CET) dans l'ensemble des communes.

a. Les principes PROGDEM[3]

[1] Loi n° 83-03 du 5 février 1983relative a l'environnement

[2] Rapport du ministère de l'aménagement du territoire de l'environnement et du tourisme, site du ministère

[3] Rapport du ministère de l'aménagement du territoire de l'environnement et du tourisme, **site du ministère**

La nouvelle stratégie de gestion des déchets se construit sur les principes du développement durable et de la bonne gouvernance. Ces principes se présentent comme suit:

- ✓ **le principe de précaution et de prévention :**pour réduire la production des déchets à la source,
- ✓ **le principe du « pollueur-payeur »** : qui consacre la responsabilité des générateurs des déchets dans la prise en charge, à leur frais, de la collecte, le transport et l'élimination de leurs déchets,
- ✓ **le principe du producteur des déchets-récupérateur :**qui fait obligation aux générateurs de déchets d'assurer, à leur frais, la récupération, le recyclage, la valorisation et l'élimination de leurs déchets,
- ✓ **le principe du droit à l'information du citoyen** : sur les risques présentés par les déchets et leurs impacts sur la santé et l'environnement et sur les mesures destinées à prévenir lesdits déchets.

L'ensemble de ces principes évoque d'une manière directe ou indirecte l'intégration du citoyen dans cette nouvelle politique de gestion des déchets, qui est un des services publics sous la tutelle de la commune.

b. Les actionsdu PROGDEM

Les principales actions concernées par ce programme sont axées sur les points suivants :

- ✓ L'élaboration et la mise en œuvre des plans communaux de gestion des déchets
- ✓ L'aménagement de sites de mise en décharge contrôlée
- ✓ La promotion des activités de recyclage et de valorisation des déchets
- ✓ L'introduction de nouvelles formes de gestion
- ✓ L'adaptation graduelle de la taxe d'enlèvement des déchets ménagers et l'amélioration de son taux de recouvrement
- ✓ La sensibilisation, la formation et l'éducation.

2. Les outils de mise en œuvre

Sur la base des dispositions de la loi 01-19 du 12 décembre 2001 relative à la gestion, au contrôle et à l'élimination des déchets, l'État accorde, dans sa stratégie décennale (2001-2010) et le plan d'actions environnementales et du développement durable (PNAE-DD) qui en découle, une grande priorité à la gestion saine et rationnelle des déchets municipaux. Pour atteindre des résultats conséquents, une approche pluridimensionnelle doit s'instaurer.

a. Outils législatifs et institutionnels

Sur le plan législatif et institutionnel, les textes promulgués et les institutions mises en place visent à redynamiser le service public de gestion des déchets. Il s'agit, entre autre, d'introduire de nouvelles formes et mécanismes de gestion, de professionnaliser les services, d'assurer l'application de la réglementation et d'améliorer les compétences à différents niveaux. Aux services de la police de l'urbanisme et de la protection de l'environnement (PUPE) est dévolu le rôle de contrôle et de constat des infractions. Au niveau central, le MATE, à travers ses directions, se charge de l'élaboration et du suivi des textes d'application, de l'élaboration de guides et de prescriptions et de l'assistance, par le biais de l'Agence Nationale des Déchets (AND), aux collectivités locales et autres utilisateurs.

b. Outils financiers

Sur le plan financier et recouvrement des coûts, c'est le recours aux instruments économiques et à la fiscalité environnementale qui est désormais de mise pour arriver graduellement à une couverture de la dépense (application du principe pollueur-payeur). Il faut alléger les dépenses publiques et rapprocher la dépense de celui qui en est la cause. C'est ainsi que dans le cadre de la loi de finances 2002, la taxe d'enlèvement des ordures ménagères, qui existe depuis 1993, a été revalorisée de presque 100%. Par ailleurs, le calcul réel des coûts et leur rationalisation sont nécessaires pour optimiser le fonctionnement des services et faciliter les procédures de privatisation. À court et moyen terme, les Collectivités Locales doivent renforcer leurs capacités de gestion pour assurer la pérennité des investissements.

c. Outils de partenariat

La participation du secteur privé à la gestion des déchets est pratiquement absente en Algérie. Ainsi, les autorités ont-elles décidé de promouvoir les dispositifs incitatifs pour stimuler la participation de ce secteur dans les activités liées à la gestion des déchets, grâce à la création de micro-entreprises, à des formes de contrats ou à des concessions concernant les activités de collecte, d'exploitation de décharges, de recyclage, de tri et de compostage pouvant faire l'objet de sous-traitance. L'AND et les Agences Nationales de Soutien à l'Emploi des Jeunes (ANSEJ) et de Développement de l'Investissement (ANDI) sont appelés à

apporter leurs concours dans le soutien et la mise en œuvre de projets viables.

d. Participation citoyenne

Le succès de la stratégie engagée par les autorités et la réussite du PROGDEM dépendent dans une large mesure de l'adhésion de la population et du partenariat développé avec les différents intervenants. Dans ce contexte, de vastes programmes de sensibilisation ont été menés à toutes les échelles. Un débat national sur l'environnement a eu lieu en 2001 et des actions de vulgarisation-information ont eu lieu. Un grand nombre d'élus locaux, de techniciens des collectivités locales, la police de l'environnement, les journalistes, les ONG, des juristes et des financiers ont suivi et continuent de suivre des formations adaptées. L' institution de base qui offre ces formations est le Conservatoire National des Formations à l'Environnement.

Dans le souci d'améliorer leurs relations avec la population, les communes s'attellent à installer des cellules de communication-sensibilisation. L'éducation environnementale est introduite dans les écoles et sera développée davantage.

Illustration pratique: la ville de Tizi-Ouzou

La ville de Tizi-Ouzou, avec son statut de grande ville avoisinant les 128000 habitants, selon le RGPH de 2008, la présence d'une entreprise privée de collecte des déchets et le nombre assez important d'associations, est un exemple pertinent pour analyser la nouvelle politique de gestion des déchets solides urbains et celle qui a trait à la participation des acteurs locaux dans la pratique des notions de bonne gouvernance et de développement durable, conformément aux nouveaux dispositifs mis en place par les pouvoirs publics. La commune de Tizi-Ouzou est parmi les premières à se doter d'un schéma de gestion des déchets municipaux (PROGDEM) (2002).

1. Production et composition des déchets

Dans le rapport sur l'état de l'environnement élaboré en 2000, par le Ministère de l'Aménagement du Territoire, la quantité de déchets solides urbains générés au niveau national est de l'ordre de 5.2 millions de tonnes/an, soit un ratio moyen national situé entre 0.5 kg/h/jet0.77 kg/h/j, alors que dans de grandes agglomérations, à l'exemple d'Alger, ce

ratio atteint 1.2kg/h/j.[1] Dans la ville de Tizi-Ouzou, et selon le schéma directeur de gestion des déchets municipaux, la quantité de déchets produite quotidiennement est estimée à 60.8 tonne, avec un ratio de 0.77 kg/h/j, un chiffre légèrement supérieur à la moyenne nationale et qui s'explique par la forte concentration de la population communale au chef-lieu et les flux quotidiens des populations migratoires.

2. Récapitulatif de la composition des déchets à Tizi-Ouzou et en l'Algérie

Nature des déchets	% dans la ville de Tizi-Ouzou	% au niveau national
Matière organiques	75.70	77.26
Papier-carton	4.52	9.82
Plastique	10.2	2.60
Matériaux ferreux	1.23	2.80
Verres	0.16	1.01
Cuir	0.82	1.34
Textile	6.81	2.02
Bois et dérivés	0.16	1.34
Autres	/	1.16
Total	100	100

Source: NEE schéma directeur de GDSU

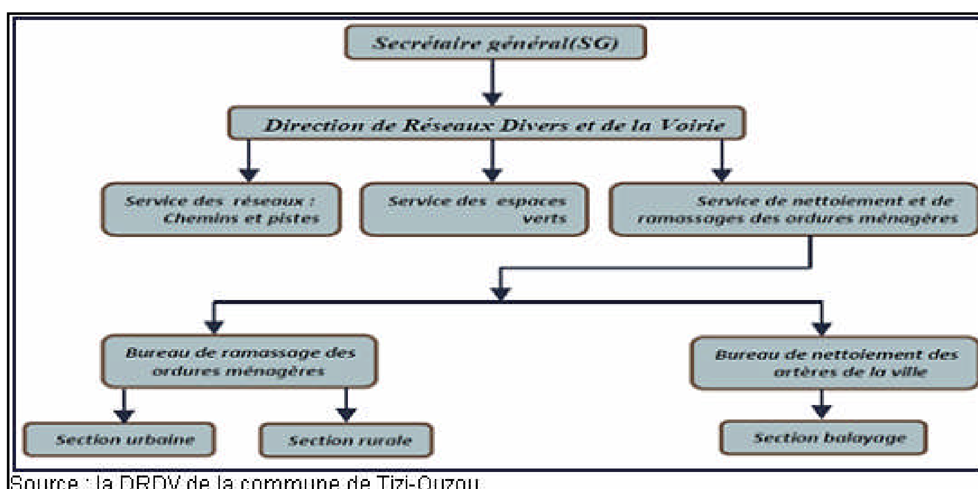
Le tableau qui précède montre que le pourcentage des matières organiques produites par la ville de Tizi-Ouzou est presque similaire à celui concernant ce type de déchets produits à l'échelle nationale, ce qui est certainement dû à un mode de consommation identique pour l'ensemble de la population algérienne.Par contre, pour ce qui est du pourcentage des déchets de plastique, la différence est flagrante entre ce qui est produit par la ville de Tizi-Ouzou et par l'ensemble de l'Algérie. À Tizi-Ouzou, ce pourcentage est bien plus important, ce qui peuts'expliquer par la présence de certaines industries, comme l'agroalimentaire et le cosmétique qui génèrent du plastique pendant le processus de production, ou par l'utilisation abusive de sacs en plastique.

[1]Ministère de l'aménagement du territoire de l'environnement et du tourisme «Etat et avenir de l'environnement», 2000, p 61

4. Le schéma de gestion des déchets municipaux

Dans le cadre de l'application des directives de la loi n° 01-19 du 12 décembre 2001 relative à la gestion, au contrôle et à l'élimination des déchets, l'inspection de l'environnement de la wilaya de Tizi-Ouzou a confié à la Nationale Eau et Environnement (NEE) la mission d'élaborer le schéma directeur de gestion des déchets municipaux des communes de Tizi-Ouzou, de Draa Ben Khedda et de Tirmitine, y compris l'étude pour l'éradication des décharges sauvages et l'aménagement d'un centre d'enfouissement technique intercommunal.

Organisation administrative du service public de GDSU



Source : la DRDV de la commune de Tizi-Ouzou

5. L'organisation du service de la collecte du service des DSU

a. La sectorisation de l'espace urbain de Tizi-Ouzou

Vu la densité et l'hétérogénéité du tissu urbain de la ville de Tizi-Ouzou, ainsi que la forte concentration de la population, le service communal, sur la base du schéma directeur de gestion des déchets municipaux, a subdivisé l'espace urbain en 2 secteurs composés de 12 sous-secteurs, et a déterminé des fréquences horaire de collecte. Car, dans la ville de Tizi-Ouzou, cette mission est assurée par deux organismes, le service communal et l'entreprise privée CAROM avec laquelle une concession a été faite en 2007, pour une durée de trois ans.

Production des déchets par sous-secteur et par horizon

secteur	Sous-secteur	Pop 2007	Q : de Déchet T/J	Pop 2012	Q : de déchet T/J	Pop 2017	Q : de déchet T/J	Pop 2022	Q : de déchet T/J
Secteur I (service communal)	Haute ville	9510	7.23	10597	7.79	11808	8.40	13158	9.04
	Centre-ville	4376	4.04	5433	4.86	6054	5.83	6746	7.00
	Lotissement Hamoutène	11450	9.50	12759	11.40	14217	13.69	15842	16.43
	Cité 05 juillet	8563	7.10	9542	8.53	10633	10.24	11848	12.29
	Cité CNEP	8170	6.78	9104	8.14	10144	9.77	11304	11.72
	Les genets	6440	5.34	7175	6.41	7996	7.70	8909	9.24
Secteur II (entreprise CAROM)	Sud-Ouest	3872	3.21	4315	3.86	4808	4.63	5357	5.56
	Fer à cheval	5035	4.23	5610	5.08	6252	6.09	6966	7.32
	2000 logements	16826	13.96	18749	16.75	20892	20.11	23280	24.14
	450 logements	6033	5.00	6722	6.01	7491	7.21	8347	8.66
	Marché de gros	1386	1.15	1545	1.38	1721	1.66	1918	1.99
	KrimBelkacem	3023	2.51	3369	3.01	3754	3.61	4183	4.34

Source: Nos calculs ont à la base les données du schéma directeur de GDSU

Nous remarquons que la production des déchets est en évolution constante, en parallèle avec l'augmentation de la population. Ces données peuvent nous servir de base à des études et à une programmation du système de gestion des déchets et des moyens à déployer.

b. Les moyens déployés

Afin d'assurer une efficacité des opérations de collecte et de nettoiement des artères de la ville, les services concernés, soit ceux de la commune ou de l'entreprise ayant obtenu la concession, doivent mettre en place des moyens humains et matériels appropriés. Or, la réalité est tout autre, pour le service communal, ce fait se justifie par la méfiance qu'éprouvent les gens envers cette activité et par les blocages financiers qu'a connus la commune. Concernant l'entreprise privée, le non-respect des termes du cahier de charges a, comme exemple, la reduction du nombre de personnes devant constituer le personnel, ce qui a pour conséquence un fonctionnement inadéquat du service de GDSU (voir le tableau ci-dessous).

Distribution des moyens humains et matériels

secteurs	Sous-secteurs	Pop 2012	Q : de déchets T/J	Moyen roulant	Personnel
Secteur I service communal	Haute ville	10597	7.79	1. C.B	10EB.08BALY
	Centre-ville	5433	4.86	1. B.T	09EB.06BALY
	Lotissement Hamoutène	12759	11.40	1. B.T	08EB.05BALY
	Cité 05 juillet	9542	8.53	1. B.T	07EB.05BALY
	Cité CNEP	9104	8.14	1. B.T	09EB.06BALY
	Les genets	7175	6.41	1. B.T	09EB.05BALY
Secteur II CAROM	Sud-Ouest	4315	3.86	2. B.T	04EB ,01BALY
	Fer à cheval	5610	5.08	3 B.T	06EB, 02BALY
	2000 logements	18749	16.75	2 B.T	04EB, 02BALY
	450 logements	6722	6.01	1 B.T	02EB, 01BALY
	Marché de gros	1545	1.38	1 B.T	02EB, 01BALY
	Krim Belkacem	3369	3.01	2 B.T	04EB, 01BALY

Source: Schéma directeur de GDSU, antenne de l'entreprise CAROM à Tizi-Ouzou

c. Moyens financiers

La part des dépenses de la GDSU dans le budget communal est trop faible, elle est d'une moyenne de 7.4%[1] annuellement. Les dépenses de fonctionnement ont connu une augmentation avec un taux moyen de l'ordre de 24.7%, entre 2005 et 2010. Ceci s'explique par l'augmentation de l'effectif des travailleurs et de celle des salaires.

6. Une investigation auprès des habitants

Suite aux directives de promouvoir la participation du citoyen, amorcées par le dernier code communal, qui se conjuguent avec les principes de la nouvelle politique de gestion des déchets (PROGDEM), et dans le but d'une conformité avec les fondements du développement durable, nous avons tenté de mesurer le degré de contribution de la

[1]Dorbane (N), mémoire de magister «Gestion des déchets solides urbains dans le cadre du développement durable, cas de la ville de Tizi-Ouzou », université de Tizi-Ouzou, 2005. p 217

A noter : C.B : camion à benne
B.T : benne tasseuse
EB : éboueur
BALY : balayeur

société civile au renforcement de la pratique d'une bonne gouvernance. Pour ce faire, nous avons opté pour une investigation à partir d'un questionnaire concernant un échantillon qui regroupe un dixième du nombre de ménages vivant à l'intérieur du périmètre urbain. Cette investigation comporte des questions simples et directes. Les questions posées se présentent comme suit:

Récapitulatif des réponses

Nature des questions		Réponses	
		Oui	Non
Dans votre quartier êtes-vous satisfait par?	Nombre de bacs	**781**	**1095**
	Répartition des bacs	**839**	**1037**
	Heure de collecte	**752**	**1124**
	Le ramassage des déchets	**404**	**1472**
Y a-t-il une association dans votre quartier?	Qui active dans le domaine des déchets	**1424**	**392**

source : auteurs

1. **Interprétation des réponses**

- Le nombre de bacs dans les quartiers: la population questionnée s'est montrée mécontente, malgré des réclamations incessantes, par rapport au nombre de bacs (poubelles) mis à sa disposition pour contenir quotidiennement les déchets, dont le taux est de 58.37%. Toutes les réponses convergent vers l'insuffisance, l'inadéquation et la dégradation des récipients. Les habitants qui font part de ce désagrément sont au nombre de 1095. Les consequences (manque de bacs…etc.) sont illustrées par la photo suivante.

Source : auteurs

- **La répartition des bacs dans les quartiers:** les habitants de la ville de Tizi-Ouzou éprouvent de profonds désagréments quant à la manière par laquelle les responsables de la gestion des déchets ont réparti les poubelles destinées à la pré-collecte des déchets. Selon le responsable du service communal, les défaillances sont dues au fait que la répartition et le nombre de bacs n'obéissent à aucun critère, ce qui explique la non prise en compte des normes édictées par le schéma directeur. Les conséquences (absence de bacs…etc.) sont traduites par la photo ci-dessus.

Sousource auteurs

- **La tranche horaire:** Selon les informations recueillies auprès du service de gestion des déchets solides urbains, la fréquence horaire de collecte est fixée à 6 heures 30 du matin. Or, une telle fréquence a été grandement critiquée par les habitants enquêtés et les demandes de changement d'horaire sont restées sans suite. De leur part, les responsables du service expliquent qu'ils sont dans l'obligation de procéder très tôt aux enlèvements pour des raisons de sécurité. La photo ci-après traduit les conséquences qui relèvent de cette situation.

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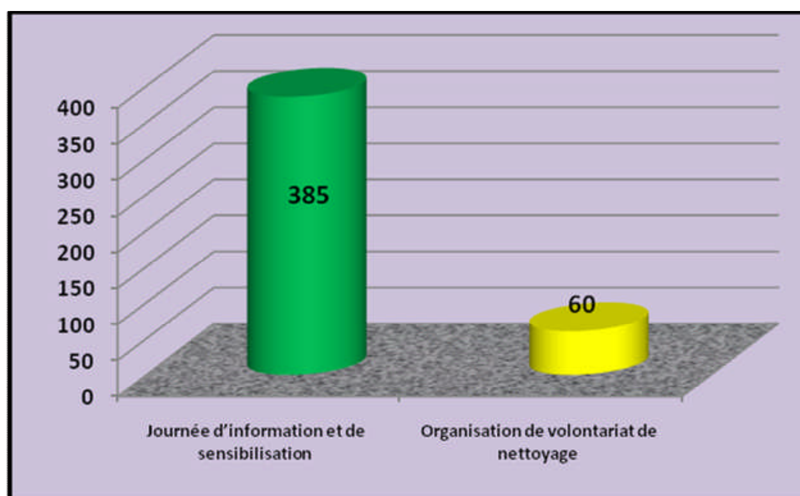
- **Le ramassage des déchets dans les quartiers**

Les citoyens de la ville de Tizi-Ouzou ne cautionnent pas la manière par laquelle leurs déchets sont collectés, ils avancent la thèse du manque de contrôle des agents de nettoyage et le manque des moyens appropriés. Ce constat est dû principalement au manque de moyens humains et au vieillissement des agents d'exécution selon les propos du secrétaire général de la commune de Tizi-Ouzou, ce qui rend ce service public inadaptable aux impératifs de la société. Cet état de chose est reflété par l'histogramme suivant:

source : auteurs

A. Les associations et leur contribution

Suivant les propos recueillis auprès de la population enquêtée, le mouvement associatif dans la ville de Tizi-Ouzou est un des éléments structurant de la société de cette ville. Par contre, dans le domaine des déchets, il y a très peu d'associations qui activent. Sur l'ensemble des réponses, soit un nombre de 1484 qui confirment ce fait, seules 30% des personnes (445) enquêtées activent dans le domaine des déchets. Des indications sur leur rôle sont récapitulées dans l'histogramme qui suit.



source : auteurs

Cette pratique, si elle s'intensifie, peut contribuer parfaitement à l'amélioration du cadre de vie des populations, et ceci par la sensibilisation à tout ce qui concerne la protection de l'environnement et les menaces que provoque la prolifération des déchets.

Conclusion

En guise de conclusion, il nous paraît pertinent de faire un constat sur l'ensemble de défaillances que ce service public présente au niveau de la ville de Tizi-Ouzou:

- **Les défaillances au niveau de la pré-collecte**

Les moyens destinés à la pré-collecte que nous avions cités plus haut sont inadaptés pour les raisons suivantes :

- Un volume de stockage inadapté. Les bacs sont en général de 150 à 240 litres, or par rapport aux quantités de déchets produits par sous-secteurs, ce type de bac doit être remplacé.
- Pour ce qui est des caissons. Ils sont mis généralement dans des quartiers à forte densité de population, ils ne sont pas vidés chaque jour selon, ce qui peut constituer une source de maladies.
- Un manque de récipients dans certains quartiers.

- **Les défaillances au niveau de la collecte**

Sur le plan quantitatif, la collecte des déchets est plus au moins satisfaisante, elle couvre la plupart de la population de la ville de Tizi-Ouzou, mais l'insuffisance qu'elle enregistre à ce niveau relève de plusieurs facteurs :

- Les moyens humains: comme nous l'avions indiqué, le nombre d'agents d'exécution est insuffisant. Ainsi le vieillissement de ces agents peut avoir pour comme conséquence l'inefficacité de la collecte.
- Les moyens matériels: selon notre observation, les agents d'exécution ne disposent pas de moyens adéquats (gains, casques de protection, etc…), or les seul moyens utilisés sont de simples pelles, ce qui explique bel et bien le manque de finition après la collecte.
- L'absence de collecte sélective: Lors de notre investigation nous avons remarqué que le stockage des déchets de toutes natures se fait dans les mêmes récipients, ce qui rend la collecte encombrante et risquée pour les agents en leur causant des blessures. En plus, l'absence de collecte sélective entrave et freine le recyclage de certaines matières.
- L'inadéquation de la fréquence horaire de collecte: les habitants enquêtés ne cautionnent guère les heures de rotations fixées à 6 heures 30 du matin, car le dépôt des déchets après les heures de rotations donnent lieu à la prolifération des déchets pendant toute la journée.

- **Les défaillances entre les partenaires de la société**

Selon nos entretiens avec les acteurs concernés par la gestion des déchets solides dans la ville de Tizi-Ouzou, nous pouvons confirmer que la rupture qui existe entre eux est due essentiellement à plusieurs facteurs :

- Une gestion technocratique de la part des responsables locaux, qui monopolisent le pouvoir de décision.
- Le non-respect du rôle conféré à la société civile par les textes de loi.
- L'incivisme de certains acteurs.
- L'intérêt que porte le partenaire privé (CAROM) au profit sans tenir compte des closes de la concession.

Quelques recommandations

À partir de notre étude, il nous semble indéniable de proposer notre contribution à l'amélioration de la gestion des déchets solides au niveau de la ville de Tizi-Ouzou. Pour cela, nous présentons les recommandations suivantes :

- **La modernisation du service public de gestion des déchets :**

  - **L'acquisition d'un matériel adéquat**

➢ Diversifier les types de bacs pour une collecte sélective
➢ Remplacer les bacs de 150 et 240 litres, par ceux de 740 ou ceux de 1100 litres.
➢ Disposer le service de moyens roulants appropriés, mieux équipés et moins polluants.
➢ Mettre en place des balayeuses.

  - **Le personnel**

➢ Mettre à la disposition du service concerné un personnel qualifié et rajeuniet d'un nombre suffisant d'agent d'exécution (éboueurs, balayeurs, agents de maintenance).
➢ Equiper les agents d'exécution de moyens appropriés (gants, uniformes, casques, pelles et ballets spéciaux).

  - **La réorganisation de la collecte**

➢ Fixer l'heure de rotation pendant la nuit, comme préconisé par les habitants
➢ Une réaffectation administrative du service public de gestion des déchets :

- à un établissement public avec une autonomie financière et morale;
- à une entreprise privée par le biais de concession.

La tendance partenariale

Afin de créer des conditions favorables pour la pratique de la bonne gouvernance, comme imposé par le concept du développement durable, nous sommes persuadés qu'il est utile d'envisager certaines propositions.
➢ La flexibilité de la part des responsables locaux et le travail en concertation et en partenariat
➢ L'ouverture au grand public (société civile, citoyens, partenaire privé, professionnels) du champ décisionnel, par l'information et le renforcement de la communication
➢ L'organisation des assises-débats à propos des affaires publiques.

➢ Désignation de commissions mixtes pour le contrôle et la surveillance de la qualité de la prestation offerte (agents étatique et représentants de la société civile).
➢ Incitation des habitants à prendre part aux débats concernant la ville.

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MERCOSUL - LATIN-AMERICA UNION

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Abstract

Since the beginning of the 1990s, integration between countries has increased at supranational level in view of social and economic progress, with major economic blocs making decisions to go beyond national borders. Facing this new reality, South American States also joined in this type of integration, creating the Mercosul (Southern Common Market), as the main economic bloc in Latin America which comprises Brazil, Argentina, Uruguay, Paraguay and Venezuela, which came into operation in 1991, after the Treaty of Asunción, featuring an economic bloc whose main principle was free trade between members. Mercosul has approximately 300 million people and generates a GDP (Gross Domestic Product) of $ 1.1 trillion and aims to strengthen economic and commercial spaces, seeking a commercial growth for intensified economic rise of its members States, as it follows a global trend, most likely as the European Union. This paper will highlight how the Mercosul member States tried to recreate in Latin America a similar integration concept as in Europe, via commercial cooperation leading to economical and, possibly, political integration, aiming thus at regional development, scientific and productive integration and institutional development.

Keywords: Mercosul, regional development, integration, sovereignity, Latin America

The 1990 represented an increased social and economic integration between countries at supranational level, by political and economical decisions that went beyond national borders), *i.e.* economic blocs.

In general, integration schemes for economic blocks (Balassa 2013) are classified according to the extent and degree of the existing economic cooperation and can be distinguished as follows:

- **Free Trade Zones**: principle of removing barriers to movement of goods, in particular the collection of import duties between the participating countries. Eventually they may involve the removal of barriers to the movement of services and capital. This is the case, for example, of the Free Trade Agreement between Mexico, the United States and Canada (NAFTA);
- **Customs Unions**: In addition to eliminating barriers to the movement of factors of production, a common tariff policy is adopted towards third countries – *i.e* all States Parties have a common external tariff. Since there is

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a higher degree of integration, are also conceived common trade policy instruments in different sectors;
- **Common Markets**: In addition to a common trade policy, its members advance the coordination of sectoral policies, including increasing the free movement of persons and production factors. The establishment of a common market also implies the harmonization of the legislation on key areas such as community rules for the customs clearance of goods, sanitary and phytosanitary controls, extrazonal trade protection and the provision of incentives to production;
- **Monetary Unions**: Assumed in addition to the Common Market, by the adoption of a common monetary policy and a single currency;
- **Political Unions**: Suggested to go beyond monetary union, throughout the harmonization of foreign policy, security and interior and even the adoption of a specific common Constitutional Treaty.

Facing the new reality, South America also joined this type of integration, by creating the MERCOSUL, as the main economic bloc in Latin America, comprising Brazil, Argentina, Uruguay, Paraguay and Venezuela. MERCOSUL - the Southern Common Market, which started from a cooperation between Brazil and Argentina, has as main feature the principle of free trade, currently housing approximately 200 million people and generating a GDP of 1.1 trillion dollars.

Historically, the creation of MERCOSUL began in 1985. This was the moment that Brazil and Argentina began trade negotiations with the aim of forming a regional market. In the historical context of this period, the society was marked by the democratization of both countries and the Presidents José Sarney from Brasil and Raul Afonsín from Argentina signed on November 30th, 1985, the Declaration of Iguaçu. In that document, the leaders of Brazil and Argentina stressed out the importance of consolidating the democratic process and the joint efforts for the defense of common interests in international forums. To reaffirm the desire to bring the two economies, they created a Joint Commission on Bilateral Cooperation and Integration, which had to formulate proposals for integration between Brazil and Argentina and whose results led to the signature in Buenos Aires, on July 29th 1986, of the Minutes for the Argentine-Brazilian Integration. In this agreement, Brazil and Argentina agreed to fulfill the Economic Cooperation and Integration Program (PICE), by means of sectoral protocols, focused on the integration of specific productive sectors. The objective of the program was to open, selectively, Brazilian and Argentine national markets and stimulate the complementarity of these two economies, in order to allow conditions to adapt to the new private economic environment agents.

The expansion of trade between Brazil and Argentina boosted the signing of the Treaty of Integration, Cooperation and Development, on November 29th 1988. With that agreement, the two countries established a period of ten years for the formation of a common economic space, by elimination of tariff and non-tariff barriers and the development of common policies.

The objective of the Treaty of Integration, Cooperation and Development was reaffirmed by Presidents Fernando Collor de Mello of Brazil and Carlos Saúl Menem of Argentina with the signing of the Act of Buenos Aires, on July 6th, 1990, despite the fact that the methodology for the creation of a common market has changed, as the Act of Buenos Aires decreased the deadline stipulated by the Treaty of 1988 which established the date of December 31, 1994 for the settlement of a common market between Brazil and Argentina to 1991. The acceleration of economic integration strategy occurred in time when Brazil and Argentina went through economic reforms based on trade liberalization. Thus, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay signed on March 26th, 1991 the Treaty of Asuncion that created MERCOSUL. Subsequently, Venezuela joined this space of free exchange in 2007 and states like Bolivia, Chile, Peru, Colombia and Ecuador have become associated.

MERCOSUL aims to strengthen economic and commercial cooperation, seeking a commercial growth for intensifying economic progress, following a global trend, like the European Union. The States Parties which have formed MERCOSUL share values expressed in their democratic societies, such as protection of freedoms and of fundamental human rights, environmental protection and sustainable development, sharing also their commitment to the consolidation of democracy, legal security and fighting poverty by economic development and social equity. With this fundamental basis, the partners sought the expansion of dimensions of their national markets through integration, which is instrumental in accelerating their economic progress.

MERCOSUL aims to establish a common market among its participating States, seeking to free movement of goods, services and factors of production between countries of the bloc. Also, the establishment of a common external tariff, the adoption of a common commercial policy towards third States or groups of States and the coordination of positions in regional and international economic and trade forums, the coordination of macroeconomic and sectoral policies between participating states, the commitment of the countries that make up the group to harmonize their legislation in the relevant areas, intend to strengthen the integration process, as a factor of order and social progress.

Integration space – Political MERCOSUL

MERCOSUL builds the foundations that frame the relations between the States Parties and is, above all, a Political Agreement. Thus, MERCOSUL is a factor of stability in the region, as it generates a web of relationships and interests which make deeper connections, both at economic and political levels, and counteracts tendencies toward fragmentation. Policymakers, workers and entrepreneurs consider it a framework for discussion of many complex facts, which can be considered as topics of common interest.

The first idea of political integration came during the Summit of Ouro Preto, held in Brazil in December 1994, where a Protocol was approved in addition to the Treaty of Asuncion, establishing the institutional structure of MERCOSUL, granting it with its international legal personality and concluding the transition period and the fundamental instruments that were adopted in relation to the common commercial policy featuring the Customs Union.

Two years later, at the tenth meeting of the Common Market Council, held in San Luis on June 25th, 1996 a "*Presidential Statement on Democratic Commitment in MERCOSUL*" was signed, as well as the Protocol of Accession of Bolivia and Chile to that Statement, as instrument that translates the full observance of democratic institutions by a member State, as prerequisite for the existence and development of MERCOSUL. Later on, at the Meeting of the Common Market Council held in July 1998, the Presidents of MERCOSUL Member States and the Republics of Bolivia and Chile signed the "Protocol of Ushuaia on Democratic Commitment." In this document the six countries recognized the validity of democratic institutions as an essential condition for the existence and development of integration processes, stating that any alteration of the democratic order is an unacceptable obstacle to the continuity of the process of regional integration. At this meeting was also signed the "Political Declaration of MERCOSUL, Bolivia and Chile as a Peace Zone", in which the six countries stated that peace is essential for the development and continuity of the regional integration process. In this respect, the six governments have agreed, among other things, to strengthen mechanisms for consultation and cooperation on existing security issues and defense between their countries, promote their progressive coordination and make joint efforts in the relevant forums to advance the consolidation of International agreements focused on achieving the objective of non-proliferation and nuclear disarmament.

Alongside the political integration process, as a generating factor, besides the rules set on trade in goods, other instruments were negotiated in areas such as services and movement of workers, aiming at developping several cooperation activities by involving coordination of policies, regulatory harmonization and joint projects in various areas, such as with respect to technical regulations, sanitary and phytosanitary regulations, in order to facilitate the free intrazonal movement. A good example of political integration throughout an economical instrument is the Fund for Structural Convergence of MERCOSUL[1] which aims to promote increased competitiveness of smaller economies and less developed regions, fostering social cohesion and strengthening the physical integration through infrastructure works. On its way to the deepening of the integration process, the treatment of asymmetries in its internal agenda occupies a relevant and transversal position. This Fund was designed to finance programs aiming to promote structural convergence, develop competitiveness, promote social cohesion - especially the smaller economies and less developed regions - and to support the functioning of the institutional structure and the strengthening of the integration process.
The creation of this Fund can be considered as a milestone in the integration process, which has a duration of ten years minimum, as this tool, which aims to provide more structural and long-term responses in addressing disparities formed with annual contributions of the States Parties totaling one hundred million dollars, while Argentina contributes with 27%, Brazil with 70%, Paraguay and Uruguay with 1% and respectively 2%, the resources are distributed inversely proportional to the amount of contributions made, as follows - Paraguay: 48%, Uruguay 32%, Argentina 10%, Brazil 10%.

Taking into account the objectives set out, funds were to be provided for the Structural Convergence Programme, the Competitiveness and Development Programme, the Social Cohesion Programme and the Programme for Strengthening Institutional Structure and Process Integration.

Economical MERCOSUL

MERCOSUL is characterized by open regionalization. This means that the creation of the bloc aims not only to the increase of intra-area trade, but also at the encouragement to trade with third countries. Attracting investment is one of the central objectives of MERCOSUL. In an

[1] http:// www.mercosur.int/focem / - accessed on 08.04.2014

international scenario as competitive as this, where countries strive to offer incentives to investors, the pursuit and consolidation of the Customs Union will tend to be fundamentally an advantage as this will provide a very suitable framework to attract foreign capital, in spite of all the difficulties arising from the difficult international economic scenario and disadvantages of the processes of restructuring of national economies. As such, MERCOSUL has been one of the leading recipients of foreign investment in Latin America.

In other words, the search for the integration process occurs on a realistic and flexible basis, as the process adapted itself to the realities of the four countries that initially constituted it. With this in mind, in the year 2000, the MERCOSUL Member States decided to start a new stage of the regional integration process, whose primary goal was to consolidate the path to Customs Union at the sub-regional level.

The confirmation and the consolidation of MERCOSUL as a Customs Union between the four initial countries involved administering sub-regional trade policies, overcoming the unilateral actions of this nature, ensuring predictable behaviors and not detrimental to the respective partners. Therefore, the entry into force of a Common External Tariff (CET) meant that any changes in the levels of protection of the productive sectors had to be achieved on a consensual manner, providing an environment of greater predictability and certainty for decision-making of economic agents. Thus, the Governments of MERCOSUL Member States recognized the role of central convergence and macroeconomic coordination in deepening integration process. Thereafter, States Parties decided to prioritize the treatment of the following themes:

- streamlining border procedures;
- convergence of the common external tariff and elimination of its dual collection ;
- adoption of criteria for the distribution of customs revenue of States Parties;
- institutional strengthening;
- foreign relations of the bloc with other blocs or countries.

The Customs Union, as an economical growth factor, meant the adoption of the MERCOSUL Customs Code, the online interconnectivity of existing customs administration in MERCOSUL Member States and the creation of a mechanism for the distribution of income, with the definition of terms and procedures. Thereafter, progress was made in the online interconnection of Customs of the four initial States Parties, currently

working, as well as making available a System for Information and Exchange of Customs Records[1] in each of the MERCOSUL countries.

International organizational structure

MERCOSUL started as a bilateral initiative to increase trade as factor of progress. When international legal personality was given to this structure, it became a new subject of international law, a derived one but, nevertheless, an important one, because of its size and importance in Latin America.
The main decision-making bodies that make up the institutional structure of MERCOSUL are the Common Market Council (CMC), the Common Market Group (GMC) and the MERCOSUL Trade Commission (CCM), as follows:
- **CMC** - the **Common Market Council** is the highest decision-making body and the Common Market. It is composed of the Ministers of Foreign Affairs and the Economy of each of the States Parties. The Board makes decisions to ensure compliance with the objectives set by the Treaty of Asuncion;
- **GMC** – the **Common Market Group** is the executive body of the Common Market. The GMC is pronounced upon resolutions that are binding on those States Parties;
- **CCM** - **MERCOSUL Trade Commission** is the body responsible for assisting the Common Market Group. It is comprised of four members and four alternates from each State Party and coordinated by the Ministries of Foreign Affairs. Among its functions are ensuring the application of common trade policy instruments, regulating the intra-MERCOSUL trade and with third countries and international organizations. Guidelines made by CCM are binding on those States Parties.
In addition to these organs, one should mention the MERCOSUL Parliament, the Committee of Permanent Representatives of MERCOSUL, the Meetings of Ministers, the Forum of Political Consultation and Coordination, Economic and Social Consultative Forum, the Working Groups, the Specialized Meeting the Committee, the Ad Hoc Groups, Groups, the Socio-Labour Commission and the Technical Committees.

Instead of a conclusion

The goal of MERCOSUL is to be one Common Market. Based on the fact that free movement of goods, services and factors of production, through the elimination of tariff and non-tariff barriers to the movement of

[1] INDIRA System - http://www.afip.gob.ar/english/indira.asp - accesed on 07.04.2014

productive factors barriers was somewhat achieved, the establishment of a Common External Tariff (CET) and the adoption of a common commercial policy towards third States or groups of States was also accomplished. At the same time, the coordination of macroeconomic and sectoral policies between States Parties - in terms of foreign trade, agricultural, industrial, fiscal, monetary, foreign exchange and capital, services, customs, transport and communications among others is in place. This action is completed with the commitment of States Parties to harmonize their legislation in certain areas. Thus one could say that, in practice, MERCOSUL can be considered today a free trade area and a customs union in the consolidation phase, with good perspectives of becoming a common market, *i.e* the Latin America Union.

At the same time, one should pay more attention to other points of interest of MERCOSUL State Parties, as, going towards real integration, new domains of interest arise, such as family agriculture, development of R&D, cooperation in energy area (petrol, biofuels and water supply), aiming at creating a social MERCOSUL, where human rights are protected and guaranteed.

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ESSEY REGARDING THE CONTENTIOUS ADMINISTRATIVE INSTITUTION IN THE PERIOD 1864-1866

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Abstract

The jurisdictional function, from the point of view of the litigations that are the object of the trial, is structured in two parts: common law contentious and contentious administrative. Contentious administrative consists of all those litigations that appear between individuals and the Public Administration within the activity of organizing and exercising the public services and where there are put to trial public law juridical situations.

In Romania, the contentious administrative appeared relatively late, following a historical evolution found in direct connection to the needs specific to the country. In this work it is presented the first period registered in the evolution of the Contentious Administrative institution, respectively the one of the period 1864-1866, a period characterized by the existence of an administrative court of law represented by the State Council. More exactly, there are presented: the way this Council was organised, its responsibilities based on the law, and finally, its abolition, mentioning also some of the reasons which led to it.

Keywords: contentious administrative, competencies, legislation

The Contentious Administrative institution is in close connection to the State’s juridical activity. It is based, as in any developed state, on two fundamental principles: the principle of complying with the rights legally obtained and the principle of state being obliged to guarantee the execution of court’s decisions. When these principles are not complied with, the Contentious Administrative institution becomes in a large measure useless and needless in state’s mechanism.

From the point of view of the litigations that are the object of the trial, the jurisdictional function is split in two parts:

1. Common law contentious, which consists of the entirety of the litigations of proper judicial authorities’ competency.
2. Contentious administrative, consisting of all litigations of administrative nature, of the competency of common law courts or some special, administrative courts, according to the law systems of different states.

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From the organic and formal point of view, the contentious administrative is considered as consisting of all those litigations that enter in the competency the courts or administrative justice (Ducrocq, 1897).

From the practical point of view, the contentious administrative can be defined either from the point of view of the persons between whom the litigation takes place, or from the point of view of the nature of the legal regulations applicable in the proper case and in solving the litigation.

Accordingly, from the first point of view, to contentious administrative belong all litigations appearing between citizens as individuals and the administration, as litigating parties. From the second point of view, it is considered that belong to the contentious all litigations that have as object rules and principles of administrative or public law.

Practically, the contentious administrative can be defined as being made up of all litigations appearing between the individuals and the Public Administration in the activity of public services' organization and operation and in which there are put to trial rules, principles and legal situations that belong to the public law.

In Romania, the Contentious Administrative is the effect of an historical evolution found in interdependency with the needs specific to our country. Within the juridical organization in our country, the Contentious Administrative institution appeared relatively late and namely after the Paris Convention of 7th August 1858, which, for the first time, established the principle of separation of powers within the state; more exactly, under the aegis of this convention, near the end of the rule of Cuza Vodă, it was registered a reform activity in the area of administrative justice. Then it was set up a State Council (of French influence), with responsibilities of a consultative body near the Government and of contentious administrative.

The evolution of the contentious administrative in our country may be divided in several stages. Out of these stages, will be presented subsequently, the ones which, in our opinion, are the most important, as follows:

1. The period 1864-1866, characterized by the existence of an Administrative Court represented by the State Council.
2. The period of 1866-1905, characterized by the abolition of the above-mentioned State Council and by attributing the contentious administrative to the ordinary courts, according to common law.
3. The period starting with the year 1905, up to at least 1936, characterized by maintaining the contentious administrative responsibilities in favour of ordinary courts and by issuing a more extensive contentious, granted to some certain bodies of the

judiciary power, based on special laws and constitutional provisions.

In this journey of ours through the history of the Romanian Contentious Administrative institution, we will limit ourselves to the first period, the one of the years 1864-1866, following that, in other future studies, to continue with the next periods of evolution.

Accordingly, in our study, we analysed how the State Council was organised, its responsibilities in general, as well as its responsibilities as a Contentious Administrative court, the decisions ruled in that quality and their power and, finally, the abolition of the State Council.

I. State Council's Organization

In the year 1864, on 11th of February, the State Council was set up near the Government, as a body with consultative role.

This body consisted of 9 members, a vice-president and a president. The president of the State Council was the Lord himself, who also appointed the members. At the same time, he also revoked them, based on a "journal" of the Cabinet Office.

The members' appointment was made from among the specialists (preferably) from different branches of public administration.

Along the permanent members of the State Council, other 9 auditors were appointed, which had as responsibilities the study of the cases and from whom the next future members could be selected, later on.

II. State Council's Responsibilities

State Council's Responsibilities were distributed, we can say, in three categories, some regarding the legislative domain, some the administrative domain and others related to Contentious Administrative.

In the legislative area, the State Council was preparing, or at least it was necessary to be consulted regarding all law proposals, except for the ones regarding the budget and other aspects related to the social life (art.3 from the Law of 11th February 1864 for setting up the State Council).

In the administrative area, the State Council had the quality of a consultative body regarding the regulation projects (according to art. 44-48 of the same law). Actually, even the State Council could have issued those projects. In the area, the Council had to be consulted regarding also many aspects with administrative character. This Council acted also as disciplinary court for judging the public servants, proposing penalties of that nature.

In contentious administrative matters, the State Council had two types of responsibilities (according to art. 49-57 of the above mentioned law), namely:

1. It had competencies in solving the complaints formulated against: •ministry's decisions given with surplus of power and breaching the regulations and the legislation; • the decisions or acts of execution given by prefects and other administrative agents, given with legislation breach; • the decisions given by the commissions of public works. Also, the Council had also the responsibilities to examine and decide on the complaints formulated by individual citizens for protecting their interests in certain cases expressly provided by the law, in case their requests were not solved within 15 days from their submission.
2. The second type of responsibilities refers to judging all litigations trusted to it by law, according to art. 49 from the Law of its incorporation, meaning it had the quality of "assignment judge", based on the provisions of art. 27 from the Law regarding „regulating the rural property" of 15th August 1864. Through the provisions of this art. 27, it was provided that this State Council „decides in last instance on the recourse against the decisions of the county councils or permanent committees", which were bodies of applying the land reform.
3. The third category of responsibilities of the State Council in what concerns the Contentious Administrative dealt with the interpreting of some decrees, regulations or ordinances in administrative area, at the direct request of individuals, acts through which the interests of some persons could be harmed.

The value of the decisions taken by the State Council was a very important one, given also by its double competency, respectively one received through its organic law, and one conferred by certain special laws.

When the Council was judging those cases given to it by a special law, its decisions were final (having the quality of first and last instance), and when it fulfilled the responsibilities received through its organic law, its decisions had only a consultative character. Accordingly, in this second case, its decisions did not confine going through the judicial procedure in front of the ordinary courts, except for certain cases legally mentioned, or when the parties mentioned in writing their contentment regarding its decisions. At the same time, its decisions were not truly court decisions, but only agreements, the final decision belonging to the Government to which the agreement was submitted for confirmation.

Actually, the State Council was not a court in the exact meaning of the term, neither through its set up, nor through its competencies. It

actually had an intermediary role between the consultative administration and administrative courts.

In as far as its legislative responsibilities are concerned, although art. 1 from its constitutive Law provided that the State Council has no legislative responsibilities, it seems that it had more important tasks in this area. Based on art.18 of the Developing Statute of the Paris Convention of 2nd May 1864, which represented our Constitution up to the year 1866 (when, on the 1st of July, the Constitution of our state entered into force), "the decrees which will be given by the Lord, until a new meeting was convened, according to the proposal of the Cabinet Office and of the heard State Council, will have the power of law". According to this law text, Vodă Cuza promulgated through the decrees-laws, all laws important for the Romanian State's development, such as: the Civil Code, The Code of Civil Procedure, the law of public instruction, the communal law, the county law, and the land law. Consequently, the State Council fulfilled also real legislative responsibilities.

III. State Council's abolition

The existence of the State Council was extremely short, operating only for two years, after which it was abolished through the Constitution of 1866. In art. 131, the Constitution provided that: „The State Council will stop its existence once the law meant to provide for the authority called to replace it is voted". Such a law was voted later on, few days after the Constitution was promulgated, respectively on 9th July 1866. Moreso, through the Constitution of Romania of 1884, it was provided in art. 130 para. 1 that: „ It will not be allowed for the State Council to be set up with contentious administrative responsibilities".

During that short period of operation, the State Council had not so much activity in what concerns the Contentious Administrative. During that period, there had been registered around 300 recourses on land domain and only about 20 trials in contentious administrative domain. Out of the above, only 4 had been allowed, the balance being solved by declining the competence.

It can be seen a fierceness, an opposition against the State Council, having in view the provisions of those two successive fundamental laws, which practically prohibited setting up again a jurisdictional body in administrative area, which was different from the power of the court, oppositions for which the specialists found many reasons.

One of the reasons was considered to be the antipathy which the ones who elaborated the Constitution of 1866 had towards this institution, claiming that it was too dependent on the Government, supporting its

dictatorial politics in the period 1864-1866 when, practically, this Council had replaced the Parliament for law issuance.[1]

Due to the above, it was considered that it did not prove an independence and impartiality in judging the trials, like it was done by the common judicial bodies.

Another motivation consisted in the opinion at international level, in all those countries where such a State Council existed, that that body served to the dictatorial politics, that way detaining the natural functioning of the legislative (parliamentary) power. This opinion had led to the abolition of the administrative courts in those states, an example to this extent being represented by Italy where, in 1865, the contentious administrative was trusted to the power of the court.

The abolition of the State Council in our country had as effect depriving the citizens of the possibility to be able to address to a judge specialised in his/her conflicts with the administration bodies and the inexistence of a specialised and authorized body to repress the abuses and the arbitrary from the administration.

Through Law of 9th July 1866, the contentious competency of the State Council was included among the ordinary courts responsibilities, and afterwards was organized according to the ordinary rules.

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THE POLITICS OF IMAGE AND NATION BRANDING IN POST-COMMUNIST COUNTRIES. BRANDING POLICIES IN ROMANIA

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Abstract

Branding represents a prominent topic of the media today and people tend to understand it as being equivalent to advertising, graphic design, promotion, public relations or propaganda, but the concept has many other meanings when applied in the context of images or representations of a country. The article sustains that for post-communist countries, besides the real necessity to conceive and develop new policies to ensure their economic growth, there is the necessity to elaborate new policies meant to define powerful nation-brands to promote their image on the international market. After the fall of communism, the process of nation branding has gained great popularity in Eastern-European countries becoming a focus of attention for their governments. In the past decade, these countries have engaged in branding campaigns which have been more or less successful.

Keywords: media, branding, nation-brand/branding, national identity

1. Introduction

Nation brand has become a pervasive phenomenon of the twenty first century and plays a highly influential role in the politics of a country's image both internally and abroad. In the past decade, national governments around the world have shown an increasing preoccupation with the construction or reconstruction of images of national identity. The article starts from the assumption that this effort at defining new identity/identities is all the more significant for post-communist countries which struggle to leave behind the heritage of communism and find themselves a place in a world of fierce competitiveness. The article argues that for post-communist countries besides the real necessity to conceive and develop new policies to ensure their economic growth, there is the necessity to elaborate new policies meant to redefine their national identity. For them, it is perhaps even more important, including for their economic welfare, to find their place within the frontiers of a Europe from which they have been separated by the Iron Curtain for too long. The battle is evidently one of gaining the international market through branding and

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territorial marketing, but also one of redefining the long sought after identity and sense of belonging to the wider European community of people and of shared social, political and economic values, ideals and realities. The article offers various definitions of the concepts used in the analysis and examines briefly the context – the post-communist phase – in which Romania makes efforts at finding and presenting to the world a better image(s) of its new identity. For this purpose, the article engages on a critical analysis of the various commercials about our country.

2. What is nation branding?

There is no doubt that the branding of a nation has become a worldwide phenomenon in the current context, having a great impact for already developed, economically and politically strong countries and less developed countries alike. Recent studies (Simon Anholt 1996, 2009, 2011, 2013; Keith Dinnie 2008, 2011; Melissa Aronczyc 2013) sustain that every country, city or region can build and manage its own brand image and that more and more governments around the world allocate resources for the elaboration and development of their nation brand.

These researchers offer various definitions of the concept. According to Simon Anholt, who coined the phrase 'nation branding' in 1996, '…the reputations of countries (and, by extension, of cities and regions too) behave rather like the brand images of companies and products, and they are equally critical to the progress, prosperity, and good management of those places' (2013: 1). Although nation branding may be created on this model, it has too often been associated with the creation of a favourable image for a country through marketing communications. Anholt, who has deepened the study of the concept along years, has shown how important it is for all those interested and involved in developing nation-brands to understand that branding goes beyond a mere attachment of an image to a country. The author points out that:

> Unfortunately, the phrase "nation brand" soon became distorted, mainly by naïve governments in willing collusion with ambitious consulting firms, into "nation branding", a dangerously misleading phrase which seems to contain a promise that the images of countries can be directly manipulated using the techniques of commercial marketing communications (2013: 1).

While branding is a main topic of the media today and people tend to understand it as being equivalent with advertising, graphic design,

promotion, public relations or propaganda, the concept has many other meanings when applied in the context of images or representations of a country, region or city. Anholt calls attention to the fact that even though '…the usual context of brand theory may be buying and selling and promoting consumer goods, this is a thin layer that covers some of the hardest philosophical questions one can tackle: the nature of perception of reality…the phenomena of mass psychology, the mysteries of national identity, leadership, culture and social cohesion, and much more besides' (2007: xii). In his works, the author has repeatedly urged governments, branding consultants and scholars to abandon the naive and superficial interpretation of nation branding.

Along the same lines, several other researchers highlight the complexity of the notions of 'brand' and 'branding' when applied in the context of a country's reputation and image on the international stage. Melissa Aronczyc, for instance, in her influential study *Branding the Nation. The Global Business of National Identity*, firmly states that nation branding takes its cues, but is not the same as product branding. She insists on the concept's expansion '...the concept of the brand has escaped its corporate origins and now stands for an indeterminate range of political and cultural meanings' (2013: 8). According to her, nation branding goes beyond any simplistic marketing logic, since it means to use '...the tools, techniques and expertise of commercial branding ... as a way to help a nation articulate a more coherent and cohesive national identity...' (2013: 3).

In his turn, Dinnie emphasizes the differences between commercial brands and the role and functions of nation-brands. In his view, a nation-brand has a multi-faceted nature which necessary integrates the dimension of national identity. In this sense, the concept may be defined as 'the unique, multi-dimensional blend of elements that provide the nation with culturally grounded differentiation and relevance for all of its target audiences' (2008: 15). At the same time, the author points out that the brand-building process has to be complex and has to be carried out over several years. 'Nations need to acknowledge this reality and adopt a long-term strategic view when building their nation-brand, rather than aiming for a quick fix short-term advertising campaign whose effects may be ephemeral'. The same idea is sustained by Anholt when he states that:

> Only a consistent, coordinated and unbroken stream of useful, noticeable, world-class and, above all, relevant ideas, products and policies can gradually enhance the reputation of the country that produces them. I have often summarised this process as consisting of three main components: strategy, substance and symbolic actions. [...]

> A single symbolic action will seldom achieve any lasting effect. Multiple actions should emanate from as many different sectors as possible in order to build a rounded and believable image for the place; they must also continue in unbroken succession for many years (2013: 2-3).

In the light of these definitions, it may be clearly stated that nation-branding goes far beyond the features of product branding and as such it proves to be a useful and important tool in a country's coordinated struggle to maintain a high position on the global market. In a world which looks much more like a huge all-encompassing market, governments seem to become more and more aware of the importance of finding new ways of looking at and defining assets like identity, reputation, fame, in order to remain attractive for both internal and external consumers. It becomes clear that a powerful brand can secure a favourable position in a competition where each country must fight for its share of the world's tourists, students, investors or international cultural events.

3. Nation-branding and the communist heritage

After the fall of the totalitarian regimes in South-Eastern Europe, the post-communist countries entered a new stage of their history in which they had to face all sorts of challenges and had to adjust continuously to meet the standards of the socio-political systems already existing in Western countries. For them, this new phase has been a very difficult one, given the radical transformations they have to undergo at all levels: economical, social, political. Adapting to the requirements and values of a democratic regime has been a tricky task for the majority of the former communist countries. Together with these new challenges, they had to go through a process of redefinition of their identity in order to address both internal and external audiences. This process has been reflected in various media used in branding campaigns that have been conceived and developed with the specific purpose of 'selling' their newly constructed image to their own citizens and perhaps even more to the citizens of the world.

Living behind the communist past and its heritage has been problematic and painful and forced post-communist countries to a series of choices that have not always been easy to make. One of these choices is related to the material marks left by the communist regime, like monuments, buildings and other constructions that can be seen everywhere

you go, from the countryside to the biggest cities. Many of these upsetting signs have been removed, as people who have been forced to live in the terrible conditions of a cruel regime wanted to forget and move on. But others, many others of these signs remained and are still in place. The choice that many of the post-communist countries had to make was to keep some of the most impressive marks of their past and change them into an element of their new brand-imagine in order to attract tourists who seemed to be interested in them. In the process of reconstruction of their post-whatever identities, the definition of a brand seemed all the more pressing, almost as pressing as the profound restructuring of their social-political system, as they have been suddenly thrown into an arena of brutal competition. It is interesting to see how some of them have chosen to totally banish from their branding process any reference to a painful and disquieting past, while others have chosen to keep traces of their communist heritage and show them to the world as constituent parts of their new, re-defined image. Perhaps, very good examples would be those of Germany and Hungary or Romania.

In Germany, the Berlin Wall has been almost completely demolished in an attempt at erasing any remnants of a monument that reminded people of the fate of their country after the Second World War and of the existence of a communist regime in the German Democratic Republic. Parts of the wall have been preserved as memorials and they seem to exert some form of attraction for tourists all over the world and for domestic nostalgic tourists alike. So, in Germany, the reaction or choice has been one of rejection as a result of an almost unanimous desire to consign the wall and its surrounding stories to the past. It is said that, from the Berlin Wall has remained less than from the Hadrian Wall (!) (Baker 1993).

In Hungary, the Statuepark in Budapest is still one of its most known tourist attraction. After the fall of communism, the city authorities of Budapest were faced with the dilemma over what to do with the very visible monuments left by the regime, namely the numerous statues built in memory of the communist heroes, both Hungarian and Russians. Certainly, there were voices sustaining that these had to be preserved, while others asked for their rapid removal so as no sign of communism be kept into place. Many of the citizens of Budapest seemed indifferent to the statues' fate. At the end of 1991, a compromise was reached, in the sense that the responsibility to decide what to do with them was transferred to the districts of the city. Finally, an architect was assigned the task of designing a statue park and his declared intention '... was to create something... politically and artistically neutral, neither celebrating, nor ridiculing the communist era'. The park is '... an open-air museum' that 'Western commentators have inevitably labelled a theme park' (Light 2000: 167). The

park displays many statues from the communist era and in a very typical postmodernist style it presents metaphors of state socialism in a sort of ironic re-construction of the past. The irony in fact is represented by the great number of tourists who gathered to see the park and are still interested in seeing it.

In Romania, the attitude towards the past is somehow different than in Hungary's case where citizens seemed more relaxed in dealing with the communist past. Romanians seem more eager to leave behind a very painful and oppressive historical time, but unfortunately the interest in the 'House of the People' – today renamed the Parliament Palace - that foreign tourists have shown along years determined its inclusion in the commercial materials about Romania. Although it is still reluctantly accepted, today, the 'House of the People' is considered a symbol of the city of Bucharest and a symbol of Romania itself. The building's almost enforced recognition as a symbol reflects the ambivalent status of the communist heritage and the clash existing between what the 'House of the People' represents for Romanians and what it represents for foreign tourists.

4. Branding Romania – present and future

Romania has made various attempts at constructing an impressive brand nation in the past decade. Its efforts at redefining its national identity and at reinventing an image that would place it in a favourable position on the international market has been somehow spoiled by the superficial understanding and dealing with this process of definition and branding. Apparently, the government and the other agents involved in the making of various commercial materials about Romania have failed to understand that branding is what Anholt calls a serious, persistent work that spans over years and consists of a series of concerted strategies, actions and symbolic actions (Anholt 2011). Marketing and branding campaigns in Romania have had unfortunately very little impact on both internal and external audiences.

The first branding efforts were made in 2001 with a project called 'Made in Romania' which did not last long and whose effects were very far from the ones expected. Afterwards, there was another short-lived and equally unsuccessful project taking the form of a photo album distributed under the name *The Eternal and Fascinating Romania*. In 2003, it was initiated the first long-term branding campaign by a 'wiser' Romanian government that seemed fully committed to the idea of creating a powerful nation-brand. The first stage of this campaign was a television spot presented under the slogan 'Romania: Simply Surprising'. This phrase was the target

of pointed criticism from Richard Batchelor, chief of the consulting team for the World Tourism Organization (Kaneva, Popescu 2011).

The consequence of this critique was that the following five commercials were released without any slogan in 2004. However, 'Simply Surprising' has remained in use on Romania's official tourism website for quite a while. In July 2010, a new branding campaign was launched under a new slogan, 'Explore the Carpathian Garden', and using a new, but highly controversial logo of a green leaf with a blue stem.

If we look at the television commercials from 2004, it may be remarked that the campaign focuses on Romania's most attractive touristic destinations, namely: Bucharest, Transylvania, the Black Sea coast, the monasteries of Bukovina and Maramures. The main idea that stayed at the basis of these commercials was that the country represents a very interesting blend of old and new, traditional and modern. At the same time, the spot highlights another symbolic representation of Romania deeply ingrained in the European imaginary according to which the country is a liminal space that stretches somewhere at the border between East and West, at the crossroads between Occidental civilisation and Oriental wilderness. This 'imagistic antagonism' is considered a 'ubiquitous theme' shared also by other Eastern European countries (Kaneva, Popescu 2011: 199).

The new 2010 branding campaign 'Explore the Carpathian Garden' proposes a paradisiacal scenery inviting tourists to discover the wonderful Romanian nature, cultural heritage, folklore and rural lifestyle. The commercials promote the return to nature, to authenticity and purity and to the warmth of the traditional home. The qualitative analysis reveals the fact that the promotional video is created around four myths: the myth of mysterious, mystical space, the myth of wild nature, the myth of rural space and traditions and the myth of deeply rooted religious beliefs (Cretu 2011).

From the analysis of both promotional campaigns, it results that the overall image of Romania is that of a mystical space full of legends, beautiful traditions, hospitable people and extremely varied and spectacular landscapes. The most powerful impression triggered is that of a fairytale like realm and a sense of timelessness. Thus, Romania is represented as a place

> [...] lost in time – vacillating between an idyllic, folkloric, pre-modern past and a glitzy, luxurious, modern future. In that sense, history has been evacuated from the national identity narratives in the commercials and replaced by a gallery of commodified heritage sites. … the adds render Romania suitable for global

> consumption; national identity is appropriated for the purposes of neoliberal globalization. This appropriation via commodification constrains national identity within an ahistorical, decontextualized, depoliticized frame, resulting in a form of *national identity lite* (Kaneva, Popescu 2011: 201)

Certainly, the fact that any reference to a clear historical and political context is totally removed from these commercials is not bad in itself, but is indicative of the uneasy way in which Romanians are still dealing with matters relating to their identity. A sense of confusion and of inadequacy seems to prevent them from finding the appropriate ways to express their credos concerning identity.

5. Conclusions

In the past years, branding nations has become a worldwide phenomenon whose prominence has become more and more obvious for countries that find themselves on a highly competitive market where they struggle to attract trade, tourism and investment. For post-communist countries the process of redefining their image and elaborating significant nation-brands proves to be all the more important as they seem to be several steps behind countries that have already created and are famous for their strong nation-brands. Their governments should abandon the superficial understanding of branding as a simplistic practice of attaching an image or a series of clichés to their country and reconceptualise the whole process in terms of concerted and perseverant actions carried out over longer periods of time in order to obtain the desired results.

Romania seems aware of the great importance of nation branding and has made various efforts at finding its own brand-image as it may be seen in the various branding campaigns performed along the years (2001-2010). Despite its willingness to construct and present a better and more attractive self image, its attempts seem hindered by its own confusion over what strategies should be adopted in the elaboration of its brand. Another obstacle appears to be its reluctance to accept as part of its brand those symbols that are attractive to foreign tourists (like Dracula or the House of the People) because of the dissonance existing between what these symbols stand for Romanians and what they represent in the European and international imaginary about Romania and its people. In the future, adopting a more flexible attitude in matters connected to its identity and a very serious attitude towards the very sensitive topic of 'money spent - valuable and real results from the branding campaigns' would make perhaps its efforts more productive and rewarding.

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FAMILY VIOLENCE – THEORETICAL AND PRACTICAL ASPECTS

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Abstract

Romania's integration into the European Union caused a growing preoccupation with the protection of fundamental human rights whereas the fight against family violence became a central topic of the national policy. In this context, both the legislation and strategies adopted in the field have been modified in order to prevent and fight against this serious phenomenon.

At both national and local levels, efforts have been made to conceive a series of instruments considered as absolutely necessary for the evaluation of this phenomenon and for the opportune intervention in due time, in order to guarantee better ways of protecting the most vulnerable categories, namely women and children. At the same time, there have been various efforts to incorporate the national legislation within the limits established by the international law in the field and to make the working methods used in the case of family violence meet the current European standards. The emphasis is laid on both the teamwork of the professionals who try to identify, take over and deal with the cases of family violence, but also on all the activities for preventing family violence.

The fight against family violence represents also a fight for the protection of children and human rights as they are established in the UN Convention on the rights of the child, the Universal Declaration of Human Rights and the EU Charter of Fundamental Rights.

Keywords: domestic violence, offences pertaining to family violence, fundamental human rights

1. The family – a sociological and juridical perspective. Family relationships and family violence

The family represents the object of study of various sciences, such as: law, sociology, history, philosophy, psychology, medical sciences, biology etc. From a sociological point of view, the notion of family designates a group of persons united through marriage, filiation or kinship, characterised by their living together, shared interests and mutual support (Stănoiu, Voinea 1983).

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From a juridical point of view, family represents a group of persons between whom there are rights and obligations generated by marriage, kinship and other relationships which are assimilated with family relationships (I.P.Filipescu, A.I.Filipescu 2006).

Between the members of the family, relationships should be governed by respect and mutual support and not by violence or abuse. Unfortunately, family violence is a phenomenon of great amplitude which is insufficiently known because of the victims' reluctance to report to the public authorities when violence occurs or because of the fact that these actions are considered legitimate in certain circumstances. At the same time, the victim's lack of reaction is caused either by their lack of financial means that would allow the victim to lead an independent life, or by their fear and even shame of being stigmatized by the rest of the community. Another common cause which prevents victims from reporting to the authorities is their ignorance with respect to the law in the field. There are many cases in which victims do not know anything about the legislation or about the available social services they can benefit from.

The number of cases of family violence registered and centralised by the Ministry of Labour, Family and Social Protection does not account for the real dimensions of this phenomenon, because these numbers represent only the cases that have been reported and registered by the local authorities. The CURS opinion poll conducted in 2008 shows that over 1,2 million of Romanian women are victims of family violence each year; less than 1% are included in official statistics as a result of their pressing charges against the aggressor. It is proved that in 45% of the Romanian families there is a risk of violence against minors and in 10% of these various forms of abuse take place against minors. A form of family violence of major importance is the one against children and this form has been on the increase in the past years.

Family violence is defined by special law as "any deliberate action or inaction, with the exception of self defence or defence actions, manifested physically or verbally by a family member against another member of the same family, which may determine or may cause a harm or any other physical, psychological, sexual, emotional suffering, including the threat of performing these acts, the constraint or arbitrary deprivation of freedom''. It is considered a form of family violence, too, the attempt at preventing the woman from exercising her fundamental rights and liberties.

In order to prevent family violence and other situations that represent violations of the victims' fundamental rights, the local administration authorities have the obligation to take all necessary measures in order to elaborate action strategies in this field and to ensure

the needed resources for their putting into practice. The implementation of these plans is made by the creation of specialised services which must have a constant preoccupation for the prevention of the phenomenon and for the counselling activities and the assistance of the victims and of the aggressor through a well trained specialised staff.

Besides the local public administration staff involved in the prevention and fight against family violence (social workers, psychologists, jurists), the staff of other public institutions as well must take action when they find out about family violence acts or notice any signs of such acts. Thus, teachers who observe signs of child abuse must promptly report any suspicion of it to the nearest office of social services, usually the social worker of the administrative-territorial unit, or the nearest police department. At the same time, employees of medical units who notice signs of child or adult abuse have to report to the General Direction for Social Assistance and Child Protection. This institution will start investigations and will ask the support of other public authorities that may help in solving the case (the police, the mayor's office etc.) If necessary, the victims of family violence will be assisted in the sense of taking them out of the environment where they are in danger in order to be hosted in a specialised shelter for the victims of family violence. The police's involvement in the confirmation of the reports of family violence and the application of legal sanctions to the aggressors are very important. Close cooperation of various specialists from all institutions concerned is essential for the correct preparation of the case. Another major element is represented by the judge who has to decide urgently upon applications of the victims of family violence, on the basis of evidence which are most of the time not convincing enough. In this context, the prevention of family violence becomes a priority and includes the promotion of relationship models based on gender equality. An important necessary step should be taken by the introduction in the national legislation of concrete references to measures and actions meant to ensure adequate protection to women, children and elderly which have to cope with violence within their families, these persons representing in fact the social categories with a high degree of vulnerability.

2. Theoretical and Practical Aspects of Family Violence at Present

The fight against family violence finds itself a place within the paradigm of the protection of human and child fundamental rights, as they are recognized in the UN Convention on the rights of the child, the Universal Declaration of Human Rights, the EU Charter of Fundamental Rights.

There are many international recommendations based on cases that have been dealt with by international courts of justice, which consider that family violence is a major topic of all practices and policies regarding the public health and the fight against discrimination. For instance, the Convention on preventing and combating violence against women and domestic violence, adopted on 11 May 2011 in Instanbul, within the Council of Europe, reiterates the recommendation to consolidate the policy for the prevention and fight against all forms of family violence. This consolidation has to be done especially through a better coordination at the highest level and the elaboration of a new solid multiannual strategy to prevent and punish family violence acts.

The national strategy should be a major concern of the executive, legislative and judicial powers, of the academic environment, as well as of local public administration authorities and civil society, and it should take into consideration the following aspects:

- Women are the most affected by family violence.
- Violence against women is favoured by the imbalanced power relations between men and women, which lead to the domination and discrimination of women.
- Children are affected by family violence even when violence is not directly targeted against them, but they are witnesses of violence.
- The European standard for the services available to the victims requires the existence of a shelter for every 10.000 inhabitants.

Family violence issues and violence against women in particular are a constant preoccupation of the EU institutions, a fact that is proved by the numerous documents elaborated and adopted at this level, documents that point out that gender-based violence is predominantly targeted towards women.

Since violence against women includes a wide range of violations of the human rights, the European Parliament by its Resolution of 5th April 2011 on priorities and outline of a new EU policy framework to fight violence against women brings to the fore a new **perspective of the global politics on gender-based violence**. The main points are the following:

- the elaboration and adoption of a new directive against gender-based violence;
- the establishment of a European charter formulating a minimum level of assistance services to be offered to victims of violence against women, such as: the right to legal aid; the creation of shelters to meet victims needs for protection and temporary accommodation; urgent psychological aid services to be provided free of charge by specialists; financial aid arrangements aimed at promoting victims' independence and facilitating their return to normal life and work;

- training for all professionals involved in the prevention and combat of violence against women with the aim to promptly and correctly apply all measures set up by national legislations;
- the creation of partnerships with higher education institutions with a view to providing training courses on gender-based violence for professionals such as judges, criminal police officials, health and education professionals and victim support staff;
- the creation of solid partnerships with the relevant NGOs which provide shelter for the victims of domestic violence etc.

The same resolution highlights that exposure to physical, sexual or psychological violence and abuse taking place between parents and other family members have serious consequences on children. This reality demands that each state conceive a legal framework for the benefit of the victims who should have easy access to the counselling services adjusted to their age with the main goal of helping children to cope with traumatic experiences within family.

The resolution also emphasises that research into the area of violence against children, young people and women has to be included as a multidisciplinary research theme in the Eighth Framework Programme for Research and Technological Development, 2014-2020. It calls on the EU Fundamental Rights Agency and the European Institute for Gender Equality to carry out research which examines the magnitude of violence in teenage relationships and the impact this has on their welfare. The resolution shows that state members should devote appropriate resources to prevent and combat violence against women, including the appeal to the Structural funds. It is considered as necessary that the authorities in member states should take action to facilitate the return to the labour market of women who have been victims of gender-based violence through instruments such as The European Social Fund or the Progress Programme.

Besides, on the official website of the Ministry of Labour, Family, Social Protection and Elderly of the Romanian Government, in the document entitled **A Socio-Economic Analysis for the 2014-2020 Structural Funds Programming**, victims of family violence are one of the target groups considered eligible for the programming of the 2014-2020 European Funds. In fact, at a national level, issues related to family violence are the subject of many legislative acts. Law no. 217/2003 on preventing and fighting family violence is the framework law that establishes the fundamental principles and modes of action in all cases of family violence.

Government Decision no. 1156/2012 has established and approved the 2013-2017 National Strategy on preventing and combating the phenomenon of family violence and the Operational Plan on implementing

the 2013-2017 National Strategy on preventing and combating the phenomenon of family violence. The Strategy promotes good practices in this domain and useful tools for all those who are in direct contact with the victims and their aggressors in the family, namely specialists in various fields such as social protection, local administration, justice, health, education, in order to ensure a common action plan providing measures meant to reintegrate persons affected by family violence and the rehabilitation of the aggressor.

For the years 2013-2017, the Ministry of Labour, Family, Social Protection and Elderly of the Romanian Government has proposed the several courses of action:

- The development of the capacity of the local administration' authorities to intervene in the preventing and fighting against family violence;
- The implementation at a national level of a unique specialized data collection system for the registration, reporting and management of the cases of family violence;
- The increase of efficiency in fighting the crimes of family violence;
- The encouragement of specialized institutions to carry out joint programmes for preventing and combating family violence;
- Continuing education and training for professionals activating in the field of family violence (social worker, policeman, doctor, psychologist, prosecutor, judge etc.);
- The recovery of the victim and/or the aggressor by complementary and integrated activities of information, counselling, psychotherapy and other forms of alternative therapies, with the aim of increasing their autonomy and raising their awareness of the social values of the individual, of enhancing their sense of responsibility and the power to regain social abilities;
- The constant effort to finance the establishment of new units for preventing and combating family violence.

A very important aspect of the procedure in the cases of family violence is that the woman who is a victim of family violence has the right to ask the Court to issue a protection order. According to the current provisions of the law, the person, whose life, physical or psychological integrity or freedom is put in danger because of another family member's violent act, has the legal possibility to request the Court to issue a protection order to put an end to the state of danger. By the protection order, the Court can establish temporarily one or more of the following measures, obligations or interdictions:

a) the temporary eviction of the aggressor from the family home, regardless of the fact that the aggressor is the titulary of the right of property;

b) the reintegration of the victim, and if possible, of the children, in the family home;
c) limitation of the aggressor's right of use of one part of the common residence only when it can be partitioned, so that the aggressor will not come in contact with the victim;
d) the obligation of the aggressor to keep a specific minimum distance in relation to the victim, her children or to her relatives or to the house, working place, or place of education of the protected person;
e) forbidding the aggressor to go to certain localities or determined areas visited or frequented periodically by the protected person;
f) the interdiction of any contact, including by telephone, correspondence or any other way of communication with the victim;
g) forcing the aggressor to hand over all possessed weapons;
h) setting custody for minor children and the establishment of a new residence for them.

The Court can also decide that the aggressor has to pay the rent and/or the maintenance expenses for the temporary residence where the victim, the minor children and other family members live or are about to live because of the impossibility to stay in the family home. The Court can force the aggressor to be subjected to psychological counselling, psychotherapy or can recommend a series of control measures, special medical care or other forms of cure, with the specific aim of disintoxication. The duration of the measures taken through the protection order is decided by the judge, but it cannot surpass 6 months from the issuing of the protection order.

The competent court to issue a protection order is the law court situated in the territorial area of the victim's place of residence. The request can be introduced by the victim or their legal representative. The request can be made on behalf of the victim and with her agreement, by any of the following bodies: the prosecutor, a representative of the authority competent in the field of family violence at the level of the administrative unit, the representative of any of the providers of social services in the domain of preventing and combating family violence, officially recognized by the law.

The request for the protection order is drawn up according to the specific request form established by law and is exempt from the legal stamp tax. The procedure to issue a protection order is performed with celerity, in the council chamber, and the prosecutor's participation is compulsory. In case of great emergency, the court can issue the protection order on that same day, ruling on the basis of the request and the papers, without the conclusions of the parties. The pronouncement may be postponed by 24 hours at most and the motivation of the protection order

will be done in at most 48 hours from the pronouncement. The protective order is executory. When the protection order expires, the protected person can require another order, if there is certain evidence that the life, physical or psychological integrity or freedom of the victim are in danger.

Mention must be made that the family violence is also incriminated by the Romanian Penal Code that stipulates the increase of the maximum of sanctions established by law in the case of a series of crimes against life, physical integrity and health.

The analysis of the 2013 statistics concerning the family violence victims in Galati county shows that in this county only, approximately 550 cases of family violence have been reported over the course of one year. Most of these cases involved children who were either abused by other family members or witnessed violence acts in the family. However, the number of the places in the shelter centres is far from satisfactory: there are only 20 places available in a shelter that was created by a public-private partnership in the city of Galati. In 2013, only 100 women could benefit from the services offered by the shelter for family violence victims.

It is important to note that victims may receive psychological counselling.

The disadvantage would be that only those victims who have financial resources would be able to go to the specialised institutions offering psychological assistance that are situated in cities like Galati, Tecuci and Targu Bujor. At a local level, there are few local authorities that hired specialised staff able to assist the victims of family violence. The insufficient financial resources hinder the capacity of the local authorities to establish and sustain centres for the support of family violence victims or shelters that may offer temporary hosting for these victims.

3. Conclusions

Family violence represents one of the most serious problems of the contemporary society at both international and national levels including Romania.

Despite the fact that the family violence and the violence against women has been a subject of debate over the past decades, the international community has not yet succeeded in ending this form of violence that proves to be extremely destructive. Family violence is a very complex problem that involves the protection of the victim's personal integrity and of their common social interests, like freedom and democracy.

Gender-based violence does prejudice to the democracy itself, given the fact that the women subjected to violence have significantly reduced chances to take part in a fulfilled social and professional life, because in

their case the life within their family does not offer them the security and support they need.

It is remarkable that at both international and national levels, there is a constant preoccupation with the prevention of this phenomenon and the protection of the human fundamental rights, in particular the rights of the most vulnerable categories: children, women and elderly. Because of the current context of the economic crisis, the state is not able to provide the resources necessary to create the specialised services for the victims of family violence. There are not enough places in the shelter centres for the victims of family violence and the specialised staff is not large enough to ensure a prompt intervention in all cases and at the right moment. But it is hoped that by the cooperation between all the professional categories mentioned above most of the cases of family violence can be properly investigated and solved.

At the same time, it may be pointed out that the social protection system, and the especially the family violence protection system is unevenly developed in urban and rural environments. The involvement of the local public authorities in the organization of this system is only occasional, these authorities playing an active role only in municipalities and cities. The capacity of the local authorities to hire and maintain specialized staff within the social assistance services is reduced. At the community level, the system of communication and cooperation between institutions is underdeveloped, and the institutional intervention is not preventive or at least ahead of time, from the first signs of violence.

Another negative aspect is that in most cases the social reinsertion of a woman or other members of the family who have been victims of family violence is not possible and that causes them to go back in the environment from which they were initially taken out. In most of these cases the perpetrator of violence will repeat his acts.

It is obvious that, in these cases, the fundamental rights of the victims, such as the right to life, to physical and psychological integrity, the individual freedom, the liberty of expression, the equality between men and women, the right to education and to the protection of health, are violated.

That is why it is necessary to analyse the situation of the vulnerable persons, of their needs and of their resources, and the information obtained has to be used in order to conceive a series of strategies and programs meant to limit their dependence upon the state services and to facilitate their social reinsertion with their own resources. This would also contribute to the limitation of the phenomenon of family violence, the adult victims having the possibility to find a job and to go on with their life in conditions of security and stability.

We also think that the national legislative framework can be improved by a consultation with the personnel who ensures the investigation of the cases of family violence and which may offer pertinent opinions about the advantages and disadvantages of the current system.

As a result of the experience gained in the activity of social assistance, and in particular in the activity of protection of the victims of family violence, we make the following remarks and propositions to improve the legal provisions in place at present:

- The time of 6 months established in the protective order for the protection measures is, in our opinion, too short, and the prolongation of this period by way of legal action is most of the time too difficult for the victim to obtain, mainly because of the lack of financial resources that women deal with in most of these situations. The period of time over which these protection measures should be applicable should be at least of 1 year, with the possibility to be extended by another year. The prolongation of the current provided period would increase the victims'chances to social reinsertion and would offer greater protection for the children and elderly who usually live in these families.
- According to the current regulations, as already said in the article, the court can force the aggressor to attend psychological counselling, psychotherapy, or other forms of cure or treatment, especially for disintoxication purposes. We consider that at least one of these measures should be taken, in each case, in order to prevent the aggressor from recidivation. The psychological counselling and the disintoxication are all the more important, especially when the aggressor is drug or alcohol addicted. At the level of each General Directorate of Social Assistance and Child Protection there is a specialised compartment for the cases of family violence in which psychologists are specially trained and employed to offer psychological counselling free of charge for both victims and aggressors. It is also known that in each psychiatry hospital there are sections that provide medical services of disintoxication free of charge.

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