

# LEX <sup>et</sup> SCIENTIA

**International Journal**

**Nr. XV Vol. 1/2008**

**Published by « Nicolae Titulescu » University from Bucharest and  
Business and Administration Faculty within University of Bucharest,  
in cooperation with “Student’s Book” Publishing House**

**<http://lexetscientia.univnt.ro/>**

**contact: [lexetscientia@univnt.ro](mailto:lexetscientia@univnt.ro)**

# “Student’s Book” Publishing House



Phone: 004.031-402.95.90.  
Phone/Fax: 004.021.322.74.93.  
Matei Basarab Street No 106, Bl. 73, et. 8, sect. 3,  
Bucharest, Romania  
e-mail: [cartea.studenteasca@rotex.ro](mailto:cartea.studenteasca@rotex.ro)  
<http://www.rotex.ro>

CNCSIS Accredited Publishing House

Cover:: Dragoş George SPĂTARU

Make up: Dragoş George SPĂTARU

## Editorial Board

### Romanian Editorial Board

Ioan Dogaru – *University from Craiova*

Dan Horia Mazilu - *University of Bucharest*

Ion Neagu – “*Nicolae Titulescu*” *University, Bucharest*

Viorel Cornescu - “*Nicolae Titulescu*” *University, Bucharest*

Ion Ignat – „*A. I. Cuza*” *University, Iaşi*

Alexandru Olteanu - “*Nicolae Titulescu*” *University, Bucharest*

Magdalena Platis - *University of Bucharest*

Victor Ploae – „*Ovidius University*”, *Constanţa*

Nicolae Popa - “*Nicolae Titulescu*” *University, Bucharest*

Dan Popescu – „*Lucian Blaga*” *University, Sibiu*

Mihai Hotca - “*Nicolae Titulescu*” *University, Bucharest*

### International Editorial Board

Shinji Naruo, Japan

Anatol Caraganciu, Moldova

Viorica Carare, Moldova

Adeyemi Oluare, Nigeria

### Editor

Elena Druică

### Assistant Editor

Alexandra Apostol

## Scientific Advisory Board

### Romanian Scientific Board

Viorel Cornescu

Christina Suci

Alexandru Taşnadi

Vasile Macoviciuc

Cătălin Popescu

Răzvan Papuc

Daniela Mihai

Magdalena Rădulescu

Andrei Stănoiu

Daniela Bădoi

Rodica Ianole

### International Scientific Board

Jørgen Lindgaard Pedersen - Denmark

Mika Saloheimo – Finland

Jacky Mathonnat - France

Mehran Nejati - Iran

Adeyemi Oluare, Nigeria

Maskov Victor - Russia

Shinji Naruo – Japan

Azlan Amran - Malaysia

ISSN: 1583-039X

## **CONTENTS:**

### **LE RAPPORT JURIDIQUE**

Nicolae Popa .....5

### **PROCEDURAL AND METHODOLOGICAL ASPECTS REGARDING THE INVESTIGATION OF THE FRAUDULENT BANKRUPTCY INFRACTION**

Mihai Adrian Hotca .....14

### **30 YEARS FROM THE ADOPTION OF ADDITIONAL PROTOCOLS I AND II TO THE GENEVA CONVENTIONS**

Beatrice Onica Jarka .....23

### **MANIFESTATIONS OF THE ABUSE OF POWER IN THE ROMANIAN LEGISLATION REGARDING THE PREFECT'S OFFICE –CONSTITUTIONAL CENSORING OF THIS ABUSE OF POWER**

#### **Case study**

Marta Claudia Cliza .....29

### **THEORETICAL AND PRACTICAL ASPECTS REGARDING CONSENT, AS VALIDITY CONDITION OF THE CIVIL ACT**

Camelia Stănculescu.....37

### **CRITIQUING AUSTRALIA'S KNOWLEDGE STRATEGY: HOW CAN WE BETTER POSITION OURSELVES IN A GLOBAL COMMUNITY?**

Sharyn Renshaw

Girija Krishnaswamy.....44

### **A RELATIONSHIP BETWEEN OWNER-MANAGER'S CHARACTERISTIC AND BUSINESS PERFORMANCE**

Nimalathasan. B .....61

### **ACTIVITY-BASED COSTING APPLICATIONS IN THE CZECH REPUBLIC**

#### **Boris Popesko**

Petr Novak.....69

### **NEW TRENDS IN THE QUALITY MANAGEMENT**

#### **Zuzana Tučková**

David Tuček.....76

### **CORPORATE SOCIAL RESPONSIBILITY IN AUTO INDUSTRY: AN IRANIAN PERSPECTIVE**

Ghodratollah Talaei

Mehran Nejati .....84

### **EXPLORING THE KEY ASPECTS OF MANAGEMENT ORGANIZATIONS IN SHIPPING BUSINESS**

Metin Celik

I. Deha Er .....95

### **ANALYSIS OF MECHANISMS FINANCING OF CULTURAL SPHERE**

Costandachi Gheorghe..... 102

<b>FAILURES OF GLOBALIZATION AND ANACHRONISMS OF GOVERNING</b>	
Ion Bucur .....	115
<b>E-GOVERNMENT AND EMPOWERMENT: IMPACTS ON EQUAL ACCESS TO INFORMATION AND DEVELOPING PUBLIC LANGUAGE</b>	
Ali A. Pourezzat, Mostafa Nejati Mehran Nejati .....	123
<b>ENHANCING QUALITY AND SAFETY MANAGEMENT IN SHIPPING: TANKER MANAGEMENT AND SELF ASSESSMENT</b>	
Fatih Turker Ismail Deha Er .....	128
<b>A MULTIVARIABLE SYSTEM BASED APPROACH FOR PROCESS IMPROVEMENT IN BID MANAGEMENT</b>	
R S Bharat Chandran .....	135
<b>THE CREATIVE ECONOMY</b>	
Marta-Christina Suciú.....	145
<b>APPRAISAL OF THE PRACTICE OF SOCIAL RESPONSIBILITY BY BUSINESS ORGANISATIONS IN NIGERIA</b>	
Olu Ojo .....	155
<b>CHALLENGE STRATEGIES OF BUSINESS COMPETITION: CREATIVE MARKETING APPROACH NOTES ABOUT DEVELOPING A SUCCEFULL ORGANIZATIONAL MODEL</b>	
A. Buğra HAMŞIOĞLU Didem HAMŞIOĞLU .....	166
<b>THE CONTRIBUTION AND SOME CHARACTERISTICS OF CROSS BORDER COOPERATION FOR MOLDOVAN SMES (THE CASE OF COOPERATION WITH ROMANIA)</b>	
Elena Aculai Adela Bulgac.....	173
<b>ORGANIZATIONAL CITIZENSHIP BEHAVIOUR AND ORGANIZATIONAL LEARNING CLIMATE RELATIONSHIP</b>	
Mine Türker .....	182



# LE RAPPORT JURIDIQUE

Nicolae Popa  
« Nicolae Titulescu » Université, Bucarest

## ABSTRACT

Le rôle du droit en tant qu'organisateur de la vie sociale, dans ses principales relations, ayant comme but de discipliner la conduite des hommes dans leur intersection quotidienne, est tout d'abord relevé – sur le plan abstrait et théorique – par les traits du mécanisme de la réglementation juridique, mécanisme dont le contour est tracé par l'existence du système normatif juridique, partie composante (sous-système) du système normatif social. Le mécanisme de la réglementation de la vie sociale par des normes juridiques met en lumière des aspects des plus variés, marquant l'influence du droit sur la société – aspects surtout juridiques, psychologiques etc. En même temps, toutefois, le rôle du droit ne peut pas être limité tout simplement à cette influence théorique. Dans sa dernière essence, le droit signifie vie, il offre un cadre spécifique à la vie sociale, étant, dans cette lumière, le résultat de la traduction, dans un langage technique, des formes et des structures de la vie sociale<sup>1</sup>. En tant qu'expression de certaines tendances, d'un certain système de valeurs, la loi garantit l'ordre, la stabilité sociale, la sécurité juridique. En pénétrant dans le tissu des rapports interhumains, les aspects sociologiques du mécanisme de la réglementation juridique ne peuvent pas échapper à l'analyse. L'étude des rapports juridiques souligne tout justement ces aspects sociologiques, les rapports de droit étant, avant tout, des rapports sociaux, dans lesquels les hommes entrent afin de satisfaire leurs besoins variés, des rapports de coopération et de coexistence.

## LES PREMISSES DU RAPPORT JURIDIQUE.

Pour qu'un rapport juridique puisse apparaître et se déployer, il faut qu'il existe certaines prémisses. En général, on considère que ces prémisses sont: la norme juridique, les sujets de droit et les faits juridiques<sup>2</sup>. Les premières deux prémisses sont considérées prémisses générales ou abstraites, tandis que le fait juridique est qualifié comme prémisses spéciale ou concrète.

Les normes de droit définissent le domaine du comportement possible ou dû, dans le cadre de certains rapports sociaux sur lesquels l'État a intérêt d'actionner d'une certaine manière. Elles représentent la prémisses fondamentale de la naissance d'un rapport juridique. En effet, faute de normes de droit, on ne peut pas parler de rapport juridique, la norme de droit étant celle qui définit la capacité des sujets de droit, en établissant, en outre, les catégories de faits juridiques de même que leurs effets. En tant que représentation consciente de la classe dirigeante sur le contenu et sur les conséquences de certains rapports entre les hommes, la norme juridique trouve dans le rapport de droit l'incarnation de son principal moyen de réalisation. Pour cette raison, très souvent, le rapport juridique est caractérisé comme une norme juridique en action, son principal, mais non pas son unique moyen de réalisation. L'influence du droit sur les relations sociales ne peut pas être réduite à une seule modalité – c'est à dire à la création et au déploiement des rapports de droit. Elle est

---

<sup>1</sup> A voir: J. Gaudement, *L'élaboration de la règle de droit et les données sociologiques*, en: *Méthode et droit*, Paris, 1958, p. 23.

<sup>2</sup> Certains auteurs qualifient comme conditions ces prémisses et les divisent en deux: la norme juridique et les faits juridiques. Voir Gheorghe Boboș, *Théorie générale du droit*, Argonaut, Cluj-Napoca, 1999, p. 273.

beaucoup plus complexe. À présent, la grande majorité des spécialistes dans le domaine de la théorie du droit sont d'accord qu'il existe des normes juridiques qui se réalisent même en dehors de la production de rapports juridiques.

Les normes auxquelles on fait référence dans ce cas, sont celles à caractère et contenu prohibitif. La caractéristique de ces normes consiste dans le fait qu'elles défendent et influencent les relations sociales par la méthode d'imposer des abstentions de l'accomplissement de certains faits qui exposent au danger l'ordre de droit. La mission de ces normes, leur tâche fondamentale, n'est donc pas la création des rapports juridiques, mais l'abstention de la commission des faits qui pourraient léser des droits et des intérêts. Dans un tel cas, on ne peut pas soutenir qu'un rapport juridique, fondé sur ces normes, ne pourrait pas se naître ; mais on peut soutenir que des la naissance du rapport juridique contraignant, la mission de la norme juridique prohibitive n'a pas été réalisée. L'apparition du rapport juridique est, dans ce cas, le résultat de la non observation de la norme, de la transgression de l'interdiction. Le législateur a voulu que cette norme soit réalisée non pas par la création du rapport juridique contraignant, mais par l'observation de la conduite prescrite et de l'abstention des actions prohibées.

Dans la droit pénal et administratif on parle, parfois, de l'existence de deux catégories de rapports juridiques: rapports juridiques de conformation et rapports juridiques de conflit.

Le rapport juridique de conformation représente l'adoption de bon gré ou par peur, face à la punition de la conduite prescrite par les normes de droit, tandis que le rapport juridique de contrainte signifie la relation dans laquelle la punition est concrétisée.

A notre avis, il n'est pas possible de s'approprier ce point de vue au moins pour deux raisons:

1. Raisons de principes. Il nous paraît qu'il ne serait pas opportun d'introduire tous les citoyens dans les rapports juridiques pénaux; 2. Le rapport juridique est une relation sociale concrète, dans laquelle les sujets apparaissent comme porteurs de droits et d'obligations déterminés. L'image d'un rapport juridique abstrait, de conformation, n'apparaît pas d'être la norme juridique elle même. C'est ainsi que la différence entre la norme de droit et le rapport juridique est effacée.

Les normes de droit qui réglementent les soi-disant droits absolus et universels (opposable *erga omnes*) se réalisent sans créer et déployer directement des rapports juridiques. A ces droits correspond l'obligation générale qui incombe à tous les autres sujets, de s'abstenir des actions qui empêchent leur exercice par les titulaires.

Dans la littérature concernant la théorie du droit a été également souligné le fait que dans les situations déterminées peuvent aussi apparaître des rapports de droit faute d'une norme expresse – il s'agit ici du fonctionnement de l'institution de l'analogie (*analogis juris*).

Tel qu'on sait, en matière civile, le juge est tenu de se prononcer (Art.3 du Code Civil) même si la loi n'est pas claire ou s'il n'existe pas de réglementation. Dans le cas de *l'analogis juris* (quand il n'existe pas de possibilité de résoudre l'affaire, et on appelle à l'application d'une norme semblable), le juge fait appel aux principes fondamentaux du droit<sup>3</sup>. On rencontre rarement l'application du droit fondée sur l'analogie et, en tout cas, elle est limitée au domaine civil.

Indépendamment, l'hypothèse dans laquelle se présenterait le mécanisme complexe de l'influence du droit sur le comportement humain, il faut reconnaître le fait que la forme essentielle de cette influence est constituée par la création et le déploiement de certains rapports juridiques. Les rapports juridiques constituent la plus fréquente modalité par laquelle l'énergie des normes de droit est concrétisée dans la vie sociale. La réalisation du droit par l'intermédiaire des rapports juridiques implique une manifestation explicite de la volonté de certains sujets déterminés, afin de valoriser les prérogatives légales.

Pour cette raison, on considère que la réalisation des normes de droit par l'intermédiaire des rapports juridiques représente l'aspect dynamique de la réglementation juridique. Le caractère typique, général, impersonnel, irréfragable et injonctif de la norme de droit devient particulier, s'individualise, reçoit une forme concrète au sein des rapports juridiques.

Dans l'ensemble des prémisses qui conditionnent le rapport juridique, c'est la norme juridique qui exerce le rôle fondamental. Les autres prémisses – les sujets de droit, les faits juridiques – se trouvent, à leur tour, dans une interdépendance serrée avec la norme juridique.

Evidemment, dans le cadre de cette interdépendance peuvent apparaître différentes nuances entre une branche de droit et une autre. Ainsi, par exemple, au sein des rapports juridiques de droit international, c'est la qualité de sujet de droit de l'État souverain qui a la priorité. Dans d'autres situations, le rapport juridique peut surgir directement de la norme juridique, sans avoir besoin d'un fait à même d'occasionner l'entrée en action de la disposition ou de la sanction de la norme de droit.

## **DEFINITION DU RAPPORT JURIDIQUE**

Dans les ouvrages de spécialité, le rapport juridique est défini comme une relation sociale idéologique, une relation individualisée, réglementée par la norme de droit, défendue par l'État et caractérisée par l'existence des droits et des obligations juridiques.

La définition du rapport juridique devra tenir compte, bien entendu, des exigences de toute définition, elle aura à retenir le genre proximal et la différence spécifique. Le genre proximal du rapport juridique est la relation sociale. Le

---

<sup>3</sup> La situation était différente dans le droit romain, quand le juge pouvait affirmer sous serment: "Rem sibi non liquere" (L'affaire n'est pas éclaircie) et il se retirait.

rapport juridique, en tant que relation sociale, fait partie d'un système de liaisons, de contacts sociaux, qui définissent l'individu comme être social (*Zoon politikon* tel que le caractérisait Aristote). Au lieu d'être un simple *homo faber* (l'être qui produit) mais un *homo sapiens* (l'être qui pense), l'homme réfléchit sur l'avenir et définit son existence en fonction d'un projet. En tant que participant aux relations sociales, il est créateur de l'histoire et porte en plein la responsabilité de ses actes. Ce qui sépare le rapport juridique de tous les autres rapports sociaux est le fait que cette liaison sociale est réglementée par une norme spécifique, la norme de droit – et qu'elle est susceptible d'être défendue par l'État, moyennant la contrainte.

Vu ces circonstances, nous pouvons définir le rapport juridique comme la relation sociale réglementée par la norme juridique, contenant un système d'interactions réciproques entre les participants déterminés, relation susceptible d'être défendue par la voie de la coercition exercée par l'État.

Les traits caractéristiques du rapport juridique:

1. Le rapport juridique est un rapport social. Le rapport juridique est toujours établi entre les hommes, soit entre partenaires qui sont des personnes physiques, soit entre ceux-ci et les organes de l'État, les organisations économiques de l'État ou bien des organisations n'ayant pas le caractère propre à l'État. En tant que rapport social, rapport entre les hommes, le rapport juridique se rallie à l'ensemble des rapports sociaux-économiques, politiques etc. (coexiste avec eux). Il est nécessaire de souligner le caractère social du rapport juridique, vu aussi la tendance présente, parfois, dans la littérature juridique selon laquelle le rapport juridique est conçu comme un rapport entre les hommes et les biens. Cette tendance est présente tout d'abord dans le droit privé et concerne le mode de définir la propriété<sup>4</sup>. Ainsi que Marx l'avait démontré, la propriété est, à son tour, un rapport social, un rapport entre différents groupes sociaux, un rapport consacré par les normes de droit. Les relations entre les hommes peuvent apparaître comme des relations face à certains objets, mais le contenu réel de celle-ci est justement le rapport social. En dehors des relations de propriété, les hommes entrent dans un grand nombre d'autres relations sociales réglementées par des normes juridiques.

La conception moderne explique la société comme un produit de l'interaction des hommes, comme un système de relations, système fini, complexe, en cours de permanent développement. L'action des individus – doués de conscience et volonté propre – réalise en fait la dynamique de la société. Par l'intermédiaire des

---

<sup>4</sup> A voir: Aubry, Rau – *Cours de droit civil français*, vol. II, Paris, 1897, p.72. L'existence de certains rapports entre l'homme et les choses est consignée aussi dans la sociologie. C'est ainsi que E. Durkheim, en analysant la division du travail par l'intermédiaire des normes juridiques, soutient l'existence de deux grandes catégories de normes de droit qui correspondent aux deux formes de solidarité sociale - mécanique et organique, certains formant le droit répressif, d'autres le droit restitutif. Ces dernières, à leur tour, sont de deux sortes: négatives, qui établissent des rapports de l'homme et des biens (soul. par nous) et positives, qui établissent les rapports des individus entre eux. Voir: E. Durkheim, *De la Division du travail social*, Paris, Alcala, 1893, p. 32-101.

actions individuelles, en dernier lieu, c'est la légité, la nécessité qui se fraient en chemin. L'individu et la société existent au sein d'une unité dialectique. Le rapport individu-société est nécessairement un rapport actif. Dans ce cadre, les rapports entre la société, considérée comme un entier, et l'individu, parcourent un chemin caractérisé par une amplification continue de leur complexité. Tout processus d'évolution, d'adaptation ou d'intégration dans la société a lieu dans un cadre organisé, normé, réglementé. Dans ce contexte, le rôle de la norme de droit dans l'orientation de la conduite humaine et en tant que facteur de socialisation est particulièrement important.

Ce rôle s'accroît dans les conditions actuelles, quand a lieu un processus de socialisation progressive et de plus en plus accentuée de la vie. Les conditions sociales contemporaines, caractérisées par une diversification et multiplication aiguë des contacts inter – et intrasociaux comme résultat naturel de l'accélération des échanges économico-sociaux, offrent un large terrain de manifestation du statut et du rôle des anneaux intermédiaires qui servent de médiateur entre l'individu et la société. La réglementation juridique ayant comme but d'influencer la conduite des hommes en diverses relations sociales, est structurée en liaison directe avec la position de l'individu dans un système social historiquement constitué.

L'homme n'actionne jamais comme un système isolé, il actionne dans un système de relations, dans une ambiance sociale, un milieu donné. Le déroulement des relations sociales réglementées par les normes juridiques en conformité avec les dispositions de celles-ci, produit un ordre social spécifique – l'ordre juridique, partie composante de l'ordre social. Evidemment, tous les rapports sociaux ne deviennent pas de rapports de droit. En endossant le vêtement juridique, le rapport social adopte une figure originale, jouit d'un traitement spécial, acquiert même une qualité qui maintient les participants près l'un de l'autre.

On a même considéré que cette liaison indissoluble, organique, qui maintient les sujets près l'un de l'autre pendant tout le déroulement du rapport juridique, relation due à l'existence des droits et des obligations réciproques des parties, constitue l'une des légités objectives essentielles dans le domaine de la réalisation juridique, tandis que l'absence de la forme juridique à un phénomène social, signifie l'impossibilité d'utiliser les instruments spécifiques au droit pour la réalisation et la protection des intérêts des participants.

2. Le rapport juridique est un rapport de surstructure. Entrant dans la composition de la surstructure juridique, les rapports de droit subissent l'influence décisive, en dernier lieu, des rapports matériels.

Les relations de propriété, n'étant que l'expression juridique des relations de production, formant l'axe autour duquel gravitent toutes les autres réglementations juridiques, les rapports matériels, qui constituent le "fond" de la réglementation des rapports sociaux accomplie par le droit, n'épuisent pas par cela la substance de cette réglementation. En tant que noyau de l'ordre social, le droit est impliqué dans le déroulement des relations d'intérêt décisif pour un bon déploiement des rapports politiques décisifs (rapports qui appartiennent au

domaine de la direction sociale), les rapports dans la sphère de la vie familiale etc. En même temps, en tant que rapports de surstructure, les rapports juridiques peuvent se manifester à un degré d'indépendance relative face aux rapports matériels, même de subsister aussi comme une création de la norme de droit.

N'existant plus, pratiquement, une délimitation entre le rapport juridique et le rapport matériel, par suite de l'identification des phénomènes, qui appartiennent à des sphères différentes de la réalité, il pourrait apparaître le danger d'ignorer la dialectique de l'auto-développement intérieur du phénomène juridique par le placement de la source du développement exclusivement à l'extérieur, en dehors de celui-ci. Le rapport juridique, en tant que rapport de surstructure nous paraît comme une forme des rapports matériels; dans son individualité il se présente, toujours, cependant, comme une unité d'un contenu spécifique et d'une forme caractéristique.

3. Le rapport juridique est un rapport idéologique-volitif. En tant que rapport entre les hommes, le rapport juridique est un rapport de volonté. Les hommes entrent dans des rapports sociaux en vue de satisfaire à leurs besoins. Menant son existence dans une ambiance sociale et satisfaisant à ses intérêts dans un cadre social déterminé, organisé et réglé par des normes, l'homme entre dans des nombreux rapports avec les autres ou avec des organismes sociaux constitués. L'homme est – ainsi comme on a dit<sup>5</sup> – père et fils, vendeur et acheteur, électeur et élu etc., et ces "housses" personnelles constituent le fondement et en même temps le "matériel" de l'ordre juridique. La participation des hommes à la vie sociale ne se trouve guère sous le signe de la fatalité et lorsque nous affirmons que les normes du droit "programme" la liberté d'action des hommes, cette affirmation, selon nous, ne doit pas être prise en termes absolus, parce que, en réalité, ce sont les lois objectives du développement social humain reflétées dans la conscience des hommes, qui, en dernière analyse, fixent les normes, qui "programment" la conduite humaine.

L'analyse du caractère volitif du rapport juridique a permis à la doctrine juridique de relever des aspects particulièrement intéressants.

C'est ainsi qu'on a souligné le fait que le rapport juridique n'est pas un simple rapport entre deux ou plusieurs participants à la vie sociale. La volonté des sujets, elle seule est insuffisante; il est nécessaire que cette volonté s'exprime en conformité avec la volonté de l'État. Dans ce contexte est relevée de nouveau la relation organique existante entre la norme juridique et le rapport juridique. Faute de la norme juridique, qui garantit par l'intermédiaire de l'État la réalisation du rapport juridique en conformité avec la disposition comprise dans son contenu, le rapport social ne devient pas juridique. Ainsi, l'opinion de ces auteurs qui parlent de rapports de droit "préjuridiques"<sup>6</sup> ou bien de relations

---

<sup>5</sup> Kaufmann; *Geganken zu einer ontologischen Grundlegung der juristischen Hermeneutic*, in: *Memoria del X Congreso Mundial Ordinario de Filosofia del Derecho y Filosofia social*, vol. VI, Mexico, 1982, p. 14.

<sup>6</sup> A voir: I. Szabo, *Osnovi teorij prava*, Moscou, 1974, p. 87.

juridiques préexistantes<sup>7</sup>, elle ne trouve pas, selon, nous, un support dans la réalité juridique.

En tant que rapport volitif, le rapport juridique est le terrain sur lequel se rencontrent deux volontés: la volonté de l'État exprimée dans la norme de droit, qui consacre les droits et les obligations des participants et la volonté des sujets. En ce sens, on parle du double caractère volitif du rapport juridique. La rencontre de ces deux volontés prend l'aspect d'une collaboration, d'un déploiement harmonieux dans la grande majorité des cas. Mais il peut apparaître aussi comme une confrontation de volontés, dans les conditions où les sujets ne subordonnent pas leur volonté et leurs actions individuelles à la conduite prescrite dans le contenu préceptif des normes de droit.

Dans ce sens, la littérature juridique classe les rapports juridiques en rapports par lesquels est réalisée la disposition des normes juridiques et rapports par lesquels est réalisée la sanction des normes juridiques.

La thèse concernant le double caractère volitif du rapport juridique retient la liaison organique existante entre les droits et les obligations, de même qu'entre les titulaires de ceux-ci. Dans la manifestation du caractère volitif du rapport de droit devra être tenu compte de la branche de droit dans laquelle participent les sujets du rapport juridique. Ainsi, dans le domaine du droit civil, de la famille, du travail etc., la majorité des rapports se fonde sur des actes de volonté individuelle. Dans la conclusion d'un rapport juridique de mariage, par exemple, la volonté des parties de conclure ce rapport juridique est déterminante. Mais cette volonté ne peut pas être exprimée valablement (le mariage ne peut pas être conclu légalement) faute des conditions prescrites par la loi, c'est à dire devant le fonctionnaire compétent et en satisfaisant aux conditions prescrites par la loi. Dans d'autres branches de droit – droit administratif, financier, pénal etc. – c'est la volonté de l'État exprimée en norme de droit, qui est essentielle. Quand une autorité fiscale établit un impôt à la charge d'un sujet imposable, en déclenchant un rapport juridique financier, il est obligé de faire cette opération sans consulter l'autre sujet (dénommé aussi sujet passif). La naissance d'un tel rapport juridique a lieu de l'initiative de l'autorité de l'État spécialement habilité. Dans le déploiement du rapport juridique, les sujets ont alors des droits et des obligations réciproques (le sujet impossible a le droit de demander qu'on lui établisse un impôt selon les dispositions légales, il a le droit de prétendre l'échelonnement du paiement de l'impôt etc.).

En matière pénale, existe également un système de garanties processuelles qui consacrent les droits de l'inculpé ou de l'accusé dans le procès pénal. Il faut observer le fait que même dans ces rapports juridiques, dont l'apparition ou la cessation ne dépend pas de la volonté des deux participants, le comportement du participant passif est indispensable et considéré comme tel dans la norme de droit.

---

<sup>7</sup> M.D. Djuvara, *Théorie générale du droit*, vol. II, Bucarest, 1930, p. 31.

Loin d'être un simple débat théorique, les aspects concernant le caractère volitif du rapport juridique ont une incontestable importance pratique. En tant que l'un des modes essentiels de la réalisation de la norme de droit, le rapport juridique, comme siège de la rencontre de la volonté de l'État avec la volonté des sujets des rapports sociaux, est l'image vivante de la volonté de la norme de droit, de sa correspondance ou de son inadéquation face aux demandes réelles de la vie, avec les intérêts et les idéaux des participants aux relations sociales.

La corrélation entre la volonté générale et celle individuelle dans la détermination des droits et des obligations réciproques des sujets, pose, ainsi que nous venons de dire, de nuances différentes par rapport à la branche de droit. Soit qu'il s'agit des normes à caractère dispositif, qui offrent aux sujets la possibilité de choisir leur conduite, soit qu'il s'agit des normes impératives, qui les obligent à une certaine conduite, l'entrecroisement de la volonté générale représentée par l'État et celle individuelle des participants à la vie sociale, représente une voie importante. Par son intermédiaire est mis en mouvement le mécanisme d'influencer la conduite humaine par la norme juridique.

De cette manière, le rapport juridique nous apparaît, tout d'abord, comme un résultat de la réglementation par la norme de droit des obligations sociales, dans lesquelles les droits et les obligations des participants sont consacrés par la volonté de l'État et, plus, comme une relation dans laquelle est exprimée aussi la volonté des participants, porteurs de ces droits et de ces obligations juridiques.

Dans le processus dont le but est de déterminer des droits et des obligations la volonté générale de l'État et la volonté individuelle des sujets agissent réciproquement.

4. L'importance de l'étude de la notion et des traits du rapport juridique est aussi mise en évidence dans le plan de l'axiologie juridique. En effet, dans les rapports juridiques se trouvent concrétisées les valeurs essentielles de notre société, le régime social et d'État, la propriété, le patrimoine de l'individu, sa vie, son intégrité, sa dignité, sa personnalité etc.

Ces valeurs s'affirment et vivent non pas en dehors de la société mais, au contraire, dans le dynamisme de leur circulation dans la société. Le déroulement de la vie, des relations en conformité avec les normes de droit (l'ordre de droit) constitue un moyen important de réaliser ces valeurs.

Les rapports juridiques – soit qu'il s'agit des plus nombreux, par lesquels sont réalisées les dispositions des normes de droit – soit qu'il s'agit des plus restreints, par lesquels est réalisée la sanction des normes de droit – peuvent être caractérisés comme instruments de transmission du contenu des valeurs des normes de droit dans le plan des relations sociales concrètes et réelles. Les normes juridiques, en tant que modèles rapportés aux valeurs<sup>8</sup>, se trouvent habituellement dans les rapports juridiques.

---

<sup>8</sup> A voir, en détail: P. Andrei, *Philosophie de la valeur. Les valeurs juridiques*, dans le vol. *Axiologie roumaine, Anthologie*, Ed. Eminescu, 1982, p. 280 (édition, étude introductive, notes et commentaires de M. Măciu)



Dans ce sens Tudor Vianu note: "Les valeurs juridiques, les légalités de différentes catégories sont des valeurs réelles"<sup>9</sup>.

Porteurs de valeurs sont les faits de quelqu'un dans la mesure où ces faits, étant coordonnés avec les faits d'autrui et/ou conformes à certaines normes de droit, donnent naissance à certains rapports ou situations réelles.

Les valeurs juridiques sont considérées par Mircea Djuvara comme le cadre nécessaire dans lequel s'agite toute la vie sociale, elles se trouvent au sommet de la hiérarchie des relations sociales. "Les valeurs juridiques – écrit M. Djuvara – se présentent d'un point de vue comme des réalités et des valeurs sociales, objet d'étude pour la sociologie, en tant que valeurs sociales suprêmes : cependant, d'un autre point de vue, elles constituent un domaine' national de recherche scientifique spéciale, celui du droit"<sup>10</sup>.

Les valeurs juridiques sont poursuivies dans le contenu de certains rapports de droit afin d'assurer ce cadre légal de vie, qui pourrait permettre l'accomplissement des finalités substantielles de l'existence dans la société.

---

<sup>9</sup> Tudor Vianu, *L'origine et la valabilité des valeurs : Système des valeurs, La valeur juridique*, vol. cit., p. 413.

<sup>10</sup> M. Djuvara, *Droit et sociologie*, Archives pour la science et réforme sociale, 1936, II, p.15.

# **PROCEDURAL AND METHODOLOGICAL ASPECTS REGARDING THE INVESTIGATION OF THE FRAUDULENT BANKRUPTCY INFRACTION**

**Mihai Adrian Hotca**  
“Nicolae Titulescu” University from Bucharest

## **ABSTRACT**

The investigation of the fraudulent bankruptcy infractions implies the thorough knowledge of the penal procedural norms, because these infractions present a particular feature due to the way they are committed, extremely elaborated and sophisticated. The revealing of the bankruptcy infractions, the collection and administration of the evidences, the doers' identification and catching, the taking of the procedural measures and finally their holding responsible represent an activity that has to be carried on by observing the norms of the penal procedural law. The specialty authors pay more and more attention to the methodological elements regarding the criminalistic investigation of the infractions in the business domain, and it is talking about the „banditry of the business”.

## **§1. THE EVIDENCE ADMINISTRATION**

Business is not always run by honest people, but mostly by dishonest people that make use of the law in order to get rich very fast. One of the infractions encountered in the practices of the penal juridical authorities is the fraudulent bankruptcy. The investigation of the fraudulent bankruptcy infraction implies a corresponding knowledge of the penal procedural norms. Just as with most of the infractions in the business domain, the fraudulent bankruptcy infractions presents a specific feature due to the way they are committed, extremely elaborated and sophisticated, based generally on a high technique and on knowing the weaknesses in the business law.

The revealing of the fraudulent bankruptcy infractions, the collection and administration of the evidences, the doers' identification and catching, the taking of the procedural measures and finally their holding responsible represent an activity that has to be carried on by observing the norms of the penal procedural law.

Establishing the existence of the penal conflict relation resulting from the committing of the fraudulent bankruptcy infraction gets some features determined by the way and the modalities used to commit this infraction. In many cases, the doers draw up false documents whose character is very difficult to be verified. Some other times, they conclude documents that are apparently legal, but that hide transactions defrauding the creditors. There are also cases when there are elements of foreign origin (foreign doers or documents made abroad). But, the cause that determines the greatest difficulties in the practice of the juridical authorities involved in the investigation of the infractions in the business domain is the existence of some huge quantities of accounting evidences and of some other documents that were drawn up for the purpose of „covering up” the committed infractions.

The specialty authors pay more and more attention to the methodological elements regarding the criminalistic investigation of the infractions in the

business domain<sup>1</sup> and it is talking about the „banditry of the business”<sup>2</sup>. In the criminality theory, it is mentioned the possibility specific to the business domain that their punishable deeds are masked through complain. In this way it appears problems related to the precursory deeds that have the purpose of verifying the data held by the juridical authorities or of completing them in order to draw the conclusions corresponding to the beginning or ceasing of the penal pursuit. In many cases, it is needed accounting, graphic, criminalistic expertise that implies not only very well- trained human resources, but also very high expenses. A number of cases are notorious for their penal records that are based on tens and even thousands of volumes.

In order to avoid the beginning of the penal pursuit without the existence of enough elements that would reasonably lead to the conclusion that an infraction was committed and that the doer can be hold responsible, in doctrine, it was righteously suggested by the law the granting of some greater possibilities to the judicial authorities with regard to the drawing up of the documents precursory to the penal pursuit phase<sup>3</sup>.

One of the principles that especially has to be observed in the case of the infractions in the business domain is the principle of the efficiency, well- known with the bankruptcy infraction, in art. 148 of Law no. 85/2006. The fame in many cases is essential for the successful investigation of the infractions in the business domain, because the most important evidences, the debtors' documents, can be easily destroyed or hidden in order not to be found by the penal pursuit authorities.

The administration of the evidences in the domain of the business criminology seldom faces difficulties caused by: the involvement of some covering persons (influential persons from the political, economic or administrative point of view); trade agents that are in connection with the doers do not cooperate with the penal pursuit authorities for fear that their own illegalities might be revealed or because of the economic dependency; the complexity of the infractions (the large volume of documents, the large number of the participants, the existence of a rigorous organization etc.). After informing the penal pursuit authorities and carrying out the precursory deeds necessary for the investigation of the infractions in the business domain, if it is drawn the conclusion that an infraction was committed, the competent authorities will go forward with the procedural activity and will carry out other specific activities.

Next, it is noticed that the penal pursuit authorities need data or information that could help to solve the cases that have been reported. The data are given by the evidences. The evidences in the penal trial are factual elements with

---

<sup>1</sup> For the methodology of the infractions in the business domain, **E. Stancu**, *Tratat de criminalistică*, Ed. Actami, București, 2001, p. 613-640.

<sup>2</sup> **M. Le Clère**, *Manuel de Police Technique*, Ed. Police Revue, Paris, 1973, p. 1001; **E. Stancu**, quoted work, p. 613.

<sup>3</sup> **I. Neagu**, *Drept procesual penal*. Tratat, vol. I, Ed. Global Lex, București, 2006, p. 525 and the next one.

informative relevance on the penal aspects of a penal trial<sup>4</sup>. According to art 64 of the Code of penal procedure, the evidence means through which it is found the factual elements that can serve as evidence are: the defendant's or the accused's statements, the injured party's, the plaintiff's statements and those of the person's civilly responsible, the witnesses' statements, the documents, the audio and video records, photographs, material evidence means, technical-scientific findings, the forensic findings and the expertise. Other evidence means or evidences illegally obtained have no relevance.

For the causes referring to the investigation of the fraudulent bankruptcy infractions, the expertise and the documents are the most important of the evidence means limitative stipulated by art 64 of the Code of penal procedure. Although these are encountered in most penal cases, we have in view the injured party's, the plaintiff's statements, those of the person's civilly responsible and the defendant's or accused's statements; these evidences do not usually have an important part. The defendant's or the accused's statements are very often misleading, because those that commit infractions in the business domain are people with experience in the relation with the state authorities.

The other parties' depositions are mostly subjective because these are mostly the source of the denunciations. We also mention that there are enough cases where the injured party makes use of penal procedural instruments in order to fix illicit problems of extra penal nature: for instance, certain disputes on the execution of some trading agreements. The witnesses' depositions are very important means of evidence within the fraudulent bankruptcy investigation, because in most cases the witnesses are objective and impartial<sup>5</sup>. In many cases that have as object the investigation of some infractions from the business domain, the witnesses are missing which means that the part of the purely technical evidences is very important. The evidences with documents, that through their content give shape to an act of thinking and will with relevance on the factual deeds or circumstances that enter the object of probation in a penal cause are very important in the domain of fraudulent bankruptcy. We have to mention that the documents that help to the finding of the truth in a penal case through their exterior aspect or due to the place where they were found are not considered documents, but evidence materials.

The minutes through which the competent authorities record findings, *ex propriis sensibus*, have a particular place within the evidence with documents in a penal trial. When we deal with a minute that does not reflect the personal findings of the public agent, but it records only the content of the witnesses' depositions, this is not considered a document as evidence means. In this case, the evidence means is represented by the witnesses' depositions recorded in a minute.

---

<sup>4</sup> **I. Neagu**, quoted work, p. 357; **N. Volonciu**, *Tratat de procedură penală. Parte generală*, vol. I, Ed. Paideia, București, 1998, p. 331.

<sup>5</sup> For the procedure of witness hearing and evidence value of the witnesses' statements, see: **N. Volonciu**, quoted work, p. 366 and the next one; **I. Neagu**, and the next one, p. 388 and the next one; **A. Ciopraga**, *Evaluarea probei testimoniale în procesul penal*, Ed. Junimea, Iași, 1979, p. 10.

Evidence means that is almost always present in the investigation of the infractions in the business domain is the expertise. An expertise type encountered in the causes that implies the investigation of the fraudulent bankruptcy infractions is the accounting expertise. Due to the special importance that they have in the evidence in the case of the investigations of the infractions in the business domain, the penal procedural law stipulates a series of rules that have to be observed when carrying out the expertise. As a rule, according to art 118 of the Code of penal procedure, the expert is appointed by the penal pursuit authorities or by the court of law. Each party has the right to ask that an expert recommended by it should take part to the carrying out of the expertise. When the penal pursuit authorities or the court of law order the carrying out of an expertise, they order a term on which the parties, as well as the expert should meet, whether this one was appointed by the penal pursuit authorities or the court of law.

On the set term, the object of the expertise and the questions to which the expert should answer are brought to the parties' and expert's knowledge and it is made clear that they can make any remarks with regard to these questions and that they can request their modification or completion. It is also brought to the parties' knowledge the fact that each of them has also the right to request the appointment of an expert recommended by them that should take part to the carrying out of the expertise. After the examination of their objections and of the requests made by the parties and experts, the penal pursuit authorities and the court of law draw the expert's attention to the term when the expertise is to take place and also that the parties take part to the carrying out of that expertise.

## **§2. SEARCH AND COLLECTING OF OBJECTS AND DOCUMENTS**

A special situation in the criminalistic investigation of the fraudulent bankruptcy infraction is the collecting of objects and documents, because it is possible that certain objects and documents that can be used as evidence in the penal trial could be in the possession of some persons, cases when the juridical authorities have to collect them in order to use them at the solving of the penal causes.

The objects and documents that can be used at the finding of the truth can be divided into more categories, such as:

- objects and documents that used or were assigned to be used at the committing of an infraction. For instance, invoices, accounting books, shareholder register, correspondence, payment instruments, etc.;
- objects and documents that represent the product of the infraction. For instance, account statement or credit cards;
- objects and documents that bear traces of the infractions. For instance, forged documents;
- any other objects and documents that serve to the finding of the truth in the penal trial, such as those that bear digital traces or any other type of traces.

According to art. 96 of the Code of penal procedure, the penal pursuit authorities or the court of law have the obligation to collect the objects and documents that can serve as an evidence means in the penal trial. According to art. 97 of the Code of penal procedure, any person in whose possession it is an object or a document that can be served as evidence means is binding to present it and to hand it over as evidence to the penal pursuit authorities or to the court of law at their request. If the penal pursuit authorities or the court of law consider that even a copy of the document can serve as evidence, it will keep only the copy. In case the object or the document has a classified and confidential character, its presentation or handing over is made in conditions that should assure the keeping of the secrecy and confidentiality.

At the prosecutor's suggestion, during the penal pursuit, the court of law can order that any post office or transportation unit should hold and hand over the letters, telegrams and any other correspondence, or the objects sent by the defendant or accused or addressed to it, either direct, or indirect. If the requested object or document is not willingly handed over, the penal pursuit authorities or the court of law orders its forced collecting (art. 99 of the Code of penal procedure). The procedure of collecting the objects and documents is similar to that existing in the case of the search. The search is an investigation procedure that assures the acquisition of some evidences indispensable or unique for the solving of the penal cause. The procedure for the carrying out of the search is stipulated in art. 100-111 of the Code of penal procedure, and it could be body search, house search and search on vehicles.

### **§3. TAKING OF PROCEDURAL MEASURES**

During the penal trial that has as object the holding responsible of some persons for having committed the fraudulent bankruptcy infraction, the juridical authorities can take certain procedural measures. The procedural measures are coercion institutions that can be ordered by the juridical authorities for the good carrying out of the penal trial and the assuring of the carrying out of the object of the actions exercised in the penal trial.

In the Code of penal procedure, many categories of procedural measures are regulated, as follows: remand measures, protection and safety measures; assuring measures; restitution of the objects and the recovery of the situation before the committing of the infraction.

As for the remand measures and the protection and safety measures, in the case of the fraudulent bankruptcy, these are only occasionally encountered, except for the obligation not to leave the locality and not to leave the country. But, on the contrary, the other procedural measures can be encountered more often in the penal trials that have as object the bankruptcy infractions, especially the insuring measures, that is levy and its two special forms: registration of mortgages and deduction. The insuring measures are taken during the penal trial by the prosecutor or by the court of law and consist of the unavailability by distaining upon the assets and the liabilities, for the purpose of the special

confiscation, of compensating the damages caused through the infraction, as well as the guarantee of the execution of the fine.

#### §4. INVESTIGATION DOCUMENTATION AND PLANNING

The beginning of the activity, with regard to the fraudulent bankruptcy investigation, is that of the documentation referring to the specific of the economic agent in connection with whom the infraction was apparently committed.

Given the fact that most of the fraudulent bankruptcy infractions are committed in connection with at least a trading company, it is considered in the specialty theory that before any other activity, the juridical authorities have to proceed to the documentation on the trading company where the infraction was committed and being able to record the following data<sup>6</sup>:

- nature of the company, and setting between production and trade, delivery conditions of the goods to the beneficiaries etc.;
- supplying model and places with raw materials; relations with the suppliers, discharge of the expenses etc.;
- conditions on which the internal financial control is carried out, the last verification and the taken measures;
- security system;
- the normative acts that regulate the activity of the company.

Of course, the documentation referring to the above- mentioned data has an orientative character and can be completed with other data based on the circumstances of the cause. Because the bankruptcy is not at present exclusively related to a trading company, in the case of other natural persons or dealers, the juridical authorities have to document by taking into consideration their particularities.

We notice that it is difficult to set a type frame, but it has to be taken into consideration the fact that the investigation in the business domain implies determination, patience, tenacity and insight. The juridical authorities have to take into consideration the fact that many of those that commit infractions in the business domain are clever, experimented, and rich and well- connected.

On these conditions, the planning of the investigations has a very important part, especially that the volume of work is very large and the problems that have to be solved are so many, and the complexity is so high. The investigation plan has the purpose to assure a judicious marking of the work, the setting of the priorities in carrying out some activities, the pursuit of the probation dynamics etc., within which it should be found all the problems that are to be set clear and the activities that have to be carried out for the elucidation of the circumstances when the infraction was committed.

---

<sup>6</sup> **Bercheșan V., Grofu N.,** *Investigarea criminalistică a infracțiunilor de evaziune fiscală și bancrută frauduloasă*, Ed. Little Star, București, 2003, p. 199.

One of the important problems in planning the investigation of the fraudulent bankruptcy infraction is the elaboration of the versions that can regard: the normative modality, participants, the modality and means of committing etc.

## **§5. METHODOLOGY OF THE OBJECT AND DOCUMENT VERIFICATION AND COLLECTION**

In the case of investigating a fraudulent bankruptcy infraction, among the objects and documents that can be collected are also: the constitutive deeds of the legal entity and the potential additional deeds; certificates and operation approvals; the economic agent's records; titles that grant certain rights; shareholder/ associate registers; registers of the general assemblies; registers of the meetings and the deliberations of the surveillance, management and control authorities etc.

Some of the objects and documents necessary for the investigation of the infraction can be collected from the defendants or from certain authorities. For instance, certain documents, such as the constitutive deeds of the trading companies can be asked from the Trading Register Office. By observing the legislation in force, the judicial authorities can obtain the documents also from the credit institutions. According to art. 114 of Emergency Government Ordinance no. 99/2006 regarding the credit institutions and the adequacy of the capital, the credit institutions are bound to provide information regarding the nature of the banking secret, after the proceeding of the penal pursuit against a client at the request of the prosecutor or of the court of law or, if it is the case, of the penal pursuit authorities with the prosecutor's approval. According to art. 116 of the same normative act, the competent persons to request and/ or receive information of the nature of the banking secret are bound to keep their confidentiality and to use them only for the purpose for which it was requested or provided to them according to the law.

The collecting of the objects and documents has to be carried out prompt and by observing the procedural norms analyzed in the previous section.

## **§6. METHODOLOGY OF THE SEARCH CARRYING OUT**

In many cases, the success or the failure of the investigation activity depends on the way the search is carried out and organized. In the case of the bankruptcy infraction, it is considered that the search has to have as a purpose<sup>7</sup>:

- the finding of the debtor's evidences;
- the finding of the documents that certify the placing of the assets in certain accounts or the placing of some goods in certain deposits, not registered in the debtor's documents;
- the finding of some documents out of which it results the giving away of the elements of assets. For instance, sale- purchase contracts, exchange, donation contracts, invoices, waybills etc.;

---

<sup>7</sup> V. Bercheșan, N. Grofu, op. cit., p. 203; V. Bercheșan, *Cercetarea penală. Criminalistica – teorie și practică*, Ed. Icar, București, 2000, p. 272-284.



- the finding of some documents that were used at the committing of the infraction. For instance, tickets for commissioning raw materials and consumables, taking delivery minutes, documents certifying the double book-keeping etc.;
- the finding of some documents that could be connected to the infraction submitted for investigation. For instance, book notes containing certain data about the committing of the infraction, computer memories, credit cards etc.

The searches can be made both at the doers' residence, as well as at the residence of other persons with whom they have very close relations, as well as at the registered offices of the business partners of those under investigation.

## **§7. METHODOLOGY OF THE TECHNICAL- SCIENTIFIC FINDINGS AND OF THE EXPERTISE**

The investigation of the fraudulent bankruptcy implies the carrying out of some expertise or technical- scientific findings. The expertise is a probation means very often used in the probation of the fraudulent bankruptcy. According to the conditions of the Code of penal procedure (art. 112-113), the technical- scientific findings can also be ordered when it is the danger that some evidence means cold disappear or that some factual situations could be changed and it is necessary the urgent clarifying of some facts or circumstances of the cause.

The technical- scientific findings are usually carried out by specialists or technicians that operate within or with the institution to which the penal pursuit authorities belong. It can be carried out also specialists or technicians that operate within other bodies. When, in order to clear some facts or circumstances of the cause for finding the truth, it is necessary the knowledge of an expert, the penal pursuit authorities or the court of law orders, at the request or automatically, the carrying out of an expertise.

The technical- scientific findings are expertise that can be ordered in the trials that have as object the investigation of the fraudulent bankruptcy. These can be:

- technical- scientific findings or graphical expertise;
- financial- accounting expertise.

The main objectives of the graphical expertise (generally of the hand writing) are: the establishing of the authenticity of the hand writing; the identification of the author of the hand writing; if the hand writing was or not an imitation; the age of the hand writing etc. The financial- accounting expertise has to answer questions, such as:

- establishing the turnover value of certain goods;
- establishing the persons that had the obligation to draw up or keep the insolvent debtor's evidences;
- establishing the value of the assets in the insolvent debtor's patrimony;
- establishing the value of the patrimony liabilities;
- establishing the fraudulent modalities that lead to the insolvency state;

- establishing the prejudice caused to the injured persons;

In doctrine, it is considered that the questions addressed to the expert should be clear, concrete, that they should contain all the data of the cause, be in a logical sequence and within the expert's competences. The expert does not have the competence to deal with the legal frame of the deed or other aspects regarding the applicability and interpretation of the law.

## **§8. TACTICS OF THE WITNESS HEARING**

The domain of the persons that can be heard as witnesses in the trials regarding the investigation of some fraudulent bankruptcy infractions contain: employees of the insolvent debtor or of some business partners of this one; persons that appear in the debtor's documents or in other acts of this one (such as, the persons on whose names the fictive documents were drawn up, but without being accomplice to the committing of the bankruptcy); persons in the circle of those that factually and righteously managed or surveyed or controlled the debtor's activity that can not make payments; doers' business partners.

The witnesses have to answer questions such as:

- who and how embezzled, destroyed or forged the debtor's evidences;
- who and how hid the insolvent debtor's assets;
- who and how gave away the assets of the debtor now in insolvency;
- who and how determined, enabled or helped to the committing of the deed;
- what the value of the amount resulting from the fraudulent transactions is;
- if there are also other persons that know the details and circumstances of the cause;
- where the objects and documents that can help to the finding of the truth in the cause are etc.

# **30 YEARS FROM THE ADOPTION OF ADDITIONAL PROTOCOLS I AND II TO THE GENEVA CONVENTIONS**

**Beatrice Onica Jarka,  
Nicolae Titulescu University, Law Faculty**

## **ABSTRACT**

The article reflects in a concentrated form some of the International Humanitarian Law progress happened in the last 30 years from the adoption of the Additional Protocols I and II to the 1949 Geneva Conventions. This progress refer to the developing of customary humanitarian law, extension of the essence of the humanitarian law applicable to international armed conflicts to internal armed conflicts and the adoption of other conventional norms of humanitarian law in specific areas.

## **I. INTRODUCTION**

Following the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict, which took place in four sessions, on 8<sup>th</sup> of July 1977, Additional Protocol I and Additional Protocol II to the 1949 Geneva Conventions were adopted. The protocols were named in accordance with their content: the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of International Armed Conflicts – Protocol I and the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts – Protocol II.

The result of several years of ICRC's efforts, the two protocols have been moving forward the development of international humanitarian law on topics of greatest importance covering the protection of victims of armed conflicts.

## **II. THE ADOPTION OF PROTOCOL I – SIGNIFICANCE**

Additional Protocol I had not only developed the existing norms on the protection of wounded, sick and shipwrecked, methods and means of warfare – combatant and prisoner of war status, civilian population but had also introduced cornerstone marks in the protection of victims in international humanitarian law conflicts. Some of these cornerstone norms refer to the enlargement of the definition of international armed conflict to include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (article I paragraph 4), the enlargement of the situations in which armed forces are recognized as such to extend the qualification of prisoners of war to categories of persons not covered by the general rule enunciated in the III Geneva convention (articles 43, 44 and 67) introduction of the categories of illegal combatants: spies and mercenaries (articles 46 and 47) limitation on parties to employ certain methods or means of warfare and definition of perfidy (articles 35, 37, 38, 40, 41 and 42) specific protection of prisoners of war against any medical

procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty, protection of civilian persons and property against attacks or threats of violence launched indiscriminately (articles 49, 51, 52, 54, 57, 58 ) protection of environment against widespread long term and sever damage (article 55), introduction of special protection for children (articles 77 and 78), women (article 76) refugees and stateless persons (article 73), journalists (article 79) and introduction of fundamental guarantees for persons who are in the power of a Party to the conflict and who do not benefit from more favorable treatment under the Conventions or under the Protocol without any adverse distinction based upon race, color, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (article 75).

### **III. THE ADOPTION OF PROTOCOL II – SIGNIFICANCE**

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), 8 June 1977, represents one of the most important results achieved in international humanitarian law. Its adoption is the step from the rudimentary framework of minimum standards represented by article 3 common to the 1949 Geneva Conventions to a detailed treaty applicable in internal armed conflicts. The evident disparity existing between the norms regulating the international armed conflicts and internal armed conflicts before the adoption of Protocol II was, to a certain extent, mitigated by introducing written rules regarding the fundamental guarantees applicable to all persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted and special protection for children (article 4), express minimum protection with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained (article 5), the conditions for penal prosecutions (article 6), the protection of wounded, sick and shipwrecked (articles 7 and 8), the protection for medical staff and units (articles 9 and 10), regulated use of distinctive emblem (article 12) special protection for the civilian population (article 13), protection of objects indispensable to the survival of the civilian population (article 14), protection of works and installations containing dangerous forces (article 15), protection of cultural objects and of places of worship (article 16), prohibition of forced movement of civilians (article 17), the intervention of relief societies and relief actions (article 18).

Although the intent behind the adoption of Protocol II was not to bring internal armed conflicts to the same level of regulation as it exists in the international armed conflicts, the rules adopted reflect the awareness of the international community in connection to this type of conflict which becomes more and more widespread.

#### IV. INTERNATIONAL HUMANITARIAN LAW DEVELOPMENTS BROUGHT IN THE 30 YEARS FROM ADOPTION OF THE TWO PROTOCOLS

The adoption and further the entering into force and continuing ratification since 1977 of the two Additional Protocols brought into existence new norms of humanitarian law and extended the conventional protection of the victims in international and internal armed conflicts. In addition, the mere adoption and entering into force of the two Additional Protocols have contributed and is still contributing to the development of the international humanitarian law in general. If in certain situations the two Protocols enunciated only the principle, it was the further development through customary law or further conventional law which developed the regulation of victims protection in the internal and international armed conflict.

It is relevant for the purpose of this article to underline several developments of the rules of the two Additional Protocols in the years that followed their adoption as the impulse on the developing of customary humanitarian law, the extension of the essence of humanitarian law applicable to international armed conflict to internal armed conflicts and the adoption of other conventional norms of humanitarian law in specific areas as mercenary and mercenarism prohibition and child solders. These aspects together with the specific examples are only some selected issues which are not intended to be either extensive or exhaustive but merely illustrative for the 30 years of international humanitarian law development.

##### **a. Developing of customary law**

Additional Protocol I codified pre- existing rules of customary international law, but also laid down the foundation for the formation of new customary rules, not only in international armed conflicts but also in the non- international armed conflicts<sup>1</sup>. In the same time, Additional Protocol II contributed to the creation of customary rules for the regulation of the internal armed conflict. This took place through the practice and *opinion juris* of states which not only transformed in customary rules different norms contained in the two protocols but also extended their applications to situations not necessarily envisaged by these bodies of conventional law.

Such developments were reflected in the study called Customary Humanitarian Law published in 2005 Cambridge University Press, by ICRC with Jean Marie Henckaerts and Louise Doswald Beck as authors and with the contribution of Carolin Allvermann, Knut Dorman and Baptiste Rolle. The study was initiated by ICRC in 1995, at the request of International Conference of the Red Cross and Red Crescent. The study comprises 161 rules of customary humanitarian law grouped in six parts: part I – The Principle of Distinction, part II – Specifically protected Persons and Objects, part II – Specific Methods of Warfare, part IV - Weapons, part V – Treatment of Civilians and Persons Hors de Combat, Part VI – Implementation.

---

<sup>1</sup> See Jean –Marie Henckaerts – Study on Customary International Humanitarian Law: A contribution to the understanding and respect for the rule of law in armed conflict , International Review of the Red Cross, volume 87, no. 857, March 2005, p. 187

The study which took ten years of preparation concentrates also the state practice and *opinio juris* as to two additional protocols.

Although the coverage of international humanitarian law by the ICRC study is impressive, we choose as an example of customary rules developed in connection to Additional Protocol I state practice and *opinio juris* - the International Court of Justice Advisory Opinion of 8<sup>th</sup> July 1996 referring to the threat or use of nuclear weapons. The ICRC study took note of the International Court of Justice Advisory Opinion and stated that it deemed it not appropriate to engage in similar exercise at virtually the same time.<sup>2</sup>

The International Court of Justice Advisory Opinion of 8 July 1996<sup>3</sup> was delivered at the request of UN General Assembly which had asked the following question: “Is the threat or use of nuclear weapons in any circumstances permitted under international law?”.

Without precedent in the history of advisory opinions delivered by International Court of Justice, more than 30 states submitted written statements in the proceedings and this led the Court to find that it “the extensive codification of humanitarian law and the extent of the accession to the resultant treaties, as well as the fact that the denunciation clauses that existed in the codification instruments have never been used, have provided the international community with a corpus of treaty rules the great majority of which had already become customary and which reflected the most universally recognized humanitarian principles. These rules indicate the normal conduct and behavior expected of States” and they apply to nuclear weapons. In this sense, the Court concluded unanimously that a threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful; a threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons; and by seven votes to seven, by President casting vote that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law; However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake”<sup>4</sup>.

Although the International Court of Justice advisory opinion does not represent state practice in itself, it certainly reflects the majority of state practice and *opinio juris*. As Jean Marie Henkaerts stated in its article “Study on Customary International Humanitarian Law: A contribution to the understanding and respect

---

<sup>2</sup> See Jean Marie Henkaerts and Louise Doswald Beck - Customary Humanitarian Law, 2005 Cambridge University Press, Volume I Rules, p 255.

<sup>3</sup> See UN General Assembly, Res 49/75 K on request for an advisory opinion from the International Criminal Court on the legality of the threat or use of nuclear weapons, 15 December 1994, and ICJ, Nuclear Weapons Case, Advisory Opinion, 8 July 1996, ICJ Reports 1996.

<sup>4</sup> See ICJ, Nuclear Weapons Case, Advisory Opinion, 8 July 1996, ICJ Reports 1996.

for the rule of law in armed conflict” published in the International Review of the Red Cross, the finding of the Court is significant “given that a number of states undertook the negotiation of Additional Protocol I on the understanding that the Protocol would not apply to the use of nuclear weapons”.

**b. Extension of the essence of the humanitarian law applicable to international armed conflicts to internal armed conflicts**

Initially thought and negotiated as separated corps of law, Additional Protocol I for the protection of victims in international armed conflicts and Additional Protocol II for the protection of victims in internal armed conflicts developed through the years, at least from the point of view of their very essence, to form a single body of legal norms applicable both to international and internal armed conflicts. It was the main achievement in the developments brought by the two Protocols that the state practices and *opinio juris* favored a unitary approach.

This unitary approach was first reflected in the International Criminal Tribunal for Former Yugoslavia jurisprudence which held in Tadic Jurisdiction Appeal that customary rules governing internal conflicts include protection of civilians from hostilities, in particular from indiscriminate attacks, protection of civilian objects, in particular cultural property, protection of all those who do not (or not longer) take active part in hostilities, as well as prohibition of means of warfare proscribed in international armed conflicts and ban certain methods of conducting hostilities, as well as the principle of personal criminal responsibility for the acts figuring in grave breaches articles apply also to internal armed conflicts<sup>5</sup>.

The International Committee of Red Cross Study on Customary Humanitarian Law, reveals even more profoundly the development of customary rules similar and parallel to those existing in Additional Protocol I for the protection of victims of internal armed conflict. The drafting of the Additional Protocol II rudimentary in certain respects made possible the establishment of more detailed rules which filled in, for certain fields of application, the gap between the regulation of internal armed conflict and that of international armed conflict. One example in this sense is the regulation of conduct of hostilities in internal armed conflicts which is provided in a vague manner in article 13 from Additional Protocol II. The International Committee of Red Cross Study considers that rules of customary law had been created in this respect and they are applicable in internal armed conflicts. Such rules cover the basic principles on the conduct of hostilities and include rules on specifically protected persons and objects and specific methods of warfare, similar to those existing in Additional Protocol I.

**c. Adoption of other conventional norms of humanitarian law in specific areas**

An important contribution brought by the adoption of two protocols is represented also by the enunciation of rules which were further developed and detailed in international conventions. Some of the fields in which such rules were enunciated are the regulation of mercenaries and the of the child soldier.

---

<sup>5</sup> See James G. Stewart, Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict, International Review of Red Cross, June 2003, Vol 85, nr. 850, p. 321-323.

The first and only provision which defines and transform the mercenary in an illegal combatant, implicitly prohibiting such conduct, is article 47 in the Additional Protocol I, which gives the definition of the mercenary and provides for the sanction. Except for the Convention on the "Elimination of Mercenarism in Africa" adopted by the Organization of African Unity in Libreville on 3 July 1977, which is a regional instrument, there have been no other definition and no other similar provisions until the adoption of the UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries. This Convention was adopted on 4 December 1989 by Resolution 44/34 of the United Nations General Assembly. Comprising 21 articles, the 1989 Convention pursues steps previously taken by Third World countries, seconded at the time by socialist countries, to fight against mercenarism throughout the world. The definition of a mercenary is derived from Article 47 of Protocol I, but goes further by applying to "armed conflict" (Article 1, paragraph 1) and also to "any other situation" (Article 1, paragraph 2). The adoption of the UN Convention of 1989 is an obviously a step forward in the development of the regulation of mercenaries and mercenarism brought by Additional Protocol I.

A second field in which both protocols enunciated rules is the use of child soldiers in armed conflicts. Provisions regulating the use of child soldiers may be found in the Additional Protocol I - article 77, which provides at paragraph 2 that the Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces and also that in recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavor to give priority to those who are oldest. Similar provisions may be found in Additional Protocol II, which provides at article 4 that children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.

Following the enunciation of these rules, the Convention on the Rights of the Child (1989) with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000) and the Rome Statute of International Criminal Court (1998) which criminalise the infringement of the rule provided in the two Protocols were adopted.

## **V. CONCLUSION**

The adoption of the two Protocols represents one of the most important moments of the international humanitarian law, which demonstrated the will of international community to protect the victims of armed conflicts. The further developments of these bodies of law either in customary rules or in more detailed conventional norms is significant from the point of view of international humanitarian law which starts to become more and more present in the public conscience of the international community.



# **MANIFESTATIONS OF THE ABUSE OF POWER IN THE ROMANIAN LEGISLATION REGARDING THE PREFECT'S OFFICE –CONSTITUTIONAL CENSORING OF THIS ABUSE OF POWER**

## **Case study**

**Marta Claudia Cliza**

**„Nicolae Titulescu” University**

### **ABSTRACT**

The current study case intends to render a phenomenon not at all to be neglected in the Romanian society: the encroachment of some authorities in the exercise of operation of some other authorities. The phenomenon is not the only one, it has been censored by the media, courts of law for many times, but it was elected especially because it appeared as a result of some legislative transformations, at their turn questionable by the critics. The prefect's institution plays at present a very important part in the life of the local community, although the power center of this authority parts from the central level. In this context, it is not to be neglected the prefect's part in the life of the local community and how far its attributions can extend, besides, how far it can interfere in the appointment of the heads of some decentralized public services without breaking the Constitution and the laws that govern its activity.

### **I. GENERAL PRESENTATION OF THE PREFECT'S INSTITUTION**

According to art. 123 of the Constitution, the prefect is the representative of the Government at the county level, but from the overall interpretation of the constitutional norms, it results the following capacities of the prefect:

- a. Representative of the Government;
- b. Chief of the state services at the county level (Bucharest municipality);
- c. Authority of administrative guardianship for the surveillance of the law to be observed by the local public administration authorities.

Art. 123 of the Constitution of Romania, revised and republished, stipulates that the Government will appoint a prefect in each county and in Bucharest Municipality and that this one is the representative of the Government at the local level. Paragraph 3 of the same article stipulates that the prefect's attributions will be set by the organic law. At first, Law no. 215/2001<sup>1</sup> regarding the local public administration had a chapter designated to the prefect, but the provisions of this law were abrogated through the coming into force of Law no. 340/2004<sup>2</sup> regarding the prefect's institution. The new regulation creates a modern system of the public sector management through the increase, sometimes too much, of the part of the prefect's institution.

The prefect, just as the sub-prefect, belongs at present to the category of the high public officials. The appointment of the prefect is made by the Government as its representative at the local level and the appointment is made at the proposal of the Ministry of Administration and Internal Affairs. In art. 4 of the law, it is

---

<sup>1</sup> Law no. 215/2001 was published in the Official Gazette of Romania, Part I no. 204 on 23.04.2001

<sup>2</sup> Law no. 340/2004 was published in the Official Gazette of Romania, Part I no. 658 on 21.07.2004

stipulated that the prefect's activity is based on the principles of lawfulness, impartiality, objectivity, transparency, efficiency, responsibility, citizen orientation, and the management of the decentralized public services of the ministries and of the other bodies in the central public administration in the administrative- territorial unit is the prefect's attribute and competence.

Out of the prefect's attributions, maybe the most interesting one from the legal point of view is the one stipulated by art. 123 paragraph 4 of the Constitution and art. 26 of the law, which is, the possibility to bring before the administrative court the administrative documents issued by the authorities of the local public or county administration, except for the management documents, if it considers that they are illegal. The contested document is legally suspended. This prerogative of the prefect bears the name of administrative guardianship (it should be mentioned in this context also that this article of the law was brought before the Constitutional Court<sup>3</sup>)

The prefect also appoints through order the secretary of the administrative – territorial unit and of the subdivisions of the municipalities as a result of the contest organized according to the law, or it orders this one's disciplinary sanctioning except for the county general secretary and respectively, of Bucharest municipality.

The development of the individual professional performances of the prefects is made by a commission set based on the conditions of Law no 188/1999 regarding the status of the public officers, republished.<sup>4</sup> In order to carry out the attributions that are granted to it by law, the prefect issues orders with individual or normative character, which have to be communicated and brought to knowledge by publication.

## **II. DEVELOPMENT OF A LEGAL NORM – PROBLEM OF THE PREFECT'S EXCESS OF POWER**

In fact, the current study pursues the development of a legal norm starting with Law no. 215/2001, then, the way how the same idea is resumed under a different shape in Law no. 340/2004 and finally, the present form of this legal norm after the modification of Law no. 340/2004 through Emergency Ordinance no. 179/2005<sup>5</sup>, approved in its turn by Law no. 181/2006<sup>6</sup>.

As I pointed out in the content of the paper, we found first the provisions that regulated the prefect's institution in Law no. 215/2001 – law of the local public administration.

---

<sup>3</sup> Resolution no. 314/2005 of the Constitutional Court published in the Official Gazette Part U no. 694 on 02.08.2005

<sup>4</sup> Law no. 188/1999 was published in the Official Gazette of Romania, Part I no. 251 on 22.03.2004. it should be noticed how many changes this status of the public officers suffered in its 6 years from the adoption, changes that basically modified the law.

<sup>5</sup> Emergency Ordinance no. 179/2005 was published in the Official Gazette of Romania, Part I no. 1142 on 16.12.2005

<sup>6</sup> Law no. 181/2006 was published in the Official Gazette of Romania, Part I no. 450 on 25.05.2006.

The text approved by the current analysis was art. 133 of Law no. 215/2001 that ordered in paragraph 2 that: *“The appointment and dismissal from a position of the heads of the decentralized public services of the ministries are made with the prefect’s consultative approval within the law.”*

In its three years of applicability, this text has created its own jurisprudence. For this reason, we point out that Resolution no. 8462 on November 24 2004 of the Court of Cassation<sup>7</sup> basically considers that “the management positions in the public administration should be occupied as a result of an examination. The occupancy of such a position by another person without having the examination is illegal. The prefect’s approval, requested for the registration in the exam based on Law no. 215/2001, has a consultative character.” Considering this cause, the case has in view the action introduced by a person that passed an examination organized for the occupancy of a position of director with Suceava Fiscal Control Department, but who had not received the approval from Suceava County Prefect’ s Office. Suceava Court of Appeal recorded that, according to art. 133 of Law no. 215/2001, the prefect leads the activity of the local public administration authority. The appointment and dismissal from position of the heads of these authorities are made with the prefect’s approval and without this approval being granted, the appointment of the plaintiff was correctly finalized, although he had passed the examination. Against this sentence, it was declared recourse admitted by the Court of Cassation that pointed out the consultative character of the prefect’s approval.

The above- analyzed text was abrogated together with an entire chapter that dealt with the prefect, by Law no. 340/2001.

Going forward on the same idea, art. 25 of Law 340/2004 regarding the prefect’s institution, stipulated: *“The appointment and dismissal from a position of the heads of the decentralized public services of the ministries and of the other bodies of the central public administration in the administrative- territorial units are made only at the prefect’s suggestion within the law”*.

The current text is deeply unconstitutional and illegal through its reference to the following provisions:

-art. 51 paragraph 1 of Law no.188/1999 regarding the Status of the public officers published in the Official Gazette, Part I, no. 251 on 22.03.2004 *“The occupancy of the vacant public positions can be made by means of promotion, transfer, redistribution and examination”*.

-art. 51 paragraph 3 of Law no.188/1999 regarding the Status of the public officers published, with further modifications and completions.

*“The examination is based on the principle of the open, transparent, competition, of the professional merits and competence, as well as to that of the equality of the access to the public positions for each citizen that fulfills the legal conditions”*;

It can also be noticed the violation of the following constitutional provisions:

-art.16 of the Constitution of Romania, revised *“Equality before the law”*

Paragraph1 *The citizens are equal before the law and the public authorities, without privileges or discriminations.*

---

<sup>7</sup> Resolution no. 8462/2004 of the Court of Cassation was published in the Cassation Gazette no. 2/2005

Paragraph 2 *No one is above the law.*

Paragraph 3 *The public positions and public, civil or military honors can be occupied within the law by Romanian persons that have Romanian citizenship and domicile in the country. The Romanian state guarantees the equality of chances between women and men for the occupancy of these positions and honors”.*

-art. 41 of the Constitution of Romania, revised ”Work and work safety”.

“Paragraph.1 The right to a work place can not be broken. The choice of the profession, job or occupation, as well as of the work place is free”.

So, it was noticed that the provisions of art. 25 of Law 340/2004 regarding the prefect’s institutions are against the provisions of art. 16 of the Constitution, that points out that the public positions can be occupied by the persons that have Romanian citizenship and residence in the country within the law, that is, in the case of the public officers, within Law no. 188/1999.

The provisions of art 25 of the Law of the prefect’s institution according to which “The appointment and dismissal from a position of the heads of the decentralized public services of the ministries and of the other bodies of the central public administration in the administrative- territorial units are made only at the prefect’s suggestion within the law, affect also the Status of the public officers by restricting the right of a person to have access to a public position. This provision breaks also the provisions of art. 41 of the Constitution, by restricting the right to work and also the right to choose both the occupation and the work place, because, in the acceptance of the law and in practice, the word “ONLY” in the mentioned article was interpreted as being a proposal or an obligatory approval.

Considering that such an appointment proposal would be made from the prefect’s part – although the law does not stipulates a certain moment – it would be necessary that all the participants should obtain such a proposal, which would lead to the violation of the provisions of the Regulation of organizing and carrying out examinations (Annex 2 of Government Resolution no. 1209/2003), in which such a proposal is not stipulated for the registration at the examination file.

If we analyze the documents that the file of that who takes part to the examination has to contain, we notice that these are:

- a) copy of the identity card;
- b) type registration form;
- c) copies of the study certificates and of other documents that certify the carrying out of the specialization;
- d) copy of the work pass or, if it is the case, a certificate certifying the seniority in work and, if it is the case, in specialization;
- e) records of punishment;
- f) certificate that certifies the corresponding health condition;
- g) copy of the evaluation chart of the individual professional skills, or, if it is the case, the recommendation from the last work place;
- h) statement on one’s responsibility or certificate certifying that it did not carry out activities of political police.

As it can be easily seen, among the documents that the law orders that the examination file should obligatory contain, there is also a proposal from the prefect out of which it should result this one's approval in order to take part to the examination, as well as the fact that the person will have the support of the prefect's institution in order to be appointed in the public leading position.

Considering that the Regulation regarding the organization and carrying out of the examinations does not stipulate that the file should contain such a proposal, it leads to the conclusion that such a proposal has no place among the documents that the law demands to the candidates. Moreover, art.17 alin.2 of the same Government Resolution stipulates that the accepted person is the one that got the highest score of the candidates that competed for the same public position.

If the favorable approval were given just to one person, in the context in which the occupancy of the vacant positions is made by means of [...] an examination according to the Status of the public officers, which is based on the principle of the open, transparent, competition, of the professional merits and competence, as well as to that of the equality of the access to the public positions for each citizen that fulfills the legal conditions, we would deal with a gross violation of the constitutional rights mentioned above.

The provisions of art. 25 of Law no. 340/2004, as they could be interpreted, created a situation obviously discriminatory, because they promoted a person that, in order to take part to a competition for the occupancy of a vacant public position, would mostly get such an approval from the prefect based on political criteria, to the detriment of some other person that would fulfill all the conditions stipulated by law, creating in this way privileges and discriminations to a certain category of persons, and that is, those that take part to the competition for the occupancy of the public management position within the decentralized public services.

In this way, it was violated also the provisions of paragraph 1 of art. 16 of the Constitution "the citizens are equal before the law and the public authorities", as well as the provisions of art. 25 paragraph 2 of Law no.188/1999 according to which "it is forbidden any discrimination among the public officers on political criteria[....] It is hard to believe that the legislator could have instituted an exception from the principle of equality regarding the access to the public positions for each citizen. Such an exception from a principle that governs the material of the development of the career of the public officers could not have been justified. This law text was brought also before the Constitutional Court as a result of the abuses created in the life of the local community by the prefect's encroachment, still the politicians at the beginning of the present governing.

So, the National Authority for the Consumers' Protection raised the unconstitutionality exception of the provisions of art. 25 of Law no. 340/2004 in File no. 4.983/2005 of Bacau Court of Appeal. The history of this file of the administrative court is less important for the present scientific reason, and it has

a much stressed politic character of local fight in order to put at the top of a decentralized public service a certain person depending on the alliance algorithm.

The Constitutional Court expressed itself through Resolution no. 208/2006<sup>8</sup>. The result of the judges' from this court analysis was relatively easy to foresee at the moment when the debates took place, because, meanwhile, the text brought before the court had been modified at the executive level through an emergency ordinance.

The unconstitutionality reasons invoked by the National Authority for the Consumers' Protection had in view the violation of art. 16 and art. 41 paragraph (1) of the Constitution. In this sense, ANPC pointed out that "to grant the favorable approval just to one person [by the prefect], in the context in which the occupancy of the vacant positions is made through a [...] competition according to the Status of the public officers" represents "a gross violation of the above-mentioned constitutional provisions". At the same time, "the provisions of art. 25 of Law no. 340/2004, as they can be interpreted, create a situation obviously discriminatory, because they promote a person that, in order to take part to a competition for the occupancy of a vacant public position, would mostly get such an approval from the prefect based on political criteria, to the detriment of some other person that would fulfill all the conditions stipulated by law in order to take part to the competition for the occupancy of the vacant public position".

Bacau Court of appeal – Trading and Administrative Court, before which the exception had been raised, considered that this was ungrounded. According to the provisions of art 30 paragraph (1) of Law no. 47/1992, the informing closure was communicated to the Presidents of the two Parliament's Chambers, Government and People's Advocate, in order to express their points of view on the unconstitutionality exception.

The Government considered that the unconstitutionality exception was inadmissible because of the new modifications that it had just brought to Law no. 340/2004. Similar to this, the People's Attorney considered that the unconstitutionality exception became inadmissible. The two Presidents of the Parliament's Chambers did not communicate their points of view on the raised unconstitutionality exception. Examining the informing closure, the points of view of the Government and of the People's Attorney, the report drawn up by the reporting judge, the dissertations of the representative of the exception author, the conclusions of the persecutor, the criticized legal provisions reported to the provisions of the Constitution, as well as Law no. 47/1992, the Court kept the following aspects:

1. The Constitutional Court was legally informed about the provisions of art. 146 letter d) of the Constitution, of art. 1 paragraph (2) and art. 2, 3, 10 and 29 of Law no. 47/1992, in order to solve the unconstitutionality exception.

---

<sup>8</sup> Resolution no. 208/2006 of the Constitutional Court was published in the Official Gazette of Romanian, Part I no. 336 on 14.04.2006.

2. The object of the unconstitutionality exception is the provisions of art. 25 of Law no. 340/2004 regarding the prefect's institution, published in the Official Gazette of Romania, Part 1, no. 658 on July 21 2004.

3. After the informing closure on 14.11.2005, both the title of Law no. 340/2004, as well as art. 25 of this normative act were modified through art. 1 point 1 and point 21 of Emergency Government Ordinance no. 179 on 14.12.2005 for the modification and completion of Law no. 340/2004 regarding the prefect's institution, published in the Official Gazette of Romania, Part 1, no. 1.142 on December 16 2005.

At present, the criticized text has the following content:

- Art. 25. "(1) *It is obligatory that a representative of the prefect's institution where the public service has the office, designated through the prefect's order within the law should be a part of the examination commission for the occupancy of the head position of a decentralized public service.*
- (2) *The prefect can propose ministers and heads of the other bodies of the central public administration organized at the level of the administrative-territorial units, the sanctioning of the heads of the decentralized public services in their subordination*".

4. The constitutional texts invoked in order to support the exception are those of art. 16 regarding the equality of rights and those of art. 41 paragraph (1), regarding the right to a work place and the freedom to choose one's profession, job or occupation, as well as the work place.

Examining the raised unconstitutionality exception, the Court kept in mind that the provisions of art. 25 of Law no. 340/2004 were modified after the informing date and that the legislative solution adopted as a result of the modifications of the text was substantial different. The Court finds that, before the occurred modification, the criticized law text stipulated: "The appointment and dismissal from a position of the heads of the decentralized public services of the ministries and of the other bodies of the central public administration in the administrative-territorial units are made only at the prefect's suggestion within the law".

In its jurisprudence, the Constitutional Court constantly stated that, if the legal provision submitted for control was modified after the invocation of an unconstitutionality exception before the courts, the Court would deliberate on the legal provisions in its new drawing up, only if the legislative solution in the law or modified ordinance was basically the same with the one before the modification. Considering that in the cause the request is not met and that, according to the provisions of art. 29 paragraph (1) of Law no. 47/1992, the Constitutional Court can deliberate on the provisions "of a law or ordinance in force", the unconstitutionality exception of the provisions of art. 25 of Law no. 340/2004 is to be rejected as having become inadmissible according to the provisions of art. 29 paragraph (6) of Law no. 47/1992.

### III. INSTEAD OF CONCLUSION

Although all the aspects brought into discussion through the current study clearly shape the possibility that the prefect had in interfering in the appointment of the heads of the decentralized public services of the ministries and of the other bodies of the central public administration in the administrative-territorial units, the legal reality hurried and did not allow the Constitutional Court to censor a law text that not only was not correlated to the other legal provisions in the domain, but it violates also certain constitutional principles.

We do not know to what extent the Constitutional Court would have adopted the admittance solution of the invoked unconstitutionality exception, but it can not be neglected that the solution of the legislator was a wrong one, and even more, an immoral one. The path of the society should be an ascendant one, and the legislator should be aware of the progress of the society. In this context, it is inexplicable how it was possible that from a solution relatively legal (that of Law no. 215/2001), it got to a solution where the word “ONLY” should dictate unilaterally, at the prefect’s disposal, the modality of appointment and dismissal of some persons that held public positions.

The current formulation of the text restricts the prefect’s part, but it is not enough to remove the abuses already committed.

#### BIBLIOGRAPHY:

- [1] A. Iorgovan, Treaty of Administrative Law, vol. I and II, Allbeck Publishing House, Bucharest, 2002
- [2] Emil Balan, Administrative Law and Administrative procedure, University Publishing House, Bucharest, 2002
- [3] Dumitru Brezoianu, Administrative Law, Titu Maiorescu University Publishing House, Bucharest, 2002
- [4] Law no. 215/2001; published in the Official Gazette of Romania, Part I no. 204 on 23.04.2001
- [5] Law no. 340/2004; published in the Official Gazette of Romania, Part I no. 658 on 21.07.2004
- [6] Resolution no. 314/2005 of the Constitutional Court; published in the Official Gazette Part U no. 694 on 02.08.2005
- [7] Law no. 188/1999; published in the Official Gazette of Romania, Part I no. 251 on 22.03.2004.
- [8] Emergency Ordinance no. 179/2005; published in the Official Gazette of Romania, Part I no. 1142 on 16.12.2005
- [9] Law no. 181/2006; published in the Official Gazette of Romania, Part I no. 450 on 25.05.2006.
- [10] Resolution no. 8462/2004 of the Court of Cassation; published in the Cassation Gazette no. 2/2005
- [11] Resolution no. 208/2006 of the Constitutional Court; published in the Official Gazette of Romanian, Part I no. 336 on 14.04.2006



# THEORETICAL AND PRACTICAL ASPECTS REGARDING CONSENT, AS VALIDITY CONDITION OF THE CIVIL ACT

Camelia Stănciulescu  
Faculty of Business and Administration  
University of Bucharest

## Abstract

According to article 953 of the Civil Code, “consent is invalid when it is granted by mistake, obtained through violence and fraud”. Besides the defects of consent mentioned by the legal provisions, we must point out, in certain conditions, injury, which represents a material prejudice that one of the contracting parties suffers, because of the obvious disproportion in value, emerging right at the moment of concluding the contract, between the performance that it undertook to provide and the performance that it was entitled to receive in exchange<sup>1</sup>. An error consists in a situation when a person has an erroneous image of reality, considering that what is false is true, or that what is true is false<sup>2</sup>. Consent must represent the perfect agreement between the wills of the persons that are bound by the legal relationship.

According to article 953 of the Civil Code, “consent is invalid when it is granted by mistake, obtained through violence and fraud”. Besides the defects of consent mentioned by the legal provisions, we must point out, in certain conditions, injury, which represents a material prejudice that one of the contracting parties suffers, because of the obvious disproportion in value, emerging right at the moment of concluding the contract, between the performance that it undertook to provide and the performance that it was entitled to receive in exchange<sup>3</sup>. An error consists in a situation when a person has an erroneous image of reality, considering that what is false is true, or that what is true is false<sup>4</sup>.

Consent must represent the perfect agreement between the wills of the persons that are bound by the legal relationship. Therefore, when the wills do not converge in an adequate and indissoluble way upon those elements that each party deemed to be constitutive of the legal act, the contract cannot be validly formed, irrespective of the type of deceitful appearances that the parties, or only

---

<sup>1</sup> According to a contrary opinion, injury is not a defect of consent, it is a condition for annulment of the legal acts performed by the persons under age, with limited acting capacity, who conclude, by themselves, without the prior authority of the parent or the tutor, acts for which the authorization of the tutelary authority is not required; please see D. Cosma, *Teoria generală a actului juridic civil*, Editura Științifică, Bucharest, 1969, p. 153.

<sup>2</sup> In other words, error is a psychological reality, defined as a belief contrary to the truth, because it points out the lack of legal correspondence between the inner and the declared will. One must note, however, that the notion of error is a lot more complex, because the concepts of “true” and “false” have, usually, a relative and variable content; please see P.C. Vachide, *Repetiția principiilor de drept civil*, vol. II, Editura Europa Nova, Bucharest, 1994, p. 55.

<sup>3</sup> According to a contrary opinion, injury is not a defect of consent, it is a condition for annulment of the legal acts performed by the persons under age, with limited acting capacity, who conclude, by themselves, without the prior authority of the parent or the tutor, acts for which the authorization of the tutelary authority is not required; please see D. Cosma, *Teoria generală a actului juridic civil*, Editura Științifică, Bucharest, 1969, p. 153.

<sup>4</sup> In other words, error is a psychological reality, defined as a belief contrary to the truth, because it points out the lack of legal correspondence between the inner and the declared will. One must note, however, that the notion of error is a lot more complex, because the concepts of “true” and “false” have, usually, a relative and variable content; please see P.C. Vachide, *Repetiția principiilor de drept civil*, vol. II, Editura Europa Nova, Bucharest, 1994, p. 55.

one of them, might have been misled by. The lack of conformity with reality of the contracting party's belief is what justifies, in certain cases, the invalidation of the legal act<sup>5</sup>.

The error may also arise out of the *interpretation* that the receiver of the offer gives to the contractual clauses. When the clause is clear, the receiver of the offer may not invoke the error caused by its own fault, and in case of ambiguity it must make recourse to the author for explanations or to the trial court<sup>6</sup>. In function of its gravity, of the nature and scope of the consequences it has on the consent validity, the error may be<sup>7</sup>:

- A fundamental error or an error that annuls the will;
- A defect of consent error and,
- A harmless error (with no effect on the contract validity).

The defect of consent error, also called serious error, implies that the false representation applies to either the substantial qualities of the legal act object (*error in substantiam*), or to the other contracting party or the beneficiary of the legal act (*error in personam*). This form of error is not as serious as the fundamental error<sup>8</sup>, because *it only alters consent; the vitiation is only partial*, while the fundamental error, which equates with the inexistence of consent, is total and permanent. In case of the defect of consent error, the wills of the contracting parties are convergent upon the essential elements of the contract: they agree to sell a property, in exchange of a certain price. So, the parties have consented, but the consent was granted on the basis of an error.

The Romanian legislator of 1864 takes corrective measures against the defect of consent error only in two cases: when it affects the substance of the object envisaged by the services provided by the parties, and when it applies to the party with which the contract is concluded, in which case the consideration of the person is the main reason why the legal act was concluded.

According to the provisions of art.954 (1) of the Civil Code, "the error does not cause nullity, except for cases in which it applies to the substance of the contractual object"<sup>9</sup>. This provision also engendered fierce controversies in the specialty literature, as the interpretation is rendered difficult by the ambiguity of the legal text. Thus, the legal doctrine emphasized that, although the law refers to the "object of the convention", or, generally speaking, to the object of the legal act, "it actually refers to the essential qualities of the object of the performances incumbent on the parties." In other words, "the substance of the contractual object is what the parties agreed it was essential for each of them in a certain

---

<sup>5</sup> Please see M. B. Cantacuzino, *Elementele dreptului civil*, Editura All Educațional, Bucharest, 1998, p. 396.

<sup>6</sup> These types of error are legally regulated in the Italian or German law, but our legal doctrine also presents opinions that plead for the completion of the civil law in this respect; please see O. Ungureanu, *Reflecții privind eroarea în dreptul civil*, *Revista juridică* no. 4/2001, p. 155.

<sup>7</sup> Please see G. Boroi, *Drept civil. Partea generală. Persoanele*, Editura All Beck, Bucharest. 2002, p. 160; V.V. Popa, *Drept civil. Partea generală. Persoanele*, Editura All Beck, Bucharest, 2005, p. 102; Gh. Beleiu, *Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil*, Vth edition, Editura Șansa, Bucharest, 1998, p. 145.

<sup>8</sup> Which is why it is also called error-defect of consent; please see G. Boroi, *op. cit.*, p. 161; D. Cosma, *op. cit.*, p. 156

<sup>9</sup> Please see E. Chelaru, *Drept civil. Partea generală*, Editura All Beck, Bucharest, 2003, p.117.

contract, and, therefore, what they expected from the other contracting party pursuant to the fulfilment of the assumed obligations”<sup>10</sup>.

If we analyze diachronically the phrase “error on the substance of the convention object”, we notice that, in the classical conception, belonging to the Roman law, *error in substantiam*<sup>11</sup> consisted exclusively in a false representation concerning the matter that the property was made of. The error is limited, in Roman law, to the matter that the property is made of, in case of legal acts in general, and with respect to the sale-purchase act, it relates to the flaws of the object, and the appreciation criterion is objective in both cases. For the Romans, it sufficed that the property should have been made of a different substance or that it should have presented one of the flaws accepted by the Roman legal experts, the determining character of the error on the party’s consent being irrelevant.

According to the objective conception, we define the substance of the object as its main quality, which is specific to its nature, and without which it wouldn’t be what it is. Delightful as it might be through the logical sequencing of arguments, the objective conception presents real difficulties when we have to outline what is essential in qualifying a property<sup>12</sup>. The shortcomings of the objective criterion are revealed in practical cases: buying a string of pearls, that the purchaser mistakenly considers to be natural, is deemed to be valid, as the matter that the string is made of, namely mother-of-pearl, is adequate; although it was a false belief that the pearls were natural that determined the purchaser to buy the necklace, this has no relevance.

To this rigid and insufficient conception, the modern law opposed the subjective conception, relying on the subjective conception, according to which “the word *substance* must not be understood in the metaphysical sense - that is by placing it beyond the subjective interest-, which is, in fact, the content of every private law. On the other hand, the substance of the convention object is not the substance of a material object; it is the substance of the services that the parties have bound each other to provide, because these services form the direct object of the contract, not the materiality of the property. "As the case may be, the substance may consist in the legal validity of the service, or, with reference to an object, in its constitutive matter, in its origin or age, and an error related to one of the above-mentioned elements may be considered as a defect of consent, according to the decision taken by the court on the determining character of the error.”

The usefulness of the object is considered to be an essential quality, provided that the parties should deem *in concreto* that this quality was essential for entering the contract, meaning that, had they known about its inexistence, they would not have entered the contract<sup>13</sup>.

---

<sup>10</sup> Please see D. Cosma, op., cit., p. 157.

<sup>11</sup> Please see V.V. Popa, op. cit., p.103.

<sup>12</sup> A possibility would be to make reference to the common opinion, to that quality recognized by most people as defining for that property; please see F. Terre, P. Simler, Y. Lequette, Droit civil. *Les Obligations*, Dalloz, Paris, 1999, p. 170.

<sup>13</sup> Please see I.R. Urs, *Drept civil român. Teoria generală*, Editura Oscar Print, Bucharest, 2001, p. 222.

Case law is full of examples: buying a plot of land for the construction of dwellings, but one is unable to use it without the authorization of the Geology Committee, a circumstance that was not known to the purchaser when concluding the act; the sale of the title to property without usufruct on a building, although the usufruct was extinguished by the usufructuary's death; the purchase of animals for traction or for breeding, while these animals are unable to perform these activities etc<sup>14</sup>.

The adopting of the subjective conception compels the judge to investigate the will of the party that is afflicted by the error, in order to determine the quality considered to be essential by the party in concluding the legal act. If the parties' intentions were expressed, and if there is no obstacle to the identification of the quality of the property which was envisaged by the parties when concluding the contract, the court's task is a lot restricted. When the recognition of this quality is not possible by analyzing the expressed intentions, it is necessary to apply an objective corrective standard, by assessing, from case to case, the behaviour of a normal, reasonable individual in a similar position.

Usually, in synalagmatic contracts, the error of the contracting party does not apply to its own performance; it applies to the counter-performance of its partner. There are cases in which the error applies to the object of one's own performance, when, for legal consistence reasons, the annulment of the contract should be imposed. For example, we can consider the case of the inheritor that waives its succession rights, as it mistakenly believes that the extent of its share of the heritage is insignificant, or of the seller that renounces a painting, believing that it is the copy of a famous work, when, in reality, the painting is the work itself. Several arguments relying on the text of the law referring to the "convention object" have been invoked against the annulment of the contract on grounds of error that affects one's own performance, although, in any synalagmatic contract there are two objects, by definition. It was emphasized that, if it were to admit the error in such a case, legal instability and uncertainty would emerge, especially in the field of trade with art works, because the annulment of the contract would lead to the punishment of those who know how to discover valuable objects in places where the other cannot identify them, and it would mean to discourage the intellectual effort and taste<sup>15</sup>.

It was emphasized that only in certain cases the error related to one's own performance triggers the annulment of the contract, and in most cases this error is only related to value or it is an unpardonable error, and in these cases our legal system does not justify the penalty of annulment. We must distinguish between the cases in which the economic value is the substantial quality of the good which is exclusively affected by error, and the cases in which this value is nothing but the logical consequence of an error related to a different quality,

---

<sup>14</sup> Please see T.S, Civil Section, decision no. 171967, in CD 1967, p. 80; T.R. Cluj, decision no. 89/1961, no. 1190/1961, no. 12678/1961 published in *Tratat de drept civil. Partea generală*, volume comprising several authors, Editura Academiei, Bucharest, 1967, p. 284.

<sup>15</sup> This idea is not sustained by case law and by the greatest part of the doctrine, on the grounds of the general character of art. 954 of the Civil Code, which applies to both unilateral and synalagmatic contracts, because *ubi lex non distinguit, nec nos distinguere debemus*; please see D. Cosma, *op. cit.*, p. 158.

considered to be essential by the parties. The error related to the economic value of the performance or of the counter-performance cannot constitute an error affecting the substance, because to admit this solution would mean to promote, indirectly, the acceptance of injury as being a defect of consent between individuals who are of age, contrary to the provisions of article 1156 of the Civil Code, which prohibits the enforcement of an action for annulment by individuals who are of age, and it would also mean to infringe upon the provisions of art.25 of the Decree no.32/1954, which delineate the scope of application of injury.

In the legal literature, the distinction was made between the error on substance and the redhibitory (latent) defects on the matter of the sale, subject to art.1352-1360 of the Civil Code, thus appreciating that, notwithstanding their common foundations, their consequences are different<sup>16</sup>. Thus, although the latent flaws might be a particular instance of error on substance, the penalty applicable to error is annulment, while the redhibitory defects offer the buyer an option between the action for reducing the price and the action for contract rescission, and the prescription term for the action for annulment has some features that distinguish it from the prescription term applying to the action brought on grounds of latent defects<sup>17</sup>.

"The error does not engender nullity when it applies to the person with which the contract was signed, except for the case in which the consideration of the person is the main cause for the conclusion of the convention", in accordance with art.954 (2) of the Civil Code. This second type of defect of consent error, *error in personam*, has a narrower scope of application, applying to the physical, civil identity or to the qualities of the person, qualities which are deemed to be determining at the conclusion of the contract. If *error in substantiam* can be incident to any contract, especially in case of extensive interpretation of the notion of object substance, *error in personam* can only be found in deeds where the consideration of the person represents the main cause, namely *intuitu personae* contracts<sup>18</sup>. This is the case of gratuitous contracts (donation, commodate), in which case the consideration of the beneficiary's person is, almost always, essential. Conversely, in the contracts for valuable consideration, the person of the contracting party is indifferent.

The error about the contracting party's person sometimes justifies the relative nullity of the sale-purchase contract in exceptional cases: an object to which the seller attaches a great sentimental value is only to be removed on grounds related to the buyer's personality. Without a general appreciation criterion, the judge will determine the extent in which the contracting party's person affects the consent of the party afflicted by the error, in function of the nature of the

---

<sup>16</sup> Please see D. Cosma, *op. cit.*, p.158

<sup>17</sup> Please see D. Chiriță, *Principiul libertății contractuale și limitele sale în materie de vânzare-cumpărare*, in R.D.C. no. 6/1999, p. 256.

<sup>18</sup> However, it is impossible to formulate a universally valid rule, which would imply that all gratuitous acts are concluded *intuitu personae* and that the acts for valuable consideration exclude this character. Exceptions can be found in case of contracts whose object is the obligation to do (contract for order of a literary work, legal aid contract, health-care assistance contract), where the contracting party's professional skills are essential (professional training, prestige, talent, reputation); please see Gh. Beleiu, *op. cit.*, 135; G. Boroi, *op. cit.*, p. 161.

convention, of the state of affairs and of the parties' intention. What is important, however, is that the error should apply to that element of the contracting party's personality which was decisive in determining the party's consent.

The French legal practice has established that it is possible to have an error on the physical identity of the person, in case of the author of an accident who, because of a mix-up of files, comes to an agreement with a person different from its victim<sup>19</sup>. Another controversial subject in legal practice represents the sale of a third party's property. As pointed out above, the solutions adopted differ, considering whether both of the contracting parties, or at least one of them, were afflicted by error, or, on the contrary, whether the contract was concluded in the know.

In case the parties or at least one of them happens to be afflicted by an error, the sale-purchase contract might be annulled for an error relating to the essential quality of the seller, which was considered by the buyer to be the owner of the property. Judiciously, it was noticed that this cause for annulment may be exclusively invoked by the buyer and by its successors in title, because, on the basis of provisions of art.954 (2) of the Civil Code, the error must apply to "the person with which the contract was concluded; so, the seller, even if it is in good faith, cannot invoke the annulment of the concluded legal act, because it cannot invoke its own error<sup>20</sup>.

In a different opinion, it is emphasized that, in this concrete case, the grounds for the annulment of the sale-purchase contract must consist in deception, because the buyer, acting in good faith, was misled by the seller, acting in bad faith, about the quality of owner of the latter. Another expressed opinion was that this is the case of deception by reticence, the fault in this case consisting in the infringement of the obligation of mutual information.

In the analyzed issue, another opinion was expressed, according to which the sale of a third party's property is neither null, nor challengeable by way of an action for annulment, on the contrary, it is a convention that is concluded in a perfectly valid manner. In case the seller does not fulfil its obligation of transferring the property, the buyer can require the contract rescission for faulty non-fulfilment. The solution was challenged by convincing arguments, which are, mainly, the following:

---

<sup>19</sup> Consent may be determined by an error regarding the civil identity of the person, its citizenship, name, age, civil status, genealogy, sex. It is necessary to determine the qualities of the contracting party, in relation to which the party is afflicted by error, and the qualities consist in morality, experience, unbiased behavior, etc., while the essential character of these qualities is appreciated by the court to which the matter was referred to, depending on the nature of the contract and the degree of intelligence and experience of the person afflicted by the error. Thus, it was possible to admit the nullity of an arbitral convention, justified by the fact that the person chosen as arbitrator did not meet the minimal requirements of impartiality and independence, imposed by its capacity; please see F. Terre, P. Simpler, Y. Lequette, *op. cit.*, p. 177.

<sup>20</sup> Please see Fr. Deak, *Tratat de drept civil. Contracte speciale*, Editura Actami, Bucharest, 1999, p. 56; C. Hamangiu, I. Rosetti-Bălănescu, Al Băicoianu, *op. cit.*, p. 905; D. Cosma, *op. cit.*, p. 217; R. Sanilevici, I. Macovei, *Consecințele vânzării lucrului altuia în lumina soluțiilor practicii juridicare*, in RRD no. 2/1975; G. Boro, *op. cit.*, p. 163.

- According to the provisions of art. 1295 (1) of the Civil Code, the seller's obligation to transfer the property is lawfully fulfilled, at the conclusion of the contract; consequently, in the absence of a derogatory clause, the obligation is extinguished by fulfilment, at the very moment of the contract's conclusion;
- As long as, in the field of contract execution, there ceases to be a concrete obligation to give, naturally the non-fulfilment of this obligation is out of the question, just as the rescission, by way of consequence;
- On the other hand, „the obligation to give, as regulated by art. 1295 (1) of the Civil Code cannot be part of the obligations undertaken to be fulfilled later, also because, in this way, the condition of anteriority of the eviction cause would be thwarted, therefore this extremely important guarantee in favour of the buyer couldn't function any more"<sup>21</sup>.

## BIBLIOGRAPHY:

- [1] Gh. Beleiu, *Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil*, Vth edition, Editura Șansa, Bucharest, 1998
- [2] G. Boroi, *Drept civil. Partea generală. Persoanele*, Editura All Beck, Bucharest. 2002
- [3] M. B. Cantacuzino, *Elementele dreptului civil*, Editura All Educațional, Bucharest, 1998
- [4] E. Chelaru, *Drept civil. Partea generală*, Editura All Beck, Bucharest, 2003
- [5] D. Cosma, *Teoria generală a actului juridic civil*, Editura Științifică, Bucharest, 1969
- [6] Fr. Deak, *Tratat de drept civil. Contracte speciale*, Editura Actami, Bucharest, 1999
- [7] V.V. Popa, *Drept civil. Partea generală. Persoanele*, Editura All Beck, Bucharest 2005
- [8] F. Terre, P. Simler, Y. Lequette, *Droit civil. Les Obligations*, Dalloz, Paris, 1999
- [9] P.C. Vachide, *Repetiția principiilor de drept civil*, vol. II, Editura Europa Nova, Bucharest, 1994
- [10] F. Terre, P. Simler, Y. Lequette, *Droit civil. Les Obligations*, Dalloz, Paris, 1999
- [11] I.R. Urs, *Drept civil român. Teoria generală*, Editura Oscar Print, Bucharest, 2001
- [12] R. Sanilevici, I. Macovei, *Consecințele vânzării lucrului altuia în lumina soluțiilor practicii juridicare*, in RRD no. 2/1975;
- [13] E. Jakab, B. Halcu, *Consecințele civile și penale ale vânzării lucrului altuia*, in *Pandectele române* no. 1/2005;
- [14] O. Ungureanu, *Reflecții privind eroarea în dreptul civil*, *Revista juridică* no. 4/2001

---

<sup>21</sup> Consequently, it was considered that, in the given hypothesis, *the sale is subject to rescission*, on the grounds of the seller's non-fulfillment of the obligation it assumed under the contract, that is the obligation to guarantee to the buyer the peaceful possession of the object; please see E. Jakab, B. Halcu, *Consecințele civile și penale ale vânzării lucrului altuia*, in *Pandectele române* no. 1/2005, p. 247.

# CRITIQUING AUSTRALIA'S KNOWLEDGE STRATEGY: HOW CAN WE BETTER POSITION OURSELVES IN A GLOBAL COMMUNITY?

Sharyn Renshaw  
ACU National, Australia

Girija Krishnaswamy,  
ACU National, Australia

## ABSTRACT

This paper will provide critical analysis of Australia's knowledge strategy, conducted from the perspective that driving a national knowledge strategy is the predominant responsibility of government for reasons of impartiality. As such critique will be focused upon the actions undertaken by the Australian government to position the nation as a Knowledge-based Economy (KBE) competitively within the global community. It will be argued that to qualify for the title of "knowledge nation" the country needs to perform well across a composite range of factors. Examination of composite strategies will be conducted within a model of Knowledge Development, categorising the government's knowledge sourcing, abstraction, conversion, diffusion and refinement strategies. The paper will conclude with recommendations for improving Australia's position within the global knowledge economy and consequently within the global information community.

**KEY WORDS:** Knowledge Management, Knowledge Strategy, Knowledge Development, Knowledge Based Economy.

## 1. DRIVERS OF THE GLOBAL KNOWLEDGE ECONOMY

Global economic activity has been undergoing fundamental transformation with the emergence of a Global Knowledge Economy (GKE) (Sheehan, 1999), an economic structure driven primarily by *globalisation* and *increasing knowledge intensity* of economic activity (Houghton, 2002). These primary driving forces are enabled by a complex web of underlying developments; *globalisation* in itself, driven by market/industry deregulation at both a national and international level as well as by increased accessibility to these markets facilitated through ongoing development in information and communication technologies (ICT) (Houghton, 2002). An *increasing* level of *knowledge intensity* is directly driven by the heightened emergence of customer centric, knowledge intensive service industries like financing, consulting and accountancy (Debowski, 2006) and the exponential pace of Information Technology (IT) development (Sheehan, 1999). The unprecedented acceleration of knowledge production, including its storage and diffusion is the direct result of scientific and technological advances (David & Foray, 2002).

These developments not only provide Australian organisations with increased opportunity to access international markets, but consequently also expose them to competition from the same markets (Debowski, 2006). The global market continues to produce a highly IT proficient customer base with expectations of rapid response to information and product queries, access to current on-line product information and online transactions. These expectations, combined with



a geographically spread customer base force Australian businesses to adopt rapid responses to compete with global competitors who utilise significant electronic infrastructure to integrate themselves with their customer base, corporate partners, suppliers and manufacturers (Thompson, Strickland & Gamble, 2005).

Strategic response to this environment has seen the emergence of knowledge-based, technology driven enterprises whose primary value is contained within their non-physical intangible assets, specifically focusing upon resource investment and development of Intellectual Capital (IC) to support innovative practices (Li, Pike & Haniffa, 2006). Knowledge stocks at the individual level as Human Capital (eg. employee competence, knowledge and experience held by individuals within the firm), at the group level as Relational Capital (eg. knowledge captured within internal staff interrelationships, external relationships with suppliers/manufacturers, brand image, reputation), and at the organisational level as Structural Capital (eg. assets, infrastructure including that which supports knowledge capture (eg. databases, manuals) (Miller & Whiting, 2005, Afiouni, 2007).

Individual organisational economic success directly contributes to national economic success in terms of both productivity and growth, referred to as Gross Domestic Product (GDP). However, variations in national productivity and growth rates are no longer linked to a nation's availability of natural resources, but rather to the quality of human capital, their knowledge creation capacity and ability to grow and share intangible capital (David & Foray, 2002).

Consequently, an organisation's capacity to compete in this global environment is largely dependent upon government driven strategy and support, primarily through national investment in knowledge creation and diffusion. This effectively translates to necessary focus upon co-ordinated and planned investment in training, education, Research and Development (R&D) and information and communication infrastructure (David & Foray, 2002) at industry, academic and governmental levels.

## **2. EARLY CONCERNS RELATING TO AUSTRALIA'S KNOWLEDGE PERFORMANCE**

Concerns regarding Australia's performance within the GKE in comparison with advanced economies (eg. America, Europe, East Asia) were raised in 2001, when the Chifley Research Centre, the Australian Labour Party's official policy development institute commissioned a report into this area. The report examined Australia's performance in three areas that define national knowledge economic capacity — education, R&D and investment in ICT drawing upon research analysis conducted by the Organisation for Economic Co-operation and Development (OECD) (Considine, et.al., 2001). Their examination of Australia's investment in Human Capital, specifically, investment in education and work force development, revealed significant deficits. They label "*Australia's poor knowledge economy performance*" as a consequence of the following — Australia's focus upon investment in fixed assets (describing Australia as an "*old economy*");

Australia's reduced funding of public education being well below OECD averages, forcing the rise of private funding; secondary school retention levels lower than OECD averages and low retention of adolescents in vocational education programs; rapid growth in higher education uptake limited to a narrow band of fields (eg. business studies, computing) supported primarily by private rather than public funds, with a decline in the role of engineering, science and research degrees.

Report by the Chifley Research Centre also revealed that whilst there had been an increased investment of GDP in R&D between the years of 1984 to 1995, this investment declined significantly in subsequent years and compared poorly against investments made by other OECD countries. *"While a sample of comparable OECD countries increased their R&D expenditure by 4.2% between 1995 and 1998, and US expenditure increased by 5.0%, Australian R&D expenditure fell by 15.4%"* (Considine, et. al., 2001). The report highlighted that the contribution of Australia's information industries made to the economy ranked last amongst OECD countries, as a direct consequence of the decline in manufacturing of communications and information equipment. Whilst knowledge intensive goods export rates increased compared with imports, this performance reversed in later years because of the failure to invest in knowledge-based industries (eg. telecommunications, computing equipment, software, services) directly contributing to the nation's negative trade balance and growth in foreign debt.

Whilst these early examinations are alarming, it could be argued that the true primary indicator of a knowledge nation is its ability to recognise these deficits and engage in an ongoing sufficient level of corrective and developmental actions. The following questions therefore are pertinent – can Australia take this lesson and learn from it; and has Australia's performance since the Chifley report changed sufficiently to merit the description of *"Knowledge Nation"* or *"Clever Country"*?

### 3. MAPPING A MEASUREMENT FRAMEWORK

Debowski (2006) outlines a model of Knowledge Development encompassing five phases – knowledge **sourcing** (bringing together informed knowledge sources); knowledge **abstraction** (framing insights gained from the sourcing process); knowledge **conversion** (translating ideas/principles into specific outcomes); knowledge **diffusion** (the spreading of codified/embodied knowledge); and knowledge **development/refinement** (ensuring knowledge sustains currency and usefulness). Whilst Debowski applies this model to an organisational setting, it can be applied equally well to a national setting, taking a lead from Wood (2003).

Pivotal to Wood's examination of Australia's knowledge performance is his identification of proposed measures within composite areas. We are using Debowski's framework to sequence and categorise the measures Wood (2003)

presents into a broader measurement map. This map is then utilised to examine more recent data in the evaluation of Australia's current level of performance.

Since examination of national knowledge networks forms a crucial element of performance analysis (Wood, 2003), such an analysis represents Australia's capacity for knowledge **sourcing**. Wood highlights the measurement of networks among universities and those between suppliers and private sector users to be useful indicators. Other indicators could include international staff/student exchange agreements, international joint ventures and strategic research alliances and collaborative research centres. A further indicator of Australia's knowledge sourcing could be the level of governmental funding support of university research centres or research initiatives that cross both industry and tertiary institutions.

One area within Debowski's (2006) framework which Wood (2003) does not identify as a key component of performance analysis is measurement of the nation's knowledge **abstraction** strategies. The most ideal national strategy in this area would involve OECD type activities, where governmental knowledge strategies receive ongoing examination and gap identification, with subsequent insights utilised to develop the breadth, depth and level of integration of sub-strategies into a broad national knowledge approach.

Wood (2003) highlights the importance of measuring knowledge inputs and outputs and the development of and application of composite indices to achieve this purpose. Wood criticises available indices, specifically the composite Information Society Index (which measures four types of infrastructure — computer, information, internet and social) for offering only superficial examination and for lack of emphasis upon human capital measurements. Ideally, a knowledge nation would engage in the use of composite indices; compare its results internationally; engage in setting comparable outcome targets that address areas of deficit consequent to gap examination that extends beyond surface level; and development of strategies to address underlying performance issues. Such an analysis at a national level is an examination of Australia's capacity to engage in knowledge **conversion**.

Extending Considine et. al.'s (2001) examination of Australia's knowledge **diffusion** strategies, Wood argues that an effective national strategy would incorporate the technical tools that assist with both embodied (individual tacit knowledge) and disembodied knowledge diffusion as well as strategies that support the development and retention of the nation's human capital (Wood, 2003). Wood draws upon the OECD definition of human capital being "*the knowledge, skills and competencies and other attributes embodied in individuals that are relevant to economic activity*" (Industry Analysis Branch, cited by Wood, 2003), extending Considine et. al.'s examination to analysis of skilled person's migration patterns. Globalisation has led to the increased mobility of the "white-collar" labour force. Consequently, integral to the economic success of a country is the ability to retain skilled workers, "*restricting the brain drain in the information technology sector is integral to the growth and development of a*

*knowledge economy*” (Wood, 2003). Essential to attracting and retaining a skilled workforce is the need to offer internationally competitive conditions including comparable salaries and incentives. However more than this, it is about developing a nation’s current workforce and examining the challenges contained within the current and future workforce.

Wood identifies a range of technical infrastructure indicators to measure the ability to **diffuse** knowledge. Possible measures include the takeup of communication and information technologies (eg. internet) and the takeup of computer-based technologies (eg. personal computers) (Wood, 2003).

Another area within Debowski’s (2006) framework which Wood (2003) does not identify as a key component of performance analysis is measurement of the nation’s knowledge **development/refinement** strategies. The ideal national strategy in this area would involve ongoing engagement and refinement of the nation’s knowledge abstraction strategies to ensure knowledge sustains its currency and usefulness.

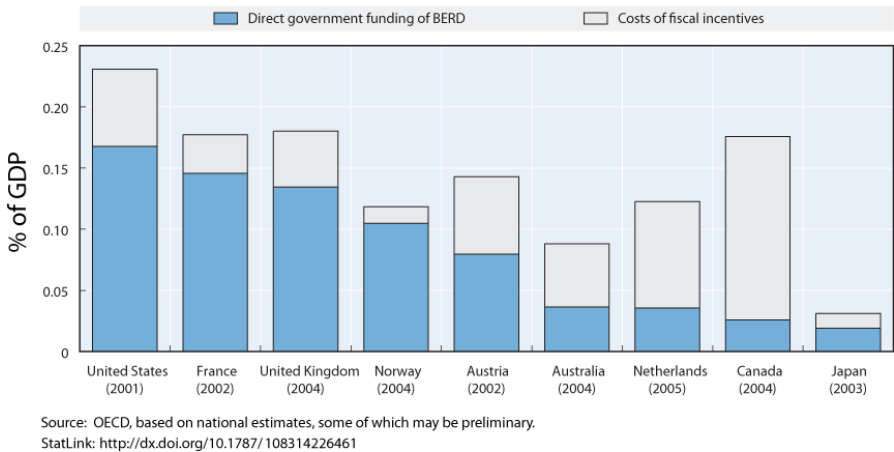
#### 4. CRITIQUING THE SUCCESS OF AUSTRALIA’S KNOWLEDGE STRATEGY

##### 4.1. Examining the success of Australia’s knowledge sourcing strategies

Australian government’s responses to the concerns raised by Considine et. al. (2001) are encapsulated in the report named “*Australia’s Strategic Framework for the Information Economy 2004 – 2006*” (ASFIE 2004-2006). Developing Australia’s innovation system as a platform for productivity growth and industry transformation has been identified as a priority, with maintaining a globally competitive business environment for innovation as a critical strategy. These knowledge **sourcing strategies** received favourable analysis from the OECD in their 2006 Science, Technology and Industry Outlook. However, close examination of the statistical information provided indicates that Australia’s efforts have yet to place the nation in an internationally competitive position. The OECD provides international comparison of R&D expenditure as a percentage of GDP. Whilst offering statistical information as current as 2004 for many OECD member countries, information pertaining to Australia in many cases is only as recent as 2002. This absence leads one to question the success of the above listed strategies and consequently whether it may be intentional. One area in which the OECD appears to have more recent national data is in its international comparison of tax incentives and direct funding provision to support business R&D activities.

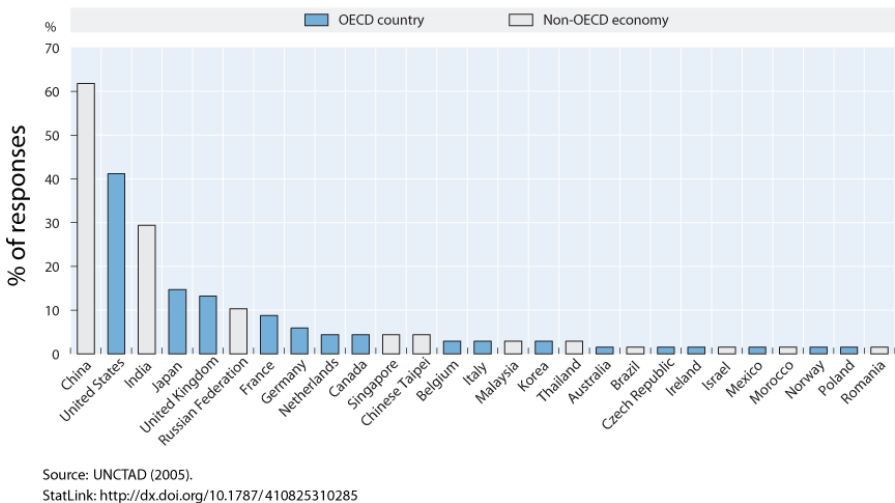
Whilst the whole amounts pertaining to Australian R&D investment can appear impressive, this investment restated in terms of % of GDP and in direct international comparison reveals a different picture (see Figure 1). For example, in 2004 Australia’s investment represents less than 0.05% of its GDP, significantly behind other OECD member countries.

**Figure 1: Direct Government funding of business R&D and tax incentives for R&D as a % of Gross Domestic Product.**



The OECD Science Technology and Industry Outlook 2006 asserted that multinational corporations underpin global R&D investment, noting that foreign affiliate investment in Australian R&D efforts exceeded 40%, comparable with Hungary, Ireland, Czech Republic and the UK (see Figure 2). Interestingly, a 2005 survey of the largest R&D investors, show Australia as one of the least attractive options for foreign R&D investment. (UNCTAD, 2006 as cited by OECD, 2006)

**Figure 2: Most Attractive Foreign R&D locations as a % of survey respondents.**



(UNCTAD, 2006 as cited by OECD, 2006)

#### 4.2. Examining the success of Australia's knowledge abstraction strategies

Knowledge development requires strategic approach (Debowski, 2006) to attract and satisfy customers, compete, grow and achieve desired objectives within the context of the vision and values of an organisation (Thompson, et. al., 2005). Consequently, a national knowledge strategy requires a series of responsive strategies (reactive, but preferably pro-active) and initiatives that competitively position Australia within a global knowledge community/economy by setting and striving toward objectives and outcomes comparable to direct competitors, with objectives framed by a vision representative of national values.

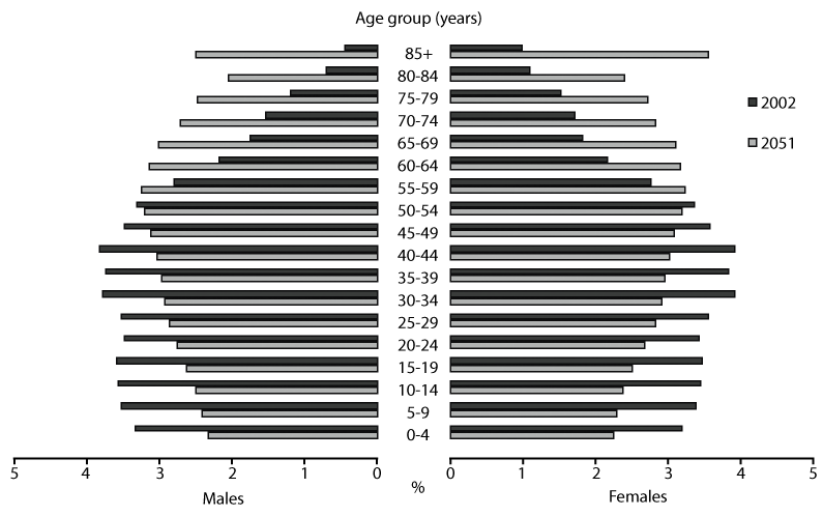
The Australian government's ability to engage in knowledge **abstraction**, to recognise and respond to self-identified deficits and those highlighted by other sources and to insightfully respond to these is partly demonstrated in the paper ASFIE 2004-2006, based upon "*Australia's vision for the information economy where government, business and society are all connected.*" This document attempts to strategically address the deficits identified by the OECD and the Chifley report. Its practical level of success will become apparent when the success of Australia's knowledge diffusion strategies are discussed later in this document.

#### 4.3. Examining the success of Australia's knowledge conversion strategies

Not only does the ASFIE 2004-2006 paper demonstrate a level of knowledge abstraction, the document partly demonstrates the government's capacity for knowledge **conversion**. Whilst the document focuses upon the development of strategies in response to identified national knowledge management deficits, the document fails to specify the quantitative measures and outcomes used to determine the success of proposed initiatives. Acknowledging this limitation, let us broaden our examination.

Australia's population is ageing, with the proportion of people aged over 65 anticipated to increase from 13% to 27% between 2002 and 2051, accompanied by an anticipated decrease in Australia's working population (those aged 15-64) as percentage of the total population (anticipated decrease of 67% to 59% between 2002 and 2051) (Australian Bureau of Statistics, 2004), represented in Figure 3.

**Figure 3: Population Projections by Age Group 2002 to 2051**



Source: *Population Projections, Australia* (catalogue no. 3222.0), Australian Bureau of Statistics.  
(Extracted from *Labour Market Indicators of an Ageing Labour Force in Australia*, Australian Bureau of Statistics, 2004).

Figure 3 raises economic and labour force concerns. For Australia to experience both economic and knowledge sustainability, strategies to increase labour force participation and productivity of an ageing population are required. The government’s national strategy for an ageing Australia as outlined by Senator Bishop’s speech (Bishop, 1999) also demonstrates the government’s knowledge abstraction abilities, whilst the initiatives cited by Taylor (2003) in Table 1 provide further, though not comprehensive evidence of the government’s knowledge conversion abilities.

**Table 1: Public Policies Affecting Older Workers – Selected Countries**

(Adapted from Taylor, 2003)

(Legend: Aus=Australia; UK=United Kingdom; USA=United States of America; A=Austria; Fi=Finland; G=Germany; F=France)

Initiative	Country						
	Aus	U K	US A	A	Fi	G	F
Strategic policy approach to the employment and retirement of older workers.	✓	✓		✓	✓		
Programs of research and development on the issue of age and employment.		✓			✓	✓	
Pension and social security reforms aimed at removing incentives to early retirement and encouraging later retirement.	✓	✓		✓	✓	✓	✓
Gradual retirement schemes.				✓	✓	✓	✓
Age discrimination legislation, protection against dismissal.	✓	✓	✓	✓	✓		✓
Proscription of age bars in recruitment advertisements, and/or abolition of mandatory retirement.							
Awareness raising campaigns among business and the general public.	✓	✓			✓	✓	
Employment and training programmes targeting older workers.	✓	✓		✓	✓	✓	✓
Support to employers (eg. advice and guidance, training, employment placements)	✓	✓	✓		✓		

Table 1 indicates that Australia compares favourably with other key countries in policy development. Whilst the practicality of these initiatives is demonstrable support for the government's ability to engage in knowledge conversion, these initiatives have not yet translated into outcome data that places Australia



competitively. Whilst Australia experienced a small increase in the labour force participation rates of people aged 15-64 of 74% in 1990 to 76% in 2005, this is attributable to an increase of women in the workforce (Australian Bureau of Statistics, n.d.). Australia's rate of persons aged 55-56 participating in the workforce remains well below other key OECD countries (Australian Bureau of Statistics, n.d.).

#### 4.4. Examining the success of Australia's knowledge diffusion strategies

The ASFIE 2004-2006 report also outlines strategies that can be categorised under knowledge **diffusion**, including strategies that support development of technical information infrastructure and the nation's human capital. The government's priority in the diffusion strategies for technical infrastructure was aimed at attaining the objective of ensuring that all Australians have capabilities, networks and tools to participate in the benefits of the information economy. The first strategy towards this end was to develop the networks and capabilities needed by people living in regional communities, indigenous Australians, older Australians, people with disabilities and others facing economic or social barriers to participation in the information economy. Strengthening collaboration and capabilities in Small and Medium Enterprises (SMEs), NGOs, and key sectors to facilitate their participation in the information economy was the second strategy. The third diffusion strategy was to promote investment in broadband infrastructure, content, capabilities and networks in regional areas and in key industry sectors.

To provide examination of the success of these strategies the government released the "*Information Economy Index 2006*" paper. This document compares Australia's on-line performance against nine other countries utilising *Composite Index Rankings* in areas including consumer technology use, internet access and intensity of use, adoption of broadband, e-business and e-government. Table 2 provides country performance rankings against the 20 indicators of the index

Table 2 shows that Australia presently ranks equal 3<sup>rd</sup> with Sweden after the US and Canada, representing a significant jump from 6<sup>th</sup> position in 2003. This result is due to positive score increases on each indicator rather than superior performance on any one indicator. Whilst the index does not provide an evaluative basis for all of the government's initiatives, the evidence demonstrates that these initiatives have enabled increased performance and better competitive positioning of Australia within the global knowledge community.

The success of these strategies is independently supported by Singh and Byrne (2005), whose research revealed that Australian organisations have made significant investments in information and communications technical infrastructure to leverage the benefits of the internet and e-business. Their research found that Australian companies have embraced these tools for conducting business with greater adoption levels seen in manufacturing and service industries.

Australia's success of strategies in the diffusion of knowledge that is disembodied can be indirectly examined through analysis of the number of patents lodged, trademarks established and emergence of technically focused services (Wood, 2003). Patenting and licensing activities undertaken by public, government and university-based research has direct economic and social benefit (OECD, 2006). In the OECD's 2006 analysis, Australia does not rate any mention of comparable performance in these areas.

The ASFIE 2004-2006 also highlights knowledge **diffusion** strategies which focus upon the development of the nation's human capital. The priority was to develop Australia's innovation system as a platform for productivity growth and industry transformation. The strategies focussed on building an innovation culture through improved access to education and skills development and maintaining a globally competitive business environment for innovation.

Evidence of the success of these strategies is contained in measures such as the rate of growth of employment in professional, scientific and technical occupations. On an international comparison (OECD Science, Technology and Industry Outlook, 2006), Australia has performed reasonably well, experiencing approximately 3% employment growth rate in these areas. However, as a proportion of total employment, this figure is less impressive. Whilst Australia has outperformed America and the UK in these areas, Australia did not experience the rate of growth experienced by Hungary, Spain and Ireland.

The success of the government's initiatives related to knowledge diffusion (human capital) is supported by Australia's low unemployment rate of 5% (Department of Employment and Workplace Relations, 2006) and evidenced in annual growth rates in advanced clerical and service workers (13.7%); professionals (9.2%) and managers/administrators (4.4%).

The OECD *"defines nations operating as KBEs as those where knowledge is the main source of wealth, growth and employment, with a strong reliance on information technology"* (OECD, cited by Debowski, 2006). Service industries are heavily knowledge focused. Callioni (2004) asserts that Australia meets the OECD definition of a KBE nation with the bulk of Australian employment being in the services sector at 71% compared with industry 26% and agriculture 3%. In 2005 the proportion of employment within the services sector increased to 75% compared respectively with Canada 75%, France 74%, UK 76% and USA 79% (House of Representatives Standing Committee on Economics, Finance and Public Administration, 2007).

**Table 2: Country Rankings of Individual Performances on the Information Economy Index (2006)**

(Adapted from *Information Economy Index 2006*, Australian Government Department of Communication, Information Technology and the Arts, 2006).  
(Legend: US=United States; UK=United Kingdom; C=Canada; F=France; G=Germany; I=Italy; J=Japan; Sp=Spain; S=Sweden; A=Australia; Aust RS Performance=Australia's Raw Score Performance)

	Comparative Rankings Based Upon Raw Scores									Aust RS Performance			
Indicator	US	U K	C	F	G	I	J	S p	S	A	%2006	%200 4	%200 3
% of 16 yr olds & over with use of a mobile phone	7	1	9	8	6	1	10	5	1	1	80	72	65
% of households which own/lease a PC	2	5	1	8	6	7	10	9	3	4	71	65	65
% of households online	2	4	4	10	6	7	8	9	1	3	65	56	54
% of persons with internet access via home PC	1	4	N/A	9	6	7	4	8	1	3	66	59	57
% of 16 yr olds & over with internet access from any location	3	5	4	7	6	8	10	9	1	2	86	84	72
% of 16 yr olds & over with internet access at home or work	2	5	3	9	6	7	N/A	8	1	4	108	109	89
% of 16 yr olds & over with internet access by gender	1	5	3	7	10	8	9	5	4	2	99	96	95
% of 16 yr olds & over with internet access by age group	N/A	4	3	5	8	6	N/A	7	2	1	63	50	81

Broadband home Internet users	5	4	2	1	8	5	N/A	3	9	7	60	21	9
Broadband households as a % of total households	3	4	1	6	10	9	2	7	4	8	31	9	4
Price of broadband access	4	5	8	2	7	9	1	10	6	3	75	62	N/A
Wireless Internet access	4	3	8	5	7	10	1	9	2	5	30	19	19
Average number of Internet sessions & hours online per month.	4	7	N/A	1	6	N/A	5	2	8	2	64	28	25
% of 16yr olds & over purchasing online	1	2	6	7	5	9	N/A	8	3	4	39	33	18
% of Businesses online	3	8	3	7	3	8	1	8	1	6	90	N/A	89
% of Businesses placing orders online	1	3	2	7	4	9	8	10	6	5	45	N/A	N/A
Number of secure servers per million inhabitants	1	4	2	9	6	10	7	8	5	3	59	64	66
E-readiness rankings	1	3	5	7	6	10	8	9	2	4	85	79	82
Penetration of online government services	5	8	N/A	2	9	6	2	2	6	1	39	36	32
E-government rankings	1	3	5	8	6	9	7	10	2	4	87	N/A	N/A
Overall Ranking	1	5	2	8	7	9	6	9	3	3			

#### 4.5. Examining the success of Australia's knowledge development/refinement strategies

The ASFIE 2004 – 2006 report also asserts strategies which can be categorised under knowledge **development/refinement**. These initiatives focus upon regulation of knowledge systems and the refinement of security arrangements to encourage increased commercial use of tools such as e-business.

The adoption of internet technologies by Australian High Technology Small Firms (HTSFs) and the adoption of online certification by Australian retailers were found to be at its infancy (Krishnaswamy, 2000, 2002). Batten and Wasif (n.d) cite a Yellow Pages survey of 1,800 Australian SMEs in 2002 which analysed their experience of and attitude towards e-business. Results indicated that takeup of e-business was being hampered by security concerns. It logically follows then that government IT security strategies were in response to the concerns of SMEs. The increased takeup of e-business in Australia (Singh & Byrne, 2005) and increased takeup of ICT indirectly support the success of government security strategies.

Australian commitment to quality assurance and development of an evaluation system to ensure public research quality, through the Australian Research Quality Framework received favourable analysis from the OECD in their 2006 Science, Technology and Industry Outlook. Australia's approach and emphasis upon identifying key performance indicators, the utilisation of self designed measures and other recognised measures such as the Information Economy Index to assess performance, provide evidence that Australia engages in strategies that can be categorised as knowledge **development/refinement**.

### 5. RECOMMENDATIONS FOR RE-POSITIONING AUSTRALIA WITHIN THE GLOBAL KNOWLEDGE COMMUNITY

It is evident that Australia has undergone extensive, critical self examination; developed a long term knowledge vision; engaged in an extensive range of strategies across a complex composite set of areas; attempted to allocate resources in a planned manner, spreading both costs and benefits; whilst also engaging in self-evaluative activities. Whilst Australia has achieved a positive repositioning within the global knowledge community, further work needs to be done.

If the government is to improve the nation's current position, a greater range of knowledge **sourcing** strategies need to be adopted, particularly increased funding for R&D activities that facilitate greater intra and inter-country collaboration. Continued engagement in knowledge **abstraction** is required. The government's engagement in knowledge **conversion** strategies requires further development. Whilst the success of the government's knowledge **diffusion** strategies that support technical infrastructure are to be applauded, greater work is required in the investment of human capital, particularly increased public funding of secondary and tertiary institutions in areas that will support

the development of the nation's service industries. It is anticipated that with the government's commitment to adoption of knowledge **development/refinement** activities, Australia is set to achieve greater competitive positioning.

## 6. CONCLUSION

Whilst Australia perhaps does not yet merit the title of "*knowledge nation*" or "*clever country*", the nation's ability to learn is self-evident. The steady rate of its knowledge growth is an indicator that Australia will continue to strengthen its capabilities as a KBE, strengthen the sustainability of these strategies and as a consequence increase its capacity to not only benefit from the global knowledge community, but be in an enhanced position to contribute to this community.

## BIBLIOGRAPHY

- [1] Afiouni, F. (2007). Human Resource Management and Knowledge Management: A Road Map Toward Improving Organizational Performance.". *Journal of American Academy of Business, Cambridge*, 11(2), pp. 124-130.
- [2] Australian Bureau of Statistics (n.d.). *Labour Force Participation – An International Comparison*,  
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/0CBA37179F1B71BACA25732C00207901?opendocument> [Accessed 4.10.2007]
- [3] Australian Bureau of Statistics (2004). *Labour Market Indicators of an Ageing Labour Force in Australia*,  
[http://www.insee.fr/en/nom\\_def\\_met/colloques/citygroup/pdf/AUS%206%20Ageing%20Labour%20Force\\_1.pdf](http://www.insee.fr/en/nom_def_met/colloques/citygroup/pdf/AUS%206%20Ageing%20Labour%20Force_1.pdf) [Accessed 4.10.2007]
- [4] Australian Government Department of Communication, Information Technology and the Arts (2004). *Australia's Strategic Framework for the Information Economy 2004 – 2006: Opportunities and Challenges for the Information Age*,  
[http://www.dcita.gov.au/communications\\_and\\_technology/policy\\_and\\_legislation/australias\\_strategic\\_framework](http://www.dcita.gov.au/communications_and_technology/policy_and_legislation/australias_strategic_framework) [Accessed 22.09.2007]
- [5] Australian Government Department of Communication, Information Technology and the Arts (2006). *Information Economy Index 2006*,  
[http://www.dcita.gov.au/data/assets/file/41073/IE\\_INDEX\\_2006.rtf](http://www.dcita.gov.au/data/assets/file/41073/IE_INDEX_2006.rtf) [Accessed 1.10.2007]
- [6] Australian Government Department of Finance and Administration, Australian Government Information Management Office (2006). *Responsive Government, A New Service Agenda: 2006 e-Government Strategy*,  
[http://www.agimo.gov.au/publications/2006/march/introduction\\_to\\_responsive\\_government](http://www.agimo.gov.au/publications/2006/march/introduction_to_responsive_government) [Accessed 1.10.2007]
- [7] Batten, L. M., & Wasif, S. A. (n.d.). *e-Business Security Strategies for SME's*. Melbourne, Australia: Deakin University, <http://bilbo.it.deakin.edu.au:8080/SWEEP/ResearchResults/PDF> [Accessed 2.10.2007]
- [8] Bishop, B. (1999). *A National Strategy for an Ageing Australia*. Speech delivered to the National Press Club 8 June 1999,  
<http://www.health.gov.au/internet/wcms/publishing.nsf/content/health-mediarel-vr1999-bb-bbsp990608.htm> [Accessed 4.10.2007]

- [9] Callioni, P. (2004). *Australia's Strategy: towards an Information Society*, [http://www.ictparliament.org/CDTunisi/ict\\_compendium/paes/australia/AU09.pdf](http://www.ictparliament.org/CDTunisi/ict_compendium/paes/australia/AU09.pdf) [Accessed 4.10.2007]
- [10] Considine, M., Marginson, S., Sheehan, P. & Kumnick, M. (2001). *The Comparative Performance of Australia as a Knowledge Nation: Report to the Chifley Research Centre*. Melbourne, Australia: Monash Centre for Research in International Education, Monash University, <http://www.education.monash.edu.au/centres/mcrie/docs/researchreports/chifley-knowledge-nation-rev2106.pdf> [Accessed 9.09.2007]
- [11] David, P. A. & Foray, D. (2002). An introduction to the economy of the knowledge society. *International Social Science Journal*. 54 (171), pp. 9-23.
- Debowski, S. (2006). *Knowledge Management*. Queensland, Australia: John Wiley & Sons Inc.
- [12] Department of Employment and Workplace Relations (2006). *Australian Labour Market Update*, <http://www.workplace.gov.au/NR/rdonlyres/88019D9E-5F52-4DE6-8FFB-946A8515FD01/0/ALMUAPRIL2006final.pdf> [Accessed 4.10.2007]
- [13] Houghton, J. W. (2002). *The Global Knowledge Economy*. Melbourne, Australia: Centre for Strategic Economic Studies, Victoria University, <http://www.tiac.wa.gov.au/directions/paper1/paper1.html#TopOfPage> [Accessed 1.09.2007]
- [14] House of Representatives Standing Committee on Economics, Finance and Public Administration (2007). *Servicing our Future: Inquiry into the current and future directions of Australia's services export sector*, <http://www.aph.gov.au/house/committee/efpa/services/report.htm> [Accessed 4.10.2007]
- [15] Li, J., Pike, R., & Haniffa, R. (2006) *Intellectual Capital Disclosures in Corporate Annual Reports: A European Comparison*, Working Paper No 06/24, Bradford University School of Management, England, [http://www.brad.ac.uk/acad/management/external/pdf/workingpapers/2006/Booklet\\_06=24.pdf](http://www.brad.ac.uk/acad/management/external/pdf/workingpapers/2006/Booklet_06=24.pdf) [Accessed 4.10.2007]
- [16] Krishnaswamy, G. (2000) "Diffusion of Internet Technologies among High Technology Small Firms (HTSFs) in Australia", R&D Enterprise Asia-Pacific.
- [17] Krishnaswamy, G. (2002) "Security in Business to Business Transactions – Where are we and where do we want to go? – Evidence from Australia", Proceedings of the International Conference on Marketing of Technology Oriented Products and Services in The Global Environment (December 27-28), Bangalore, December 2002.
- [18] Miller, J. C., & Whiting, R. H. (2005) *Voluntary Disclosure of Intellectual Capital and the "Hidden Value"*, Conference Paper, University of Otago, New Zealand, [http://www.research.smu.edu.sg/faculty/cgic/Research/Research\\_Papers/CGICResearchPaper7.pdf](http://www.research.smu.edu.sg/faculty/cgic/Research/Research_Papers/CGICResearchPaper7.pdf) [Accessed 4.10.2007]
- [19] Organisation for Economic Co-operation and Development (OECD) (n.d.). *About the OECD*, [http://www.oecd.org/pages/0,3417,en\\_36734052\\_36734103\\_1\\_1\\_1\\_1\\_1.00.html](http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1.00.html) [Accessed 4.10.2007]
- [20] Organisation for Economic Co-operation and Development (OECD) (2005). *Growth in Services, Fostering Employment, Productivity and Innovation*, <http://www.oecd.org/dataoecd/58/52/34749412.pdf> [Accessed 4.10.2007]
- [21] Organisation for Economic Co-operation and Development (OECD) (2006). *Education at a Glance 2006: Highlights*, <http://www.oecd.org/dataoecd/44/35/37376068.pdf> [Accessed 28.09.2007]

- [22] Organisation for Economic Co-operation and Development (OECD) (2006). *OECD Science Technology and Industry Outlook 2006*, <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=860833> [Accessed 28.09.2007]
- [23] Sheehan, P. (1999). *The Global Knowledge Economy: Challenges for China's Development*. Paper presented at the International Soft Science Symposium, Sanshui City, Guangdong. People's Republic of China, [http://eprints.vu.edu.au/archive/00000061/01/wp15\\_1999\\_sheehan.pdf](http://eprints.vu.edu.au/archive/00000061/01/wp15_1999_sheehan.pdf) [Accessed 9.09.2007]
- [24] Singh, M., & Byrne, J. (2005). Performance Evaluation of e-Business in Australia. *The Electronic Journal of Information Systems Evaluation*. 8 (1), pp. 71 – 80, <http://www.ejise.com/volume-8/v8-iss-1/v8-i1-art8-abstract.htm> [Accessed 2.10.2007]
- [25] Taylor, P. (2003). *Global Ageing – Meeting the Business Challenges*. Paper prepared for the symposium: An Ageless Workforce – Opportunities for Business, Sydney Australia, 27 August 2003), [http://www.health.gov.au/internet/wcms/publishing.nsf/content/ageing-ofoa-wllplan-aawpapers.htm/\\$file/aawtaylor.pdf](http://www.health.gov.au/internet/wcms/publishing.nsf/content/ageing-ofoa-wllplan-aawpapers.htm/$file/aawtaylor.pdf) [Accessed 4.10.2007]
- [26] The Chifley Research Centre (n.d.). *About the CRC*, <http://chifley.org.au/about/index.php> [Accessed 9.09.2007]
- [27] Thompson, A. A., Strickland, A. J., & Gamble, J. E. (2005). *Crafting and Executing Strategy: The Quest for Competitive Advantage*. 14<sup>th</sup> Ed. New York, America: McGraw Hill Irwin.
- [28] Wood, J. (2003). Australia: an under performing knowledge nation? *Journal of Intellectual Capital*. 4 (2), pp. 144-164.



# **A RELATIONSHIP BETWEEN OWNER-MANAGER'S CHARACTERISTIC AND BUSINESS PERFORMANCE**

**Nimalathanan. B**  
**University of Jaffna, Sri Lanka**

## **ABSTRACT**

Effective and efficient use of resources ultimately determines the overall performance of the organization. In this way performance of the organization depends on how the management of the organization drafts their strategies and implements practices for all organization to handle the resources in effective and efficient manner. These practices are determined by the entrepreneurial characteristics. Entrepreneur to Entrepreneur, the characteristics vary and their practices also vary. It is therefore important to understand the relationships between the entrepreneurial characteristics and organizational performance. This paper will help to understand to what extent the entrepreneurial characteristic can go to determine the Business performance. Even though there is number of views and ideas broadening the concepts of managing business successfully. Therefore this study will contribute to enrich the knowledge in the field to somewhat extent. Thus the paper is focused to analyze the "Relationship between owner-manager's characteristics and business performance. Cooper (1998) that there is an empirical relationship between the business founding processes of entrepreneurs and the performance of their businesses. The result also supports Kotey's and Meredith's (1997) broad finding that the personal values of owner/managers, the strategies they adopt in operating their firms, and the performance outcomes of their businesses are empirically related. Based on the empirical research, there is positive relationship between owner manager's characteristics and Business Performance.

## **INTRODUCTION**

All developed and developing countries have recognized the importance of the development of Small and Medium Enterprises (SMEs), because, they play a significant role in economic development. SMEs perform as a useful vehicle for economic growth of countries, because they have the capacity to achieve rapid economic growth, while generating a considerable extent of employment opportunities (Reddy, 1991).

Development of SMEs is significant in the developing countries, which suffered from problems of unemployment, lack of investment, balance of payment, poverty etc because, growth of SME's provides solution for the complex economic problems of a country. Small and Medium Enterprises are assumed to play a key role in social and economic development. Entrepreneurship is a decisive factor for any economy to attain its competitive and dynamic character. It is the driving force for the achievement of economic development and creation of jobs, contributing at the same time to personal development. It is important to encourage entrepreneurship because they are market oriented. Their outlook effectively solves many problems or "voids" in the community and market place, with optimal use of resources. They organize themselves effectively, they thrive at their work and their influence on employees results in productive and efficient working ventures. They build businesses creating wealth and developing themselves and others in their communities. Thus entrepreneurial action results in contributing towards the development of overall environment and society.

Entrepreneurship is a process undertaken by an entrepreneur to argue his business interests. It is an exercise involving innovation and creativity that will go towards establishing his/ her enterprise. Entrepreneurship is a composite skill, the resultant of a mix of many qualities and traits-these include tangible factors as imagination, readiness to take risks, ability to bring together and put to use other factors of production, capital, labor, and land as also intangible factors such as the ability to mobilize scientific and technological advances.

Organization performance today has assumed special significance, since it is a key to economic development. The objectives of industrial development, regional growth and employment generation depend upon Organization performance. Entrepreneurs are thus the seeds of industrial development and the fruits of industrial development are greater employment opportunities to employed youth, increase in per capita income, higher standard of living and increased individual saving, revenue to the government in the income tax, sales tax, export duties, import duties, and balanced regional development. The aim of this study is to evaluate the characteristics of the entrepreneurs and the extent of the success gained in the enterprise through the business performance.

## **REVIEW OF LITERATURE**

Entrepreneurship covers business activities including manufacturing, retailing and also service industries. The word “entrepreneurship” has entered the managerial vocabulary as the 1980s’ equivalent of “Professionalism” the managerial buzzword of the 1970s. Many managers are trying to understand the concept of entrepreneurship, and their own organization can be made more “entrepreneurial”.

The theory of entrepreneurship comes in many guises. Management scholars and economists have made the entrepreneur an innovator, a leader, a creator, discover, an equilibrator, and more. In only a few of these theories, however, is entrepreneurship linked to asset ownership (Knight, 1921; Mises, 1949; Casson, 1982; Foss, 1993; Langlois and Cosgel, 1993; Foss and Klein, 2005).

Entrepreneurship plays an important role in the economic system, which determines the nature and scope of this field. Economic systems grow and take shape under the influence policy, economic policy, and the socio-political and cultural ideas of the people. Entrepreneurship gives a fillup to new organizational forms and the economy bring about economic reforms which determine other factors affecting the economy.

According to Cole (1942) production of goods and services is possible due to integration of various factors of production such as land, labour, capital, management and entrepreneurship. Entrepreneurship is the purposeful capacity of individual or a group of associated individuals, undertaken to initiate,

maintain or organize of profit -oriented business unit for the production or distribution of economic goods and services.

According to McClelland (1961) entrepreneurship is a risk –taking, which is responsible for end results in the form of profit or loss according to him, the function of an entrepreneur is to promote economic ventures and take decisions on vital issues concerning production, finance, personnel and marketing and bear the risk arising out of business operations in a company form organization, the entrepreneurs are the common funds of the company.

Higgins (1991) defined entrepreneurship is meant the function of seeing investment and production opportunity, organizing an enterprise to undertake a new production process , raising capital , hiring labor, arranging for the supply of new materials and selecting top managers for the day – to – day operation of the enterprise.

According to Drucker (1970) entrepreneurship is neither a science nor an art, it is a practice, it has a knowledge base; knowledge in entrepreneurship is a means to an end. Indeed, what constitutes knowledge in practice is largely defined by the ends, that is, by the practice.

## **ENTREPRENEUR**

The concept of entrepreneur varies from country to country as well as from period to period and the level of economic development thoughts and perceptions. A review of research done in different disciplines over the year would improve our understanding of the concept of entrepreneur. The English word entrepreneur is a derivative of the French verb *entreprendre* that means literally, to “undertake” the German equivalent, *unternehmer*, closely translates to owner- manger (Drucker, 1985).

In the late 17<sup>th</sup> century, the French economist Cantillon described the entrepreneur as a rational decision – maker who assumed the risk and provided the management of the firm (Kilby, 1971). In the 18<sup>th</sup> century, Drucker (1985) point out from Say’s statement the entrepreneur as one who “shifts economic resources out of an area of lower and into an area of higher productivity and greater yield”.

Collins , Moore , and Unwalla ( 1964) defined the entrepreneur as “--- a risk taker – a man who braves uncertainty , strikes out on his own , and through native wit, devotion to duty , and singleness of purpose , somehow creates business and industrial activity where none existed before”. In a 21<sup>st</sup> Century business context, and largely as lay people understand it, entrepreneur typically refers to “a person who undertakes or control a business or enterprise and bears the risk of profit or loss” (Brown, 1993), while the Macquarie Dictionary offers a definition of “one who organizes and enterprise, one involving considerable risk” (Delbridge, Bernad, Blair, Peters and Bulter, 1991).

## **THE CHARACTERISTICS OF AN ENTREPRENEUR**

The characteristics of an entrepreneur that contribute to success are the result of his achievement motivation the characteristics of achievement motivated persons as identified by McClelland (1961). Successful entrepreneur must be a person with technical competence, initiative, good judgment, intelligence, leadership qualities, self – confidence, energy, attitude, creativeness, fairness, honesty, tactfulness and emotional stability.

Timmons (1994) analysis of more than 50 studies found a consensus around six general characteristics of entrepreneurs :( 1) commitment and determinations; (2) leadership (3) opportunity obsession; (4) tolerance of risk, ambiguity and uncertainty; (5) creativity, self – reliance and ability to adapt; and (6) motivation to excel. A related stream of research examines how individual demographic and cultural backgrounds affect the chances that a person will become an entrepreneur and be successful at the task. Hashim, Wafa, and Suliman (1999) have proven empirically that entrepreneurial characteristics of the owner / manager are closely related to the success of the firm.

## **BUSINESS PERFORMANCE**

Kiyonari, Nakamura, and Hirao (1971) stated Venture business is a new company that intensively invests its energy in research and Development or creative design development. According to this definition, it may be considered that a venture business has at least two distinguishing characteristics. One is that there must be an entrepreneur who positively undertakes a new enterprise in which a risk exists. The other is that this entrepreneur performs some type of innovation activity, Birch (1987) suggest positive link between economic development and entrepreneurship. In another study, the most important psychological factors judged by entrepreneurs to be related to success were the energetic participation in the endeavor, self – confidence, desire for being one's boss, achievement need, linking of work commonsense and tenacity (Hornaday and Bunker, 1970).

The resulting strategies therefore are frequently an extrapolation of the personality of the entrepreneur and an image of his or her vision. In turn, those decisions are guided by many factors, such as the characteristics, values and expectations of the individuals that make theme; factors that may thus influence the performance of the business (Bamberger, 1983). Sandberg and Hofer (1987) put forward a model,  $NVP = f(E, IS, S)$ , suggesting that new venture success is dependent on the characteristics of the entrepreneur (E); the structure of the industry involved (IS); and the strategy (S) of the venture involved. In his subsequent we examine of the role of entrepreneurs in determining new venture performance (NVP).

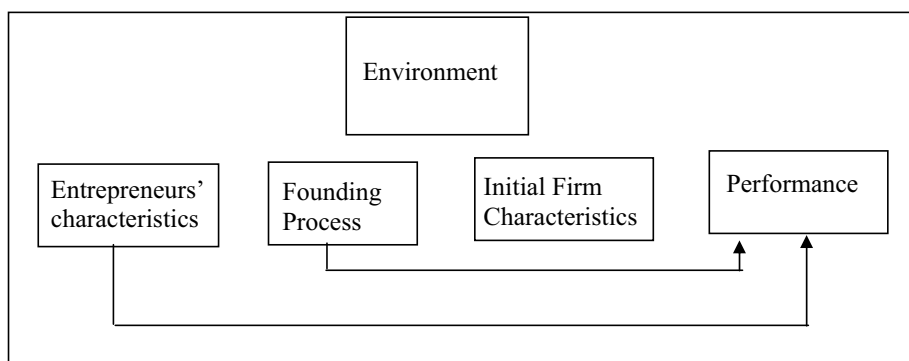
Herron (1990) found that 40% of NVP could be attributed to entrepreneurial skills, skill propensities, and the interactions with strategy and industry structure. Freeman (1996) emphasizes successful entrepreneurs are especially

skilled at using their time to develop relationships with people, who are crucial to the success of their new venture. The characteristics of top management teams are important to the success of a new venture (Eisenhardt and Schoonhoven, 1990).

## OWNER-MANAGERS CHARACTERISTICS AND BUSINESS PERFORMANCE.

The most important psychological factors judged by entrepreneurs to be related to success were the energetic participation in the endeavor, self – confidence, desire for being one's boss, achievement need, linking of work commonsense and tenacity (Hornaday and Bunker, 1970). Whilst several studies have focused upon the personality and traits of entrepreneurs, the performance of entrepreneurs has received limited research attention. Given the heterogeneous nature of entrepreneurship in terms of motivational diversity, different types of entrepreneurs and organizational forms, measuring entrepreneurial performance is inevitably a challenging task Davidsson (1995).

**Figure 1: Framework for Research Linking the Characteristics**



Source: Cooper, A.C. (1998) "Findings on predictors of performance from a Large – Scale Research Program", Small Enterprise Research , *The Journal of SEAANZ* ,247

Figure 1 shows that there is a relationship between the entrepreneur's characteristics and performance. Cooper (1998) suggested that the degree to which an entrepreneur was satisfied may influence future investment decisions in the business and Watson (2001) argued that, as many of the reasons given for entering a business are non – financial (Stanworth and Curran 1976; Cooper ,1993). Non- financial performance indicators (Such as owner satisfaction) should be included in any assessment of SME performance (Watson ,2001).

Heunks (1998) pointed out that innovation plays an important role in the success of small and medium-sized enterprises, and the individual characteristics of entrepreneurs such as values, posture, and education level etc may influence a company's innovation and originality. Kiyonari, Nakamura, and Hirao (1971)

conducted research about the relationship between the characteristics of founders and enterprise establishment on the basis of interviews of 80 people who founded venture businesses. Gartner (1985) proposed that the interaction of the entrepreneur's personality the environment, and the Characteristics of the organization, led to the process of entrepreneurship, including the venture creation and growth.

Freeman (1996) emphasizes that, as a result, successful entrepreneurs are especially skilled at using their time to develop relationships with people, who are crucial to the success of their new venture. Management characteristics, operating characteristics, and competitive strategy are the characteristics of the successful small manufacturing firms (Stainer and Soles, 1998). Another study has identified six principal factors (Efficient management, marketing strategy, customer orientation, supportive environment, capital accessibility, and product quality) that are perceived to be major contributors to the success or growth of manufacturing SMEs in Sri Lanka (Wijewardena and Zoysa, 1993). Dess and Robinson (1984) reported strong and statistically significant relationships between the subjective comparative assessments of the 5- year performance of 18 businesses by their top management against other similar businesses in their industries, and the objective measures of return on assets and sales growth.

## CONCLUSION

Cooper (1998) that there is an empirical relationship between the business founding processes of entrepreneurs and the performance of their businesses. The result also support Kotey's and Meredith's (1997) broad finding that the personal values of owner /managers, the strategies they adopt in operating their firms, and the performance outcomes of their businesses are empirically related. Based on the empirical research, there is the positive relationship between owner manger's characteristics and Business Performance.

## REFERENCES

- [1] Bamberger, I. (1983) "Value Systems, Strategies and the Performance of SmallandMedium - Sized Firms", *European Small Business Journal*, 1(4), 25-39.
- [2] Birch, D. (1987) "An Analysis of Small Business Size and Rate of Discontinuance", *Journal of Small Business Management*, 7(4), 1-7.
- [3] Box, T .,White, M .A.,and Barr, S.H. (1993) "A contingency theory of new manufacturing firms performance", *Journal Entrepreneurship Theory and Practice*,31-45.
- [4] Brown,L.(1993)The new psychology of the entrepreneur,Encyclopedia of Entrepreneurship, Englewood Cliffs, NJ, Prentice-Hall, 39-57.
- [5] Casson, Mark C. (1982) *The Entrepreneur an Economic theory*, Oxford: Martin Robertson, 2<sup>nd</sup> (ed) Edward Elgar, *Advances in Economic strategy Research*, New York: Oxford University Press.
- [6] Cooper, A.C., and Dunkelberg, W. C (1981) A new look at business entry experiences of 1,805 entrepreneurs , *Frontiers of Entrepreneurship Research* , MA Babson, college, 1-20.

- [7] Cooper, A.C. (1998) Findings on Predictors of Performance from a Large – Scale Research Program, Small Enterprise Research, *The Journal of SEAANZ*, 247.
- [8] Collins, O.F., Moore, D.G., and Unwalla, D.B. (1964) *The Enterprising Man*, East Lansing, MI, Michedan state University.
- [9] Davidson, P.(1995) Determinants of Entrepreneurship intentions RENT IX Workshop, Piacenza, Italy.
- [10] Drucker, P.F (1970) Entrepreneurship in business Enterprise, *Journal of business policy*, 1, 15-20.
- [11] Drucker, P.F, (1985) *Innovation and Entrepreneur ship Practice and principles* 2<sup>nd</sup> (ed) London Heinemann publication.
- [12] Dess, G.G., and Robinson, R.B., (1984) “Measuring organizational Performance in the absence of objective measure”: The case of the privately held firm and conglomerate business unit *Strategic management Journal*, 5(3), 265-273.
- [13] Delbridge, A.,Bernard, J.L., Blair, D.,Peters, P.,and Butter, S. (1991) *The Macquire Dictionary*, The National Dictionary .Sydney, Kevin Weldon.
- [14] Eisenhardt, K.M., and Schoonhoven, C.B. (1990) “Organizational growth: Linking founding team, strategy, environment, and growth” among U.S Semiconductor venture, 1978-1988, *Administrative science quarterly* ,35,504-529.
- [15] Fernando,A.K.A (2006) “Entrepreneurship and Exploration of Barriers to Learning and Practicing Entrepreneurship”, Paper presented at the International conference on Business Management; University of Sri Jayewardenepura., Sri Lanka.
- [16] Freeman, J.(1996) Venture capital as an economy of time. Working paper .Haas Business School, University of California at Berkeley.
- [17] Foss, Nicolai .J (1993) “Theories of the Firm: Contractual and competence Perspectives”, *Journal of Evolutionary Economics*, 3, 15.
- [18] Foss, Nicolai J. and. Klein P. G. (2005) Entrepreneurship and the Economic Theory of the Firm: Any Gains from Trade in Rajshree Agarwal Sharon.
- [19] Gartner, W. B. (1985) “A conceptual framework for describing the phenomenon of new venture creation”, *Academy of Management Review*, 10(4), 696-706.
- [20] Hashim ,K., Wafa .S.K., and Suliman.M (1999) “Entrepreneurial Characteristics Strategy Types and Performance of Small and Medium – sized Enterprises in the Malaysian Manufacturing Sector”,International conference on small and medium Enterprises , University Saians Malaysian , Penang.
- [21] Herron, L. (1990) The effects of characteristics of the Entrepreneur on New venture Performance, College of Business Administration. Columbia, SC, University of South Carolina, 2, 18.
- [22] Heunks, J. (1998) “Innovation, Creativity and Success”, *Journal of Small Business Economics*, 10,263-272.
- [23] Higgins, (1991) *Entrepreneurship entrepreneurial Development* 1<sup>st</sup> (ed), Himalays publishing House.

- [24] Hornaday, John A., and Charles S.Bunker, (1970) "The Nature of the Entrepreneur *Personnel Psychology*", 23, 47-54.
- [25] Kotey, B., and Meredith, G.G. (1997) "Relationships among owner / manager Personal values, business strategies and enterprise performance", *Journal of Small business Management*, 37-64.
- [26] Knight, Frank H. (1921).Risk, Uncertainty, and Profit .New York: August
- [27] Kilby, P. (1971) Entrepreneurship and Economic Development, NewYork, Free Press.
- [28] Kiyonari, T., Nakamura, S.,and Hirao, K. (1971)Bencha bijinesu (Venture Business), NihonKeizai Shimbun Sha.
- [29] Langlois, Richard N; and Metin Cosgel. (1993) Frank Knight on Risk, Uncertainty, and the Firm: A New Interpretation, *Economic inquiry*, 31.
- [30] Lumpkin, G.T.,and Dess, G.G. (1996) "Clarifying the entrepreneurial orientations. Construct and linking to performance", *Academy of Management Review* 21,135- 172.
- [31] McClelland, D.C (1961).The Achieving society .New York: Free press.
- [32] Mises, Ludwig von. (1949)Human Action, New Haven: Yale University Press.
- [33] Reddy (1991) Respiration in the crab, *Oziotelphusa*, is under the control of. Respirationinhibitinghormoneofeyestalks,[www.springerlink.com/index/JT61577841667515.pdf](http://www.springerlink.com/index/JT61577841667515.pdf).
- [34] Robert Sobel (1974) The Entrepreneurs; Explorations within the American Business Tradition Brown, L, Ed (1993), The New shorter Oxford English Dictionary On Historical Principles,oxford Clarendon press.
- [35] Sandberg, W.R.and Hofer, C.W. (1987) Improving new venture performance: The role of strategy, industry structure, and the entrepreneur .*Journal of Entrepreneurship Theory and Practice*, 16, 73-90.
- [36] Stanworth ,M.K.J and Curran ,J. (1976) "Growth and the small Firm – An Alterantive View",*Jouranal of Management Studies*, 13(2), 95-110.
- [37] Steiner, M.P; and Solem, O. (1988) "Factors for Business in Small Manufacturing Firms", *Journal of Small Business Management*, January, 51-56.
- [38] Timmons, J.A. (1994) New Venture creation: Entrepreneurship for the 21<sup>st</sup> Century, Fourth Irwin press, Barr Ridge IL.
- [39] Waston,J.(2001)"Examining the impact on Performance of DemographicDifferencesbetween Male and Female Controlled SMEs",Small Enterprises Research, *The Journal of SEAANZ* 413,262-277..
- [40] Wijewardena, H., Anura De Zoysa.(1993)"A Factor Analytic Study of the Determinants of Success in Manufacturing SMEs", School of Accounting and Finance,UniversityofWollongong,Australia[www.app.iese.edu/eisb/papers/full/paperEISB52.doc](http://www.app.iese.edu/eisb/papers/full/paperEISB52.doc).



# ACTIVITY-BASED COSTING APPLICATIONS IN THE CZECH REPUBLIC

**Boris Popesko**  
Tomas Bata University in Zlin  
Faculty of Management and Economics

**Petr Novak**  
Tomas Bata University in Zlin  
Faculty of Management and Economics

## ABSTRACT

The Article deals with the problem of Activity-Based Costing (ABC) utilization in conditions of the Czech Republic. Shortcoming of the traditional costing methods and advantages of Activity-Based Costing systems are explained in the opening part of this article. Major part of article is dedicated to presentation of advantages of utilization of ABC system in practice. Final part of article is focused on results of the authors' research focused on the level of the cost management systems in the Czech enterprises. Authors search the answer for the question: "How do the Czech enterprises deal with the different types and levels of costing methods and systems? ". In the final part of article, authors define the obstacles of modern costing methods application and the possible ways of the utilization and implementation of these systems.

**Key words:** Cost management, costing methods, Activity-Based Costing

## 1. INTRODUCTION

In the last several years we can see a dramatically growing importance of the high quality information for the company management decision. The area of the cost management systems used for costing and budgeting is one of the most important areas of company financial management. According to growing competition on the globalized markets, companies need the information about the profitability of a product, customers or markets, about costs consumed by different activities and other different areas where the costs have the important role. If the company wants to keep in touch with the strongest competitors, its costing system has to implement the ability to react to changes in product and activities structure and feature these changes in the product costing. If the costing system does not change and does not conform with process, activities and product structure dynamics, than the costing system will become obsolete and will produce the incorrect information about the company cost.

Modern, process and activity based costing systems has been developed in early 1980's and are mostly used by US companies and the European top companies. The level of utilization in the central European companies is not very high. Companies often deal with problems and obstacles in application and useful utilization of these systems. Authors have participated on several ABC implementation projects and interviewed a lot of companies which showed the discontent with present quality of their costing system. Most of them showed an interest in the area but was unsure if the ABC system is practically able to solve most important problems with the costs.

Traditionalism and inflexibility in adoption of modern management tools is also the one of the problem in the extension of process costing systems. This article describes the approach of Czech companies to the problems of cost management in today's business environment and seeks the obstacles in adoption of modern costing systems.

## 2. INTRODUCTION OF THE ACTIVITY-BASED COST MANAGEMENT SYSTEM

In the beginning of 1980's companies started to seek for new costing methods and started to deal with activity-based methods, consequently with development of process management, which has been developed in the same period. The Activity-Based Costing (ABC) as the type of the costing method was constructed in that time. ABC involved the important quality improvement in the area of cost calculations and solved the basic shortages of traditional absorption costing systems, by the seeking of the true causes of the overhead costs consumption.

Major problems of traditional costing methods: mixing of all types of costs together in the few company overheads; arbitrary allocation of that overheads; and "averagization" of the overhead costs allocated, can be effectively eliminated by the process view on the allocation process. Usually used **absorption costing method** allocates the proportionally same volume of overhead costs to each product, according to the volume of the direct costs. In present enterprises could be this method very often misleading. The effect that plays its role in wrong overhead cost allocation could be described as the "averagization". This term means the effect, when to all cost objects, will be allocated proportionally average volume of costs of any type.

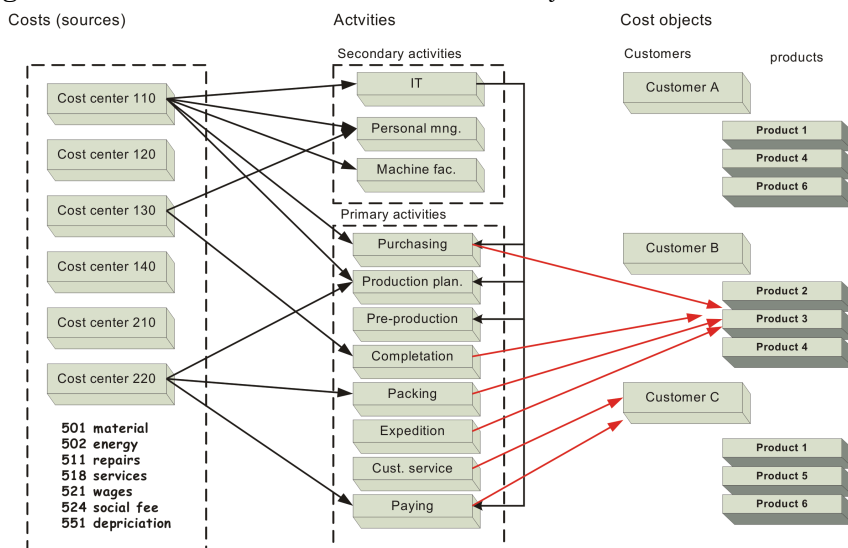
Problem of the averagization of the overhead costs allocation can be effectively solved by the ABC method, in that way, that individual groups of overhead costs will be allocated by individual cost drivers, according to the nature of relation between these costs and cost drivers. ABC system divides the costs into individual groups of costs (Cost pools), where the costs of similar type and behaviour, are gathered together. This gathering is also performed according to process structure of the enterprise. The costs are than measurable and manageable by the similar ways as the company processes. Some authors also consider the ABC method as the complete alternative to the traditional way of accounting. (Potkany, Hitka, Gejdos 2007).

The basic idea of the ABC method is the allocation of the costs to the operations through the individual activities, which can be measured by the cost drivers. In other words, the cost units are in the first phase allocated to the individual activities (such as planning, packing, quality control), using the resource cost driver. In the second phase, costs of those activities are allocated to the concrete products or cost objects, which in reality caused the incurrence of the overheads, using the activity cost driver.(fig.1)

The cost allocation deals also with the division into primary and secondary activities and its cost consumption relations. Not all company activities are

consumed by the external cost object (such as product or customer); some of the activities are consumed within the organization, for the in-house needs (such as IT, personal management or infrastructure).

**Figure-1:** Overhead costs allocation in ABC systems



Source: Stanek, V. 2003

## FIELDS OF USE OF ABC SYSTEM

After short introduction of the system, there is necessary to answer the question: "For what type of companies may utilization of the ABC system bring a highest effect?" In previous paragraph, the main advantages of the system had been introduced. These advantages can not be fully achieved by companies of any kind. ABC system is useful tool for allocation of that type of costs, which are not effectively allocatable by the traditional methods. The criterion for the effective ABC application is, from that point of view, the relative portion of these types of overheads. In other words, if the portion of overheads, and also the wideness and structure of the performed overhead actions is high, than the application of the ABC system could bring the measurable effect. Usual recommended fields of application are the services (IT, financial, energy distribution or the project-based manufacturing industries (automotive industry). (Glad, Becker 1996)

## 2. COMPONENTS OF THE COST MANAGEGENT SYSTEMS IN CZECH ENTERPRISES

The image of the cost management level in central European companies could be presented through the results of the research performed at the Tomas Bata

University in March and April 2007. The sample of Czech enterprises, of different size, ownership structure and business branches, has been chosen as the object of this research, to help to show the approach of the Czech companies to the utilisation of the ABC system in their cost management.

## RESEARCH METHODOLOGY

Random sample of 500 Czech Enterprises has been chosen for participation on this research. The sample had been chosen to correspond to the average structure of the regional business. Chosen companies had been contacted through the email and those companies (153), which decided to participate on the research, had filled the questionnaires, with the questions related to the area of research. Contacted persons were usually financial or general managers of the companies, what proves the relevance of the gathered data. In spite of the relatively small number of enterprises in the file, the results relatively accurately show the real level of the cost management among central European countries. The main aim of this research was to identify the number of enterprises using or considering the utilization of the process costing and management system (Activity-Based Costing) and describe the relation of the enterprises to possible utilization of these systems. Some of these results are compared with a similar research performed on Tomas Bata University in 2004 (Popesko 2004).

## COSTING SYSTEMS USED

The core part of the research focused on the questions about the costing method used by the company. Companies were asked to define, which costing method they use for their product costing. The results are shown in table 1. The 5% of companies don't perform any product costing. (Portion of enterprises not doing any product costing in 2004 research was 6%)

**Table- 1:** Calculation methods used in Czech enterprises

<b>1 - division costing</b>	<b>18</b>	<b>12%</b>
<b>2 – absorption costing</b>	<b>31</b>	<b>21%</b>
<b>3 – standard costing</b>	<b>42</b>	<b>29%</b>
<b>4 - variable cost analysis</b>	<b>18</b>	<b>12%</b>
<b>5 - Target costing</b>	<b>1</b>	<b>1%</b>
<b>6 - Activity-Based Costing</b>	<b>7</b>	<b>5%</b>
<b>7 - combination (2, 3, 4)</b>	<b>18</b>	<b>12%</b>
<b>8 – other</b>	<b>10</b>	<b>7%</b>

Source: Own research

As we can see, the most extended costing methods are the traditional absorption costing and standard costing. The results are very similar with the research performed in 2004 the amount of absorption costing was 25% (21% in 2007), portion of standard costing was 34% (29% in 2007), portion of variable costing was 24% (12% in 2007) and portion of Activity-Based Costing was 4% (5% in 2007). Definite interpretation of these results is not possible, but we can see a slow decrease in number of traditional costing methods and variable costing methods and very slow increase in ABC utilization and development of combined costing methods, which should replace the obsolete traditional costing methods. These results are relevant to the trends described in the worldwide information sources.

Despite of the costing method used, a relatively high number of enterprises do not consider their costing system as the accurate one; 26% of all firms are not satisfied with their cost managing system and 20 % of all firms assume that their own costing system doesn't provide the real image about the company costs. That means, that in fact the quarter of the firms in the sample recognize their own costing system as insufficient and providing the inaccurate data. Rest of the should consider their costing system as providing the correct data or firms could be satisfied with its level, but its not proving, that the data and information provided by that system are correct in fact. Based on these results, it is not possible to formulate any proved conclusion what portion of the companies uses the incorrect system in fact and what is the level of distortion of the calculated costs. According to the experiences from worldwide researches and findings, we can expect that a relatively large number of enterprises, uses the inaccurate costing system, but regard their costing system as suitable.

## **UTILIZATION OF ACTIVITY-BASED COSTING SYSTEMS**

The following part of the research focused on the Activity-Based Costing systems itself. 43% of the enterprises know about the ABC system, but only 21% of them are completely informed about the features and consequences of the system. This shows that the popularization of this method is good, but there is a lack of practical experience with the utilization of this system and detailed information about the advantages and possibilities of effective applications.

Table 2 shows the companies' approach to the Activity-Based Costing methods. As we can see, most of the companies have never dealt with this type of costing method. A relatively high number considered the possible implementation of ABC, but finally they rejected the application of this system. The high number of enterprises, that have not dealt with the ABC or rejected the application of this method, is generally caused by the lack of information sources about this approach and a general lack of experience with the method.

The reasons why companies have never dealt with ABC systems or rejected its application are described in the following part of the research. 26% of companies consider the ABC system as not suitable because of the character of their operations, 10% of companies consider the application of the method as

inadequate for investment and 51% of companies do not have enough information about the ABC system. Companies are not able to perform any kind of analysis, which could help them to forecast the propriety of the ABC application or lead them through the successful implementation process. Sometimes also the implementation performed by the external consultants could be seen as expansive and ineffective.

**Table- 2:** Calculation methods used in Czech enterprises

<b>Never dealt with</b>	<b>109</b>	<b>71%</b>
<b>Considered but rejected</b>	<b>15</b>	<b>10%</b>
<b>Really considering</b>	<b>12</b>	<b>8%</b>
<b>Implementing</b>	<b>8</b>	<b>5%</b>
<b>Using</b>	<b>9</b>	<b>6%</b>

Source: Own research

The last part of the research focused on the companies which use or consider the use of the ABC system. The intention of the research was to find out the reasons why companies decided to use this system. The results are introduced in the table 3. According to the low number of enterprises participating in this field of the research, the results can be accepted only as a preview.

**Table - 3:** The reasons of using ABC system

<b>Necessity of cost reduction</b>	<b>2</b>
<b>Necessity of cost reduction + improving of the information about costs</b>	<b>6</b>
<b>Original system became insufficient</b>	<b>2</b>
<b>Other reasons (changes in process structure, rise of overheads)</b>	<b>4</b>

Source: Own research

## CONCLUSION

The results of the research provide an overview of the level of cost management in Czech Republic. Despite long discussions about the limitations of the traditional costing systems, the modern Activity-Based Costing systems, which are able to eliminate the inaccurate absorption of costing methods, are not widely extended. There is very presumable, that the level of utilization of ABC system is very similar in neighboring central European countries, according to similar history in business development. On the other side, some sources refer about

slightly higher level of utilization in Slovak Republic. (Stanek 2003) The main reason of the low utilization of these systems is the inability to perform effective implementation process and be able to effectively utilize information outputs of the system. The ABC method itself is mostly utilized by the biggest Czech enterprises operating in the field of energy, telecommunications and other services, where the limitations of the traditional systems and obscurity of cost objects is very relevant. Medium sized companies with heterogeneous production, where the application of ABC system could be very effective, do not deal with ABC system in a wider range, because of the reasons mentioned above.

Possible solution of this problem, which is primarily caused by the information barrier about the system details and information outputs, is to publicize the practical examples of useful and effective utilization in the sources, where could be recognized by the possible users of these systems.

## **BIBLIOGRAPHY**

[1] Glad, Ernst, Becker, Hugh (1996), *Activity-Based Costing and Management*, John Wiley and Sons, ISBN 0-471-96331-3

[2] Popesko, Boris (2005), *Aplikace procesního řízení nákladů v podmínkách českých organizací*, dissertation thesis, Tomas Bata University Press, ISBN 80-80-7318-280-7

[3] Potkány, Marek, Miloš Hitka and Pavol Gejdoš (2007), "Cost calculation in wood processing industry in the new century", *Intercathedra*, No.23, Annual Bulletin of Plant- Economic Department of The European Wood Technology University Studies. Poznań: 2007, pp 116-120, ISSN 1640-3622

[4] Staněk, Vladimír (2003), *Zvyšování výkonnosti procesním řízením nákladů*, Prague, Grada Publishing, ISBN 80-247-0456-0

# NEW TRENDS IN THE QUALITY MANAGEMENT

Zuzana Tučková  
Tomas Bata University in Zlín  
Faculty of Management and Economics, Czech Republic

David Tuček  
Tomas Bata University in Zlín  
Faculty of Management and Economics, Czech Republic

## ABSTRACT

This article begins with access to Quality Management. Further, it deals with the ways of applying Quality Management in the everyday working practices of the Ahold Central Europe (ACE) Company - made up of the Czech Republic, Slovakia and Poland. The rest of the article aims at a description in greater detail of the “World Class” philosophy and the components that the above-mentioned company could use to fulfil the same. The article provides the answers to the following questions:

- How should a quality approach perform in general?
- What should a quality approach function not do in general?
- What is the most frequent quality approach function?
- Where do we need to concentrate on, in the future?
- What activities in a quality approach are missing?

**Key words:** Quality Management

## 1. INTRODUCTION

We can indisputably consider the three main competitive weapons of an enterprise to be: **Quality, Costs, and Time**. Of the three indices, we shall orient ourselves on Quality – but more than on the theory behind this index, this article will concern itself with the practical approaches and procedures to care for quality in the Ahold commercial retail chain.

Quality represents a summary of characteristics and features of a product (i.e. product or service) which determines the fulfilment of the requirements for which the given product was/is intended. The **Official definition of Quality** – according to the International Organization for Standardization –ISO 8402 norms, which states: “Quality is a summary of the characteristics and features of products or services, determining their ability to satisfy established or anticipated needs or requirements.

## 1. BASIC APPROACHES TO QUALITY MANAGEMENT

Over the past ten to twenty years, a wide variety of concepts have been put forward for the creation of a quality management system – of which today, it is possible to recommend two approaches to the successful development of quality and its systematic assurance:

**The (QMS) - Quality Management System:** Extensive throughout Europe, it creates and maintains mechanisms capable of preventing unwanted behaviour through internal controls and independent (external) controls demonstrating credibility towards customers. This



approach is based upon the **documentation and standardisation of procedures, their stabilisation, and improvements in the form of corrective and preventive measures, and is based upon the standardised directives** and models described in the **ISO 900X** set of norms, whose foundations were laid outside of Europe. These norms have also been, however, adopted into EU policies in the field of adjudicating correlations (homologations), and which depend upon – among other things, the certification of the quality management system, and which more than 350,000 organisations around the world have already undergone. This conception also is in absolute dominance in the Czech environment – with all of its positive and negative consequences. Even if evaluation of the returns provided by such a conception of the returns on investment is not all that easy – see, for instance, Zámečník [4].

The first (**TQM - Total Quality Management**) models originally spread across Japan and the USA, and oriented on the exploitation of the knowledge and skills and abilities of people in resolving problems, constant improvement of processes, **achieving customer satisfaction, ensuring success, and the development and satisfaction of co-workers, the management, and owners of an enterprise**. This conception – which is rather, a philosophy of management, and which in practice is implemented in line with a variety of models, is mainly known in Europe as the so-called **EFQM Model of Excellence**. [3]

## 2. THE AHOLD COMPANY

The Ahold Company was founded in Amsterdam (The Netherlands) in 1887 (as the “First Shop” (of) Albert Heijn). Today, the activities of this supranational concern concentrated not only in Europe where they see cca 27% of their overall sales turnover, but also in the USA, from which they make cca 72% of their sales turnover. In 2004, overall sales turnover amounted to 52 billion EURO and flow into Ahold’s coffers in part thanks to more than 200,000 commercial partners. The number of sales outlets in 2003 was some 5,600 – of which 60% were supermarkets. Ahold achieved its leading position in the sale of foodstuffs in the USA and the position of the most significant and well-known retail outlet chain in the Netherlands. In 2003, Ahold Central Europe (ACE) was established and apart from the Czech Republic, it also includes Slovakia and Poland. The overall number of ACE outlets – in the two years since they were opened, has increased by almost seventy others and, by the end of 2005 it exceeded 500 outlets. ACE’s overall sales turnover in 2004 amounted to almost 1.7 billion EURO. A brief history of the company’s activities in the Czech Republic: In 1990, Ahold opened Mana, its first wholly-owned chain in the Czech Republic. In 1998, Ahold opened its first Hypernova hypermarket in the Prague district of Průhonice. In 2000, the Sesam and Mana retail chains were renamed Albert, and a year later, Prima stores were renamed Hypernova. Two years later, the acquisition of the Meinel chain took place. By 2004, Ahold Czech Republic, a. s. (Joint-stock Company), served more than 145 million customers in its more than 230 Albert and Hypernova outlets and employed more than 13,000 people.

Ahold is, without discussion, one of the fastest growing retail outlet chains and at the same time - it is one of the ten largest employers here. The Albert chain of stores also offers a range of non-foodstuffs goods in its sales outlets – these amount to some five or six percent of the overall sales turnover. In the

Hypernova stores, these goods have a more than 30% share in overall sales turnover.

### **3. THE COMPANY'S MISSION AND VISION**

ACE's vision is defined precisely how a vision should be defined – it is succinct (brief and to the point) and crystal clear: “A better place to buy in, a better place to work in.” The mission statement is based on this, and more precisely formulates the basic principles set out within the context of the vision: “We want to be successful as the most dynamic, flexible, and first entrepreneurial entity to react to the market with foodstuffs in Central Europe.” [2]

### **4. QUALITY AND AHOLD**

The Ahold Company clearly understands its social responsibilities, and for this very reason, it is set on the concept of permanent sustainable development. The basic principles of its quality concept can be defined in the following points:

- Its customers hold the key position – the company is built on its customers.
- The company offers an appropriate selection of goods and a structure of good quality products and services in locally accessible outlets.
- The company has shown the ability to continually satisfy all of its shareholders.

We can therefore understand quality to be a priority for all of the Ahold outlets, because:

- The highest level of hygiene safety and foodstuff quality is a requisite for all.
- All have appropriately and professionally educated staff, a well-elaborated and implemented food hygiene safety policy – based on a scientific base, practical operational knowledge, the best available technology and the appropriate training. (*Source: Fons Schmid, SVP Quality: June 2005*).

One of the facts that complicate this vision and the aims results from the employees themselves – and that is due to the great fluctuation in their numbers – requiring training and retraining over and over again for employees who frequently leave the company. The mission described above is further re-worked in the form of the core tasks for the quality department, and on their basis – four basic problem areas have been defined, as follows:

- We know what we have to do.
- We want to do it.
- We are allowed to do it.
- We know how to do things correctly. [2]

### **5. QUALITY AND THE DEVELOPMENT OF THE COMPANY**

Now, we shall look at the extensive spectrum of relationships on which Ahold's permanent sustainable development is based, including the quality field. This has to do with two extensive areas - the contractual relationships field and the context-related field. Contractual relationships: These are clearly closed with

members of the supply chain, financial institutions as well as with internal partners. Context relationships: These are created and expanded in the external communications area and in public relations. In order to provide you with an idea of just how wide a field the surrounding environment of the company, here it is the structure in greater detail. These include:

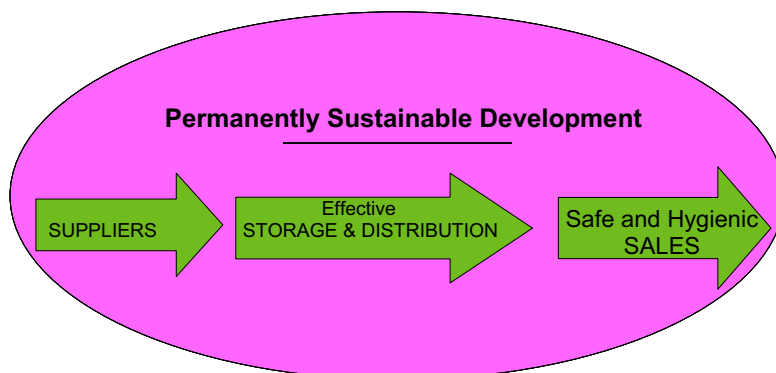
- The customers.
- The outlets themselves.
- The distribution centres.
- The transport firms.
- The wholesalers and importers.
- The manufacturers and suppliers.
- The raw materials suppliers.
- The processors of the raw materials.
- The farmers.
- The livestock feed suppliers.
- The seed-stocks suppliers.
- The pesticide suppliers.
- Scientific institutions and centres.

The financial institutions are made up of:

- The shareholders.
- Banks.
- Accountancy companies (i.e. Auditors).
- Legal services firms.
- Insurance agencies.

The field of so-called Internal Partners is no less important as regards contractual relationships and has to do with the following:

- The employees in the outlets.
- The Top Management.
- The Supervisory Board.
- The regional teams.
- The special project teams.
- The employee associations.



**Fig.1** Basic processes in the Ahold Company leading to permanent sustainable development. [2]

Pressures in the Context Relationship field continue to strengthen – just as they do for the public relations field. These are caused by:

- Various communities.
- Local (national) governments.
- Administrators.
- Local parliaments.
- Advisory bodies.
- Commercial organisations.
- Consumer organisations.
- Special interest groups.
- The WHO (World Health Organisation).
- The Codex Alimentarius (Foodstuffs regulatory codex).
- Trade union organisations.

Recently, external communications with regard to relationships with the print media, broadcasting services and television stations have been the subject of a great deal of media interest. The relationship between quality and price functions like joined containers in the commercial chain. In essence, the following basic strategies exist, by which commercial organisations must guide themselves in relation to quality and price:

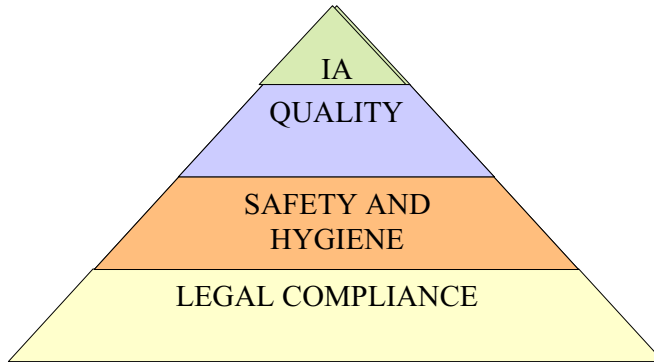
- Low prices – low quality >>> The “Poverty” strategy.
- High prices – high quality >>> The “Exclusive Club” strategy.
- A fair price for reasonable quality >>> this strategy may lead to problems in the perception of quality on the side of the customer.
- Good quality for a reasonable price >>> which is the Ahold Company’s strategy.

There are several reasons why the company has chosen precisely this strategy:

- It is the approach which has the best evaluation from the customers’ side.
- It best reflects the substance of the social responsibility felt by the company.

This however, requires that every new project begins by the defining of the qualitative requirements and only after this – in the second phase to decide upon a price. What quality means for all of the employees is set out in the pyramid describing the standing of quality here below. If we were to divide the level of quality management into the following areas:

- A Reactive Approach – Managed only in line with legislative requirements, inspections, internal standards and the company’s approach can only be characterised as “do nothing”.
- A proactive Approach – For which inspections, management of processes, internal and sector-based standards are typical.
- World Class Company – Which is the level at which – apart from sector-related standards, elements of Reengineering and the maintenance of the basic principles and philosophy of TQM (Total Quality Management) are typical. For this level, exceptionality and innovation are typical elements.



IA = Innovative approach of a sustainable company

**Fig. 2** Pyramid showing the standing of quality in the company. [2]

We could say that today, the Ahold Company is roughly at the proactive approach level, but is clearly directed towards a World Class Company approach and philosophy, which we shall cover briefly in the next section. [2]

## 6. A World Class Company

Achieving a World Class level is based upon:

- A tendency to grow quickly and to achieve higher profits than their competitors.
- The employment of workers and managers so capable that other enterprises continually endeavour to attract them away and to themselves.
- Much prompter reactions than the competition, for instance to changes in the market situation – or to movements in prices and in launching new products on the market.
- Continual improvements in the production operations process, support systems, and employee qualifications in order to continually and to an ever greater extent exceed and expand upon earlier considerations of the limits and possibilities (i.e. always trying to “stretch the envelope”).

World Class Enterprise principles are:

- To create room for employee participation in change.
- Under all circumstances to apply process orientation.
- To orient oneself on non-physical investments with higher rates of return.
- To dynamically eliminate waste in operational and other work areas, as well as elsewhere.
- To assure the strategic and even tactical application of classical and modern industrial engineering methods.
- To introduce internal and external Just – in – Time (JIT) elements.
- To continue to develop the supply chain and delivery systems.
- To create a quality management system in the sense of complex quality management -TQM.
- To exploit teamwork in all of the enterprise’s activities.

- To reduce the time needed for the development and launching of new products onto the market through the use of simultaneous engineering.
- To apply cost and structured management at all times.
- To continually educate and train employees in key areas.

The World Class Model is one of the tried-and-tested models (“schools”), but only in accord with “World Class” strategies. It always appears as the most appropriate approach to maximising the success of changes of the enterprise into a dynamic enterprise – in line with previously elaborated company change models. The World Class Model is, in such cases, one of a whole pleiad of such models.

The main causes of failure and obstacles to success in the process of changing traditional enterprises (functioning according to traditional principles) into dynamic enterprises often are the following:

- Insufficient support from the management.
- A poorly chosen model for any changes.
- Poor management of the changeover project.
- Traditional access to selected consultants (access to advisors rather than trainers).
- Ineffective training of employees, etc. [1]

## **7. REQUIREMENTS ON SUPPLIERS AND ON LOGISTICS**

The basic point for quality control for commercial enterprises is based upon the fact that whatever gets into the system cannot – under any circumstances, be improved in any way. Delivered products can only be stored as is. The Ahold Company today has set out on the path of audits and certification by accredited firms. In addition, key suppliers in the “Fresh Products” category are audited directly by the Ahold Company itself. Private brands suppliers have been asked to furnish either BRC or IFS certification. For fruit and vegetable suppliers – requirements for EUREPGAP certification were defined and set. Logistics – has as its task the provision of the outlets with the correct quantities of good quality products at the right time. At present, they are going through the HACCP certification process and working on a BRC certification project.

## **3. CONCLUSION**

In conclusion, we may state that the Ahold Company (in its ACE context) is aware of its social responsibilities in relation to the customer and is actively working on improving the overall level of quality management and of understanding quality in the Central European region. It is also possible to support this statement not only through the facts and measures mentioned above, but also with other concrete acts:

- In the permanent sustainable development context, the company is actively working on the projects within the EUROKOMERCE framework.
- It is actively betting on the implementation of BRC/ IFS and EUREPGAP certification.

- The Ahold Company holds conferences worldwide on “Healthy Lifestyle” and “Fight against Obesity” themes.
- In April 2005, the Ahold Company prepared a two-day seminar in conjunction with the Czech Ministry of Agriculture for suppliers entitled: “Standards for Chains for the Safety and Hygiene of Foodstuffs as a Chance for Czech Suppliers.”

## BIBLIOGRAPHY

- [1] TUČEK, D., BOBÁK, R., *Výrobní systémy*. Zlín: UTB Zlín, FaME Zlín: 2006. 297 s. ISBN 80-214-0895-8
- [2] MIKOŠKA, P. *Management kvality v obchodním řetězci*. Lednice: Interní prezentace spol. Ahold, 2005. Bez ISBN
- [3] TUČEK, D., Vstup do Evropské unie v souvislosti s normalizací. In *Česká republika na cestě do Evropské unie*. Sborník prací posluchačů 1. ročníku PDS, Brno: FP VUT Brno, 1999, s. 19-23. ISBN 80-214-1267-4
- [4] ZÁMEČNÍK, R., RAJNOHA, R. Hodnotenie ekonomickej efektívnosti alternatívnych kalkulačných modelov. In: *ControllerNews* 3/2005, Contrast Consulting Praha spol. s r.o., září 2005, str. 13-16. ISSN 1214-5149

# **CORPORATE SOCIAL RESPONSIBILITY IN AUTO INDUSTRY: AN IRANIAN PERSPECTIVE**

**Ghodratollah Talaei**  
**Iran Khodro Company, Iran**

**Mehran Nejati**  
**Department of Economics, Management and Accounting**  
**Yazd University, Iran**

## **ABSTRACT**

Corporate Social Responsibility (CSR) is a concept which suggests organizations, especially (but not only) corporations, have an obligation to consider the interests of customers, employees, shareholders, communities, and ecological considerations in all aspects of their operations. CSR is closely linked with the principles of Sustainable Development, which argues that enterprises should make decisions not only based on financial factors such as profits or dividends, but also based on the immediate and long-term social and environmental consequences of their activities. In the absence of evidence of the research in the area of CSR in auto industry domain in Iran, the current paper may be a starting-point for a debate and possible strategies to implement CSR concept in this area. Also, CSR indicators for assessing companies' of the industry based on their commitment toward their social responsibilities are proposed in this research. These indicators can also be adapted with appropriate modifications to meet the needs and conditions of similar companies in other countries or companies in other industries.

**Keywords:** Corporate social responsibility, CSR, Auto industry

## **INTRODUCTION**

Within the last decade corporate social responsibility (CSR) has been gaining momentum across the business community and it is seen to be increasingly high on boardroom agendas. It is no news that today's business organizations are expected to exhibit ethical behavior and moral management. However, over the past half century the bar has been steadily raised. Now, not only are firms expected to be virtuous, but also they are being called to practice "social responsibility" or "corporate citizenship" (Carroll, 2000), accepting some accountability for societal welfare.

Existing universal figures all point to this fact that today's automobile industry is considered the third largest after food and construction industries when considering the capital ratio and investment, not to mention it as the biggest industry from the technological point of view (IB Chamber, 2002). Although the chief goal of auto manufacturing companies is to manufacture more cars in order to gain more income, it is important to consider that they be committed to their social responsibilities. Unfortunately, too frequently marketers still focus solely on their products and markets while neglecting the social impact of their activities (Flores, 2001).



Perhaps this is because the concept of corporate social responsibility (CSR) Corporate social responsibility is a fuzzy one with unclear boundaries and debatable legitimacy. The purpose of this paper is to clarify the CSR concept in auto industry by offering an historical perspective on CSR, reviewing the different viewpoints on the role of business in Iranian society.

The legitimacy of CSR relates to a set of fundamental and crucial questions: Why do corporations exist? Should enterprises also be concerned with their social performance as well as economic results? If so, what does it mean to be “socially responsible”? To whom do businesses owe “responsibilities”? What kinds of activities and programs should CSR include? How can we measure social performance and thereby know when companies have fulfilled their societal obligations? This paper will offer suggestions for answering these questions in the context of auto industry based on a synthesis and analysis of the literature, with a focus on auto industry. Of course we must have in mind that empirical research is needed for definitive answers to these questions.

## **AUTO MANUFACTURING IN IRAN**

The first car imported into Iran was a Ford that Mozaffaredin Shah, the king of Qajar, had purchased from Belgium. This car which puffed much smoke was renowned as “smoky chariot”. Following urbanization process since 1920, the importing trend of cars increased. Most automobiles of that time were brought from the USA and England. The first car manufactured in Iran was called “Paykan”. It was produced in "Iran National Industrial Corporation" licensed by British Talbot Company and offered to market in 1967. Later on, Iran National Company, on a gradual basis, assumed the manufacture of other vehicles like pick up, minibus and passenger bus. In the same year, two models of American “Rambler” cars locally called “Aria” and “Shahin” were produced by Pars Khodro, however, one year later, in 1968, a model of French Citroen named “Dyane” was offered by SAIPA Company to the national market.

In 1972, Pars Khodro transformed into "Iran General Motors" and started manufacturing two models of Chevrolet (Opel) 2500 cc and 2800 cc as well as three other cars licensed by American General Motors, namely; “Buick”, “Cadillac” and “Chevrolet Nova”. The production of these cars continued until 1981. In SAIPA Company the production of “Citroen Dyane” stopped in 1980, however, the manufacturing of “Renault 5” that had already been launched in 1975 went ahead. Later the production of innovative cars such as “Pride”, “Peugeot 405 and 206”, “Nissan Patrol” and “Mazda 323” started and some has continued till today.

## **GROWTH IN IRAN AUTO MARKET**

According to French automaker Peugeot, Iran has one car for every 21 inhabitants. Turkey has one for every 12. Western European countries and Japan have nearly one car for every two people. That indicates tremendous market

growth potential, and in part explains substantial foreign car manufacturer interest in the Iranian market. (AME Info, 2004)

According to Fortune Magazine (Ellis, 2006): This nation of 70 million people [Iran] has much at stake. Its auto industry has boomed in recent years to become one of the biggest sectors outside of oil, employing 150,000 and accounting for about 4% of GDP. With nearly one million vehicles produced last year, as many as in Australia or Thailand, Iran boasts the largest car industry in the Middle East and Central Asia. "We're not talking small numbers here," says industry analyst Jonathan Poskitt of J.D. Power Automotive Forecasting. "There is a huge aspirational population under 40 in Iran, with money, and they want the same stuff as everyone else."

## **CORPORATE SOCIAL RESPONSIBILITY: CONCEPT AND HISTORY**

Corporate social responsibility is the obligation of the firm to use its resources in ways to benefit society, through committed participation as a member of society, taking into account the society at large, and improving welfare of society at large independently of direct gains of the company. (Kok, van der Wiele, McKenna & Brown, 2001)

CSR has been variously defined as:

An organization's obligation to maximize its positive impact and minimize its negative effects in being a contributing member to society, with concern for society's long-run needs and wants. CSR means being a good steward of society's economic and human resources (Journal of Consumer Marketing, 2001).

The obligations of the firm to its *stakeholders* - people and groups who can affect or a who are affected by corporate policies and practices. These obligations go beyond legal requirements and the company's duties to its shareholders. Fulfilment of these obligations is intended to minimize any harm and maximize the long-run beneficial impact of the firm on society (Bloom and Gundlach, 2001, p. 142).

The intelligent and objective concern for the welfare of society that restrains individual and corporate behaviour from ultimately destructive activities, no matter how immediately profitable, and leads in the direction of positive contributions to human betterment, variously as the latter may be defined (Andrews, quoted in Hartman, 1998, p. 243).

Businesses do not operate in a vacuum since their activities generate positive and negative ripple effects throughout the ecosystem in which they are embedded (Frederick, 1995). Therefore they are responsible for the effects their activities have on society. Epstein (1999) describes corporations as "ubiquitous and dominant forces that affect our entire social system in diverse and complex ways." At the local level CSR messages espouse activities that are designed to improve the neighborhoods in which employees work and live. At the nation-state level organizations use statements describing their attempts to advance

important national interests of particular countries, especially during times of great urgency or need. Finally, at the worldwide level firms present their concerns about and efforts to enhance the quality of life of citizens using the opportunities inherent in their product offerings. (Hill, 2004)

Carroll (1979) and other researchers believe that we should judge corporations not just on their economic success, but also on non-economic criteria. Carroll (1979) proposed a popular four-part definition of CSR, suggesting that corporations have four responsibilities or “four faces” (Carroll, 2000) to fulfil to be good corporate citizens: economic, legal, ethical and philanthropic. The eighteenth-century Scottish philosopher Adam Smith, in *The Wealth of Nations*, provided us with a framework for modern business and its relationship to society. Smith proposed that capitalism, by encouraging the pursuit of gain and efficiency, works to create greater wealth than any other economic system, and maximizes liberty by allowing individuals freedom of choice in employment, purchases, and investments, thereby benefiting the common good. Endeavoring to beat one's rivals, and toiling to produce better work to earn the next promotion, if done ethically, will result in high personal development and therefore excellent use of one's time and talents and the firm's treasury (Johnson, 1990).

*Economic responsibility.* Economic responsibility, then, is to be profitable for principals by delivering a good quality product at a fair price is due to customers. Novak (1996) more fully delineated a set of seven economic responsibilities. These are to:

- (1) satisfy customers with goods and services of real value;
- (2) earn a fair return on the funds entrusted to the corporation by its investors;
- (3) create new wealth, which can accrue to non-profit institutions which own shares of publicly-held companies and help lift the poor out of poverty as their wages rise;
- (4) create new jobs;
- (5) defeat envy though generating upward mobility and giving people the sense that their economic conditions can improve;
- (6) promote innovation; and
- (7) diversify the economic interests of citizens so as to prevent the tyranny of the majority.

*Legal responsibilities.* Legal duties entail complying with the law and shortcomings of laws playing by the rules of the game. Laws regulating business conduct are passed because society does not always trust business to do what is right. However, laws have certain shortcomings to ensure responsible behaviour: they are of limited scope (they cannot cover every possible contingency); merely provide a floor or moral minimum for business conduct; are reactive, telling us what ought not to be done, rather than proactive, telling us what ought to be done; and might be followed involuntarily out of fear of punishment rather than voluntarily out of internal moral conviction.

*Ethical responsibilities.* Ethical duties overcome the limitations of legal duties. They entail being moral, doing what is right, just, and fair; respecting peoples' moral rights; and avoiding harm or social injury as well as preventing harm caused by others (Smith and Quelch, 1993). Ethical responsibilities derive their source of authority from religious convictions, moral traditions, humane principles, and human rights commitments (Novak, 1996). Today, virtually all members of the business system agree, at least in theory (although, unfortunately, often not in practice) with this set of "social responsibilities".

*Altruistic responsibilities.* Carroll's discretionary or philanthropic Controversy over the responsibility - "giving back" time and money in the forms of voluntary service, voluntary association and voluntary giving - is where most of the controversy over the legitimacy of CSR lies. Over the past half century, business increasingly has been judged not just by its economic and its moral performance, but also by its social contributions. Henry Ford II identified this when he spoke at the Harvard Business School as far back as 1969: "The terms of the contract between industry and society are changing ...Now we are being asked to serve a wider range of human values and to accept an obligation to members of the public with whom we have no commercial transactions" (Chewning et al., 1990, p. 207).

The prevalent business model addressing corporate ethical behaviour is that of the stakeholder concept that was first introduced in the 1960s, a period of great social change in America (Preble, 2005). According to stakeholder theory, the corporation has responsibility to any group or individual who can or is affected by the corporation's obligations (Mitchell et al., 1997). Ideas concerning the ethical behaviour of corporations and its responsibility toward various stakeholders have their roots in the early decades of the twentieth century and reflect the institutional environment in which the present modern corporation developed.

The decade of the 1920s has been selected as the early periods of CSR development and focus for this discussion because it represents what appears to be one of the first eras of modern corporate social responsibility (CSR which we consider for these days corporations). First of all, according to historian Chandler (1962, 1977) the modern corporate enterprise was fully developed by 1917. Secondly, business (Krooss, 1970, p. 3) ". . . finally emerged at the height of prestige in the 1920s when the businessman became the authority on matters economic, political, and even aesthetic." Finally, the corporate manager of the 1920s seemed to have developed, for the first time, a concept of social responsibility from a corporate rather than an individual perspective. This was a period in American history that saw a decline in the individual ethic needed for westward expansion and the rise of the social ethic needed for industrial harmony (Scott, 1959). This discussion will center on the increased awareness of social responsibility by managers of large publicly-held corporations because they were faced with a greater challenge of legitimizing their positions in society than their entrepreneurial predecessors because of their more dispersed activities and ownership (Epstein, 1972).

## **APPLICABILITY AND DESIGN OF CSR IN THE IRANIAN ENVIRONMENT**

Figure one shows a model drawn based on the four-part definition of CSR introduced by Carroll (1979, 2000). The model is then specifically considered for the auto companies in an Iranian context and the indicators within each part of CSR are suggested in tables 1 to 4. As it can be seen in table 1, economic responsibilities are broken into 7 parts based on Novak classification (1996). Each part is then illustrated in the form of related measures. Table 2 describes the legal responsibilities of Iranian auto companies through a number of measures including “number of illegal actions reported”, “environmental standards of autos manufactured”, “fuel consumption rate of autos manufactured”, “safety standards of autos manufactured”, and “in time payment of tax”. Table 3 focuses on ethical responsibilities. And finally table 4 which introduces altruistic responsibilities consist of various measures mainly involving company's support for academic, research, and voluntary giving projects.

It is important to notice that although the main goal of auto manufacturing companies in Iran is profitability, they are socially and ethically asked to work within a standard limit. That is, because they are not working in a vacuum, these enterprises should also be concerned with their social performance as well as economic results. In this paper, we have defined the meaning of being socially responsible in auto industries in terms of various indicators. Besides, the stakeholders of auto industries are seen as people and government.

## **CONCLUSION**

The development of corporate social responsibility is inextricably involved in the historical, socio-economic, political, and organizational features of the society and time period under consideration. These are the institutional forces that seem to shape the concepts of what exactly that responsibility should be. Whatever condition exist, however, companies and organizations must consider their social responsibilities and act in accordance with the society welfare. Because of the scarcity of resources and issues involving environmental sustainability, auto manufacturing companies have a great role in CSR issues. This paper reviewed the auto manufacturing growth in an Iranian context, and with a review on CSR literature, proposed the CSR indicators for Iranian auto industry. The introduced indicators are then shared among experts both in the area of CSR and auto industry and the final indicators are suggested upon a Delphi method process. These indicators can also be adapted with appropriate modifications to meet the needs and conditions of similar companies in other countries or companies in other industries.

## REFERENCES

- [1] AME Info. (2004, October). FDI in Iran's auto industry picks up speed, Middle East Finance and Economy. Retrieved December 02, 2007, from <http://www.ameinfo.com/46564.html>
- [2] Bloom, P.N. and Gundlach, G.T. (2001), Handbook of Marketing and Society, Sage Publications, Thousand Oaks, CA.
- [3] Carroll, A.B. (1979), "A three dimensional model of corporate performance", Academy of Management Review, Vol. 4, pp. 497-505.
- [4] Carroll, A.B. (2000), "The four faces of corporate citizenship", in Richardson, J.E. (Ed.), Business Ethics 00/01, Dushkin/McGraw-Hill, Guilford, CT, pp. 187-91.
- [5] Chandler, A.D. Jr (1962), Strategy and Structure: Chapters in the History of the American Industrial Enterprise, MIT Press, Cambridge, MA.
- [6] Chandler, A.D. Jr (1977), The Visible Hand: The Managerial Revolution in American Business, Harvard University Press, Cambridge, MA.
- [7] Chewning, R.C., Eby, J.W. and Roels, S.J. (1990), Business through the Eyes of Faith, Harper & Row, San Francisco, CA.
- [8] Ellis, E. (2006, September). Made In Iran, Fortune Magazine. Retrieved December 02, 2007, from [http://money.cnn.com/magazines/fortune/fortune\\_archive/2006/09/18/8386173/index.htm](http://money.cnn.com/magazines/fortune/fortune_archive/2006/09/18/8386173/index.htm)
- [8] Epstein, E.M. (1999). The continuing quest for accountable, ethical, and humane corporate capitalism, Business and Society, 38, 253–267.
- [9] Epstein, E.M. (1972), "The historical enigma of corporate legitimacy", California Law Review, Vol. 60, pp. 1701-17.
- [10] Flores, C.A. (2001), "Socially challenged: the corporate struggle with responsibility", unpublished MBA student paper, Auburn University, AL.
- [11] Frederick, W.C. (1995). Values, Nature, and Culture in the American Corporation. New York: Oxford University Press.
- [12] Hartman, L.M. (1998), Perspectives in Business Ethics, Irwin/McGraw-Hill, Boston, MA.
- [13] Hill, R.P. & Cassill, D.L. (2004). "The naturological view of the corporation and its social responsibility: An extension of the Frederick model of corporation-community relationships". Business and Society Review, 109.
- [14] IB Chamber (2002, May). Auto and Auto Part Manufacturing in Iran, Irano-British Chamber of Commerce, Industries and Mines. Retrieved December 02, 2007, from [http://www.ibchamber.org/Magazine%204/autopart\\_1.htm](http://www.ibchamber.org/Magazine%204/autopart_1.htm)
- [15] Johnson, T.S. (1990), "How the notion of a calling manifests itself in the world of business: one viewpoint", America, Vol. 162 No. 5, 10 February, pp. 117-20.
- [16] Journal of Consumer Marketing (2001), "Call for papers for special issue on social responsibility for consumer marketing practice", 24 January. Available at: <http://www.literaticclub.co.uk/news/call18.html>

- [17] Kok, P., van der Wiele, T., McKenna, R. & Brown, A. (2001). "A corporate social responsibility audit within a quality management framework". *Journal of Business Ethics*, 31, 285–297.
- [18] Krooss, H.B. (1970), *Executive Opinion: What Business Leaders Said and Thought on Economic Issues 1920s-1960s*, Doubleday & Co., Garden City, New York, NY.
- [19] Mitchell, R.K., Agle, B.R. and Wood, D.J. (1997), "Toward a theory of stakeholder identification and salience: defining the principle of who and what really counts", *Academy of Management Review*, Vol. 22, pp. 853-86.
- [20] Novak, M. (1996), *Business as a Calling: Work and the Examined Life*, The Free Press, New York, NY.
- [21] Preble, J.F. (2005), "Toward a comprehensive model of stakeholder management", *Business and Society Review*, Vol. 110 No. 4, pp. 407-31.
- [22] Scott, W.G. (1959), *The Social Ethic in Management Literature*, Georgia State College of Business Administration, Atlanta, GA.
- [23] Smith, N.C. and Quelch, J.A. (1993), *Ethics in Marketing*, Irwin, Homewood, IL.

**Table 1: CSR Indicators in Iranian Auto Industry: Economic Responsibilities**

Objective	Measure
Satisfying Customers	Customer satisfaction rate Customer complains about the auto prices Customer tendency rate toward buying a similar foreign car because of the higher value perceived
Fair rate of return	Return on investment (ROI) Stakeholders satisfaction rate
Poverty eradication	Annual payment for poverty eradication purposes Percent of the companies share in publicly-held companies
Creating new jobs	Number of employment provided Growth rate in offering new jobs
Diversify citizens economic interests	Customers satisfaction rate for buying an auto from the company Customers' belief in the improvement in their life style through buying an auto from the company
Generating upward mobility	Offer models for all groups of interests Offer various selling methods for various groups of people with different financial and social levels
Promoting innovation	Number of new auto models developed annually in the company Number of improvements in manufacturing methods Number of innovative suggestions offered by company's personnel

**Table 2: CSR Indicators in Iranian Auto Industry: Legal Responsibilities**

Objective	Measure
Moral minimum for business conduct	Number of illegal actions reported Environmental standards of autos manufactured Fuel consumption rate of autos manufactured Safety standards of autos manufactured In time payment of tax



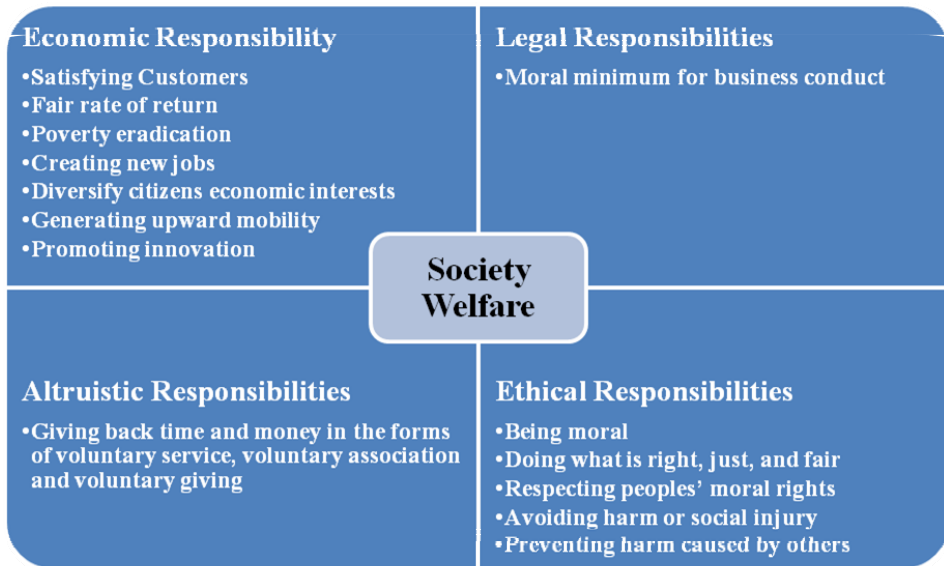
**Table 3: CSR Indicators in Iranian Auto Industry: Ethical Responsibilities**

<b>Objective</b>	<b>Measure</b>
Being moral	Number of immoral activities reported
Doing what is right, just, and fair	Number of un-just activities reported
Respecting peoples' moral rights	Number of autos designed against peoples' moral rights Number of advertisements against peoples' moral rights
Avoiding harm or social injury	Number of social injuries reported Amount of social injury/harm in Rials (Iranian Official Currency) caused by the company
Preventing harm caused by others	Number of activities in order to prevent harm caused by others

**Table 4: CSR Indicators in Iranian Auto Industry: Altruistic Responsibilities**

<b>Objective</b>	<b>Measure</b>
Giving back time in the forms of voluntary service, voluntary association and voluntary giving	Number of internship opportunities provided by the company Number of voluntary association of company and its managers in various social activities
Giving back money in the forms of voluntary service, voluntary association and voluntary giving	Amount of budget donated to voluntary service, voluntary association and voluntary giving Annual support for research projects Annual support for academic projects

Figure 1: CSR Model [Based on Carroll (1979, 2000)]



# EXPLORING THE KEY ASPECTS OF MANAGEMENT ORGANIZATIONS IN SHIPPING BUSINESS

Metin Celik

Department of Maritime Transportation & Management Engineering,  
Istanbul Technical University, Turkey

I. Deha Er

Department of Marine Engineering,  
Istanbul Technical University, Turkey

## ABSTRACT

Ship management, recognized as one of the complex business disciplines, consists of various managerial aspects in different levels of organization hierarchy such as administrative, technical, and operational. On the other hand, the requirements of international maritime rules & regulations, market competitiveness, safety and environmental related concerns are the primarily constraints in maritime transportation industry. This paper mainly concentrates on identification of key issues within the concept of ship management in shore-based organizational level. Consequently, the relative importance of the each item is determined quantitatively by utilizing Analytic Network Process (ANP) that led to ensure dependencies and feedbacks between relevant aspects.

**Key words:** Ship management, Maritime Industry, ANP.

## 1. MOTIVATION ON SHIPPING BUSINESS

The increased popularity and growth of the maritime transportation industry in global trade have eagerly motivated the researchers and practitioners in the field of maritime policy and management. In recent years, the potential and were deeply underlined in several papers (Hork, 2004; Panayides, 2006) in literature. Especially, the human resources context in shipping business (Wu and Lai, 2006) has been addressed as one of the significant themes due to the availability of various constraints and complexity of maritime transportation environment. On the other hand, as the human factor has been cited as the preliminary factor in maritime accidents, it is another critical point to link the human resources with the safety aspects (MIF, 2001). Therefore, effective execution of the shipping operations is required well-qualified personnel both on board and ashore positions, moreover, it is also necessary to structure an innovative management style in practice (Celik and Er, 2006; Celik and Karayigit, 2007).

This paper discusses the key aspects of shore-based organization of ship management companies comparatively. The motivating information on shipping business is represented in this section. The remains of paper are organized as follows: the concept of managerial responsibilities in traditional ship management process is introduced in Section 2. Then, Section 3 concentrates on structuring a control criterion with dependency and feedback on problem by utilizing Analytic Network Process (ANP) as one the popular multiple criteria decision making (MCDM) tool to illustrate quantitative outcomes. The conclusive remarks and proposals towards further research interests are summarized at the end of the paper.

## **2. OVERVIEW ON MANAGERIAL RESPONSIBILITIES IN SHIP MANAGEMENT**

Apart from the other business disciplines, ship management requires high level of competency and proficiency due to the complex nature of maritime industry. Besides the existing risks and challenges in global manner, the internal weakness and threads especially in operational process enforce the ship managers to seek for the multidisciplinary solutions on various issues such as finance, risk management, legislation, maritime laws, and etc. Managing of decision-making process with respect to main targets and prior principles of ship management company depends on designing and setting the divisional responsibilities in a systematic manner.

Briefly, the common responsibilities and priorities of the different divisions of shore-based management organization (Er, 2001) can be identified as follows:

- Establishing interrelationships and coordination between divisions in high level of communication without any conflict.
- Enhancing the competitiveness of the company through increased quality and productivity.
- Increased the reputation of the company in the maritime transportation market.
- Implementing integrated management system approach based upon employee involvement and commitment to manage sustainable development.
- Integration of technology and innovation to enhance the continuous improvement of managerial procedures.

The scope and concept of relevant responsibilities are planned to be utilized as a guide in further sections for defining the key aspects of management organizations in shipping business.

## **3. ANALYTICAL MODELING OF KEY ASPECTS IN ORGANIZATION & MANAGEMENT**

This section briefly introduces the ANP as the research methodology this study, moreover, the control criterion on modeling of key aspects in various critical phases of ship management in organizational level are categorized by taking the role of human element for shipping business into account.

### **3.1 Brief Overview on ANP**

The ANP is originally developed by Saaty as one of the comprehensive MCDM methodology (Saaty, 1996; Saaty, 1999). The problem that includes tangible and intangible factors can be achieved to be modeled and solved quantitatively to make an optimum decision (Saaty, 2003) by utilizing ANP methodology. Moreover, the theory of ANP lets the decision-makers to design a control criterion with inter/outer dependencies in feedback. It means that the relations between the elements of clusters can be defined (Saaty, 2001; Kinoshita, 2003).

Furthermore, recent applications of the ANP methodology have been seemed in literature on various management-related themes such as strategy selection (Wolfslehner et al., 2005), product planning (Chung et al., 2005), knowledge management (Wu and Lee, 2007), strategic partnering (Cheng and Li, 2007), hazards planning and emergency management (Levy and Taji, 2007).

### 3.2 Structuring of Control Criterion

The initial stage of ANP methodology is based on structuring a control criterion whose elements have dependencies and feedbacks. This study defines the numbers of five clusters and relevant factors. Table 1-5 illustrate the key aspects for the executive management, personnel management, operational management, technical management, and safety management in ship management respectively.

Table- 1: Key Aspects in Executive Management

Cluster A: Executive Management	Code
Safety policy	A1
Budgeting	A2
Resource allocation	A3
Leadership philosophy	A4

Table- 2: Key Aspects in Personnel Management

Cluster B: Personnel Management	Code
Selection and check of competence	B1
Education and training	B2
Leadership and supervision	B3
Motivation	B4
Modification of attitudes	B5
Development of social climate	B6

Table- 3: Key Aspects in Operational Management

Cluster C: Operational Management	Code
Inspection methods	C1
Maintenance methods and procedures	C2
Operations procedures	C3
System documentation	C4
Manning and watch systems	C5

Table- 4: Key Aspects in Technical Management

Cluster D: Technical Management	Code
Reliability and availability	D1
System performance	D2
Instrumentation	D3
Monitoring	D4
Automation	D5
Man-machine interface	D6
Work place conditions	D7

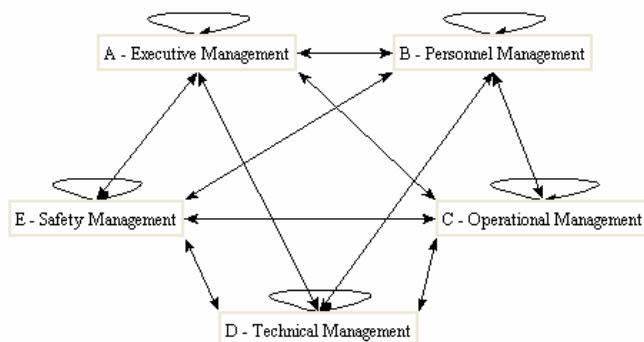
Table- 5: Key Aspects in Safety Management

Cluster E: Safety Management	Code
Management	E1
Organization	E2
Routines	E3
Inspection and auditing	E4
Feedback	E5
Learning	E6
Emergency planning and training	E7
Health	E8
Environment	E9
Safety at work	E10

After defining the assessment factors on the problem, initiating of relations and dependencies between the clusters is the next step in model structuring process. The Figure 1 illustrates the fundamental structure of proposed multi-criteria evaluation model in *Superdecisions Software* when the existing relations are established between the relevant factors.

The last step is to insert data inputs for the *Superdecisions Software*. In this stage, it is contacted with the several professionals from maritime industry to get the expert opinions on pair-wise comparisons in a group consensus as well. Totally, it is contacted with the numbers of twenty experts from maritime society for completing this research. The geometric means of the experts' judgments are computed to provide input data for the software consistently.

Figure-1: Fundamentals of model structure in *Superdecisions Software*



### 3.3 RESULTS & FINDINGS

After performing the software on the inserted pairwise comparison values, the unweighted supermatrix, weighted supermatrix, limit matrix, cluster matrix, and global priorities are computed as the output data of the *Superdecisions Software* package. Finally, Table 6 illustrates the global priority weights on key aspects of management organization in shipping business.

Table- 6: Global Priority Weights on Key Aspects

Code	Limiting Values	Normalized Values	%
A1	0.101	0.384	% 38
A2	0.065	0.248	% 25
A3	0.035	0.135	% 13
A4	0.061	0.234	% 23
B1	0.043	0.243	% 24
B2	0.051	0.286	% 29
B3	0.035	0.197	% 20
B4	0.023	0.127	% 13
B5	0.009	0.051	% 05
B6	0.017	0.095	% 10
C1	0.030	0.187	% 19
C2	0.058	0.363	% 36
C3	0.025	0.157	% 16
C4	0.024	0.152	% 15
C5	0.022	0.141	% 14
D1	0.059	0.243	% 24
D2	0.083	0.344	% 34
D3	0.008	0.032	% 03
D4	0.005	0.021	% 02
D5	0.029	0.118	% 12
D6	0.032	0.133	% 13
D7	0.026	0.109	% 11

E1	0.015	0.092	% 09
E2	0.013	0.084	% 08
E3	0.016	0.100	% 10
E4	0.011	0.067	% 07
E5	0.012	0.077	% 08
E6	0.017	0.108	% 11
E7	0.033	0.210	% 21
E8	0.014	0.086	% 09
E9	0.016	0.104	% 10
E10	0.011	0.071	% 07

#### 4. CONCLUSION & FURTHER RESEARCH

This paper identifies the priorities of key aspects in managerial process in shipping business systematically. The results indicate that safety policy (% 38) in Cluster A, training (% 29) and crew competency (% 24) in Cluster B, maintenance procedures (% 36) in Cluster C, monitoring and keeping system performance in desired levels (% 34) in Cluster D, and emergency planning (% 21) in Cluster E are appeared correspondingly as significant issues among the key aspects in organizational base. The outcomes of this study can be utilize as decision aid for designing the organization structure of a professional ship management company, moreover, also for setting and planning of the general priorities within company strategic vision.

The ANP methodology contributes the problem modeling process due to the characteristics of relevant attributes. Further research direction can be motivated as structuring the problem problem's criterion hierarchically without any dependency and applying the Analytic Hierarchy Process (AHP) as another MCDM methodology.

#### REFERENCES

- [1] Celik, M. and Er I.D. (2006), Methodology of Establishing Executive Maritime Business Administration Program for Maritime Transportation Industry, 3rd International Conference on Maritime Transport, 16-19 May, Barcelona, Spain. pp. 953-961.
- [2] Celik, M. and Karayigit B. (2007), Gemi İşletmeciliği Firmalarının Teknik Yönetim Karar Süreçlerinin Modellenmesine Yönelik Karar Destek Sistemi Önerisi, YA/EM 2007 - Yöneylem Araştırması ve Endüstri Mühendisliği 27. Ulusal Kongresi, 2-4 Temmuz 2007, Bornova, İzmir, Türkiye.
- [3] Cheng, E.W.L. and Li H. (2007), Application of ANP in process models: An example of strategic partnering, *Building and Environment*, Vol. 42, No. 1. pp. 278-287.
- [4] Chung, S.-H., Lee A.H.I. and Pearn, W.L. (2005), Analytic network process (ANP) approach for product mix planning in semiconductor fabricator, *International Journal of Production Economics*, Vol. 96, No. 1, pp.15-36.
- [5] Er, I.D. (2001), Inclusion and Codification of Shore-Based Activities into Maritime Safety Management System, Research Study Report, Istanbul.
- [6] Hork, J. (2004), An analysis of decision-making process in multicultural maritime scenarios, *Maritime Policy & Management*, Vol. 31. No. 1, pp. 15-29.



- [7] Kinoshita E. (2003), From AHP to ANP, *Operations Research of Japan*, Vol. 48, No. 9, pp. 677-683.
- [8] Levy J.K. and Taji K. (2007), Group decision support for hazards planning and emergency management: A Group Analytic Network Process (GANP) approach, *Mathematical and Computer Modeling*, Vol. 46, No. 7, pp.906-917.
- [9] MIF (2001), *Report for the MIF 2001 Plenary Session of the Ad Hoc Working Group on the Human Resources Aspects of Safety*, The website of the Maritime Industries Forum, <http://www.mif-eu.org/>, [Accessed 10.9.2007].
- [10] Panayides, P.M. (2006), Maritime policy management and research: role and potential, *Maritime Policy & Management*, Vol. 33, No. 2, pp. 95-105.
- [11] Saaty, T.L. (1996), The analytic network process-decision making with dependence and feedback, RWS Publications, Pittsburgh, PA.
- [12] Saaty, T.L. (1999), Fundamentals of the analytic network process, The International Symposium on the Analytic Hierarchy Process, Japan, Kobe.
- [13] Saaty, T.L. (2001), Decision makings with dependence and feedback: the analytic network process, RWS Publications, Pittsburgh, PA.
- [14] Saaty, T.L. (2003), The analytic hierarchy process (AHP) for decision making and the analytic network process (ANP) for decision making with dependence and feedback, Creative Decisions Foundation.
- [15] Wolfslehner, B., Vacik H. and Lexer M.J. (2005), Application of the analytic network process in multi-criteria analysis of sustainable forest management, *Forest Ecology and Management*, Vol. 207, No. 1, pp.157-170.
- [16] Wu, B., Lai K.H. and Cheng T.C. (2006), Emergence of 'new professionalism' amongst Chinese seafarers: empirical evidences and policy implications, *Maritime Policy and Management*, Vol. 33, No. 1, pp. 35-48.
- [17] Wu W.W. and Lee Y.T. (2007), Selecting knowledge management strategies by using the analytic network process, *Expert Systems With Applications*, Vol. 32, No. 3, pp. 841-847.

# ANALYSIS OF MECHANISMS FINANCING OF CULTURAL SPHERE

Costandachi Gheorghe  
Institutul de Economie, Finanțe și Statistică  
al Academiei de Științe din Moldova

## ABSTRACT

In this work is made analysis concern basically state structures of culture and arts activities, is describes the problems are met during the reforming process the financial mechanisms in cultural sphere. Author disclosed the ways evolve private and estate financing cultural sphere, also is disclosed why is need estate financial support. The work contains something detailed measures actions to improve financial and mechanisms financing of cultural sphere. Analyzing questions of modernization of budgetary financing of branch the author have formulated effectiveness of use of budgetary funds at all levels in cultural structures and proposed the ways of finishing of market reforms in cinematography. In the final of work is presented scheme system of financing, formation and distribution of financial resources in cinematography and is making conclusions and is offered wais of the solutions created present situation in this sphere in Moldova.

**Key words:** cultural mission, cultural policy, mechanisms of financing cultural sphere,

## INTRODUCTION

The economic crisis of the ninetieths and significant (in the comparable prices and conditions) reduction of budgetary support of culture and arts activities has forced to increase volumes of provided paid services to the population (frequently to the detriment of to their quality and general availability) to obtain other off-budget sources of finance. Our analysis will concern basically state structures of culture and arts activities. Reduction of the state support of all kinds of cultural institutes became a consequence of system political and economic social crisis sharp, almost twice in comparable prices. Forced in these conditions to become on a way unjustified commercialization, culture establishments have essentially reduced service of children, rural population, an interstate and international cultural exchange. Consecutive replacement of free services paid, a prompt rise in price for tickets have led to actual infringement of constitutional laws of citizens on access to cultural values and use of culture establishments.

## THE FUNDING FOR THE CULTURAL SPHERE IN TRANSITION IN RM

Therefore, in our opinion, forthcoming years the basic efforts of the state should be concentrated not to reduction of the State expenditure on culture - continuation of it threatens with already irreversible consequences - and on efficiency of use of budgetary funds and restoration at least that level of financing which was in not too safe 1990 Understanding, that only budgetary support of branch was, is and remains in the future the warranty of fulfillment by culture and art of those social problems which are put before them by any civilized state, it is necessary to understand clearly, that the system of budgetary financing of culture requires serious modernization.

Thus, research shows that on the first place it is necessary to put necessity of sharing of the state for financing of cultural activity. Dynamics of financing of sphere of culture and art is presented to Republics Moldova in table 1. Democracy and market economy is an unconditional imperative of development of our country. Here is not present and there can be no doubts. But, going on this way, it is impossible to forget, however, as the market is imperfect. Objective comprehension of "market errors" phenomena has induced an economic science to admit possibility of imperious interference of the state in those particular cases, when the market generates inefficient resource exploitation. It is known that, there are such fields where are met «the market' errors», more of that, there is exception of imperious state interference which is observed hardly, but exists naturally. The culture and art concerns such spheres.

Whether means the given fact what it is necessary to refuse at all here market mechanisms? Thus, should we replace them? We would not like to come back to the set the teeth on edge alternative «the state market ». If in the most developed market countries the state redistributes more than third of gross national product, that, similar, that in this case this alternative in general is incorrect. With ours - and not only with ours - the points of view, in culture and art sphere market and state regulation symbiosis is necessary.

Cultural activity from a number of other sectors of an economic life is allocated, in particular, with that circumstance, that for the majority of the organizations of culture the economic insufficiency caused by their inability to market self-repayment and forced attachment to the state is characteristic. This insufficiency became that weak place in a public organism where pathogenic viruses are conveniently settled. They cause as «a dependence syndrome» - fall of a tone of market activity of the organizations of culture, and some kind of «a budgetary spasm», accompanied by increase of pressure of financial department with a request of reduction of the state support. Owing to genetic dependence on budgetary funds of the organization of culture for ever belong to risk group.

Table 1. Dynamics of costs connected with welfare actions, cultures and art, sports and youth financed from the budget for 1997-2004

1; 2; 3 – in mln. MDL, 4; 5 – in % to the total budget expenses  
In % to total expenditures

N /	consolidated budget	1997	1998	1999	2000	2001	2002	2003	2004
1	Expenditures-total	3608,4	3027,1	3495,3	4268,8	4325,8	5194,1	6177,5	7390,1
2	social-cultural activities	1964,3	1475,9	1460,6	1887,4	2063,1	2816,7	3352,8	3720,5
3	culture, art, sport and measures for youth	82,0	82,2	62,0	82,5	92,5	138,7	175,0	219,2

4	social-cultural activities	55,4	48,8	42,5	44,2	47,7	54,2	54,2	50,3
5	culture, art, sport and measures for youth (%)	2,3	2,7	1,8	1,9	2,2	2,6	2,8	2,9

1990th have been connected with not come true hopes of power structures to shift a part of budgetary burden on shoulders of a different sort of sponsors and patrons of art. It became popular in those years and it's still popular till now to allocate budget funds to projects to achieve certain results instead of existing structures. Recognizing such item absolutely unreasonable, it is not necessary to deny nevertheless necessity of reforming of the developed system of state financing of cultural activity. Thus it is necessary to remember, what efficiency of concrete reforms in very big measure is caused by answers to the general questions - *what* benefits of culture, for what purpose and how should support the state?

In our opinion, first, in ward the states should be the mixed and social benefits of culture having social utility. Second, support of cultural activity is carried out for the purpose satisfactions of the public interests which are not revealed market by, i.e. for the purpose realizations of a cultural policy of the state. Third, this support can be realized as in the form of direct budgetary appropriations (by means of current financing of activity of official bodies and financing of concrete projects of not state organizations), and in the form of fiscal incentives.

## WHAT IS A PUBLIC CULTURAL INSTITUTION?

Culture official bodies are the organizations of the culture which founder is the state. These organizations *created for fulfillment of certain cultural mission* (for example, formation of library funds and information service of the population, preservation and public demonstration of museum collections, statement of products of a theatrical art and display to their spectators), constitute now a basis of branch of culture. Budgetary financing of such organizations should supply fulfillment of that cultural mission which is fixed in their constitutional instruments and consequently cannot be focused on separate projects and the programs having certain duration and the concrete contents. Another typical situation for cultural organizations which founder the state is not and consequently has before them no any budgetary obligations. In this case, on the contrary, by the most comprehensible and even, it is not excluded, unique, the project financing and a competitive order of distribution of budgetary funds are. Here it is necessary to underline, that for official bodies of culture project financing methods can be considered only as auxiliary mechanisms of distribution of budgetary funds.

In the developed conditions installation on transformation of a competitive order of distribution of budgetary funds from auxiliary in the basic financing method of cultural activity means not that other, as a request of realization scale

institutional reforms. And the main contents of such system modernization is liquidation of the majority state both municipal authorities of culture and creation on their basis of the organizations of the culture having other legal status. Commenting on this clearly undesirable scenario of development, it is necessary to underline, that in itself system of financing of cultural activity and even quite clear aspiration to reasonable economy of budgetary funds change of a legal status of the organizations of culture cannot cause. *The mission of culture and arts structures is set in favor strategic public interests, state cultural policy but not in favor of investors.* Thus without delegation of necessary authorities to culture establishments by means of definition of their mission expressed in the authorized purposes to realize the cultural policy it is impossible. In this context it would be wrong to think, that the cultural policy of the state can be shown to set of projects and programs. At the heart of the given error two extreme items lay.

The first originates in the centralized economy of the recent past with its aspiration to transform managing subjects in the disciplined executors of decisions of operating body. In this case any authorities to delegate it is not necessary, for all decide tasks from above (in the most advanced form is a state order). The second, being complete contrast to the first, is connected with failure of the state of realization of a cultural policy counting on positive results of market mechanisms of self-regulation. And in this case no delegation of power to the culture organizations occurs. Not having before them budgetary obligations, the state decides only present-day problems, correcting the market at the expense of financing of the same state orders in the form of support of concrete projects and programs.

Denying both extreme measures, we start with the recognition of expediency of interference of the state accepted in all civilized world in a situation in those particular cases when the market does not consult. To such particular cases, we will repeat once again, the biggest segment of cultural activity, where not revealed market by public interests concerns (the valuable judgments formed by political system and democratic institutes of company) define strategic targets and the cultural policy of the state. Their realization is impossible without delegation of corresponding authorities to the culture organizations. Focusing the created establishments on fulfillment of certain cultural mission, the state undertakes budgetary obligations on financing of their operating performance.

Actually, here also there passes that border outside of which the culture appears in the power of pure market mechanisms. Therefore, recognizing not so comprehensible to many organizations of culture the existing status of establishment and thinking of expediency of realization corresponding institutional reforms, should start with necessity of preservation of two "patrimonial" signs of activity of the organizations of culture:

1. Availability of the authorized purposes reflecting the state cultural policy;
2. Budgetary obligations of the state on financing of operating performance of these organizations.

From the indicated items it is necessary to approach and to definition of the valid role of a project financing of culture. Instead of purely tactical attempts of ideological sense directed on redistribution of budgetary support of culture in favor of concrete projects (it is all the same «a budgetary spasm»), it is necessary to prefer a principle of "allocation of grants", transferring in a project financing zone only those problems of a cultural policy which cannot be decided within the limits of operating performance of culture establishments. For example, development of large information systems or organization of festivals, competitions and other actions directed on preservation of uniform cultural space, and also purely investment projects connected with capital construction, repair, etc. According to the practice of the developed culture and arts activity countries, the project financing share doesn't exceed 25-30 % of all budgetary funds allocated for support of cultural activity. At the same time we do not consider, that official bodies and budget financing of their activity are the unique institutes for the culture organizations. Reforms here have ripened for a long time. The need to increase the state support of cultural activity, desirability of gradual failure of a budget method of the financing not creating stimulus to rational resource exploitation and reproducing wasteful type of managing, in our opinion, require realization of some **the practical measures** directed on modernization of developed system of budgetary financing of culture establishments.

## MEASURES AIMED AT MODERNIZING THE FINANCING OF CULTURE

As a result of our research, most of the main measures have been introduced as it follows:

1. *Introduction of the new organization-legal form of nonprofit institutions;*
2. *Introduction of contract relations of culture establishments with their founder;*
3. *Change of the mechanism of budget financing;*
4. *Overcoming of backwardness of an infrastructure and removal of barriers in cooperation of budgetary funds;*
5. *To increase the results of the use of budgetary funds at all levels;*
6. *End of market reforms in cinematography.*

Now we will shortly consider in effect each of these measures:

1. *Introduction of the new organization-legal form of nonprofit institutions*

In the evolutionary comparison, the first attempts «to unbutton a close uniform» the official body essentially limiting creative and economic activities of many organizations of culture, have been undertaken, as is known, still in the late eighties, at introduction of "new system of managing». Practice has confirmed efficiency of the accepted measures. Realization of substantive provisions of this system has allowed increasing essentially quality of work, to interest workers in results of the work, to improve, within the limits of possible, their financial position to involve additional financial resources and by that has increased "survival rate" of the organizations of culture in difficult 90th

However neither the Civil Code, nor any other Code or laws concerning nonprofit institutions do not contain the given positive experience. As a result many organizations of the culture, the reorganizations which have passed a difficult way of management, independent management of the economic development have got again to a vice of directive economy. The development of market relations and the need to increase the results of the deployment of budgetary funds press the prompt legislative introduction of the new organization-legal form of the state nonprofit institutions allowing at preservation of a state ownership and indicated above "generic characteristics" to restore freedom of managing of these organizations, supplying at fulfillment of budgetary obligations of the state for persistent growth of incomes of own activity. Therefore, we consider, that realization corresponding institutional reforms, directed on transformation of official bodies of culture to this new kind of nonprofit institutions is possible only on the basis of free will of collective and cannot have compulsorily mass character.

## *2. Introduction of contract relations of culture establishments with their founder.*

Introduction of contract relations means application of such method of budgetary financing of operating performance of the organizations of culture which would be based on introduction three-year (five years') and the annual agreements concluded by the founder with culture establishment. Within the limits of the three-year agreement it is necessary to provide responsibilities of the organizations of culture on realization of their professional functions connected with granting to the population of profile services (theatrical, concert, museum, library, leisure realizations etc.), no less than responsibilities on realization of a complex of the measures directed on preservation and development of their cultural potential, creation and preservation of repertoire of the organizations of performing arts, formation and preservation of museum and library funds, etc. In the same agreement should be formulated warranties of the founder on maintenance of conditions of cultural activity at the expense of public finance means.

Besides, in the three-year agreement it is necessary to establish specifications of financial expenditures of the founder (the fixed contract prices), supplying: (1) partial refund of costs of the organization of culture and the art, connected with cultural service of the population (production of the mixed benefits of culture); (2) the full indemnification of costs of the organization of culture and the art, connected with preservation and development of its cultural potential (production of social benefits of culture).

In the annual contract the production volume of profile services adjusted by the parties and a complex of the measures directed on preservation and development of cultural potential, proceeding from the program of activity of the given organization of culture for a current year, to its corresponding cultural mission and possibilities of the founder could be established. In the same agreement the annual sum of financing of operating performance of this organization from a public finance, expected on the basis of an annual production volume of its profile services and a complex of the measures directed on preservation and development of cultural potential, and corresponding specifications of financial expenditures of the founder should be fixed. Specifications of financial expenditures of the founder (the fixed

contract prices) are defined counting on unit of profile services and per unit of a complex of the measures directed on preservation and development of cultural potential, for each organization of culture. Specifications of financial expenditures of the founder remain stable for all three-year period and come under to annual correction in cases of change of the sizes and repayment terms of work, change of wholesale prices and tariffs, and also in case of increase in total amount of financing of culture and art in budgets for corresponding year.

### *3. Change of the mechanism of budget financing*

Our research has shown interesting results. From the point of view of economic freedom, in 1990th obvious narrowing of economic freedom of all organizations using budgetary funds was observed. As it is paradoxical, but during market times as a result of working out of the new budgetary legislation and introduction of exchequer system economic independence of official bodies has fallen even below that level which has developed in the conditions of the planned housekeeper. Consequences of it are not noticed only by the one who continues to challenge known true - administration always revenges an inefficiency of use of economic resources and is objectively fraught with growth of production costs of benefits of culture and-or decrease in their quality. In effect, it is the same rake on which habitually there come officers of different generation and which strike every time on managing subjects.

Economic classification of costs of budgets of Republic Moldova which provides a regulation of the operational expenditure of the organizations financed on the basis of incomes and expenditure budgets under subject articles and sub-articles became the basic instrument of restriction of economic independence in 90th years, as is known. In present conditions in which there lives Republic Moldova clearly, that any establishment not in a condition for a year forward to calculate costs on all these kinds allocated in classification, moreover in the conditions of unpredictable change of the prices for commodity items and services and high rates of inflation. Position and the bureaucratic procedure of clarification of estimates of establishments established by finance bodies do not facilitate. Under the threat of punishment for "no-purpose" draught on funds of establishment are quite often forced to detain payments to one supplier of the goods and services and without special necessity to spend budgetary funds on accounts with others - especially in the end of a calendar year. In it is necessary to consider the relation and tough policy of the control of use which sometimes turns to game «long game of a ball in one collars» because on the one hand money and funds as though are allocated, and their use it is braked by exchequer the bureaucratic interpretations.

That, for example, preparation for acquisition of library fund passes very long means and sometimes time leaves only on document circulation, and time limits do not allow to sustain the announcement of competitions and then the provided financial funds are not used and withdrawn by the state. In this case our research has proved the inefficient existing mechanism of financing. In our opinion it is necessary to develop more flexible mechanism of preparation and to give more autonomy to culture establishments on development of financial resources. Thus, quality of development of all allocated financial resources, and also financial



management in it the relation will increase. Freedom and frameworks in which managers of these establishments can increase quality of rendered services also will increase.

At the same time the same economic classification does not provide allocation in an account part of the estimate of the subject article defining expenses for primary activity of establishments, - on achievement of the purposes for the sake of which realization the founder and creates corresponding establishments. In the field of culture and art it is replenishment and the contents of funds of libraries, replenishment and the contents of museum funds, exhibition activity of museums, updating and maintenance of repertoire of the organizations of performing arts. Efficiency of use of budgetary funds in the conditions of the scheduled stabilization of economy and also resulted above a reason apropos is obvious not optimum structure of incomes and expenditure budgets, press entering of essential clarifications into economic classification of expenditures on public account.

At the assertion of incomes and expenditure budgets of budgetary establishments and a budgetary list for main managers of budgets to establish the operational expenditure only under subject articles, without detailed elaboration of these costs on sub-articles. Further it is necessary to consider expediency of preservation as independent subject articles of estimates of the incomes which specific weight in a total sum of costs is insignificant (for example, in costs for culture and art these expenses constitute less than one percent). After the assertion of the new organization-legal form of the state nonprofit institutions to pass to the assertion for them incomes and expenditure budgets and a budgetary list under articles connected with a payment and charges to a payment, the payment of expenses on achievement of the authorized purposes, the operational expenditure on purchase of the goods and fee, etc.

Further, in process of the further stabilization of economy, achievement of stable growth rates of the budget and decrease in rates of inflation to Central European level, it is offered to restore financing of establishments by one line. At the same time, the state should not lose the control over validity of planning of expenditures on public account by establishments and should become the main things the manager of credits. For this purpose it is required to approve when due hereunder forms of *projects* of incomes and expenditure budgets of establishments and accounts to budget statements for main managers of credits, and also their reports on outturn of the budget. In these documents, proceeding from *information* requirements of finance bodies for the account, for certain time it would be possible to save the list of subject articles and sub-articles economic classification, in the statutory form, having added with its new subject article «the Payment of expenses on achievement of the authorized purposes».

#### *4 Over comings of backwardness of an infrastructure and removal of barriers in cooperation of budgetary funds.*

Simultaneously with increase of requests to integration into European communities and in process of development international cooperation between the countries in the field of culture and art in the world there are different problems. Our country - not an exception and the duly decision of these problems allows to realize new steps

to constant improvement of investigated sphere. Along with other problems, one of the pivotal is improvement financing of budgetary sphere and one of them is financings of culture, art and cinematography.

In our opinion, the decision of the ripened problems of modernization of system of budgetary financing of culture, art and cinematography, efficiency of use of allocated funds is necessary for beginning with clarification of functions of republican, regional, municipal and local government bodies in this sphere, structure of subordinated establishments, conformity of the problems assigned to them to modern requests and new social and economic conditions. A legislative basis for this purpose is the Constitution of the Republic Moldova which has defined authorities of the authorities all levels in the field of culture. However today, after many years after the Organic law acceptance, separate questions of the organization of a cultural life of the country, its economic maintenance have found decision. State ownership differentiation in this sphere is not finished, the rights and responsibilities of various levels of the power in the field of protection of monuments of history and culture, the international cultural cooperation, preservation of uniform cultural space of the country and other general questions of culture are not defined.

The initial structure of culture establishments and art has been generated in the early nineties the last century by mechanical addition of a network of these establishments of allied (USSR) and republican (Moldovan Soviet Socialist Republic) submission. Because of discrepancy of responsibility as on a vertical and strong disintegration of culture, art and cinematography is across observed. To this process has helped more effectively to a measure process of privatization of many objects of culture and art.

On an extreme measure, the country has neither concepts, nor development strategies of this sphere, and it no that defines level of a condition of company for today. As a result enforcement authorities were not able to execute effectively the functions taken on, to supply safety and restoration of thousand monuments of history and the culture, taken under state protection. Meanwhile, the Constitution, other laws do not relieve from government bodies of responsibility for a culture condition in subordinated territories, for satisfaction of cultural requirements of the population living here, cultural heritage preservation. Thereupon it would be possible to offer a principle of the importance of establishments, their places in formation of a nucleus of the Moldavian culture defining Republics Moldova as the great cultural country.

Question on structure of republican establishments closely related with system of their financing. The active budgetary legislation recognizes only one criterion of differentiation of account authorities between budgets of various levels. In this quality, administrative subordination of establishment acts. Thus the quota of consumers of its services, and also the known in theory and checked up basic principle of successful economic policy known in theory in practice is completely ignored - the source of finance should be on the closest point to the recipient. But in this case here it is necessary to differentiate administrative submission of objects of

culture and art. In our opinion, it is necessary to define functional responsibilities and submission on a vertical and it is necessary to develop such structure which will allow to organize financing and to supervise performance.

Hence, the budgetary legislation should regulate not only differentiation of account authorities, but also possibility of their association in cases when this or that kind of activity is in joint management government bodies of various level. However finance bodies do not hurry up to clarify this question, have not approved an order of practical application of the indicated norm and by that there is a risk when some establishments can be debarred from the state support.

Consolidated financing on a contractual basis republican and local government bodies of culture establishments will allow to spend more effectively means of budgets of various level, to strengthen the control over their rational use. Under the arrangement inter parties republican bodies, for example, could incur financing of charges of staff of creative staff, preparation new and support of current repertoire in the organizations of performing arts, preparation of new expositions, replenishment and the contents of funds of libraries and museums, and local authorities - the contents of buildings, utilities, payment of attendants. At making contract the variant of distribution of budgetary financing in percentage to the general income and expenditure budget of establishment (such practice is applied in Germany and some other European countries) is possible also.

##### *5. Efficiency of use of budgetary funds at all levels.*

Considering questions of modernization of budgetary financing of branch, it is necessary to concern problems of an effective utilization of budgetary funds at regional and municipal levels. For branches of social sphere as a whole and for culture in particular it has basic significance as nearby more than 65 % of means of the national budget of the country on culture are necessary on regional and local budgets. The particular interest is caused by costs for culture from local budgets because from local budgets on financing of houses of culture, clubs and libraries it is allocated more than from the republican budget. Meanwhile, if to compare number of rural population in Republics Moldova and Russia the obtained data very different. In our country, proceeding from a population of villages, there is settlement which would not require in libraries, no club or similar. In Russia, according to State Committee for Statistics, in 1989 was 152.9 thousand rural settlements, and the number of rural settlements continues to be reduced. Thus, it is possible with sufficient share of reliance to assume, that in settlements with number of inhabitants from 6 to 200 people, the contents of clubs, houses of culture and significant number of libraries is justified by nothing, in particular from Republic Moldova, where concentration of the population very dense.

From the beginning of 1990th of the last century functions of culture establishments were not revised also. As show checks, over 90 % of funds of rural libraries constitute editions of the Soviet years. In them there are no newspapers, thick and thin journals, scientific and the fiction, published in modern Moldova. Houses of culture and the clubs executing before function of assistants of a consignment on communistic education, are extremely slowly reconstructed, define the new purposes of the activity. The question on re-structuring of these establishments has ripened

for a long time. However overwhelming majority of municipal unions does not hurry up with searches of approaches to its decision. Certain conservatism shows in it and the republican authorities of subjects. Certainly the situation with cultural service of inhabitants has sat down difficult, it infringes on interests of many the person, has not only economic, but also political significance.

In our opinion, and the analysis shows, that formation modern cultural and leisure and the information environment on village followed begin with the regional centers. In the majority of them regional libraries for adults and children, culture houses, children's musical or art schools operate, in many there are municipal museums and some other establishments. They work each is isolated, under the plan, are equipped by primitive engineering. On the basis of these establishments followed create the modern cultural-information complexes equipped with modern electronic engineering and Internet connection. Provided that children joining now at school to new information sources and knowledge, with end of training would not lose communication with modern culture and a country and world science. The indicated measures would create additional possibilities for all countrymen.

Formation of such complexes and their hardware could become the major component Republican target and regional purpose-oriented programs the next years. It would be simultaneously expedient to start realization under the special program of monitoring of culture establishments on village and to define on its basis viability of each establishment (a quota of potential consumers of its services, volume of these services for the last two-three years, personnel structure, etc.).

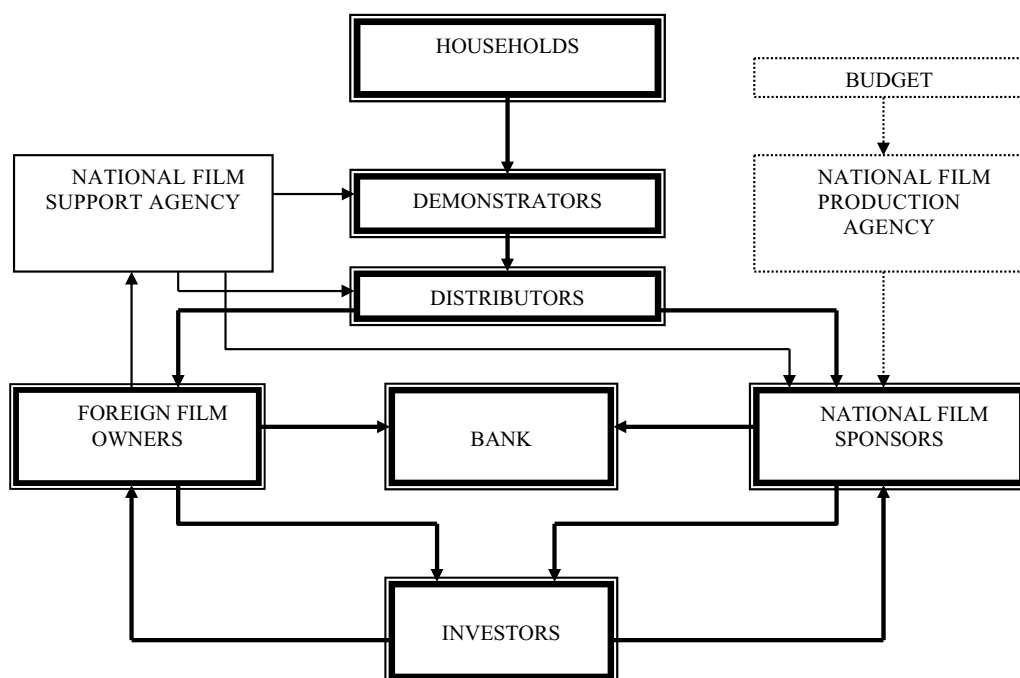
Monitoring data it would be possible to use for working out of recommendations about transformation of a part of rural clubs and culture houses, depending on local conditions, in culture establishments of new type - houses of crafts, houses of national culture, the house of public leisure and other establishments, which occurrence in a number of areas completely itself has justified. Creation on the basis of club establishments and libraries, club establishments and museums cultural-information, or cultural and leisure centers is represented perspective. It is natural, that all work on reforming of the organization of cultural activity on village should be executed on places at a methodical management of regional bodies of culture without allocation of supplementary appropriation from the budget.

#### *6. End of market reforms in cinematography.*

By means of cinematography the private blessings purchasing social utility only in certain conditions and in concrete intervals of time are made and consumed basically. Taking into consideration all told above, and also with allowance for specificity of cinematography, stage-by-stage end of reform we see in a following kind. At the first stage it is necessary to finish to a total condition institutional modernization, having transformed all independent organizations attending to production, hire and demonstration of films in private enterprises. Simultaneously with it is necessary to create a nonprofit institution, for example, «Agency on production of national films» which purpose should become support of production and hire of national films. Similar to European councils on art (*The Arts Council*), carrying out «a policy of the extended hand», this organization should act as the recipient of budgetary funds and the organizer of

competitive procedure of their distribution between manufacturers of national films. Besides, it is necessary to reorient a little work and the existing **body which is responsible for social and economic support of cinematography**, having granted in its order a part of incomes of hire of foreign films, which it will direct on support (in the form of grants) national cinema. As a result of such institutional reforms the developed; market infrastructure including three basic branches of formation and distribution of financial resources of cinematography can be created, happy.

First, it is main «a market branch», serving on purely market basis production, hire and demonstration of films. Three basic sources of financial resources in this case take place: budgets of house economy (family budgets), credit resources of banks (loan proceeds) and money of the investors putting internal funds in production and hire of films.



Film production and distribution financing mechanism

Secondly, it is intrabranh «a redistributive branch», supplying redistribution of a part of incomes of hire of foreign films in favor of support of national cinema. Thirdly, it is the budgetary branch connected with realization «politicians of the extended hand», with allocation of budgetary funds to Agency on production of national films for their subsequent distribution between manufacturers and distributors national films). At the second stage, in process of development of a domestic cinema, promotion on complete power intra-branch «a redistributive branch» and more effective work of financially-credit mechanisms it is necessary to weaken «a budgetary branch», and it is essential to reduce budgetary support of a cinema. The system of financing, formation and distribution of financial resources in cinematography is represented in the form of the above-mentioned scheme.

## REFERENCES:

1. State budget Law of Republic of Moldova 2001-2007 (Legea Bugetului de stat al Republicii Moldova pe anii 2001-2007).
2. Law of Republic of Moldova nr. 1530 от 22.06.1993 (Legea Republicii Moldova privind ocrotirea monumentelor nr. 1530 от 22.06.1993)
3. Muravyov N. J. The forms and types of financing in the sphere of culture / N. J. Muravyov // Culture: governance, economics, law, 2004 .- No. 2 .- S. 42-44 (Муравьева Н.Я. Формы и виды финансирования в сфере культуры / Н.Я. Муравьева // Культура: управление, экономика, право, 2004.- №2.- С. 42-44)
4. Mustaphin N. Y. system services in the field of culture / N. J. Mustaphin // Culture: governance, economics, law .- 2004 .- No. 2 .- С. 44 (Мустафина Н. Я. Система платных услуг в сфере культуры / Н.Я. Мустафина // Культура: управление, экономика, право.- 2004.- №2.-С. 44)
5. Financial reports of some head of cultural sphere.
6. Directives and instructions of Minister of Culture of Moldova

# FAILURES OF GLOBALIZATION AND ANACHRONISMS OF GOVERNING

Ion Bucur  
Faculty of Business and Administration  
University of Bucharest

## ABSTRACT

Noticing the failures of the current globalization and of the corrupted governing system has changed the debates on identifying new and more correct management and governing forms, which could favor the speeding up of economic growth and the promotion of humanistic values.

The rhythms and sizes of the current globalization call for better assurance of a correct balance between market and the state, the capitalization of their adjusting potentials and reciprocal failure compensation. Also, the lack of transparency and of democratic responsibility imposes the reformation of the international institutional system's architecture and the promotion of economic policies systems that could ensure nations' prosperity and stability of the world economy.

**Key words:** globalization, worldwide governing, market fanaticism, market failures, emergent economies, democratic deficit

The understanding of the forces that influence the worldwide economy destined must be grounded on the economic and political actual realities. Today's economy is considerably different from the one existing at the end of the previous century. The world has become more and more independent from an economic stand point, and the worldwide system is liberalizing everywhere. On a worldwide scale, the contrasts are becoming more and more obvious, which increase the economic insecurity feeling. The forces rapport is modified on an international level and the market democracy is generalized.

Globalization represents the key to a better understanding of the recent economy's history. Along with the occurrence of a genuine global economy a vast debate was initiated regarding the future of globalization and capitalism. Essentially, such debate is not a matter of anti or pro globalization, but is closely connected to researches over the economic theory and values. Globalization is potentially a carrier of huge benefits. The main issue is represented by concretizing such potential and comparing the benefits with the costs implied by globalization.

The successes arising partially from globalizations are obvious, but so are the effects generated by inappropriate management of such: crises and recessions due to world economy instability, environmental degradation consequent to growth without worldwide rules and so on.

The manifestation of reticence regarding the current globalization is also due to the unjust nature of the game's rules mostly established by the developed countries. The current globalization process determines disequilibrium between countries and within such, tending to become morally unacceptable and insupportable from a political stand point. There must be also taken into account the fact that the economy is not a null sum game, and that the emergent economies' situation contributes to establishing and securitizing the developed world. The possibility of restructuring the globalization for the benefit of all

countries is closely conditioned by multiple improvements that are specific to its functioning and which could lead to sustainable, balanced and democratic development.

Concerns regarding the reconsideration of theoretical and ideological fundamentals of the current globalizations, as well as of the mechanisms of putting such into functioning, are grounded on strong arguments. Economic globalization advanced to political globalization, and defying and failures confronted by such severely affect world's political and economical stability. An in depth critical analysis of the current globalization's status was made by the economy Nobel awarded American economist Joseph E. Stiglitz, reputed theoretician and excellent knower in this area.

In his papers, largely published on an international level, complex debates are launched on the issue of reorganizing globalization, reforming economic policies and restructuring of the international financial system, as well as on ensuing a correct equilibrium between the public and the private sector. The specific problems regarding world governing, and the way in which decisions are made on an international level benefit of increased attention.

A critical analysis of governing functioning in a world of complex interdependencies emphasizes its non-functional nature. The existent tension degree and the incapacity of the current governing of coping with defies of globalization are clear proves of the inadequate nature and of the crisis faced by the world economy governing.

The adepts of current economic governing system's reforming also invoke considerate such as legitimacy, transparency and liability in the activity of international economic and financial institutions. Under such circumstances, the profound legitimacy crisis is noticed of the institutional collective action both on the objectives setting up level and of the ways in which decisions are made and applied. One of the most severe objections against the international economic institutions' functioning refers to the promotion of the same set of economic policies. Such universality claim ignores on one hand choice as an essence of the economic science, and on the other hand, experience, options and concrete conditions of each of the world areas and countries. The features of the economic policies system as recommended by the IMF are determined by their theoretical and ideological fundamentals, as well as by pursued interests.

IMF, the World Bank and the US Treasury have foreseen economic policies which are contrary to those used by the developed countries. The ideas of "market fanaticism" have influenced the fundamental strategy of development, as well as the crisis management and transition towards market economy as promoted ever since the 80s and sometimes referred to as "neo-liberalism" or the "Washington consensus". The principles of such strategy are grounded on a market economy theory implying perfect information, competition and perfect risk markets.



It is obvious that an economic theory's success is conditioned by the adopted hypothesis and by the degree of concordance with the existent realities. As a result of the progress registered by the economic theory in the 70s-80s, the limits of the market were emphasized and the possibility for such to function efficiently only under certain conditions.

The lack of significant economic growth and the persistence of the disequilibrium generated disillusion and the contextual degree of the "networks" provided by the international institutions the central objective of which was to reduce to a minimum the role of the state, privatization privileged position, free exchange and capital markets and deregulation.

The percepts of "consensus" are an eloquent proof that the economic policies are oriented by the free market ideology, idealizing the private sector and diabolizing the state programs and regulations (Stiglitz, 2003, p. 60). The liberalization of capital markets not only favored economic growth, but it also had a decisive contribution to creating an instable economic system. Traditionally, IMF has focused on inflation, however neglecting the necessary measures in the fields of unemployment or poverty. From its initial mandate, by which it pursues to finance the expansionist budgetary policies, a shift was made towards stimulating the credit policy towards the countries which promoted expenses contraction. As a result of the obsession regarding budgetary deficits, IMF imposed austerity budgetary and monetary policies, characterized by taxes increase, reduction of public expenses and increase of the interest rates. Qualified as "self-poverty" policies (Touffut et al, 2006, p. 192), the austerity policies had Keynesian economy acquisitions, which emphasized the contribution of state, by increasing expenses, reducing taxes and the interest rates, mitigating negative effects of recession. More recently IMF has rejected Keynesian policies in favor of pre-Keynesian prescriptions, focused on public deficits, increase of taxes and reduction of public expenses during recession. Such obviously represents the opposite of the solutions forecasted by the adepts of state's active role in preventing and mitigating the consequences of economic recession.

Rapid and profound changes characterizing the geo-political and institutional environment call for permanent adaptation of the governing systems to the new prerequisites. The configuration of the current world economic governing represents the consequence of the arrangements made after the Second World War and is dominated by a paradigm which is focused on international economic institutions and on national states suzerainty.

The weak points of contemporary economy governing are generated by numerous factors and multiple causes, manifested under the circumstances of new economic and social organization forms' occurrence, of modernized capitalism expansion and of the crisis faced by the current international economy order. The study of international institutions' governing emphasize the lack of adequate institutional structure, able to take over all functions transferred by national states, as well as the lack of adaptation of the institutions to economy's solutions.

The critics regarding the institutions for managing international common actions refer to two categories of aspects: lack of clearly defined mission which could be subject to a larger consensus; and the lack of politic capital and responsibility. The objective regarding global economic institution's democratization must be achieved under the context of reduced control placed over such by national states, given the fact that regulation national competencies are being transferred. In the conditions of globalization, the major economic governing institutions have increased their power and influence, which significantly diminishes the direct control from the states. Given the transfer of competencies towards international authorities, the demand becomes increasing for direct democratic representation.

Taking into account the numerous gaps in the current governing system and its inability of coping with globalization issues the need arises for urgent measures for strengthening the international governing community. The perspectives for reforming those international institutions which play a central role in the governing of world economy represent a major source of disputes. The specific globalization players place considerable influence over governing along with the new regulating bodies on a global level. New and important forces such as nongovernmental organizations are progressively manifesting. Along with public governing authorities new "private" authorities and associations are occurring on a global level. The occurrence of new worldwide authorities contribute both to increasing the number and complexity of the economic governing bodies, and to the setting in of new characteristics of the market regulation process. In the same time, the influence and power of "private" authorities are increasing given the occurrence of a new generation of collective players. In a wider sense, the private players contribute to designing, legitimating, implementing and controlling institutional norms that could influence the values promoted by economic globalization.

Recent developments in the field of international institutional system can contribute to the identification of new forms of a more just globalization, able to allow for the economic growth to speed up and for poverty to be reduced. The central reason for globalization failure is the way in which decisions are made on an international level. During the past decades an original system has developed for promoting international public policies, qualified as "global governing without a world government".

Most of the core world decisions are made in international economic institutions the main mission of which is to ensure world economy stability. As a result of recent developments, the idea has been increasingly admitted that a defective global governing system exists (Stiglitz, 2006, p. 29). The lack of transparency and legitimacy, as essential features of a democratic governing, represent a preemptory proof that fundamental ruled regarding the functioning of democratic public institutions are breached, as well as the mechanisms characterizing the current world economy governing. One of the main issues arising from less democratic and transparent institutions is the possibility of remedying the market's failures worldwide. The emergency of promoting reforms aiming to ensure more equitable globalization and governing is due to the complex political and economic mutations in the national and world environments.

The generalization of governing and public policy concepts over those of government and public economy means that the state's intervention is grounded on the articulation of numerous public and private players, although the state plays and important role. This symbiosis of the players in the governing process involves the mix of their functioning laws. Ensuring proper governing in the public sector involves associating public and private partners in the public goods production, which creates a new vision over governing, grounded on the culture characteristic to each national public production system. The de-centralization strategies play an essential role in respect with the governing and are not promoted as individual aim.

The reforms in the public sector and in the public management must be made upon the context whereas a new public institutional design is configured, allowing for the public and private mechanisms to be compatible in the very middle of public production. Some international organizations have supported the idea of "less government, more governing" for the very purpose of avoiding public intervention and of allowing for markets liberalization and for occurrence of foreseen outcomes. The theme of governing, ambiguous and differently perceived concept, according to national cultures, seems to underline the pertinence of such approach.

Grounded on the national and world realities in the field of governing, possible evolutions can be forecasted both from an institutional stand point, and in respect with the concrete manifestation forms. Hence, the idea has imposed that new governing institutions and control and regulation bodies should be established, as well as self-proclaimed governing forms (Attali, 2006, pp. 292-294). The occurrence of governing forms providing specialized assistance will be accomplished if governing itself will become a particularly profitable economic sector.

The idea of reforming the international economic institutions' architecture is grounded on the need of coping with the economic globalization defies, having generated a chaotic world governing system. Given the present context, it becomes more and more difficult to reach a just equilibrium between various national and world governing mechanisms, especially between market and the state. The contestation of the intellectual fundamentals of laissez-fair is more and more vehement. The increased fragility of the equilibrium between the market and the state has imposed the need for a new rapport between the local, national and world order.

The market-state dichotomy represents an abusive simplification, whilst a more realist vision is imposed over the state's role, the avoidance oppositions between different ideologies', market party-pries and the state. (Touffut, 2006, p. 128). The national state which represented the center of the political and economic power for over a century and a half is now at the confluence of world economy forces and political exigencies of power's evolution, although it does not represent the only means for public intervention. The idea is increasingly shaping that globalization enhances the need for powerful collective action. The argument according to which the state is ineffective by default is rather ideologically than scientifically grounded. Without specific state interventions and regulations, the markets cannot lead to

equilibrium and economic efficacy. The state and the market must cooperate, must complete each other, as the only way of ensuring reciprocal failures compensation. Activities exist in which the state can achieve better performances than the private sector. The conspiring against the public side must be replaced by concerns for revalorizing the two sectors and for making them to cooperate. Moreover, a new public-private mixture constitutes a real challenge for economic globalization.

The old forms of market-state dualism are under process of disappearing. Today, a certain conscience has developed over the market's limits, and the validity of the old general assertions over the efficacy of the market is severely contested. The economic doctrine of "market fanaticism", according to which markets spontaneously lead to equilibrium, is profoundly damaged (Stiglitz, 2006, p. 13). Alan Greenspan, one of the eminent champions of the market economy evoked certain turbulences regarding the "irrational exuberance" of the markets and the necessary conditions for ensuring their efficacy. The potential evolution of the markets depends both on the modifications in their content, nature and manifestation forms, as well as on the perspectives of public interventions. Tendencies are somehow contradictory. A regulated and global market will be achieved under the condition of states' "deconstruction" (Attali, 2006, p. 241) and of the progressive reduction of state's role. The victory of the market over democracy will create a new situation: a market without the state, although the need is recognized of regulation in order to ensure proper functioning of the market. In the same times, the markets will find new profitability sources in activities which are currently performed by public services (education, health care, environment, suzerainty). The role played by the state and the possibility for such to be harmonized with the market is modified in time, is different from one country to another and provides specific features to the economic governing mechanisms and forms. Capitalism has generated a variety of practices during the post-war period (Greenspan, 2007, pp. 267-294).

Realities and experience have demonstrated that no unique capitalism form exists, nor a single "good" way of administering the economy. Other possible efficient market economy forms also exist (Stiglitz, 2006, p. 16). The American model, deemed as the most dynamic and productive, is different from that of the Nordic countries, from the Japanese model or from the European social model. The American system is characterized by certain particular merits; however it is not the only one possible. Different models can be valid for different countries. The differences between the USA and continental Europe in respect with supporting competitive markets are obvious. The existence of profound cultural diversity makes it possible for a country to use its own capitalism version. The degree of risk acceptance represents a major characteristic contributing to the use of specific practices.

A recent survey shows that 71% of the Americans view the free market system as the most adequate one. Only 36% of the French think the same. Also, three quarters of the young French aspire to a governmental job, whilst a very small number of Americans have the same preference. The economic freedom index established for 161 countries in 2007 considers USA as the most "free" of the large economies. The idea of model universality and of potential convergence to a unique model has

generated controversies. For multiple reasons it is considered that at the beginning of the 21<sup>st</sup> century the diversity will persist of national capitalisms, and the tendency of lining up to the American model will exclude all existent directions, given the fact that the said model itself faces numerous evolutions. Under such circumstances, it becomes more and more possible for performance economic and social systems to exist open to globalization and to the new technologies and different for the features of the dominant model.

Practicing own capitalism versions does not exclude the occurrence of problems of general nature, affecting the basis of the system. Such danger is first of all due to excesses. Some of these challenges are the fact that the large enterprises reveal insolent profits, very comfortable wages for managers and distribute record dividends to shareholders. All these under the circumstances of lent or stagnating economic growth, increased relocations and ever growing unemployment rate. The increased vulnerability of the capitalist system is due to the domination of a short term financial vision in respect with “wealth creation”. However, the low term profitability obsession perverts the system and contains the grains of its very end, as it involves scarifying the future. This is about capitalism without a project, unable to avoid a new crisis (Artus, Virard, 2007, pp. 6-9). In order to avoid such faith, it is necessary to achieve profound reform of economic management and to impose new governing rules.

## **Conclusions**

Increased debates on globalization are justified by the need of evaluating its current stage and removing some myths and dogma around such controversial phenomenon. History demonstrates that globalization is not an unavoidable process and that it is of reversible nature, even though it is based on strong economic and political forces.

Such measure is grounded on the increased sense of distrust generated by inappropriate management of globalization, calling for sustained researches for mitigating market failures worldwide and identifying the solutions for a better functioning of globalization and governing. The difficulty is also amplified by the fact that economic theory and historic experience do not comprise enough clues regarding the reorganization and reforming of globalization.

In an era in which free market de-regulation and ideology have dominated the public arena, ensuring economic prosperity implies a realist vision over the state's role and its harmonization with the market forces, promoting economic policies systems able to provide stability and to contribute to the creation of new stronger economies and societies, in which humanistic values could prevail.

## REFERENCES

- [1] Stiglitz, J.E. (2006), *Un autre monde contre le fanatisme de marche*, Fayard, Paris
- [2] Touffut, J.P. et al (2006), *L'avancee des biens publics*, Edition Albin Mihcel
- [3] Attali, J. (2006), *Une breve histoire de l'avenir*, Fayard, Paris
- [4] Greenspan, A. (2007), *The Age of Turbulence. Adventures in a New World*, Penguin Bookd
- [5] Stiglitz, J.E. (2003), *Quand le capitalisme perd la tete*, Fayard, Paris
- [6] Artus, P. & Virard, M.P. (2007), *Le capitalisme est en train de s'autodetruire*, Editions La Deconverte, Paris

# **E-GOVERNMENT AND EMPOWERMENT: IMPACTS ON EQUAL ACCESS TO INFORMATION AND DEVELOPING PUBLIC LANGUAGE**

**Ali A. Pourezzat,  
University of Tehran, Iran**

**Mostafa Nejati  
University of Tehran, Iran**

**Mehran Nejati  
Yazd University, Iran**

## **ABSTRACT:**

Undoubtedly, e-government can accelerate the rate of information distribution, and add to the number of people who can access and apply the information. But, e-government may have both functional and dysfunctional affects on social justice situations.

Access to information can create many opportunities for better use of money, power, and knowledge. E-Government can act as a facilitator for equal access to information, and can empower people in all aspects of social arenas. But the question is, how poor people who do not have enough money, power, and knowledge can enjoy the benefits of e-government and its functional impacts.

The central premise of this research is that e-government can affect the public language. Language is the main channel for conveying and development of knowledge. No one can stop people from language benefits, because language belongs to all people, and it will convey information and its products to others. Therefore, the development of e-government language can make it beneficial to all people from different income levels.

In addition, governments must provide a situation that everyone can benefit from e-government. Because, in near future, information technology and e-solutions will become as the necessities of social life, and anyone who does not posses these skills, cannot continue to live within the society. In this article, e-government and its dual functional impacts, and its roles in developing public language and people empowerment will be discussed. Besides, the roles of governments in reinforcing equal access to e-governments benefits will be studied.

**Keywords:** E-government, Empowerment, Public Language

## **INTRODUCTION**

In order to empower people, there is a need for an approach which considers all people and their needs, in different eras and arenas. A good example for such a solution is language. Language has a public feature that enables it to be used by everyone. On the other hand, it seems that e-government and information technology creates a new language that will be opposed to next generations. As a result, the nature of poverty and wealth will change in future. Therefore, governments should pay much attention to this reality, and consider it in their public policies on development programs.

There is an idea that e-government transition can be accelerated when the public can speak the information technology language (Pourezzat, 2007). The development of IT language affects the public empowerment, and vice versa. So, governments should provide opportunities for more equal access to information through e-government, in order to empower their citizens.

## LANGUAGE, KNOWLEDGE, AND EMPOWERMENT

Knowledge has become the main source of power in today life. However, access to it, and its development greatly depends on the language and information processing. People should know the right language in order to acquire information and use it effectively as a way to develop new progress opportunities, and affect others. Empowerment is a process through which people gain a momentum to actively participate in different social life arenas, demand their own rights, use the opportunities to make progress, and develop their capabilities to acquire required knowledge. Empowerment means having the right and opportunity to select from among various options. That is, people can decide how to live.

Every decision making needs information, and e-government can facilitate access to it. Decision making can affect the success and failures of people in their lives and can result to their being poor or wealthy. Hong and Padney (2007, p. 27) research show that level of education, Job training, and health conditions affect the likelihood of being poor. Human endeavor in order to eradicate poverty and empower poor people has not been completely successful as it was planned. In analyzing and fighting poverty, the determination of causes of poverty is key (World Bank, 2000). It is not enough to find out who is poor, we also need to examine why they are poor. In order to determine the factors behind poverty it is necessary to examine in a more critical manner the nature of poverty. The concept of poverty is divergent in terms of its dynamics, intricacies, and definitions (Hye, 1996).

Poverty, the inability to attain a minimal standard of living, refers to forms of economic, social and psychological deprivation occurring among people lacking sufficient ownership, control over or access to resources to maintain or provide individual or collective minimum levels of living (Ullah and Routray, 2007). Major policy implications have been that solution to poverty is about changing the poor to be different and better in some ways (Hong and Pandey, 2007, pp.19). An aspect of poverty reduction embraces access to various social and economic facilities (Adarkwa and Oppong, 2007, p. 23).

It seems that planning for empowering people and reducing poverty, requires an alternative that is equally available for all people, and there is no discrimination in accessing to it. A phenomena like language. E-government can change the current language in all societies. This new language will function concurrently with all existing languages in the world, and no one can avoid people from using it (Pourezat, 2007). E-government enhances equal access to information and create new opportunities. It seems that e-government will become the main media means for communications of people to people (P2P), government to people (G2P), people to government (P2G), government to business (G2B), business to government (B2G), business to business (B2B), and government to government (G2G). Therefore, it is obvious that e-language and all other e-solutions will dominate the interaction of people, businesses, and governments.



ICT in public administrations combined with organizational change and new skills in order to improve public services and democratic processes, and strengthen support to public policies” (European Commission, 2003). Of course, e-government is a sword with two opposite functions; it can be used for both negative and positive purposes. If the public organizations tend to equality, accountability, and transparency in their decision makings, e-government leads to good governance (Pourezzat, et al, 2007). However, if public officials tend to force their decisions and deceive people, e-government may act as a dominating instrument (Morgan, 2006), which can make the situation more complex for ordinary people, and create new opportunities for a limited interest group to have control on all aspects of public life (Table 1).

**Table 1:** Functional and Dysfunctional impacts of e-government in social life (Pourezzat, et al, 2007)

Functional outcomes	Dysfunctional outcomes
<ul style="list-style-type: none"> <li>• E-Government can help to easier and better distribution of information to the public;</li> <li>• So, E-Government can increase transparency, answerability and accountability to the public;</li> <li>• So, it can lead to public participation;</li> <li>• So, it can lead to public maturity, voice and empowerment;</li> <li>• So, it can lead to autonomous poverty eradication in a holographic perspective.</li> </ul>	<ul style="list-style-type: none"> <li>• E-Government is a powerful instrument; so it can be an instrument for more intensive domination of the policy maker, and some interest groups;</li> <li>• So, it can increase the gap between different groups within the society in case of wealth, power, and consciousness;</li> <li>• So, it can increase the opportunity for rant and discrimination.</li> </ul>

So, e-government may lead to many functional and dysfunctional outcomes and impacts.

In fact, e-government can:

- Eliminate or reduce human intervention in policy making process;
- Facilitate the mutual interaction between nation and state;
- Act as an effective instrument for implementing public policy.

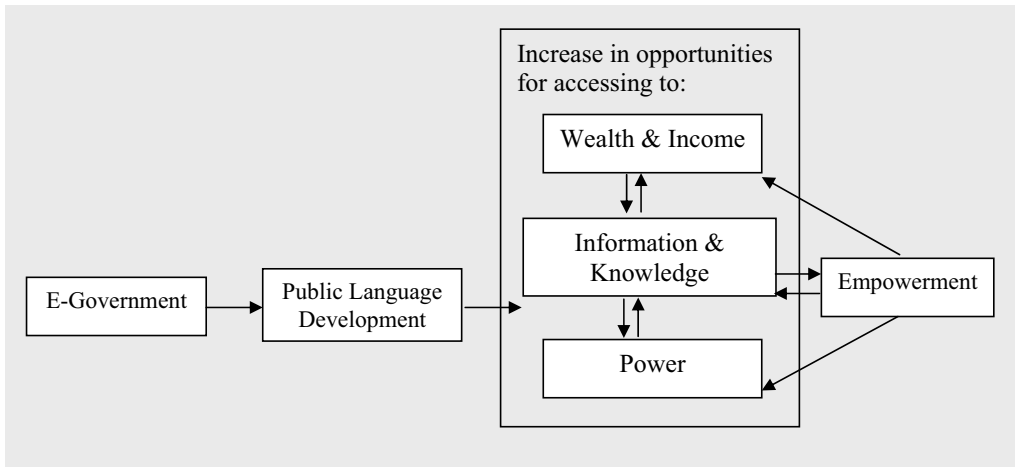
It also can:

- Become a powerful instrument for manipulating the information to the benefit of a limited interest group;
- Increase discrimination and differences in the society, if it is not properly managed.

It is important to consider that all the above functional and dysfunctional impacts happen through the language context.

## E-GOVERNMENT AND PUBLIC LANGUAGE DEVELOPMENT:

E-government will institutionalize the information technology language among people, because it will create a situation that people cannot live without using it. It will empower people for more equal access to wealth, information and knowledge, and power sources (Fig. 1).



**Figure 1: Impacts of e-government and empowerment on increasing equal progress opportunities through public language development**

Of course, governments must provide facilities for their nation in order to learn the IT language, and gain the related skills for using e-government opportunities. When the public language is equipped with the e-government literature, knowledge distribution will be equal and just. With developing the distributive justice in the knowledge development process, we can expect that information justice will be reinforced and the interactional and procedural justice in the interaction of people and government will be realized. E-government will create an opportunity for empowering the public, because everyone will then have access to its language and can use it effectively. Therefore, information discrimination will fade away, and opportunities will be available to more people. It is expected that governments use this phenomenon and enhance the life quality of their people.

## CONCLUSION

Despite its functional and dysfunctional impacts, e-government is becoming a widely used means in today's life and people will need to be capable of challenging its features, in order to have a successful life. As a result,

governments should provide an opportunity for their citizens to learn this language and apply it effectively in their lives. Distribution of social opportunities through language is consistent with justice-oriented purposes, because it is available to all people, and no one can stop other people from accessing it. Therefore, if social justice is realized through development of public language, there is more hope for it to be ongoing, and lead to public excellence.

The authors hope that with the development of e-government and its accessibility for everyone, poverty will eradicate from the human life, so that poverty will become a history, and only can be found in the conceptual museums without any fact in our real life.

## REFERENCES:

- [1] Adarkwa, K.K. and Oppong, R.A. (2007), "Poverty reduction through the creation of a liveable housing environment", *Property Management*. Vol. 25, No. 1, pp. 23.
- [2] Burn, J. and Robins, G. (2003), "Moving towards eGovernment: a case study of organizational change processes", *Logistics Information Management*, Vol. 16 No. 1, pp. 25-35.
- [3] Churton, M. (2000), *Theory and Method*, MacMillan Press Ltd.
- [4] Hong, Y.P. and Pandey, S. (2007), "Human capital as structural vulnerability of US poverty", *Equal Opportunities International*, Vol. 26, No. 1. pp. 19, 23, 27.
- [5] Hye, H.A. (1996), *Below the Line: Rural Poverty in Bangladesh*, Chapter IV, University Press Limited, Dhaka, p. 112.
- [6] Morgan, G. (2006), *Images of Organization*, updated Edition, Sage Publications, pp. 291-329.
- [7] Mutula, S.M. (2006), "Freedom of information in the SADC region: implications for development and human rights", *Library Review*, Vol. 55 No. 7, pp. 441-7.
- [8] Pourezzat, Ali (2007), *Fundamental of Knowledge on Public Administration & Government*, Tehran: SAMT, (Under publication-in Persian).
- [9] Pourezzat, Ali A., Nejati, Mostafa (2007), "Truth-oriented justice and the Millennium Development Goals", *Proceeding of Justice and Social Security Congress*, Social Security Research Institute (SSRI), Social Security Organization (SSO), Tehran, Iran.
- [10] Pourezzat, Ali A., Nejati, Mostafa, and Nejati, Mehran (2007), "E-Government & Public Policy for Poverty Eradication and Empowerment", *Proceedings of 5th International Conference on E-Governance (ICEG2007)*, Computer Society of India-Special Interest Group on E-governance, India.
- [11] Ullah, A. and Routray, J.K. (2007), "Rural poverty alleviation through NGO interventions in Bangladesh: how far is the achievement?", *International Journal of Social Economics*, Vol. 34, No. 4. pp. 237.
- [12] United Nations (2007), *The Millennium Development Goals Report*, New York.
- [13] World Bank (2000), *World Development Report 2000-2001*, World Bank, Washington, DC.

# ENHANCING QUALITY AND SAFETY MANAGEMENT IN SHIPPING: TANKER MANAGEMENT AND SELF ASSESSMENT

Fatih Turker

Istanbul Technical University/ Maritime Faculty  
ITU Maritime Faculty 34940 Tuzla- Istanbul TURKEY

Assoc. Prof. Dr. Ismail Deha Er

Istanbul Technical University/ Maritime Faculty  
ITU Maritime Faculty 34940 Tuzla- Istanbul TURKEY

## ABSTRACT

Shipping industry is governed by a multitude of statutory regulations that support ship safety and pollution prevention efforts at both national and international level. However the studies and experiences show that without “embedding the safety, quality and maritime environmental protection culture” with in the company, external audits can have a limited effect on the ship’s safety and prevention of pollution. Tanker Management and Self Assessment (TMSA) is a guideline to measure and assess tanker operators’ management system developed by Oil Companies International Marine Forum (OCIMF). This study focuses the objective and scope of the TMSA by defining its objectives and benefits while arguing its impacts on the overall performance of tanker operator companies.

**Key words:** Safety &Environmental Management, Quality Management, Tanker ship,

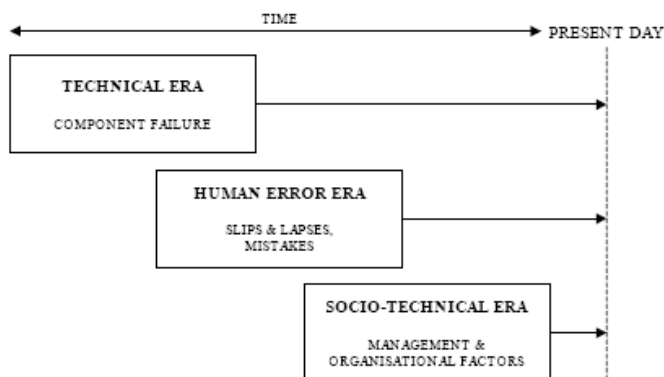
## 1. INTRODUCTION

Shipping industry is governed by a multitude of statutory regulations that support ship safety and pollution prevention efforts at both national and international level. However the nature of the shipping business allows companies to carry the flag of the country which best fits to the companies objectives. While some of the flag authorities pay utmost attention to the performance of their registrated vessels in the name of safety and environmental consciousness; some other, which are generally called as “flag of convenience”, approach the problem as a more “business” way. According to the OECD the percentage of sub-standard ships in the world commercial fleet is estimated to be between 10-15% (Peijs, 2003). The maritime industry solution to this problem is represented by the vetting inspections which are performed on oil tankers, chemical tankers and bulk carriers. The vetting inspections create a strong commercial incentive for the ship operator to comply to the vetting inspection requirements since the outcome of these inspections will determine if the ship gets cargo or not. This lack of trust in the maritime industry among all the industry organizations, stakeholders and regulators has created an inspection industry which is heavily controlled by oil majors in order to limit their liability. Therefore inspections can be classified under six terms. These are (Knapp and Franses, 2006):

- ISM and ISPS audits due to statutory requirements and which are still sometimes performed by the flag states but most of the time also delegated to recognized classification societies.
- Port State Inspections

- Classification surveys on behalf of flag states and to remain in class
- Insurance companies such as P&I Clubs for insurance coverage purposes.
- Industry inspections such as vetting inspections performed on oil tankers, chemical tankers, gas carriers and bulk carriers on behalf of oil majors or other cargo owners or on behalf of the ship management. These inspections can be listed as CDI, OCIMF/SIRE, Rightship, and Oil Majors.
- Commercial incentives: These inspections are on request of the ship operator in order to obtain a quality certificate which will then help in obtaining commercial incentives.

However the studies and experiences show that without “embedding the safety and maritime environmental protection culture” with in the company, external audits can have a limited effect on the ship’s safety and prevention of pollution caused by shipboard operations. The safety concerns can be classified under three ages as interpreted by Reason (1991) (Fig. 1). First, the focus was on technical problems, and this still has its place. However, as technical systems became more reliable, the focus turned to the human causes, and many accidents were blamed on individuals directly involved in the operation. More recently, major accident investigations like Piper Alpha have recognized that the root causes of failures of equipment and operators lie deeper in the organizations’ safety management and safety culture (Department of Energy, 1990).



**Fig.1. Three Ages of Safety Concerns (Reason 1991)**

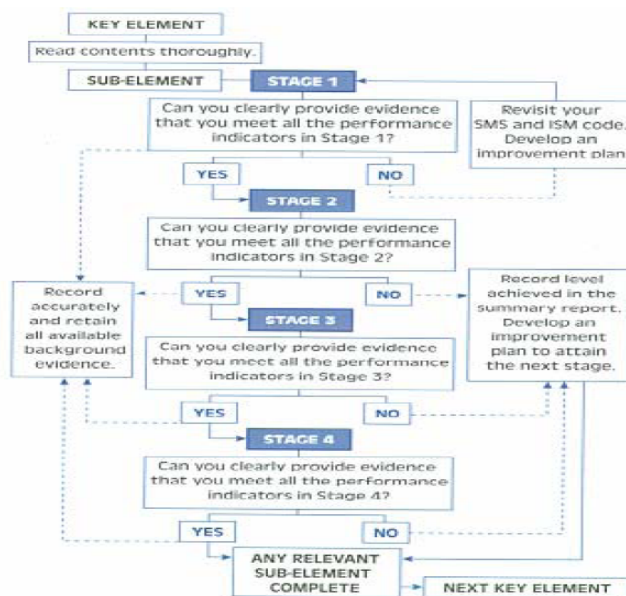
In scope of this idea, in 2004, Oil Companies International Marine Forum (OCIMF) published its best practice guide for “Tanker management and Self-Assessment” (TMSA).

## 2. REQUIREMENTS OF TMSA

For almost two decades the International Safety Code (ISM code) and the Ship Inspection Report Program (SIRE inspections) are in place. However the industry saw that there is a need for more safe-guards for vetting and chartering above the both ISM and SIRE. This need arises from the criticism that the requirements of the ISM code are not applied properly by tanker operators.

Indeed it was felt that it had gone the same way as the STCW Convention where every country managed to be on the white list (IMO, 2007). Another criticism is that the SIRE inspections become very subjective because of the nature of the inspection. Moreover, as Parker (2001) mentioned, SIRE inspections could overlook important defects in the system.

In this respect TMSA is aimed to be the alleged solution to the ills of the system, which has managed to circumvent the spirit of ISM and the uncertainty of data presented by a SIRE audit of finite and limited nature. The TMSA program propose to achieve this by providing clear-cut criteria to tanker operators, which are to be self-assessed by the operators and by presenting their findings to OCIMF for its inspection and scrutiny. Help is provided to the operators through Key Elements, the Aims of such key elements, the guidance notes, the Key Performance Indicators (KPIs), and Best-Guidance Practices (OCIMF, 2004). To evaluate the progress of the tanker operator the program identifies 4 “stages”. Every tanker operator is to report to OCIMF his “progress report card” on the “stage” reached by him on a progressive basis. The reports are to be continuous, to be updated whenever the operator achieves a higher stage level. Figure 2 illustrates a typical flow chart of a key element implementation through the management system where as serves as a guide for the progress (OCIMF, 2004).



**Fig. 2. Measurement-process flowchart (OCIMF, 2004)**

The report thus generated is to be an indicator of where the tanker operator stands with respect to the OCIMF guidelines on TMSA. OCIMF admits that these guidelines are to be reviewed and updated by it on an on-going basis.

## 2.1 Elements of TMSA and their interpretation

The TMSA guidelines define 12 principles or key elements of management practices. These elements provide a checklist approach for ship operators who are aiming to achieve safety and environmental excellence. The elements define the objectives and key performance indicators required to meet the main objective of the element and guidance on how the objective should be achieved. The key elements under the TMSA program and their main objectives are:

**Table 1: Elements of TMSA and their main objectives**

Elements of TMSA	Main Objective
1. Management, leadership and accountability	Provide direction and clearly define responsibilities and accountabilities at all levels within the organization.
2. Recruitment and management of shore-based personal	Ensure that fleet is supported by competent shore-based staffs who are committed to a high standard of fleet management.
3. Recruitment and management of ships' personnel	Ensure that all ships in the fleet have competent crews who are capable of working as effective teams.
4. Reliability and maintenance standards	Establish maintenance standards so that all ships in the fleet capable of operating safely without the risk of an incident or detention.
5. Navigational safety	Establish and consistently apply navigational practices and the bridge procedures in line with regulatory and company policies.
6. Cargo, ballast and mooring operations	Establish and consistently apply planning and operational practices and procedures that support regulatory and company policies.
7. Management of change	Establish procedures for evaluating and managing changes to operations, procedures, ships' equipment or personnel to ensure that safety and environmental standards are not compromised.
8. Incident investigation and analysis	Use effective investigation, reporting and follow-up methods to learn from significant near misses and incidents, and thus prevent recurrence.
9. Safety management	Develop a proactive approach to safety management, both on board and ashore, that includes identification of hazards and the implementation of preventive and mitigation measures.
10. Environmental management	Develop a proactive approach to environmental management that includes identification of sources of marine and atmospheric pollution, and measures for the reduction of potential impacts, both on board and ashore.
11. Emergency preparedness and contingency planning	Establish an emergency-preparedness system and regularly test it to ensure an ongoing ability to react effectively to an incident.
12. Measurement, analysis and improvement	Establish and implement appropriate measurement and feedback processes to focus on and drive continuous improvement.

If the above elements are analyzed, it more or less reflects the objectives of the ISM Code. But the difference between the TMSA and ISM Code show its self

upon guidance where TMSA not only provides the objectives to be achieved but also gives detailed guidelines through key performance indicators to achieve them. These guidelines are not vague but quite certain, almost leaving any room for possibilities of circumventing them.

In fact operators, who have implemented ISM, in its true spirit, will find at least the first 2 stages of the program very parallel to their current ISM applications. Stages 3 and 4 of some key elements require a certain degree of planning, restructuring and/ or remodeling of the Safety Management System (SMS) of the company. However the need for supplementing ISM Code and SIRE inspections guide through TMSA indicates that it is not going to be easy to implement the TMSA requirements for the operators who do not internalized the ISM Code within their management system. Further more stage 4 is not the ultimate objective because continual improvement is the very foundation of TMSA.

To achieve the objectives of an element in the TMSA, program defines key performance indicators (KPIs). The KPIs within the elements help ship operators to drive their continuous-improvement programmes. Operators can use their own assessment as a stand-alone lever for improvement, or combine it with the tools they currently use for developing and improving their management system. In either case, the feedback should provide operators with a clear, objective picture of their performance. This will help them to identify gaps and will provide a focus for planning closure and future improvement

## **2.2 Objectives and Benefits of TMSA**

A bit misleading in name, the TMSA tool is in fact a quality management system standard. It is felt that operating tankers only in accordance with an ISM Code-defined safety management system is not sufficient. The TMSA takes the approach of the ISO 9001:2000 Quality Management Systems Requirements and promotes continual improvement of processes through the Plan-Do-Check-Act cycle which is also know as the Deming Cycle(Simsek,2001). In this respect the TMSA addresses issues beyond those required by the ISM Code. These issues can be summarized with the following concepts:

- The use of performance indication (benchmarks) to measure progress – approximately 250 performance indicators have been documented in this guide;
- Significant emphasis on leadership (the role of top management);
- Significant emphasis on the recruitment and maintenance of shore-based staff to including retention benchmarks;
- Significant emphasis on environmental policy and management – stating and pursuing objectives to reduce pollution – eventual attainment of ISO 14001 accreditation;
- A controlled management of change process;
- Formalized (documented) risk assessment programs;
- Formal navigational audits by the master of the ship; and
- Greater emphasis on feedback mechanisms, to specifically include the customer.



On the other hand the TMSA quality system initiative provides several benefits to tanker operators who promote safety and quality. The benefits of implementing such a system for a tanker operator can be namely:

- Key Performance Indicators – examples to incorporate as specific results to measure;
- Goals by way of Best Practices – established for each stage of implementation;
- Directly addressing leadership – one of quality management principles;
- Compelling operators to establish benchmarks and measure the results of important activities;
- Directing your organization based on factual information, the result of measurement and analysis; and
- Allowing each OCIMF member to charter from those operators who excel in safety and environmental practices.

With regard to the continues improvement goal and the need of clear-cut criteria's to achieve safety, quality and environmental excellence, the objectives of the TMSA can be identified briefly as:

- To make a standard framework for assessments of the operators management system and to be able to do this in a consistent way.
- To ensure effective strategies and provide clarity in the company's policies, its purposes, processes roles and responsibilities and to ensure that these systems are implemented and known throughout the ship operator organization in every level.
- To make systems to achieve the organizations objectives by consistent implementation of all the plans.
- To check, to evaluate and to create feed back systems from results obtained.
- To define targets and focus the efforts on areas where maximum benefits and improvements can obviously be obtained.
- To reduce the risk of incidents and accidents involving; threat to human life, the environment, the cargo and the ship and her equipment.

### 3. CONCLUSION

Most of the tanker industry shares the legislators' objectives of achieving a safer and cleaner world. The industry should be in the business of constantly improving safety and efficiency systems rather than trying to keep one step ahead of the game by finding loopholes and clever tricks around the legislation. It is not the threat of punishment, which should drive the industry to achieving higher standards, but a genuine desire to work as a responsible industry.

TMSA could well prove to be an excellent example of this being put into practice. Allowing a tanker operator to assess how good they are and then tell their customers, is fundamentally a good system as it pushes the responsibility for making sure that the ship is safe into the operator's hands. Vitally, it is not a system, which is based on a vetting inspection which just takes a momentary snapshot of the ship. TMSA goes beyond this and takes a look at the most

fundamental aspect of running a good ship – its crew, their training and continuous improvement practices. Besides the objectives of TMSA are indeed lofty such as, Incident-free operations, Improved management systems, Best practices transferred across the fleet, Feedback and easy access to the charterer on performance of operator, No-Blame culture and Continuous improvement in standards, to list a few. Therefore Tanker Operators will notice that TMSA, though in the same mould as that of ISM Code, is different, living and evolving.

## REFERENCES

- [1] Cowley, J., 1995, The concept of the ISM Code. In Proceeding of management and operation of ships: practical techniques for today and tomorrow ( pp. 24 – 25). London: The Institute of Marine Engineers.
- [2] Department of Energy (1990). The public inquiry into the Piper Alpha disaster, London: Department of Energy.
- [3] IMO,2007, Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended, confirmed by the Maritime Safety Committee to have communicated information which demonstrates that full and complete effect is given to the relevant provisions of the Convention, MSC.1/Circ.1163/Rev.2, [http://www.imo.org/includes/blastDataOnly.asp/data\\_id%3D18788/1163-Rev-2.pdf](http://www.imo.org/includes/blastDataOnly.asp/data_id%3D18788/1163-Rev-2.pdf).
- [4] Knapp, S. and Franses, P.H, 2006, Analysis of the Maritime Inspection Regimes, Econometric Institute Report, Erasmus University, Rotterdam.
- [5] OCIMF, 2004, Tanker Management and Self Assessment, OCIMF Press Ltd., London.
- [6] Parker, C.J., 2001, Shipping and the human factor, Seaways, The Nautical Institute, 11, 4-8.
- [7] Peijs, K., 2003, Speech at Mare Forum, Amsterdam.
- [8] Reason, J. (1991), “The Reliability of Management in Decision Making”, Seminar Reliability, The Risk of Management, IMechE, London.
- [9] Şimsek, M.,2001, Toplam Kalite Yönetimi, Alfa Yayınları, Istanbul.

# A MULTIVARIABLE SYSTEM BASED APPROACH FOR PROCESS IMPROVEMENT IN BID MANAGEMENT

R S Bharat Chandran  
Member, IEEE, India

## ABSTRACT

This paper presents a control system based approach on bidding process for winning business deals, which make use of a basic non linear model formulated with the steps involved in common bidding scenarios in the present industry. This system will follow an error-correcting mechanism for creating proposals which will result in successful business contracts. The input-output feedback system will assist us in predicting, identifying and fixing the issues, based on a priori information and optimize by itself giving better results for increased usage. Modules can be defined and integrated to the system by following a standardized architecture. This will pave the way to provide a system which helps bid/proposal managers for achieving high win rates, as well aid the organization to monitor, measure and improve process performance using the feedback mechanism.

**Key words:** Bidding process, Proposal management, Process improvement.

## 1. INTRODUCTION

In 1911, Frederick Taylor, father of scientific management proposed several methods to increase the worker productivity. Since then, researchers are trying to apply scientific methodologies to management in varying fields of interest [1-5]. A typical example is the application of the concept of control systems, which is a methodology commonly used in electrical sciences, in management systems [6]. A control system is a set of devices to manage, command, direct or regulate the behaviour of other devices of the system. These set of devices act together to maintain the actual system performance close to a desired set of performance specifications. A control system can be one which controls the output of another system. Control is a process by which a system is modulated, controlled, or changed depending upon the output, or response it produces.

In a management system, if the manager needs to achieve a target, his team should be aligned accordingly to reach the specified goal, for which he needs to monitor and regulate the performance of each team member [7]. Here the control system acts such as to align the team and control the team to get the optimum performance and reach the target in a short time with the best output.

Study of control systems is a wide branch in science which deals with system performance characteristics and improvement strategies for each of those. A very basic system will consist of an Input and an Output, i.e. Single Input- Single Output (SISO) system. In control system language, the system to be controlled is called the process or controlled system, which is having a command following nature, wherein the controlled attribute (output) follows a given command (input). Thus a control system can be considered as a regulator, where the command input is the desired value of the controlled output and is processed within the system (regulated) to achieve the optimal output. Systems can be broadly classified as Open type and Closed type. Output of open type system will

be affected by corresponding input and the system parameters. While in the case of closed type system there a feedback exists from the output to the input. A portion of the output of a process or system is returned to the input, especially when used to improve performance or to control the system or the process. The return of information about the result of a process or activity is an evaluative response. In feedback systems another variable, the error or manipulated variable is used to realize a prescribed accuracy and adequate stability for the system. Feedback is a process in which a system regulates itself by monitoring its own output. That is, it “feeds back” a part of its output to itself. For example, in a water tank level controller, the water level is detected (the output variable) and is used as the feed back variable which is compared with a set level and an error signal (deviation) is generated. This error signal is made use of by an on-off controller which controls the system to avoid tank overflow.

Management control systems are used to provide information to managers which help them in achieving their goals and to assist the organization in developing the strategic planning and maintaining operational control. In such systems feedback is inevitable for progress [7-9]. For achieving any goal one has to know where he stands and then plan accordingly to reach the goal. No matter whether in the planning or the execution stage only corrective action will assist improve to get better. This corrective action would be a result of feedback, which will essentially show the deviation from the expected outcome. If a system is defined to achieve a set of goals, we need to walk through the system and measure its performance based on the actual and expected results. Here, the control action will be decided based on the deviation parameters between the actual and the expected values. This deviation parameter can be called as the learning from the present system. This learning will contribute to the improvement in the next version of the system or even the inputs may be modified to achieve the expected results. The “feedback” in a management control system is any response or information about the result of a process.

From the feedback when a discrepancy or error is noted, the initial step is to determine whether to take an action for that corresponding variation or not. This decision of ‘action’ or ‘no action’ is decided by the controller. Is the error too small to act on or is it too large to be raised as a red flag to the system? This decision making process is entirely depended on a controller or a set of controllers. A manager in a small project based system can be considered as a controller for that specific project. He would be having enough information about the system and would also be having a clear idea about the expected output from each of the resources in his team. He would try to give inputs to the team members who are not approaching to his expectations (or set targets) and motivate them to reach up to the expected level. Here, the manager (controller) monitors a team, gives suggestions (feedback) to his team members and tries to motivate (error correct) them to achieve the desired target (expected output).

The idea of creating similarities between inanimate mechanical control systems and humans might not be pleasing for many. Sir Geoffrey Vickers [10] says “In the days when our minds were dominated by mechanical analogies, industry was

inclined to think of men as cogs in a machine. It is probably no less misleading to think of them as relays". Even though, humans cannot be considered as just machines or relays, it is required to have a control mechanism to ensure the improvement in performance.

To complete any task and to achieve desired targets we follow a process, which will eventually be the modification of system parameters which assists in modifying the input to reach the expected output. The process should be defined to make the tasks simple and effective and to get the desired measurable performance. Measuring and monitoring of the process makes it easy and simple to make sure that the tasks are done according to the defined set of protocols. These protocols are defined in order to break the complex steps into simple ones and easy to understand. Having smaller modules will make the complex system functionalities straightforward especially at the time of troubleshooting.

Initially, Bid Management was widely used in the civil engineering industry for high valued deals for contractors [11]. Now, managing bids is very crucial in the IT service industry [12]. For large deals which involve multi-domain requirements, we need to have wide spectrum of expertise. Managing a team of specialists starting from sales till the delivery and producing a winnable bid out of it is not an easy task [13].

In this paper an attempt is made to apply, a methodology based on conventional feedback control systems to Bid Management process. Section 2 describes the bid management process in general, and its model. In Section 3 the concept of feedback control system is introduced and the bid management model is considered as a typical feedback control system. Section 4 deals with the system input variables and Section 5 is devoted for the error correcting mechanism and the process automation. Section 6 gives the simulation studies along with system performance improvement criteria and Section 7 is the concluding remarks

## **2. BID MANAGEMENT PROCESS**

To make successful business in a competitive environment outstanding skills and experiences are required. Active bid management helps an organization in determining whether bids lead to successful deal, creating return on the investment by closely observing the customer requirements [13, 14].

Bidding performance can be improved by: (i) Assessing the approach to major opportunities to establish what works well and what needs attention. Here the priority is to maximize early returns on investment satisfying the customer requirements. (ii) Implementing a structured bid management method that suits the organization's needs and (iii) Helping to decide what to bid for and what not to bid for (qualifying).

A very basic model for Bid Management process will involve the following steps.

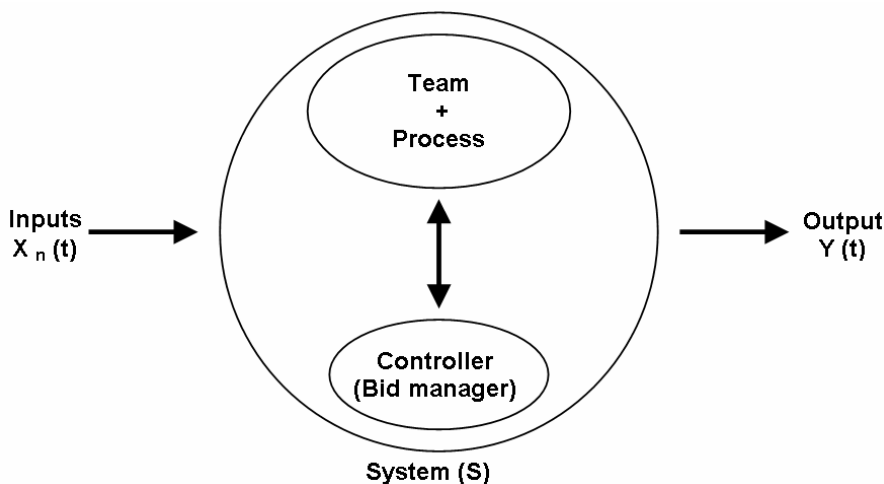
1. Qualifying the Request For Proposal (RFP)/ Request For Quotation (RFQ)
2. Identifying the team and Assigning roles and responsibilities

3. Planning
4. Preparation - Generating the content Compiling Building
5. Reviewing
6. Submitting

Bid Management system maps the conventional Multiple-input and single-output (MISO) model. The key input for the Bid Manager is the Request for Proposal that he would get from the customer; along with the target date for submission and other specific requirements mentioned in the RFP. The output that a Bid Manager needs to produce is a winnable proposal/ bid within this stipulated time defined by the customer. The Bid Manager needs to feed in the input to the system which comprises of specific set of process and people, whilst he himself is a part of the system being a controller. In Figure 1, this concept is shown as a block diagram for bid management system. The variable notations used are:  $X_n(t)$  is the inputs to the system which includes RFP document in the time domain, sales inputs, etc.  $S$  is the system; including the Bid Manager; team and process and  $Y(t)$  is the output bid document ready at the expected time.

For every system there exist variables and constants. An attempt is made to define the corresponding constants and variables very broadly in the system under consideration. The constants are mostly the dead line limits specified by the customer and the process stages, which is unlikely to vary in most circumstances. The variables include the bid team (resource), team member response, and content for the proposal (text document), process parameters, strategy, and decision makers. The Bid Manager, the controller of the system, is responsible for handling the variables in an efficient way to produce the best results in all situations. All the above said variables need to be aligned towards producing the best results (excellent proposal) which requires efficient co-ordination and decision making skills.

**Figure – 1:** Model for a bid management system



## **2.1 Defining System**

The expected outcome for any bid is the state of 'win' and that end result can only be achieved after submitting the bid. There arises a question on how do we include the measure of winning a bid, proactively. We try to model a system which will invariably include the parameters learnt from the previous action (previous similar bid submission) and map those learnings to decide on the output action. Here we do a walk through the defined system, with a set of error corrected parameters to ensure the success rate and minimise the weakness or chances for losing. Let us consider the following system for the present study. System constants are Time/Process steps, system variables include people and process parameters, the controller is the Bid Manager, process parameters includes proposal structure, strategy, solution for the requirement, planning. Inputs to the system are customer document, sales representation inputs, senior management inputs and the output variable is the winnable appealing proposal.

### **2.1.1 System performance**

The inputs are fed on to the variables and are controlled by the controller to ensure a smooth process. The process is initiated by a set input, the controlling processes monitor the results of the executing processes, assign appropriate resources, and define strategies which are then used by the planning and executing processes. The results of the executing processes are feedback to the controlling processes that adjust the resources and the strategies to optimize some assigned criteria like optimal resource allocation, minimum time delivery, "Just in time" delivery, and minimum cost [7]. The constants are maintained as it is and the variables are made to work out in a way to reach the target. For example the competitor analysis report given by the sales representative is an input which plays an important role in the strategy development for winning the deal. Once the outputs reach a level of defined satisfaction, the process is concluded.

## **2.2 Defining the role of Controller**

The role of the controller (Bid manager) varies from organization to organization. The duties of a controller, at one end of the scale must be largely an administrative and logistical one on the other, can be the combination of that of sales, delivery and project management. The key element of successful bid management is proper planning. This does not mean that the production of complicated network diagrams or highly detailed micromanagement plans are required. The bid environment can be highly changeable, the client may request a new requirement and may be included at some stage or sales may identify a different approach by which, requires the work to be reviewed and so on. In a feedback system, the controller will be updating the plan according to who does what, when and where? Figure 2 shows the block diagram of a feedback control system.

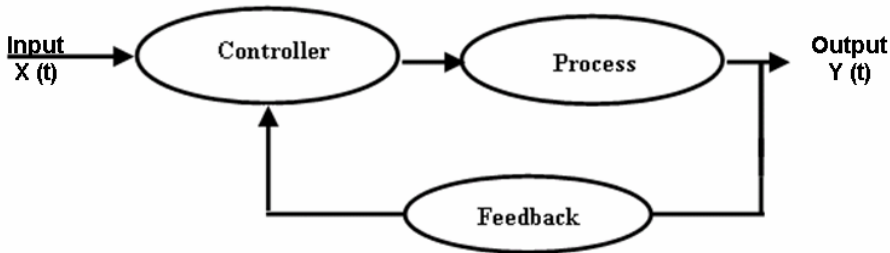
## **3. SYSTEM WITH FEEDBACK**

In a BM control system, the feedback variables are obtained from three sources. They are (i) internal reviews, (ii) external reviews [15] and (iii) benchmark results.

### 3.1 Feedback from internal reviews

These include the feedback obtained from reviewing the proposed bid, proof reading and editing done by the bid team itself. The frequency and time of the feedback depends upon the nature of the bid, skills of the team and requirements of team. Such feedbacks act as a part of the process of refining the bid. Sometimes this is just checking the clarity of what is written against the overall strategy for winning the bid. In some other situations feedback will be based on a full review by the team and the controller (bid manager) need to plan, organize and act according to this feedback for a winning deal.

**Figure – 2:** The block diagram of a feedback control system



### 3.2 Feedback from external reviews

The external feedback arises from a condition, when the bid is reviewed by a separate review team. The external feedback ensures that the content of the bid is correct that there is a feasible solution behind the bid. The external review acts as a quality control on the process rather than a proof reading as done by the team members. The external feedback obtained will have an active part on developing a bid. The advantages of such a feedback mechanism are: (i) An independent opinion on the team's ideas are obtained, (ii) New ideas will be suggested by the review team, (iii) The quality assurance role helps eliminate mistakes and misconceptions and (iv) Thought process from a customer's point of view also may be involved

### 3.3 Feedback from benchmark results, sales strategies and competitors

The results of similar projects which were successful, will be considered as some bench mark results for a new one. Such comparisons will help in proceeding through a right path. Other important factors are, know much about the customer from the sales team, collect key points from the sales strategy for winning the bid etc. Based on these important feedback criteria, plan the process in terms of who does, what and when.

## 4 SYSTEM INPUT VARIABLES

Being a multi input system, there will be more than one input which is equally important for the system. The major inputs for a BM control system are the customer document and the sales representation. Figure 3 gives the over all idea of the variables involved as input, output and system variables for Bid management model based on feedback control system



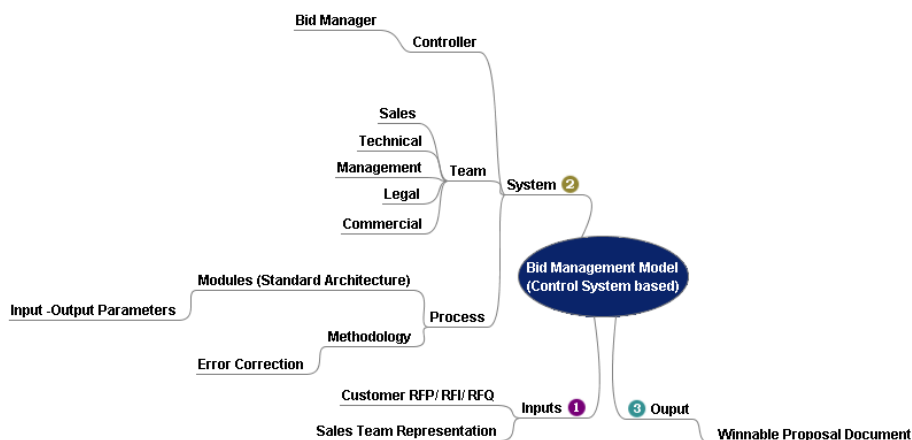
#### 4.1 Customer document

Customer document is the available bible for the bid, if in case many inputs are not available from the sales team. But in most practical cases customer document alone will have a meagre chance in achieving a good end result. This input will typically be containing the specifications of the requirement along and their expectations from the vendor. This input (document) is fed to all the team members and they will respond to their own respective sections. Broadly, following are the important parameters that accompany this input: technical requirement, legal and commercial, important dates (submission date) and the format of the proposal copy.

#### 4.2 Sales Representation

This is the most crucial input for any deal. The chance for winning is proportional to the information that the sales team carry in particular to each bid. The key parameters for this input will include (i) The Customers requirements (ii) Known Competitors and their details and (iii) The expected gain for the organization and the customer.

**Figure – 3:** Input, output and system details for Bid management model based on feedback control system



### 5 ERROR CORRECTING MECHANISM

Error occurs when there is a variation in the expected result from the actual or desired result. Errors can happen at any stage which includes input, output or inside the system parameters. The total error can be given as

$$TE = X(e) + Y(e) + S(e)$$

Where  $X(e)$  is the error in input parameters,  $Y(e)$  error in output parameters,  $S(e)$  is the error in system parameters. An error in any of these three parameters will add up the total error which will result in increasing the chances of losing the deal. Error inside the system can be due to any of the following parameters:

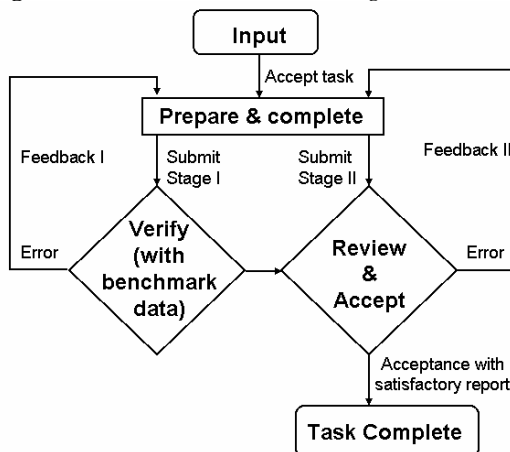
- (i) Insufficient Input parameters (ii) Lack of clear understanding of customer requirements or deviations from the requirement mentioned in the RFP and the understanding – RFP (e) and (iii) Deviations from the actual details & the details presented by the sales team – ST (e)

When the system nonlinear components are considered, the error in the model can be given as error involved in constants which occur in the time/ process steps, in variables, where people are involved, and in the process parameters and controller which arises due to the inadequacy of the Bid Manager.

## 6 SIMULATION STUDIES

Self learning methodology incorporates the error correction method which practises on the existing benchmark data (if in case it is available) and generate the set point parameters. These parameters can be generated using the simulation studies and it will again feed in as another input for the system. So, if an opportunity comes up for delivering a network implementation and if we have lost similar opportunity in the past, we can use the acquired knowledge (simulation) from the benchmark data and arrive at a best result in decision making/ strategy development. The key output from the simulation studies is the correlation report from the events happened already which resulted in a loss or win of previous business deals. These analysis reports can also be mapped into SWOT (Strength, Weakness, Opportunity, Threat) report, which gives a high business value add in terms of positioning/ presenting our solution to the customer. Figure 4 describes the flow chart for a bid management scheme simulated as a feedback control system. Accepting a task is based on identifying requirements, defining goals, foreseeing the risk and selling the concept. The process of gathering data is not only from the input, but also from the feedback channels as shown in the flow chart. The error occurring from the comparison with the bench mark data as well as the feedback from the review team are considered at this stage. Based on the result of comparison with the benchmark data and the decisions of the review, a satisfactory report can be finalised which completes the task.

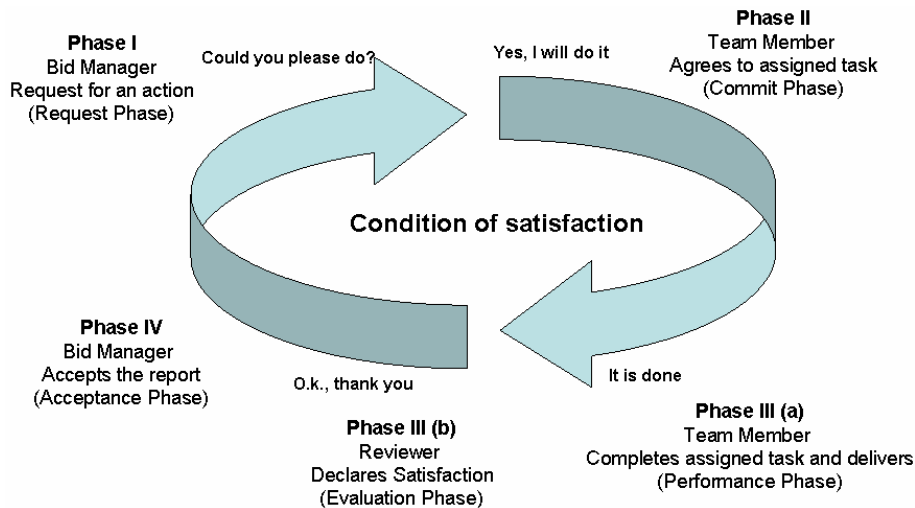
**Figure – 4:** Flow chart for a bid management scheme simulated as a feedback control system



## 6.1 Performance improvement

Once the 'go' call is made for a particular RFP, the initial step is team building. The team building including the roles and responsibilities assignment is done according to the problem definition with a given set of inputs. The early clarity in problem definition will have high impact on the chances for winning. We break down each of these steps into independent modules by giving a clear problem definition in order to make the process simple and effective. The risks involved in this process might be the multi domain involvement where one solution will have high impact on the other team's solution. Basically there are many cases where they follow a workflow, where one team's output would be another teams input. So, in these cases they need to work together to come up with a best fit solution for the problem. In these cases the multiple modules would be plugged together to give a desired result. The action workflow methodology holds well in bid management process with some variations.

**Figure – 5:** Bid management action workflow loop based representation (Source: Based on Ref.16)



Task based analysis will give us a clear understanding of the team performance which would in turn give them a feedback to improve.

## 7. CONCLUSION

A basic framework model for control system based bid management process is defined. The modules developed using a standard architecture model will always have an option to fit into any system since the input-output and parameters format is standardised. The feedback control system approach infuses valuable expertise into the bid management system. The success of the approach depends on many key factors. The most important one is the co-ordination and overall communication between the bid manager, his team and the review and sales teams. The feed back in a bid management system can be described as lessons

learning sessions. These learnings can be utilized to review and analyse the problems encountered during the preparation stage. Near the end of each project, the feedback paths could have enabled many times and the effect of which will be to provide a dynamic road map to drive, guide and co-ordinate a well planned hundred percent winning deal. Building a software based model is the next step for this approach, which could result in off the shelf implementation state.

## REFERENCE

1. R. Max Wideman (1990), "Total Project Management of Complex Projects Improving Performance with Modern Techniques", Acres International Limited, Vancouver, BC, Canada.
2. W.R Allen (2000), "Basic management cycle: A systems approach to the management process", International Conference on Systems Thinking in Management.
3. David Otley (1999), "Performance management: a framework for management control systems research" *Management Accounting Research*, 10, pp 363-382
4. Y. Diao, J. L. Hellerstein, and S. Parekh (2002), "Using fuzzy control to maximize profits in service level management" *Artificial Intelligence: IBM Systems journal*, Volume 41, Number 3.
5. Margherita Grasso and Matteo Manera (2007), "Asymmetric Error Correction Models for the Oil - Gasoline Price relationship", *Energy Policy*, Vol. 35, Issue 1, January, pp 156-177
6. Pradip Mehta (2007), "Selecting a project control system is one thing, implementing is quite another" *NW Communiqué*, vol.2.2, February.
7. L. Scibile (2000), "Feedback control in project-based management", CERN: Geneva.
8. Tian He, John A. Stankovic, Michael Marley, Chenyang Lu, Yin Lu, Tarek Abdelzaher, Sang Son, and Gang Tao (2007), "Feedback Control-based Dynamic Resource Management in Distributed Real-Time Systems", *Journal of Systems and Software*, Vol 80, Issue 7 (July 2007), pp997-1004.
9. Robert F. Engle and Andrew J. Patton (2004), "Impacts of trades in an error-correction model of quote prices", *Journal of Financial Markets*, Volume 7, Number 1, January, pp. 1-25(25)
10. Sir Geoffrey Vickers (1967), "Towards a Sociology of Management", Chapman and Hall, , p.104
11. R.M. Skitmore, "Fundamental research in bidding and estimating", *The International Council for Construction Research Studies and Documentation CIB W-55*.
12. David Raffo and Warren Harrison (2000), "Combining Process Feedback with Discrete Event Simulation Models to Support Software Project Management," *Proceedings of the International Workshop on Feedback and Evolution in Software and Business Processes (FEAST)*, London, UK, July.
13. Ashkan R. Kiana, Jose B. Cruz Jr.b (2005), "Bidding strategies in dynamic electricity markets" *Decision Support Systems* 40 pp 543– 551
14. Sebal.S , Zarate .R (1997), "A decision support system for bidding process", 'Computational Cybernetics and Simulation', *IEEE International Conference on Systems, Man, and Cybernetics*, vol.4 pp 3603-3608
15. *The Bid Manager's Handbook* by David Nickson, Gower Publishing, Ltd.
16. Thomas Schael (1996), 'Workflow Management Systems for Process Organisations', *Lecture Notes in Computer Science* Vol. 1096 Springer

# THE CREATIVE ECONOMY

Marta-Christina Suci  
Academy of Economic Studies, Bucharest

## ABSTRACT

More and more of us believe that "the world evolves through innovation". According to the Nomura Institute the main eras of human civilization are: agricultural, industrial, informational and creative. Michael Porter has suggested that "as nations develop, they progress through a number of stages in terms of their characteristic competitive advantages and modes of competing"<sup>1</sup>. Porter considers innovation-driven stage as a distinct stage.

## 1. THE AGE OF CREATIVITY AND THE CREATIVE ECONOMY

**Motto:** "Change and innovation are the only constant features of work organizations in today's society. Successful organizations in the modern economy work under the imperative of the need constantly to be creative in what they do. Creative organizations are those which seek to be open to the world around them"

(Bob Garvey, Bill Williamson, Beyond Knowledge Management. Dialogue, creativity and the corporate curriculum, p. 109)

Creative economy is the ideas business; it asks to turn ideas into products. According to John Howkins –author of the famous work *"The Creative Economy: How people make money from ideas"* published in June 2001- worldwide the creative economy was worth about 2, 2 trillion \$ in January 2000 and is growing at 5% a year. If we project this figure to 2020 at the current growth rate of 5% it can be forecast a total of \$ 6, 1 trillion. In some countries, creative economy is growing faster. In United States of America the average growth rate was 14% and in UK the average growth rate was 12%. In the OECD countries the annual growth rate of creative economy through the '90s was twice that of the service sector and four times that of manufacturing. According to *the World Bank* the world's Gross National Product (GNP) in 1999 was \$ 30,2 trillion, the creative economy represents 7,3% of the global economy<sup>1</sup>.

Creative economy is about the relationship between creativity and economics. Creativity is not new and neither is economics, but what is new is the nature and extent of the relationship between them and how they can be combined to create value and wealth.

---

<sup>1</sup> Michael Porter, *The Competitive Advantage of Nations*, Macmillan Press, 1990, Chapter 10, p. 545

In the *Global Competitiveness Report 2000* Andrew M. Warner of *Harvard University* has introduced the *Economic Creativity Index*. Nations can link themselves to the global technology engine: by being centers of innovation themselves (innovative countries) or by facilitating technology transfer and rapid diffusion of innovation (technology-transfer countries). *The Economic Creativity Index* is an attempt to bring together under one measure: technology sub-index and start up sub-index. In the 2000 *Economic Creativity Index*, the United States ranks first, as an innovator. Finland is second, followed by Singapore (3), Luxembourg (4), Sweden (5), Israel (6), Ireland (7), the Netherlands (8), the United Kingdom (9) and Iceland (10).

In new economies there are some industries-called *creative industries*-where creativity is considered to be the most important raw resource and the most valuable economic product. Such industries include software, publishing, design, music, video and electronic games. More than 50% of the consumer spending is now on outputs from creative industries in G-7 countries (Ryan, 2003<sup>1</sup>). This trend will be true for the middle and higher income economies of East Asia. These creative industries are called by some authors as core creative industries. *The International Intellectual Property Alliance (I I P A)* defines the country's core copyright industries as those that create copyright products; its categories are: film and video production, book publishing, newspaper publishing, computer software, theatre, advertising, TV, radio etc. It is estimated that these industries contributed with 3,65% of American Gross National Product (GNP) in 1997 and that during 1977-1997 they grew at 6.3% a year compared to the country's overall growth of 2,7% a year-overall they contributed more to the American economy than almost any other industry. In table 1 there are presented the estimated size of the creative economy.

**Table 1.** The Creative Economy-Market Size, in \$ billions

Sector	Global	US	UK
Advertising	45	29	8
Design	140	50	27
Film	57	17	3
Music	70	25	6
Publishing	506	137	16
R&D	545	243	21
Software	489	325	56
TV and radio	195	82	8
TOTAL	2,240	960	157

Source: John Howkins, *The Creative Economy. How people make money from ideas*, The Penguin Press, 2001, p. 116

---

<sup>1</sup> **Ryan, P.**, *The Creative Economy: Creative Clusters Key to Knowledge-based Economy*, in "Marubeni Economic Report Tokio", Marubeni Corporation Economic Research Institute, 2003

The size of the creative economy depends also on managing creativity debated in paragraph 3.

Creative industries are among the most skill intensive and IT intensive<sup>2</sup>. High skilled workers have become increasingly mobile: the workforce of the high-tech and creative industries is also looking for an urban milieu well endowed with recreational amenities and with world class education and health services. For cities & communities aspiring to become *creative cities & creative communities* it is clear that urban development needs creativity. *Glocalization* and *city's diplomacy* are becoming relevant today for the regional development.

As some brief conclusions we consider that:

- creative economy has an increasing role in the world economy. Its dynamics is high and more accelerated than in other sectors.
- creative industries are the most skill intensive and IT intensive.

## 2. CREATIVE CLASS & NEW ECONOMIC GEOGRAPHY OF CREATIVITY

The key to understanding the new economic geography of creativity and its effects on economic outcomes lies in *the 3T's of economic development theory: technology, talent, and tolerance*. Each is a necessary but by itself insufficient condition; they have to act in synergy.

*Creative Intelligence*<sup>1</sup> provides new data on issues of high importance to the future of regions. This is a joint publication between *the Richard Florida Creativity Group*<sup>2</sup> and *Catalytix, Inc.*<sup>3</sup> and will provide the regional indicators developed by Richard Florida and his team. It provides new data on wages and salaries for the three main sectors of the economy: the creative, manufacturing,

---

<sup>2</sup> Shahid Yusuf, Kaoru Nabeshima, *Urban Development needs Creativity. How creative industries can affect urban areas*, in "Development Outreach. Putting knowledge to work for development", November 2003, World Bank Institute, p. 12-15

<sup>1</sup> *Creative Intelligence Newsletter*-a joint publication between *the Richard Florida Creativity Group* and *Catalytix, Inc*, Volume 1, Issue 1 December 2002; [newsletter@creativeclass.org](mailto:newsletter@creativeclass.org).

<sup>2</sup> *The Richard Florida Creativity Group* provides forward-thinking strategies for the development of *creative communities*. For more information, go to [www.creativeclass.org](http://www.creativeclass.org).

<sup>3</sup> Catalytix provides analysis, strategic planning, and implementation support for regional, civic, and business partners. For more information on Catalytix, go to [www.catalytix.biz](http://www.catalytix.biz); [www.catalytix.biz/reg.htm](http://www.catalytix.biz/reg.htm)

and service sectors. While the creative class makes up 30% of the workforce, it accounts for almost half of all wages and salaries (table 2).

**Table 2.** Wage share and percentage of workers for three main sectors of the economy: the creative, manufacturing, and service sectors  
-%-

	Percentage of Workers:	Wage Share:
Creative Class	30%	47%
Working / manufacturing Class	26%	23%
Service Class	44%	30%

Source: *The Creative Intelligence Newsletter*, a joint publication between the Richard Florida Creativity Group and Catalytix, Inc, Volume 1, Issue 1 December 2002, p. 2

Creative people, who prefer diverse places, tolerant and open to new ideas, power regional economic growth. Diversity will attract different types of creative people with different skill sets and ideas. Measures of diversity and creativity in connection to regional development ask for index used to analyze regions using this innovative approach to economic development (Creative Class & Super Creative Class that ranks data to the regional level). *State Creativity Index* is ranking for the 50 states on the basis of *the Creativity Index*. Creative capital is important to regional growth because in order to succeed and prosper economically, a region needs to offer all 3T's of economic development.<sup>4</sup> The best seller "*Rise of The Creative Class*" written by Richard Florida <sup>5</sup> suggests that the key to economic growth lies not just in the ability to attract the creative class, but to translate that underlying advantage into creative economic outcomes in the form of new ideas, new high-tech businesses and regional growth.

There has been developed a new measure called *the Creativity Index*-a composite indicator that is considered to be a better measure of a region's underlying creative capabilities than the simple measure of the creative class. *The Creativity Index* is a barometer of a region's longer run economic potential. In E U it have been introduced the *Euro Creativity index*. The creative economy differs from the traditional economics in the central role of the individual. From the days of Adam Smith, traditional economics has been centered on the firm belief that firms are more efficient than individuals in identifying and using resources.

But creative people are not dependent upon organizations to the same extent. They often have low transaction costs and do not need large resources of capital and equipment. And the creative people seem also to be irrational despite traditional economics assumed for decades that individuals acted in a rational manner. Perhaps a better word than irrational is imaginative.

<sup>4</sup> More on the 3T's of economic development can be found in articles from the "*Harvard Business Review*" and "*New York Times*", "*Fast Company*" or "*The Austin American Statesman*" which are available at [www.creativeclass.org/5mc2.htm](http://www.creativeclass.org/5mc2.htm).

<sup>5</sup> Florida, Richard, *The Rise of the Creative Class*, New York, Basic Books, 2002. It has been translated into Chinese, Japanese, Korean, Italian, French, and Spanish. There have been sold over 30,000 copies.



## TEN RULES FOR SUCCESS IN A CREATIVE ECONOMY

*“Technical skill is mastery of complexity while creativity is mastery of simplicity.”* Christopher Zeeman, “Geophysics”, vol. 64, no. 5, 1999, p.1347–1348

Even I do not believe in simple receipts I present the rules recommended by Howkins<sup>1</sup>:

- Invent yourself-own your image and manage it. Be clear about your own assets and talents; they are unique and they are all you have. Break the rules, but never stop learning.
- Put the priority on ideas, not on data-create and grow your own creative imagination. Entrepreneurs in the creative economy seem to be more worried if they lose their ability to think than if their company loses money.
- Be nomadic-nomads felt at home in every country. Nomads appreciate both the desert and the oasis; likewise creative needs both solitude and the crowd, thinking alone and working together.
- Define yourself by your own thinking activities-in the creative economy we each can think and exchange creative solutions with each other.
- Learn continuously-innovate and remember that *“a new idea is often two old ideas meeting for the first time”*.
- Exploit fame and celebrity-being well known for being creative is important in the creative economy of the twenty-first century.
- Treat the virtual as real and vice versa-cyberspace is another dimension to everybody life. Do not judge reality by whether it is based on technology but by more important and eternal matters such as humanity and truth. As Sydney J. Harris once said *“The real danger is not that computers will begin to think like men, but that men will begin to think like computers.”* (Sydney J. Harris, “Geophysics”, vol. 64, no. 5, 1999, p. 1347–1348).
- Be kind-kindness is a mark of success. It seems that a kind person will be more invited to more networks, receive more knowledge and have better opportunities to create more.
- Admire success openly creative people try to judge both their successes and failures because they want to learn from them. You will never win if you cannot lose.
- Be very ambitious but have fun and a good sense of humor-people who enjoy themselves and what they are doing seem to be happier and to achieve performance faster.

I believe that such simplistic formulas are not mostly recommended. Applying Howkins’ first rule a creative person has to invent her/his self and has *“to break the rules”*. Don’t worry! Be happy if you end up with eleven rules and if the eleventh one represents only you! ☺

In order to build a truly *creative community*-one that can survive and prosper in this emerging creative age, the key are creative people and a successful people climate. This entails remaining open to diversity and to a creative lifestyle. In the creative age young people matter. Furthermore, a climate oriented to young people is also attractive to the creative class more broadly. Creative-class people

---

<sup>1</sup> John Howkins, *The Creative Economy. How people make money from ideas*, The Penguin Press, 2001, p. 155-158

do not lose their lifestyle preferences, as they grow old. They don't stop bicycling or running, for instance, just because they have children. They continue to value diversity and tolerance. They enjoy stimulating and dynamic places that are a challenge for a creative lifestyle.

As brief conclusions from this paragraph we focus on the ideas that:

- Creative classes are an essential ingredient for the regional development and in the new urban economy for shaping a new economic geography of creativity.
- Creativity Index is determined at the regional level as a composite complex index.
- Creative people have an important role in creative economy.

### 3. CREATIVE AND INNOVATIVE MANAGEMENT

Managing creativity starts with understanding the economics of creativity. It has to deal with two value systems. One is based on the tangible capital; the other one focus on the intangible capital and on the intellectual property. The traditional economics has focused on the tangible capital and on the conventional manufactured goods and services. New economics focus on the intangible capital.

Managing creativity involves knowing first when to exploit the “*non-rivalrous*” nature of ideas and second when to assert intellectual property rights and make one's own ideas-as-products rivalrous. These two kinds of decision are crucial for the creative management process.

#### *Organizational and corporate creativity*

Leonard and Swap defined organizational creativity as a “*process of developing and expressing novel ideas that are likely to be useful*”. Organizations have to remain open to change in response to new ideas coming from the people who work within them. Creatogenic features of an organization are: values, beliefs, commitments, habits that enhance the creativity of both individual employees and groups. According to Robinson and Stern (*Corporate Creativity: How Innovation and Improvement Actually Happens*, San Francisco, CA: Berrett-Koehler Publishers, Inc. 1998) corporate creativity manifest itself in the form of: improvements-incremental creativity; innovations-radical creativity.

To ensure positive economic growth, creative and innovative managers in both the public and private sectors need to collaborate to develop and implement a competitive strategy for managing growth and diversification through technology and commerce. Creative and innovative managers can develop a link among key institutions to build a viable *public/private* infrastructure, a strong financial environment, an entrepreneurial spirit, and a commitment and dedication to risk-taking and risk sharing. Within this strategy, private sector goals must recognize the need for developing both innovation centers and manufacturing centers. In the past, U.S. management has emphasized the development of innovation centers while the Pacific Rim nations' firms have emphasized the development of manufacturing centers. Managers in tomorrow's global

environment of competition and cooperation will focus on strategies that can link effectively these two types of centers.

A new framework is needed. This new framework must provide insight on those areas requiring creative management, those requiring innovative management, and those requiring creative and innovative management.

■ *Creative management* consists of new concepts, new ideas, new methods, new directions, and new modes of operation. The operative word is “new.”

■ *Innovative management* consists of the ability to implement creative ideas and/or move successfully in such new directions. The operative words are “to implement” and “to move successfully.”

■ *Creative and innovative management* focuses on coupling, that is, linking creative and innovative management. The operative notion here is an “act of management” rather than the act of an individual.

*Creative and innovative management* implies new managerial practices on the one hand and leadership to implement on the other. Traditional management decision-making centered on efficiency and effectiveness. Creative and innovative management focuses on flexibility and adaptability to deal with the process of managing change.

*Technopolises* are bringing together in dynamic and interactive ways, state government, local government, private corporations, universities, non-profit foundations, and other organizations. *Incubators* are another promising tool funded by both public and private sources. Risk capital networks are structured to organize the capital pools held by individual investors. These individuals are generally known as “*business angels*”. Economic development as a creative and innovative managerial activity is based on linking four critical factors:

- talent - people;
- technology - ideas;
- capital - resources;
- know-how - knowledge.

*Entrepreneurial talent* results from the tenacity, dedication, and hard works of special types of individuals-people who make things happen. Entrepreneurs are individuals who recognize opportunities and desire to push an innovative idea. But talent without ideas is like sea without water. The second critical component in the entrepreneurial process concerns the ability to generate ideas that have real potential within a reasonable time. Every dynamic process needs to be fueled. The fuel for the entrepreneurial process is capital. Given talent, technology and capital, one other element is Know-how defined as the ability to find and apply expertise in a variety of areas that can make the difference between success and failure.

#### *Creator and entrepreneur*

Rimler summarized the main characteristics of the successful creator and entrepreneur. Rimler pointed out that the traits characterizing creative persons and entrepreneurs are more or less the same. Differences can be found in the special needs required for successful businesses.

*Success in business today is a creative activity*

If we are to thrive in business we must be creative. Business is a creative activity. Success in business today demands constant innovation. Generating fresh solutions to problems, and the ability to invent new products or services for a changing market, are part of the intellectual capital that gives an organization its long-run sustainable competitive advantage.

While brain power is our most valuable resource, great ideas are in short supply. *Fortune 500* companies now place a premium on attracting and keeping talent because wealth flows directly from innovation. Creativity is the root of innovation. It is a process and a skill which can be developed and managed throughout the entire organization. Nowadays competition among these networks can be observed, while their growth has also become more and more significant. There is a connection between business networks and innovation. The network itself can be a form of innovation. In this respect, it means organizational innovation. Business networks can also produce innovations.

There is a need for a change in methods in the field of economics. Besides being capable of illustrating the states of the event (*static approach*), this new method should be able to reflect the events in process (*past–present–future-dynamic approach*). It was mentioned that game theory provides a new methodological approach the analysis of inter-relations. Besides the methodological questions, the question of ethics and moral responsibility also arises in the analysis of economic processes, which requires a new approach as well. It seems that all these problems cannot be solved within the framework of traditional methodology.

#### *The creative entrepreneur*

Entrepreneurs in the creative economy are often called *creative entrepreneurs* (John Howkins, 2001, p. 128-131). In traditional economics workers may have better ideas about how to run their factory than the existing managers, but the workers can not put their ideas into practice. But creative workers can start their own business and the creative economy encourages it. These kind of entrepreneurs have the following characteristics:

- vision (the entrepreneur has an idea and wants to bring it to life);
- focus (they are determined not only on what to do but also on what has not to be done). World chess champion *Gary Kasparov* says the difference between a good chess player and a master chess player is not really that the great chess player knows which moves *to look at* but that he/she knows which *not to look at*;
- financial capabilities (financial skills assist one to avoid pitfalls, move faster and sleep at night);
- pride (entrepreneurs believe not only that their idea will work but they are the only one who can make it work);
- they have pride in themselves and their idea and they are very reluctant to give up); urgency ( the entrepreneur always wants to “*do it now*” partly for competitive reasons and partly because they cannot think of anything else;
- many start-ups in the creative economy are “*momentum*” business, gathering attention and assets like a snowball).

#### *Decision making styles in the creative economy. The conceptual manager*

There are four decision making styles based on the two dimensions that define a style: the way of thinking (which can be either rational or intuitive) and the tolerance for ambiguity (which can be low or high). Based on these two dimensions, a manager can be directive, analytical, behavioural or conceptual<sup>2</sup>.

- ◆ *The directive manager* is highly rational and does not tolerate ambiguity. He makes decisions fast and thinks on short-term. Even though he can be efficient, he makes decisions with minimal information and just a few alternatives. The directive style should be reserved for emergency situations in which a quick remedy is the only solution to an unexpected event.
- ◆ *The analytical manager* is also highly rational, but tolerates high levels of ambiguity. He is a careful decisions maker who can adapt to or cope with new, even unexpected, situations.
- ◆ *The behavioural manager* is intuitive and does not tolerate ambiguity. His main characteristics are that he works well with others and is open to his subordinates' suggestions and ideas. He practices a participative leadership style and since communication processes are vital for a behavioural manager, he needs regular meetings and contact to his subordinates.
- ◆ *The conceptual manager* is highly intuitive and highly tolerant of ambiguity. His main
- ◆ Characteristic is his creativity. He has a broad, holistic and integrative approach to things and considers many alternatives.

**Styles of decision making according to the way of thinking and the tolerance for ambiguity:**

	Low tolerance for ambiguity	High tolerance for ambiguity
Rational way of thinking	Directive manager	Analytical manager
Intuitive way of thinking	Behavioural manager	Conceptual manager

In recent years, economic psychology has witnessed a shift from the rational to the intuitive and from ambiguity intolerance to tolerance. While the traditional manager was directive in his style, the modern manager is moving towards the conceptual style, sometimes by going into training and by developing creativity-relevant thinking skills (such as brainstorming or metaphors or analogies) and lateral thinking (as opposed to vertical thinking that is rational and sequentially logical and integrates only relevant information); this style does not have to be logical and may integrate also irrelevant information in the process of decision making).

---

<sup>2</sup> Cristiana Pudroski, *Decisions Making Processes in Organizations: The Rational versus the Practical*, in "Ziarul Financiar", April 2003. Cristiana Pudroski is a Romanian economic psychologist who lives in Vienna.

<i>Traditional economics</i>	<i>Economic psychology</i>
Directive style manager	Conceptual style developing creativity-relevant thinking skills
<i>Vertical thinking</i> that: is rational and sequential logical; integrates only relevant information	<i>Lateral thinking</i> that: does not have to be logical; may integrate irrelevant information in the process of decision making

In the learning process learning goes together with the employees' extended independence; as a result, creativity gains can be large. A *creative person* should be a successful businessman. Some authors suggest even the need to substitute a model of "*creative man*" for homo economics and they suggest even a creative way to live.

As conclusions we mention just a few issues that regard mainly the fact that:

- Creative and innovative management is a modern concept that continues previous approaches;
- The creative entrepreneur meets the qualities for both entrepreneur and creative person;
- Conceptual manager is the management style considered to be mostly appropriate in the creative economy (economic psychology approach).

## SELECTIVE BIBLIOGRAPHY

- [1] \*\*\* *Creative Intelligence Newsletter*-a joint publication between the Richard Florida Creativity Group and Catalytix, Inc, Volume 1, Issue 1 December 2002; [newsletter@creativeclass.org](mailto:newsletter@creativeclass.org).
- [2]. John Howkins, *The Creative Economy. How people make money from ideas*, The Penguin Press, 2001
- [3]. Florida, Richard, *The Rise of the Creative Class*, New York, Basic Books, 2002
- [4]. Michael Porter, *The Competitive Advantage of Nations*, Macmillan Press, 1990, Chapter 10, p. 545-549
- [5]. Cristiana Pudroski, Decisions Making Processes in Organizations: The Rational versus the Practical, in "Ziarul Financiar", April 2003
- [6]. Ryan, P., The Creative Economy: Creative Clusters Key to Knowledge-based Economy, in "Marubeni Economic Report Tokio", Marubeni Corporation Economic Research Institute, 2003
- [7]. Shahid Yusuf, Kaoru Nabeshima, Urban Development needs Creativity. How creative industries can affect urban areas, in "Development Outreach. Putting knowledge to work for development", November 2003, World Bank Institute, p. 12-15
- [8]. [www.creativeclass.org](http://www.creativeclass.org).
- [9]. [www.catalytix.biz](http://www.catalytix.biz).
- [10]. [www.catalytix.biz/reg.htm](http://www.catalytix.biz/reg.htm)

# APPRAISAL OF THE PRACTICE OF SOCIAL RESPONSIBILITY BY BUSINESS ORGANISATIONS IN NIGERIA

Olu Ojo  
Covenant University, Ota, Nigeria.

## ABSTRACT

This paper focuses on the social responsibility of business organizations in Nigeria. It examines the extent of their involvement in the concept of social responsibility with a view to recommend the strategic importance of being socially responsible to all the stakeholders. The methodology employed was that the researcher examines the Annual Reports and Accounts of randomly selected companies and compared their turnover with their investment in social responsibility.

The result revealed that these companies have contributed infinitesimal amount of their gross earnings in social responsibility. Thus, they need to increase their involvement in social responsibility to boost their reputation capital.

**Key words:** Business organizations, Gross earnings, Social responsibility

## 1. INTRODUCTION

Business organizations operate in a given environment characterized by dynamism, complexity and uncertainty. Thus, managers must take into consideration the interests of many external public (stakeholders and society) in the performance of their organizations duties. More than ever before, stakeholders demand that business functions in a responsible way. Business responsibility and its relationship to the community in which it operates and seeks to serve are more important than ever.

The concept “corporate social responsibility” (CSR) has a philosophical orientation (Wartick and Cochran, 1985). CSR was described by Jones (1996) as an ‘ideology’, was advanced during the past 50 years with the business and society research tradition. CSR refers to corporate performance that is *normatively correct* with respect to all constituents of the firm (Epstein, 1987). Such normative correctness implies a correspondence between corporate action and societal expectations (Zanisek, 1979). CSR is concerned with the different segments of the society to which corporations have obligations. According to Carroll, 1991, social expectations can be translated into four characteristics of corporate social responsibility, viz: economic, legal, ethical, and discretionary. This means that companies are expected to generate profit, to obey the law, to operate in harmony with the unwritten social rules, and to voluntarily support societal programmes even if society does not expect such support.

A number of empirical studies have been conducted to explore managerial response to social demands and the impact on organizational performance. Alexander and Bucholz (1978) noted that the relationship between the market performance of a firm’s common stock and its social responsibility has been a subject of contradiction. One view according to these researchers is that social responsibility will make a firm an attractive investment (Stanwick and Stanwick, 1988; Arlow and Gannon, 1983; Wokutch and Spencer, 1987).

Research on this subject shows that most of the studies were conducted in industrialized countries such as United State, the United Kingdom, and Japan. This implies that there is dearth of relevant literature on Third World countries, including Nigeria which has to be covered by research. Equally important is the fact that most of the studies done so far on the subject of corporate social responsibility have produced some conflicting results. In view of the conflicting findings obtained from past investigations on corporate social responsibility and performance, there is need for further empirical research to examine social responsibility practices of Nigerian firms.

It is against this background that this paper tries to discuss and to clarify the role of business in our modern society with special emphasis on corporate social responsibility of limited liability companies. The paper examines the relationship between corporate social responsibility and organizational performance. However, the empirical study of the investment of selected companies in corporate social responsibility is limited to quoted companies by the Nigerian Stock Exchange Market.

## **2. THEORETICAL FAMEWORK**

### **2.1 CONCEPT OF CSR**

Social responsibility as a concept has been described in a number of ways by different writers. Most of theses descriptions are inescapably guided by educational background, exposure, interest, as well as values embodied in the writer's frame of reference. The concept of social responsibility proposes that business organizations have responsibilities to society that extend beyond profit maximization. There are as many definitions of CSR as there are writer, leaving the concept fuzzy (van Marrewijk, 2003; Gobbels, 2002; Henderson, 2001) and open to conflicting interpretations (Windersor, 2001). Some writers have equated CSR to morality (Freeman, 1994; Bowie, 1998; Phillips 2003), environmental responsibility (Des Jardins, 1998) stakeholders engagement (Andriof and Waddock, 2002), corporate citizenship (Carroll, 2004; Matten and Crane, 2005), social responsible investment (Warhurst, 2001; McLaren, 2004), sustainability (Bansal, 2005) amongst others. All these render CSR a multipurpose concept.

Despite this surge in definitions, Luttans and Hodget (1976) noted that a classic discussion of social responsibility is the obligation of the businessmen to pursue these policies, to make decisions or to follow those lines of actions, which are desirable in terms of objectives and values of the society. In the words of Jones and George (2003) the term social responsibility refers to a manager's duty or obligation to make decisions that nurture, protect, enhance, and promote the welfare and well-being of stakeholders and society as a whole. The European Union (EU) defines CSR as 'a concept whereby a company integrates social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis' as they are increasingly aware that responsible behavior leads to sustainable business success. At the heart of this definition are McWilliams and Siegel's (2001) explanation of CSR as "....actions that appear to further some social good, beyond the interests of the firm...."



As straight forward as these definitions seem, social responsibility can be a difficult concept to understand. This is because different people have different views about the actions that can improve society's welfare. Failure of an organization to undertake its social responsibility can lead to regulation by government and an opposition by the society. Thus, business must make positive impact on the society. The ability of an organization to make meaningful positive impact and reduce deliberately, its negative influence on the society is an integral part of its social responsibility. However an action must be voluntary to qualify as a socially responsible action (Kreitner, 1995).

## **2.2. THEORETICAL PERSPECTIVES ON CSR.**

Many theories have been brought to bear on the concept of CSR. In addition, there have been a lot of disagreements over what social responsibility entails. These controversies could be traced to a fundamental debate about the exact purpose of a business. Depending on one's perspective, social responsibility can be interpreted using either of the theories discussed below. Two major schools of thought exist at opposite extremes of a continuum; the restrictive and expansionist views. The former is made up of proponents of profit maximization while the latter consists of writers who believe that business has to be socially responsible.

### **The Shareholder Theory**

This is otherwise known as the classical economic view. Levitt (1985) could be credited with setting the agenda for the debate about the social responsibility of business in his Harvard Business Review article "The Dangers of Social Responsibility", in which he cautions that "government's job is not business, and business job is not government." Another outspoken advocate of the shareholder theory is economist Milton Friedman.

According to Friedman (1970) the only responsibility of business organization is to use its resources and engage in activities designed to maximize profit through open and free competition, and without deception and fraud. This position is based on the argument that business organization is an economic institution whose legitimate function is economic performance and not social activity.

### **The Stakeholder Theory.**

The stakeholder theory holds that business organization must play an active social role in the society in which it operates. Freeman (1984) one of the advocates of stakeholder theory, presented a more positive view of manager's support of CSR. He asserts that managers must satisfy a variety of constituents (e.g. investors and shareholders, employees, customers, suppliers, government and local community organizations) who can influence firm outcomes. According to this view, it is not sufficient for managers to focus exclusively on the needs of stockholders, or the owners of the corporation. Stakeholder theory implies that it

can be beneficial for the firm to engage in certain CSR activities that non-financial stakeholders perceive to be important, otherwise, these groups might withdraw their support.

### 3. HISTORICAL EVOLUTION OF CSR

The idea of social responsibility appeared in the United States around the start of the 20<sup>th</sup> century. According to Carroll (1989), there have been three critical turning points in the evolution of social responsibility. The first one he called **Entrepreneurial era**. This was the time in which America business magnates like John Rockefeller, Cornelius Vanderbilt, J.P.Morgan, and Andrew Carnegie were amazing wealth and building industrial empires.

Unfortunately, they abused their power and were found guilty of antisocial and anticompetitive practices such as labor lockouts, discriminatory pricing policies, kickbacks, blackmail, and tax evasion. There were public outcries against them and government was forced to outlaw some business practices and restrict others. The laws also defined the relationship among business, the government, and society and specified that business had a role to play in society beyond profit maximization.

The next turning point occurred during **Depression era** of 1929 through the 1930s. At this time, the economy of the United States was dominated by large organizations, and many people criticized them for sharp financial practices. This made government to pass more laws to protect investors and smaller businesses. And by extension, the social responsibility of organization was more clearly defined. The third landmark in social responsibility came during the Social era of 1960s. This period was characterized by social unrest in the United States. This made government to take a close look at organizational practices. At this time it was clearly defined whom the business is responsible to and who in an organization's is responsible for the organizational practices.

The last turning point in the evolution of CSR, according to Goddard (2005) came in 1953 with the publication of Bowen's book: '*Social Responsibilities of Businessmen*.' At that time, the emphasis was placed on people's conscience rather than on the company itself. A number of factors such as managerial revolution, a growing hostility of people who experience social problems demanding changes in business led to the shift in focus. The term 'CSR' is used to connect business activities to broader social accountability and successful benefits.

### 4. METHODOLOGY

In conducting this study the researcher ensured that the research data collection matched the research objective-to explore the practice of CSR in Nigeria. A survey of 40 limited liability companies quoted on the floor of Nigerian stock

exchange was undertaken. The sample was randomly selected from a total number of 209 companies which were quoted on the floor of the stock market as at July 2007. The distribution of selected forty companies across thirteen different sectors of the Nigerian economy is presented in table 1. Secondary data were used for the study. The data were about the company's annual turnover and their investment in social responsibility. These were expected from the published annual reports and account of the sampled companies between 2000 and 2006. Table 2 presents the descriptive analysis of the data generated from the companies' annual reports and accounts.

## 5. ANALYSIS

The data collected for this study were analyzed by the use of correlation, regression, and Analysis of Variance (ANOVA). Annual report and accounts of the sampled companies were analyzed to determine the total amount invested in social responsibility. Table 2 above gives the summary of the data. The table revealed that the amount committed to social responsibility vary from one company to the other. The data further revealed that all the sample firms invested less than one percent of their annual turnover to social responsibility. However, this does not preclude the fact that positive relationship ( $r = 0.118294591$ ) exists between turnover and investment in social responsibility. In view of the findings above, the researcher tried to establish further relationship between the two variables through regression and ANOVA in Table 3.

### 5.1 QUALITY MEASURES

One important way of ensuring that we have used the right instrument and have taken correct measurement is that our outcome must be in consonance with two major criteria for measuring quality known as validity and reliability (Ojo, 2003).

**Validity:** Explorative studies are valid if the measuring instrument, correctly designed and administered, measures exactly what it was designed to measure. The tactic that have been used in our attempt to guarantee the correctness of the operational measures being studied rests heavily on data collection method based on internal published documents.

**Reliability:** Case study research is reliable if the data collection can be repeated with the same results (Yin, 1994). Hence we provided a careful documentation of the data collection procedure.

## 6. CONCLUSION

Business managers in Nigeria should realize that business organizations make demand on the society, and vice-versa. Business needs the support of the society in order to grow and prosper while society needs business organizations in terms of goods and services they provide. The idea of social responsibility implies that in addition to the pursuit of their organizational goals, business should assist the society especially the fact that their actions sometimes produce negative consequences to the society. Failure of an organization to undertake its social

responsibility can lead to regulation by government and an opposition by the society.

In view of the fact that the contributions of business organizations to social responsibility are negligible compared with their turnover and the cry of the public to organizations to be more responsible socially, following recommendations are offered to improve the social responsibility performance by business organizations operating in Nigeria.

First, Nigerian companies should establish social responsibility unit or division charged with the duty of alerting the organization about their social responsibility. The head of such unit or division should be directly responsible to the Chief Executive Officer (CEO) will create a more conducive and effective social responsibility performance. Second, government should re-adjust taxation law in the country so that expenditure on all form of social responsibility could be classified as deductible expenses during the process of computation of tax and not just part of social responsibility. Third, industries should ensure that representatives of all the stakeholders, employees, governments, customers, shareholders, etc, are appointed as members of Board of Directors and must be present and actively participated at board's meeting to defend the interest of their members. Fourth, there is need to re-orientate chief executives and top management team to pursue policies, decisions, and actions that are desirable in aids of the society. Fifth, the government should review existing laws, policies and regulations governing operations of business organizations to ensure that they operate in socially responsible manner.

Finally, government can establish a body or an agency that will audit the performance of these organizations and reward socially responsible corporations and sanction those that are socially irresponsible. This will help them to be mindful of all their stakeholders.

## REFERENCES

- [1] 7UP Bottling Co. Plc (2005), Annual Report and Accounts.
- [2] Access Bank Plc (2006). Annual Report and Accounts.
- [3] Afribank Nigeria Plc (2005), Annual Report and Accounts.
- [4] AG Leventis Nigeria Plc (2005), Annual Report and Accounts.
- [5] AIICO Insurance Plc (2006), Annual Reports and Account
- [6] Andriof, J. and Waddock, S. (2002), Unfolding Stakeholder Engagement. In: J. Andriof et al. (Eds). *Unfolding Stakeholders Thinking- Theory, Responsibility and Engagement*. Sheffield: Greenleaf Publishing.
- [7] Ashakacem Plc (2006), Annual Report and Accounts.
- [8] Bansaal, P. (2005) Evolving Sustainability: A Longitudinal Study of Corporate Sustainability Development. *Strategic Management Journal*, 26(23): 197-218
- [9] Berger Paints Plc (2006), Annual Report and Accounts.
- [10] BOC Gases (2003), Annual Report and Accounts.
- [11] Bowie, N. (1998), A Kantian Theory of Capitalism. *Business Ethics Quarterly, The Ruffin Series, Special Issue* No. 1:37-60.
- [12] Cadbury Nigeria Plc (2005), Annual Report and Accounts.
- [13] Carroll, A. B. (2004), Managing Ethically with Global Stakeholder: A Present and Future Challenge. *Academy of Management Executives*, 18(2): 114-119
- [14] Carroll, A.B. (1991), The Pyramid of Corporate Social Responsibility: Towards the Moral Management of Organizational Stakeholders. *Business Horizons*, 34(4), 39-48.
- [15] Chevron Oil Nigeria Plc (2005), Annual Report and Accounts.
- [16] Cornerstone Insurance Plc (2000), Annual Report and Accounts.
- [17] Dangote Sugar Plc (2006), Annual Reports and Accounts.
- [18] Desjardins, J. (1998), Corporate Environmental Responsibility. *Journal of Business Ethics*, 17(8):825-838
- [19] Diamond Bank Plc (2005), Annual Report and Accounts.
- [20] DN Meyer Paints Plc (2005), Annual Report and Accounts.
- [21] Dunlop Nigeria Plc (2006), Annual Report and Accounts.
- [22] Ecobank Nigeria Plc (2005), Annual Report and Accounts.
- [23] Epstein, E.M. (1987). The Corporate Social Responsibility and Corporate Social Responsiveness. *California Management Review*, XXIX (3), 9(-114.
- [24] European Union (2002), [http://europa.eu.int/comm/employment\\_social/social/csr2002\\_col\\_en.pdf](http://europa.eu.int/comm/employment_social/social/csr2002_col_en.pdf) p. 4 [ Accessed on 15.9 2007]

- [25] First Bank of Nigeria Plc (2006), Annual Report and Accounts.
- Freeman, R. E. (1984), *Strategic Management: A Stakeholder Perspective*, Englewood Cliffs: Prentice Hall.
- [26] Friedman, M. (1970), A Friedman Doctrine: The Social Responsibility of Business is to Increase its Profits. *New York Times Magazine*.
- [27] Flour Mills Nigeria Plc (2006), Annual Report and Accounts.
- [28] Freeman, R. E. (1994), The Politics of Stakeholder Theory: Some Future Directions. *Business Ethics Quarterly*, 4(4): 409-421
- [29] Gobbels, M. (2002), Reframing Corporate Social Responsibility: the Contemporary Conception of a Fussy Notion (cited in van Marrewijk, 2003)
- [29] GSK Nigeria Plc (2006), Annual Report and Accounts.
- [30] Guarantee Trust Bank (2006), Annual Report and Accounts.
- [31] Guinness Nigeria Plc (2006), Annual Report and Accounts.
- [32] Henderson, D. (2001), Misguided Virtue: False Notions of Corporate Social Responsibility. *New Zealand Business Roundtable*.
- [33] IGI Plc (2000), Annual Report and Accounts.
- [34] Ikeja Hotels Plc (2003), Annual Report and Accounts.
- [35] International Bank (2006), Annual Report and Accounts.
- [36] John Holt Plc (2006), Annual Report and Accounts.
- [37] Jones, G.R., and George, J.M. (2003), *Management*, Third Edition, Boston: McGraw-Hill Irwin.
- [38] Jones, M.T. (1996), Missing the Forest for the Tress: A Critique of the Social Responsibility Concept and Discourse. *Business and Society*, 35(1), 7-41.
- [39] Kreitner, R. (1995), *Management*, Sixth Edition, Boston: Houghton Mifflin Company.
- Levitt, T. (1958), The Danger of Social Responsibility. *Harvard Business Review*, September-October: 41-50
- [40] Luthans, F. and Hodget, R. (1976), *Social Issues in Business: A Text with Current Readings and Cases*, New York: Macmillan Publishing Company.
- [41] Matten, D., and Crane, A. (2005), Corporate Citizenship: Towards an Extended Theoretical Conceptualization. *Academy of Management Review*, 30(1): 166-179
- [42] May & Baker Nigeria Plc (2006), Annual Report and Accounts.
- [43] McLaren, D. (2004), Global Stakeholders: Corporate Accountability and Investor Engagement. *Corporate Governance: An International Review*, 12(2), 191-201
- [44] McWilliams, A., and Siegel, D. (2001), Corporate Social Responsibility: A Theory of the Firm Perspective. *Academy of Management Review*, 26(1): 117-127.
- [45] Mobil Oil Nigeria Plc (2006) Annual Report and Accounts.

- [46] Nigerian Bottling Company Plc (2006), Annual Report and Accounts.
- [47] Nigerian Breweries Plc (2006), Annual Report and Accounts.
- [48] Nig-Ger.Chem. Plc (2005), Annual Report and Accounts.
- [49] Oando Plc (2006), Annual Reports and Accounts.
- [50] Oceanic Bank Plc (2006), Annual Report and Accounts.
- [51] Ojo, O. (2003), Fundamentals of Research Methods. Lagos: Standard Publications.
- [52] PZ Nigeria Plc (2003), Annual Report and Accounts.
- [53] Skye Bank Plc (2006), Annual Report and Accounts.
- [54] Total Nigeria Plc (2006), Annual Report and Accounts.
- [55] UAC of Nigeria Plc (2006), Annual Report and Accounts.
- [56] Unilever Nigeria Plc (2006), Annual Report and Accounts.
- [57] Van Marrewijk, M. (2003), Concepts and Definitions of CSR and corporate sustainability: Between Agency and Communion. *Journal of Business Ethics*, 44: 95-105
- [58] Warhurst, A. (2001), Corporate Citizenship as Corporate Social Investment. *Journal of Corporate Citizenship*, 1: 57-73
- [59] Wartick, S.L. and Cochran, P.L. (1985), The Evolution of the Corporate Social Performance Model. *Academy of Management Review*, 10(4), 758-769.
- [60] Windsor, D. (2001), The Future of Corporate Social Responsibility. *The International Journal of Organizational Analysis*, 9(3): 225-256
- [61] Yin, R. K. (1994), Case Study Research: Design and Methods. London: Sage Publications.
- [62] Zanisek, T.J. (1979). Corporate Social Responsibility: A Conceptualization Based on Organizational Literature. *Academy of Management Review*, 3(3), 359-368.
- [63] Zenith Bank Plc (2006), Annual Report and Accounts.

**Table 1: DISTRIBUTION OF SAMPLED COMPANIES ACROSS SECTORS.**

**Source: Field Survey**

<b>S/N</b>	<b>SECTOR</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
1	Automobile	1	2.5
2	Banking	10	25.0
3	Brewery	2	5.0
4	Building materials	2	5.0
5	Chemicals	3	7.5
6	Commercial/services	1	2.5
7	Conglomerates	5	12.5
8	Food/beverages	5	12.5
9	Healthcare	2	5.0
10	Hotels	1	2.5
11	Industrial products	1	2.5
12	Insurance	3	7.5
13	Petroleum	4	10.0
	Total	40	100
<b><i>S/N</i></b>	<b><i>SECTOR</i></b>	<b><i>FREQUENCY</i></b>	<b><i>PERCENT</i></b>
1	Automobile	1	2.5
2	Banking	10	25.0
3	Brewery	2	5.0
4	Building materials	2	5.0
5	Chemicals	3	7.5
6	Commercial/services	1	2.5
7	Conglomerates	5	12.5
8	Food/beverages	5	12.5
9	Healthcare	2	5.0
10	Hotels	1	2.5
11	Industrial products	1	2.5
12	Insurance	3	7.5
13	Petroleum	4	10.0
	Total	40	100



**Table 3: Regression and ANOVA Statistics**

<i>Regression Statistics</i>	
Multiple R	0.118294591
R Square	0.01399361
Adjusted R Square	-0.01195393
Standard Error	78378791.96
Observations	40

ANOVA						
	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>	
Regression	1	3313071227101730	3313071227101730	0.539304	0.467228957	
Residual	38	233442931133142000	6143235029819540			
Total	39	236756002360244000				

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>	<i>Lower 95.0%</i>	<i>Upper 95.0%</i>
Intercept	25622417.18	16521454.44	1.550857	0.129225425	-7823518.484	59068352.85	-7823518.484	59068353
Investment In CSR	0.000234837	0.000319779	0.734373	0.467228957	-0.000412522	0.000882196	-0.000412522	0.000882

# **CHALLENGE STRATEGIES OF BUSINESS COMPETITION: CREATIVE MARKETING APPROACH NOTES ABOUT DEVELOPING A SUCCESFULL ORGANIZATIONAL MODEL**

**A. Buğra HAMŞIOĞLU Res. Assist.**

**Kafkas University, Faculty of Economics and Business Administration Kars/Turkey**

**Didem HAMŞIOĞLU Res. Assist.**

**Anadolu University, Faculty of Economics and Business Administration  
Eskişehir/Turkey**

## **ABSTRACT**

Nowadays redefining and changing contents of competition direct to force businesses pursuing faster than before and not to have temporary successes towards lasting superiority. This puts forward a question about which strategies and marketing applications need to integrate in lasting competitive superiority. Especially recently rapid changes and transformer of marketing paradigm presents new road maps to follow new approaches to businesses. Unique of these maps is “creative marketing” approach.

Developing or creating existed or feasible customer desires and needs is developing or creating marketing and it has been able to present customer in short time. Although, this is possible if business in all focus on marketing, it will determine and develop internal abilities true. Varying competition, continuing existence of business and/or providing successful permanent competition depends on constitute framework of creative marketing. In this point of view considering and adapting creative marketing approach in competitive strategies in business seems to be important because of lasting superiority /leadership business.

This research main idea and basic aim is to search in competition put forward creative marketing as a challenge strategy business could develop new models and strategies and successful organizational model. Consequently hypothetical and conceptual scope of this study contains as a framework of providing analytic contribution.

**Key Words:** Creative Marketing, Competitive Intelligence, Organization Model.

## **1. INTRODUCTION: CONTENTS IN COMPETITION VARYING ATTRIBUTION**

Providing competitive advantage both in national and global area in businesses, depends on ability to identify and understand changeable demands and needs of customer, correspond with new and innovative ideas, ability to create new demands for customers (Hao, 2000:53-64). Moreover, businesses exists forceful competitive pressure because of rapid changes in market needs, rapid changes in technology, getting shorter of product life cycle desire of meeting customer demands. In this state, field of business evermore new competitive advantages such as (a) developing new products/services (b) researching new methods in production (c) expanding new market fields (d) finding new resources to provide (Amabile et al., 1996:1154-1184).

Businesses for having competitive advantage, necessity transform and revise itself in steady changing market. This transformation/variation occurs at the same time and everywhere. In point of business, competitive advantage as a trigger endures development, innovation and creativeness. As today, having

changes in competitive advantages was affected by technologic changes and/or transforms (Moore, 1997:140-149; Bettis and Hitt, 1995:7-79).

Nowadays, businesses have global competitive which is technology/market focused. Global competitive which is technology/market focused brings moving faster money capital, shorter product/life cycle, needing more developed technology and having more complicated customer. Challenges in competitive occur more in IT industry. Before these sectors had traditional product/focused structure, now businesses adopts shortening product life cycle and creative marketing which depends on business resources and competences. Such strong competitive, another word, challenging in competitive, when they produce businesses have seen over revising almost everything as a resolution. Businesses should need to use existing products and product development for new competitive challenge strategy in new competitive (Hooley and Greenley, 2005:93-116; Hunt and Morgan, 1996:107-114; Cockbur et al., 2000:1123-1145).

## 2. CYCLE OF CREATIVE MARKETING PARADIGM

Cycle of creative marketing paradigm in Businesses depends on redefining creativeness and innovativeness and establishing infrastructure of business culture. Cycle of marketing paradigm is based on continuity of this process. In other words, creativeness is not limited with producing products or serving in market. Creativeness invents new energies and probabilities. Therefore creativeness is a process of starting point of successful innovation application or creating new things. Cycle of creative marketing paradigm's ability to convert new ideas to useful and fact requires initiative and objective point of view. This is important for cycle of creative marketing paradigm success. Cycle of creative marketing paradigm provides developing new idea system and producing idea. Thus, cycle of creative marketing paradigm includes constitution of management systems or developing performance and customer services and technology which has deep impact on market structure (Papatya, 2006:73-77).

Marketing paradigm's creative process is under pressure about managing successful and according to that developing marketing culture. Effective planning and managing creative marketing are possible if the potential of market are discovered finding right solutions. Getting useful these solutions for market, businesses need to have marketing competences and competitive intelligence. If businesses access to success, business should have key element of marketing; however, businesses should be saved from these pressures (Coade, 2002:25-26):

- **Customer Behavior:** The main reason of determining customer behaviors is having more alternatives to customers and choosing more than before.
- **Compatible of Demand:** Different, specific and compatible desire products' demand growth rapidly.
- **New Economic Surroundings:** When economic surroundings search for different products/services from competitors, it puts pressure about being more creative on to businesses.

- **Managing Transition:** Managing complex transitions is not only for specific sectors.
  - **High Quality:** Customers always follow highest quality as possible. Businesses provides not only quality, but also they are under pressure about developing first product and services.
- In this case, businesses have to change and transform themselves seriously for continuing their presence in the market place and challenging competitive (Chaharbaghi and Lynch, 1999:45-50).

### 3. CRITICAL SUCCESS FACTORS IN CYCLE OF CREATIVE MARKETING

Critical success factors role playing in cycle of creative marketing paradigm are creative marketing culture, leadership style, creative marketing source and competences, creative marketing structure and strategies (Andriopoulos,2001:834-840). These critical success factors are shown at Table 1.

**Table 1: Critical Success Factors**

<b>Factors</b>	<b>Statements</b>
<b>Creative Marketing Culture</b>	Developing organizational creative culture and spreading out through to organization is a challenge strategy in businesses. Culture is determinant of innovation. As creative marketing culture is a model of leaning upon experiences and predicting future (Ahmed, 1998:30-40;Schein,1993:13-28).
<b>Leadership Style</b>	Creative marketing relates to leadership. Leadership and being leader are not just competence also they are responsibility. Responsibility is not only taking responsibility of good work but also taking responsibility in bad situations. Because of these reasons, businesses need to have leadership more than before (Redmond et al., 1993:120-151).
<b>Creative Leadership Source and Competences</b>	It is so important that having unique sources and competences in businesses for creating new markets and changing competitive thinking. As only businesses which have effective competences and skillful, could develop and new products, services and works to serve high level (Carson and Gilmore, 2000:363-382; Andrews and Smith, 1996:174-187).
<b>Creative Marketing Structure and Strategies</b>	Transforming and changing marketing paradigm brings out to be open for businesses' creativeness. At the same also, businesses' creative marketing process should focus on targets and consequences; however target of creative marketing is developing new things more different than operational functionality targets. (Papatya,2006:76)

Beside of these critical success factors, business managers should eliminate barriers in front of creative organizational culture for having compatible environment, should know that creativeness is indispensable component and give education about creativeness (Suh, 2002:135-147). Barriers for businesses creativeness and innovations are given at Table 2 Creative organizational climate and eliminating barriers in front of the innovation, businesses which have creative and innovative organizational culture, not only learn how to deal with rapid changes and unpredictable environment but also they learn how to work with them (Shalley and Gilson, 2004:33-53).

**Table 2: Barriers to Creative Climate and Innovation**

<b>Barriers</b>	<b>Statements</b>
<b>Top management isolation</b>	Fosters misunderstandings and contributes to risk-averse climate
<b>Intolerance of differences</b>	Denies diversity, creates homogeneity and identifies as troublemakers those who question the status quo
<b>Vested interests</b>	Focuses on the parts rather than the whole and emphasizes the defense of areas against the encroachment of others
<b>Short-time horizons</b>	Emphasize short-term result over the potential for new ideas to generate long-term gains
<b>Overly rational thinking</b>	Tries to place Creative and chaotic processes into systematic and rational sequences and may emphasize schedules over development needs
<b>Inappropriate incentives</b>	Reward and control systems reinforce regularity and discourages surprises and differences linked to innovation
<b>Excessive bureaucracy</b>	Allegiance to rules and procedures that frustrate creativity and innovation

**Resource:**Roffe,(1999:232)

#### **4. SUCCESSFUL ORGANIZATION MODEL FOR CREATIVE MARKETING**

Successful organizational model which is designed for creative marketing is shown at figure 1 and has 3 processes has positive impacts. Particularly, beginning stage which is creativeness process is so important for improving creative business environment and forming right managerial behaviors (Woodman, et al., 1993:291-321). In this case important thing is represent thoughts freely, behaving with their ideas not with restrict management plans, encourage to take risks, tolerating failures in applications, accepting radical thoughts and approving success of employees.

Consummation all of these process from businesses also means that second stage. This stage is meeting customer needs and creating new needs for customers. In this stage some points are important which are having sufficient sources, manager's support, cooperation and efficient working team. In the third stage of the organizational model is ability to be successful about developing concepts of applications. In this stage, customers are tested for how they react and accommodate to new concepts. This stage is last stage and also being successful about applications. Analyzing customer needs and producing good products have important role in this stage. Creating new needs for customers and successful harmonizing customers with products are important stage for creative marketing process. Important factors of supporting these processes will be advertising and brand (Cumming, 1998:22-23).

The diagram illustrates the Innovation Process as a flowchart with three main stages: Birth of initial idea (Creativity), Successful Development, and Successful Application. The process is supported by various factors and resources, which are listed in columns on either side of the central flow.

```

graph TD
    A[Birth of initial idea  
(Creativity)] --> B[Successful Development]
    B --> C[Successful Application]
    C --> D[High quality implementation]
  
```

**Factors and Resources:**

- Left Column (Supporting Birth of initial idea):**
  - Diverse Information Sources
  - Staff with diverse interests
  - Supportive management
  - Failures willingly tolerated
  - Freedom to pursue own
  - Success recognised
  - Suggestion programmes
  - Patent programmes
  - Non conformity tolerated
  - Adequate funding
  - Adequate manpower
  - Management belief in
  - Risk taking encouraged
  - Strong project champion
  - Senior project champion
  - Strong project leader
  - Good project selection
  - Good source of project
  - Meets customer's needs
  - Value of money
- Right Column (Supporting Successful Development and Successful Application):**
  - Risk taking encouraged
  - Adequate resources
  - Good strategic direction
  - Free information exchange
  - Brainstorming encouraged
  - Access to external stimuli
  - Non constraining
  - Technically competent
  - Challenging environment
  - Aligned to company
  - Clear project objectives
  - Full time team members
  - Enthusiastic cooperative
  - Empowered team
  - Use of external expertise
  - Users needs understood
  - Good contact with users
  - Thorough development
  - Out performs current products
  - High quality implementation

Acceptance of creative marketing concept and getting at the right position depend on tending certain strategic targets. In this case important point is not only having targets but also having efficient creativeness and innovative applications. Application effectiveness however, depends on creativeness and innovation of targets on a large scale and to accommodate changeable conditions (Amabile, 1998:77-87). Also, creative marketing application begins with analyzing opportunity and resources. These resources are important because they could occur different time and different structures and shapes in businesses (Drucker, 2003:95-103).

Businesses need to develop creative marketing in organization and for application need to evaluate success requirements which are given below: (Brown, 2002:105-115; Khan and Al-Ansari, 2005:1-21)

- Doing research about new work applications,
- Learning from innovations,
- Realizing associates of creativeness is customer,
- Generating creativeness and innovations ,
- For creative marketing, developed organizational mission should cover all of the organization,

- Successful creative marketing should have valuable products/services for itself and customers, dynamic environment which creates processes and new applications.

In conclusion, businesses need to develop competitive challenge strategies for surviving and to restructure of business competences with creative quality for competitive advantage. Evaluating of creative fields and concepts will make businesses realize creative marketing is new marketing paradigm. Also, strategies will come into for developing competitive capability. Thus, for obtaining more successful and stronger organization sustainable success and challenge are so important.

## REFERENCE

- [1] Ahmed, P.K, (1998), "Culture and Climate for Innovation", *European Journal of Innovation Management*, 1(1):30-40.
- [2] Amabile T.,Conti R.,Coon H.,Lazenby J.,(1996),"Assessing The work Environment for Creativity",*Academy of Management Journal*, 39(5),pp.1151-1184.
- [3] Amabile T.,M.,(1998),"How to Kill Creativity",*Harvard Business Review*,(September-October),pp.77-87.
- [4] Andrews J.,Smith D.,(1996),"In Search on the Marketing Imagination: Factors Affecting the Creativity of Marketing Programs for Mature Products",*Journal of Marketing Research*, (33),pp.174-187.
- [5] Andriopoulos C.,(2001),"Determinants of Organizational Creativity:a Literature Review",*Management Decision*,39(10),pp.834-840.
- [6] Bettis R.,A.,Hitt M.,A.,(1995),"The New Competitive Landscape",*Strategic Management Journal*, (16):pp.7-19.
- [7] Brown, J.,S.,(2002),"Research That Reinvents the Corporation", *Harvard Business Review*, 80(5),pp.105-115.
- [8] Carson D.,Gilmore A.,(2000),"SME Marketing Management Competencies",*International Business Review*, 9(4):363-382
- [9] Chaharbaghi K.,Lynch R.,(1999),"Sustainable Competitive Advantage: Toward A Dyanimc Resource-Based Strategy",*Management Decision*,37(1),pp.45-50.
- [10] Coade N.,(2002), Her Koşulda Yaratıcı Olmak, (çev.Savran, A.,E),İstanbul:Epsilon Ya.
- [11] Cockbur I.,M,Henderson R.,M,Stern S.,(2000),"Untangling The Origins of Competitive Advantage", *Strategic Management Journal*, 21(10/11),pp.1123-1145.
- [12] Cumming B.,(1998),"Innovation Overview and Future Challenges", *European Journal of Innovation Management*, 1(1),pp.21-29.
- [13] Drucker P.,F.,(2002),"The Discipline of Innovation", *Harvard Business Review*, 80(5),pp.95-103.
- [14] Hao M.,(2000),"Of Competitive Advantage: Kinetic and Positional",*Business Horizons*, 43(1),pp.53-64.

- [15] Hooley G.,Greenley G.,(2005),”The Resource Underpinnings of Competitive Position”,*Journal of Strategic Marketing*,13(2),pp.93-116.
- [16] Hunt S.,D.,Morgan R.,M.,(1996),”The Resource Advantage Theory of Competition:Dynamics, Path Dependencies and Evolutionary Dimensions”,*Journal of Marketing*, (60),pp.107-114.
- [17] Khan R.,M.,Al-Ansari M.,(2005),”Sustainable Innovation as a Corporate Strategy”,<http://www.triz-journal.com/archives/pdf> [Accessed 10.09.2007]
- [18] Moore J.,F.,(1997),Rekabetin Yeni Gerçekliği, (çev. Z. Dicle),Anadolu Grubu Ya., No:3,İstanbul.
- [19] Papatya, N.,(2006),”Pazarlamada Değişimin Ötesi:Yaratıcı ve Yenilikçi Pazarlama Dönüşümü”,*Pazarlama Dünyası*,20(5),pp.73-77.
- [20] Redmond M.,R.,Mumford M.,D.,Teach R.,(1993),”Putting Creativity to work:Effects of Leadre Behavior on Subordinate Creativity”,*Organizational Behavior and Human Decision Processes*,55(1),pp.120-151.
- [21] Roffe I.,(1999),”Innovation and Creativity in Organizations: a Review of the Implications for training and Development”,*Journal of European Industrial Training*,23(4/5),pp.224-237.
- [22] Schein E.,H.,(1993),”The Role of The Founder in Creating Organizational Culture”*Organizational Dynamics*, (12),13-28.
- [23] Shalley C.,E.,Gilson L.,L.,(2004),”What Leaders Need to Know: A Review of Social and Contextual Factors that can Foster or Hinder Creativity”, *The Leadership Quarterly*, 15:33-53.
- [24] Suh T.,(2002),”Encouraged Motivated and Learning Oriented for Working Creatively and Successfully: A Case of Korea Workes in Marketing Communications”, *Journal of Marketing Communications*, 8:135-147.
- [25] Woodman R.,W.,Sawyer J.,E.,Griffin R.,W.,(1993),”Toward a Theory of Organizational Creativity”,*Academy of Management Review*,18(2),pp.291-321.



# THE CONTRIBUTION AND SOME CHARACTERISTICS OF CROSS BORDER COOPERATION FOR MOLDOVAN SMES (THE CASE OF COOPERATION WITH ROMANIA)

Elena Aculai

Adela Bulgac

Institute of Economy, Finance and Statistics

Chisinau, Moldova

**Abstract:** In the paper, some characteristics of cross border cooperation of Moldovan SMEs are examined - types of cooperation, problems and preferences in choosing foreign partners, impact of cross border cooperation on business and regional development. The stress is made on the cooperation with Romania. Content of the paper is based on results of the international research project "Cross-border Cooperation and Partnership in selected NIS countries and the Consequences of EU-Enlargement: Fostering Entrepreneurship in the Ukraine, Belarus and Moldova", elaborated by a research team from 5 countries during 2005-2007 years with the support of INTAS.

The main research method within the project was weakly structured "face to face" interviews with different actors, first of all, with enterprises and households involved in CBC. In Moldova, actors from 2 districts (Edinet, Cahul) placed in the northern and southern parts of the country, correspondingly on the territories of Upper Prut and Lower Danube Euroregions, right along the border with Romania, were interviewed.

**Keywords:** small and middle enterprises, cross border cooperation, the European Union,

## INTRODUCTION

Limited possibilities of SMEs in transition economies, along with development of the process of internationalisation, where more actively smaller sized enterprises are implied, determine entrepreneurs to seek new directions of business development and realise new strategies directed out of borders of their country. An additional opportunity for enterprises from border regions could serve such a form of external economic activity as cross border cooperation (CBC), i.e. the cooperation between enterprises from border regions of neighbour countries.

For Moldovan SMEs that confront serious barriers in their activity (difficult access to all types of resource, narrow internal market, etc.), the CBC could be of special importance. We should mention that Moldova has a small territory and among its 32 districts more than 20 have external borders. But, due to certain circumstances only few Moldovan businesses cooperate with enterprises from neighbour countries. In the paper, results of the international investigation realised in 2005 – 2007 and oriented to identifying some essential characteristics of CBC of Moldova, Ukraine and Belarus with the EU countries and with Romania – at that moment being a candidate country, are presented.

In the paper, some characteristics of CBC are examined – types of cooperation of SMEs, preference in choosing partners from Romania or Ukraine, problems of partners' search, interest of both sides in CBC, influence of CBC on business development and its contribution to regional development.

## THE ROLE OF CBC: LITERATURE REVIEW

In order to define the CBC and elucidate different aspects of this phenomenon, several investigations have been taken during last decades in the world. Some researchers see the CBC as a modern regional development practice. While traditional regional development practices originally intended to solve regional discrepancies within national boundaries, CBC is new in that it involves foreign, national and regional governments in addition to supranational institutions (Friedmann and Weaver 1979, cited by Enokido 2007). And implication of different level institutions assumes avoiding of discrepancies between regions which don't have anything in common with national borders. This aim is of a permanent actuality in the EU that uses, including, the CBC for the realization of European integration of countries from the continent.

Thus, the European Commission in the Madrid Convention offers an official status to the CBC defining it as "any concerted action designed to reinforce and foster neighborly relations between territorial communities or authorities within jurisdiction of two or more Contracting Parties" (European Commissions 1980). The importance and relevance of CBC to European integration is mentioned by Grix (2001) who sustains that "the act of 'knitting' together historically antagonistic neighboring states at national, sub-national and local levels has been particularly successful in western Europe, where a myriad of Euro regions function as channels for, and facilitators of, formal and informal interstate cooperation and exchange".

The EU, within its policies established several instruments of CBC promotion. Among them the EU established the concept of the Euro region, "which is a form of transnational co-operation structure between two or more territories located in different European countries" (Smallbone 2007). Besides Euro regions, there have been launched the INTERREG programmes „that aims to promote integrated regional development between neighboring border regions, including external borders, by developing cross-border economic and social cooperation through joint strategies and development programmes" (Smallbone 2007).

In the EU the CBC has been one of the key factors in the process of integration and has been seen by Central and Eastern European countries that have aspired to accede to the EU as a model of integration. In this sense, the EU supports the effort of these countries through launching of a CBC instrument with regard to its external borders – programmes such as PHARE and CARDS that have funded cross border cooperation projects (Smallbone 2007). Since 2007, Moldova, being an immediate neighbor of the EU, can facilitate from some of these instruments as well. Although declared by national authorities of special importance, the problem of CBC has been little investigated in the country. At the same time, few activities that could lead to the awareness by population of CBC advantages are taken. In this sense, the CBC of economic agents from border regions as one of the main aspects of CBC, which directly determine regional development has a decisive role.

## **RESEARCH METHODOLOGY**

The material of the paper is based on results of the international research project “Cross-border Cooperation and Partnership in selected NIS countries and the Consequences of EU-Enlargement: Fostering Entrepreneurship in the Ukraine, Belarus and Moldova”, elaborated by a research team from 5 countries during 2005-2007 years with the support of INTAS № 04 79 6991. A determinant contribution to discussing the methodology and results of investigation have made the project coordinator professor Friederike Welter (University of Siegen, Germany) and professor David Smallbone (Kingston University, Great Britain).

The main research method within the project was weakly structured “face to face” interviews with different actors, first of all, with enterprises and households involved in CBC. Besides, employees of business support institutions such as regional/ local administrative bodies, chambers of commerce and industry, business associations and NGOs involved in the economic activity, were also interviewed. In Moldova, actors from 2 districts (Edinet, Cahul) placed in the northern and southern parts of the country, correspondingly on the territories of Upper Prut and Lower Danube Euroregions, right along the border with Romania, were interviewed. In each district 40 interviews were performed: with enterprises – 20, with households – 10, with business support institutions – 10.

## **MAIN TYPES OF CBC OF MOLDOVAN SMES WITH ROMANIA**

In spite of little number of Moldovan enterprises participating in CBC, the interviewing elucidated different types of cooperation. The preponderant type of CBC for most Moldovan enterprises is import-export relations. The main type of production exported from Moldova to Romania is agricultural production: fruits and vegetables, wine, grains, cereals. Within CBC, from Romania to Moldova, relatively more often goods for population are imported, such as clothes and footwear, tablewear, detergents, cosmetics, etc.

Forms of import-export operations essentially differ from partner to partner. Besides, these relations suffer certain changes in time. Thus, for small (micro) enterprises and households, especially at the beginning of business development, the cooperation often was limited to one transaction or periodically repeating transactions, that weren't accompanied even by verbal agreements. Such forms of CBC were quite spread in 1990<sup>th</sup> when large part of Moldovan citizens ran out of their jobs and had to take entrepreneurial activity in order to ensure a source of income for living. Seizing the opportunity offered by the recently opened borders, they oriented to Romanian markets to realize their production or to acquire goods for trade activity in Moldova. A representative example of that period was the market place in Galati county (Romania), which due to large number of Moldovan traders on it was called “Moldavians' market”. In time, a part of entrepreneurs chose certain partners to cooperate and negotiated certain parameters of transactions, such as assortment, price, volume and time of transactions.

In the CBC are implied not only production and trading firms that import and export goods, but also service providing enterprises, mainly from construction, transporting and land processing spheres. In particular, in interviews there were mentioned examples of providing by Moldovan enterprises of services of road construction and repairing in border regions of Romania; passenger carrying on cross border routes between Romania and Moldova; agricultural land processing for Romanian enterprises.

Sometimes, the CBC is based on exchange of information and consulting. As an example illustrating this type of CBC could serve the cooperation of Moldovan enterprise "Optica" with the supplier of optical goods and equipment from Romania. The latter offers to the Moldovan enterprise information about new types of goods, offers consultations, organizes change of experience, invites to exhibitions organized by himself, sometimes at his expense.

Quite rare are cases of personnel training within CBC. In fact, organized training takes place only at larger enterprises. As example, can serve the training in Romania of the personnel of the under construction Moldovan airport. At SMEs, only familiarization with partner's experience within meetings and while observing activity of its managers, took place. In some cases the type of CBC was conditioned by specific needs of one of the partners. For instance, a Moldovan agro industrial enterprise, in order to get operative information about markets in the border regions of neighbor country, came with the initiative to establish its partner's business in Romania. As a result, the Romanian partner had the role of intermediary, which purposefully was trading the production of the Moldovan enterprise on the Romanian territory.

Among less spread forms of CBC can be mentioned the distributing activity and creation of joint ventures. An example of the later is the creation in the border region of Moldova of a Moldovan-Romanian joint venture producing package (plastic bottle) for mineral water. Thus, even covering little number of economic agents and households, the CBC of Moldovan and Romanian enterprises is characterised by a certain variety.

## **PARTNERS IN THE CBC**

### ***Preferences in choosing partners – from Romania or Ukraine?***

Moldova has external borders with 2 countries – Romania and Ukraine. Both of them are attractive for Moldovan entrepreneurs because of their larger markets and higher level of economic development. The commonality of language, culture, ethnic provenience also favour the development of external economic activity with both Ukraine and Romania. The fact that a significant part of earlier inhabitants of Moldova, after USSR collapsed either emigrated to Romania and Ukraine or left abroad to work, contributed to the development of external economic activity of Moldova. Many of the emigrated people have relatives in Moldova, i.e. there are strong contacts between citizens of Moldova and of

neighbour countries. A part of inhabitants of Moldova have got the citizenship of other countries, including of Romania and Ukraine. This fact facilitates the solving of many problems on the neighbour country territory, as well as, visa and customs problems. The later ones are of a particular importance for the cooperation with Romania after accession of this country to the EU.

A certain part of citizens, like in the past, continue to develop cooperation with Ukrainian partners. This direction is habitual: Ukrainian market refers to traditional for Moldovan goods market, where many of them are well known. At the same time, the Ukrainian market is a part of the huge NIS market, where demand is less satisfied and differentiated than in the EU. Requirements of inhabitants of Moldova and Ukraine to goods are mostly similar or, at least, quite clear because they many years lived as one country. At the same time, the confidence in the possibility to develop a long-term cooperation with Ukrainian business lacks, because there are many unpredictable things in the political and economical life of Ukraine.

Most part of Moldovan entrepreneurs started to explore the Romanian market only in 1990<sup>th</sup>, but, closeness and openness of borders greatly contributed to establishment of contacts with Romania in all spheres, including business. The attractiveness of Romanian market potentially increased after the issue with regard to the entrance of Romania to the EU was worked out, as the access to Romanian market meant access to the EU market. But, barriers that impeded the access to the EU market, higher level of competitiveness, different standards and requirements towards quality of goods, lack of information about legislation and juncture of the foreign market significantly limited the interest and possibilities of Moldovan enterprises. Also, visa and customs problems arisen after Romania entered the EU didn't foster initiation of CBC.

It is necessary to mention also the preference of Moldovan citizens – a part of them are oriented to Europe, the other – to Ukraine, Russia. The orientation is conditioned by the existence of relatives in one or other country, prior experience of cooperation, knowledge of language to communicate with potential partners, ethnic provenience.

### ***Search of partners by Moldovan enterprises***

The problem of partners' search is both responsible and quite difficult for Moldovan enterprises determined to initiate CBC. As a rule, the search is initiated and performed by the Moldovan side. We can assume that it is conditioned by a higher interest of Moldovan firms in the cooperation. Romanian enterprises are interested in cooperation with partners from west at a larger extent that with those from east. In the opinion of business support institutions this situation only becomes more acute after the accession of Romania to the EU.

In the interviews, different ways of foreign partner search were mentioned. Small enterprises and households perform the partner search independently. It is not wondering as SMEs from Moldova, as in many other cases as well, quite seldom officially address to business support institutions and prefer to solve problems by

their selves or appeal to unofficial private consultations. This happen because other ways of partner search are not known to Moldovan SMEs, are not accessible or don't correspond to their requirements (regarding the quality, price, etc.).

More often, larger enterprises find foreign partners within forums, seminars, as well as through Internet. The seminars and forums are usually organised by Chambers of Commerce and Industry (CCI) or local administrative bodies. For instance, one of the respondents participated in a meeting of economic agents from Romania and Moldova organised by the CCI Edinet and CCI Botosani. Because among participants the respondent couldn't find a suitable partner in the sphere of tourism, he asked CCI Botosani for help. Later, the Chamber recommended a tourism agency from Iasi which became respondent's partner.

The analysis of the CBC shows that enterprises often limit to finding of one partner, or among several partners usually there is a main one and the cooperation with it is for the participant more important, stable and lasting. The existence of just one partner implies risk for the partnership and possibly for the business, especially if the CBC is quite important for the activity of the enterprise.

### ***Interest of partners in CBC***

Most of Moldovan respondents mention that the interest for CBC comes from both sides. At the same time, from their point of view, Romanian partners are oriented to western European partners at a larger extent than to the eastern neighbours. The orientation of Romanian business to west could become a threatening for the development of cross border cooperation of Moldovan enterprises.

From another side, some Moldovan entrepreneurs point out the stimulating role of the ethnic factor in the development of CBC with Romania. In the interviews is mentioned that in spite the fact that main in CBC is the economic effect, at the same time, there is present the willing to have common deals with kindred people. A part of respondents – Moldavians are sure that the support coming from the Romanian side has also on the basement a national subtext. The result of cooperation is determined not only by the extent of interest, but also by the commonalty of interests of both sides in the CBC.

The expectations of Moldovan and Romanian partners from CBC mentioned in the interviews are quite different. Expectations of Moldovan entrepreneurs are more diverse: they need raw materials, equipment and new technologies, they necessitate training and change of experience, seek new markets and possibilities of financing. For Romanian entrepreneur there are two attracting factors in CBC – entrance to a new market and the possibility to access the EU financing that can be facilitated by cooperating with Moldova. Lack of commonalty of interests of partners could turn into barrier of CBC development.

## CONTRIBUTION OF CBC TO BUSINESS AND REGIONAL DEVELOPMENT

### ***Importance of CBC for enterprises activity***

Analysing the importance of CBC, it was found out that practically all Moldovan entrepreneurs evaluated positively its impact on business; even they used different criteria of evaluation. The effect from CBC for most enterprises was the growth of income (oriented to business development or family needs), enlargement of the assortment, growth of turnover, entrance to new markets, acquiring of work experience in other conditions.

For a range of enterprises the CBC became a necessity that determined the continuity of enterprise's activity. In some cases, especially at the beginning of 1990<sup>th</sup>, due to established CBC, enterprises avoided the bankruptcy. Some entrepreneurs outline the change of current business indicators under the influence of CBC. Thus, for a Moldovan enterprise that due to CBC became distributor of a large European company, the cooperation brought a small 5% growth of turnover as a result of assortment enlargement. Other entrepreneurs examine the role of CBC from a strategic point of view. For instance, the manager of a bakery that recently signed a contract of delivering to a Romanian supermarket belonging to a large European trade network around 20% of its production, considers the cooperation important, first of all, due to the possibility of accessing a new market – not only the Romanian, but also the European one.

Sometimes, the entrance to Romanian market takes place with the purpose to diversify external sale markets. Even holding a small segment of market in Romania (i.e. Europe), enterprises try to secure against any unpredictable changes of situation on traditional NIS markets, although the later at the moment are suitable to Moldovan producers. Besides, the diversification of markets allows smoothing to some extent the seasonal aspect of the production process. The international, including cross border cooperation increase the number of potential customers, as well as offer a larger choice of raw material and equipment suppliers.

Cooperation with Romanian partners earlier developing cooperation with European firms, allows receiving of information about new technologies, modern methods of goods' advancement, organising of production, situation and development trends in certain sectors of economy, and as a consequence, using these knowledge while working on domestic market. As a result of CBC some enterprises acquire additional sources of financing, in particular, by creating of joint ventures.

### ***Contribution of CBC to regional development***

Beside the opportunity of business development offered by CBC, it is important for the region ensuring contribution to its economic and social growth. Particularly, industrial enterprises produce substitutes of imports, contribute to growth of competitiveness, and satisfy local demand by enlarging the assortment and improving quality of goods. Enterprises participating in CBC contribute to

local and national budgets paying taxes; and at goods' export in the region/country international currency come. Due to CBC, new work places are created. Enterprises, producing high quality production, contribute to the improvement of the quality of life of inhabitants.

Especially should be mentioned the social orientation of some enterprises, for example, creation of work places for disabled people. One of the interviewed enterprises at the beginning was created as Centre for professional training of disabled people. Even in time it changed the status, the enterprise continues hiring disabled people and their children, offers sponsorship and donation to them. In the interviews, other kinds of enterprises' contribution to social development of the region were mentioned. For example, the enterprise "Opica" regularly offers sponsorships to the Society of Blind from Cahul, as well as free diagnostic service, treatment and medicines.

Any positive results of business development, including, of CBC, have a particular value, because they serve as example for other entrepreneurs – less active and successful, that consider impossible the development of business in existent business environment, and the achieving of competitiveness on European and other external markets.

## **CONCLUSIONS AND IMPLICATIONS**

The achieved investigation allowed making some conclusions on both theoretical and practical plans. In the theoretical plan, on the background of insufficiently studied problem of CBC with regard to transition economies, investigation of the case of Moldova and Romania can serve as an additional "input" in elucidating of all variety of CBC. All the more that the case between Moldova and Romania is a peculiar one, because here left trace on, from one side, the commonality of culture, history, language; from another side – the long period of "iron curtain" between 2 countries, the contemporary stage with difficult political relations between the governments of Moldova and Romania, additional problems linked to the accession of Romania to the EU.

The utilisation of obtained results for practical purposes, proceed from the fact that most Moldovan enterprises, due to CBC, could improve their business indicators. Besides, the CBC of Moldovan and Romanian enterprises foster the economic and social development of regions, which is very important for Moldova. Nevertheless, quite few Moldovan enterprises are involved in CBC. Among main barriers of CBC development, could be mentioned insufficient business support institutions, their weak orientation to providing services related to foreign economic activity.

Besides, entrepreneurs are not completely informed on advantages the CBC could offer; they are not used to ask support to institutions, don't know about their existence or don't trust them. For Moldovan SMEs, the difficult foreign partner search is another barrier to CBC initiation and development. In order to



stimulate the CBC development, there is the need of development of business support institutions, which facilitate the access of enterprises to sources of financing, information, consulting, training. It is important to take into account the specific needs of entrepreneurs related to CBC, for example, familiarisation of Moldovan entrepreneurs and specialists to methods of foreign partner search, technologies of initiation and maintaining business contacts, etc.

After the adhesion of Romania to the EU in 2007 year Moldova became an immediate neighbour of the EU and that influenced the CBC of enterprise with Romania. In the perspective, this can bring new possibilities for Moldovan enterprises, but, at present, they confront additional visa and customs problems. The situation is worsened by political divergences between the two neighbor countries that influence the activity of all levels authorities and have a negative impact on the CBC of Moldovan enterprises. An important role in this situation could play the policies of the two countries and of the EU, by fostering simplification or, at least, well-regulation of visa problems, as well as, by stimulating all forms of contacts between enterprises, organisations and citizens from neighbour countries.

The study of CBC on external borders of the EU in the future could serve as grounding of practical measures for realization of the EU neighbourhood policy, including within Euro regions.

## REFERENCES

- [1] Enokido, K., 2007. 'Searching for Partners Across Borders: A Literature Review on Cross Border Cooperation', *Journal Tourism Sciences*, Vol.1, March, 2007.
- [2] Grix, J., 2001. 'Towards a Theoretical Approach to the Study of Cross Border Cooperation', *Perspectives*, No 17/2001.
- [3] Smallbone, D. and others, 2007. 'Challenges and prospects of cross border cooperation in the context of EU enlargement', *Deliverable 7: State of the art literature review*. London, Kingston University.
- [4] European Commission, 1980. 'European Outline Convention on Transfrontier Cooperation Between Territorial Communities or Authorities', Madrid, 1980.

# ORGANIZATIONAL CITIZENSHIP BEHAVIOUR AND ORGANIZATIONAL LEARNING CLIMATE RELATIONSHIP

Mine Türker  
Marmara University, İstanbul, Turkey

## ABSTRACT

Global competition highlights the importance of innovation, flexibility, responsiveness, and cooperativeness for long-term organizational success. Innovative and spontaneous behaviours' vitality is revealed in protecting organization in an ever-changing environment. As a necessity, organizations will become more dependent on employees who are willing to contribute effective organizational functioning, regardless of their formal role requirements. Employee behaviours like citizenship behaviours become more important and even crucial for organization's survival.

In this study, organizational citizenship behaviours as voluntary acts beyond the role specifications and its relationship with organizational learning climates are studied. Learning climate characteristics and the antecedents of organizational citizenship behaviours are compared and as a result of this comparison; organizational learning climate is explained as a contextual factor that facilitate employees to show citizenship behaviours.

**Key words:** Organizational citizenship behaviour, Organizational learning

## INTRODUCTION

Organizations always have long-term plans but in a benevolent environment they don't very much need to think about the future of organizations, they are assured by their ways of doing business. But when environment begins to change; they are confused about the decreased organizational performance and profitability. Continuous change proved the fact that gained superiority does not give an advantage unless it can't be duplicated by others and these conditions -we called shortly global competition- forced organizations to learn new ways of business rather than apply known solutions (Baldwin et.al., 1997). Of course, it is not easy to play a game if the rules are constructed while you are playing. So when organizations search for unknown business development in an unpredictable environment, they have to generate the knowledge to construct new mechanism for organizational goals accomplishment.

As Baldwin et.al., (1997:47) said "*when the speed of change exceeds the limits of our system to make sense of it, the change becomes unpredictable*", these conditions stress the concepts -innovation, flexibility, responsiveness- that organizations should use to adapt and enact to environment for sustained advantage in long term. In the last decade, organizations search for work behaviours beyond the traditional means of performance. In this perspective, the importance of learning concept is revealed. Organizations learn by through individuals but if they want to preserve the knowledge while individuals come and go, knowledge have to be shared in organization and become a part of work behaviours, procedures, politics etc. that we can talk about an organizational learning.

As a necessity, organizational learning mechanisms and employees' behaviours as first step of organizational learning have to be well understood. Organizations will become more dependent on employees who are willing to contribute effective

organizational functioning, regardless of their formal role requirements. In this respect, employee behaviours like citizenship behaviours become more important and even crucial for organization's survival. In this study, organizational citizenship behaviours and its relationship with organizational learning climates is studied. Learning climate characteristics and the antecedents of organizational citizenship behaviours is compared and as a result of this comparison; organizational learning climate is explained as a contextual factor that facilitate employees to show citizenship behaviours.

## **ORGANIZATIONAL LEARNING**

With an open system perspective, organizational survival depends on the relationship with its environment and learning is the main step of adaption and reaction of organizations. Organizational learning or learning organizations are become highlighted concepts as organizations need to take action beyond the traditional ways of doing business that become useless in changing environment. As environment becomes more dynamic nearly for all businesses in this global competition, organizations need to adapt and act quickly to keep up with at least the speed of change. Environmental conditions make organizations to have stronger incentives to renovate conditions. Organizational learning involves new responses or actions that are based on the environmental changes interpretation (Daft&Weick, 1984). Continuous improvement requires a commitment to learning (Garvin, 1993).

Luthans (2001) said that portraying an organization as a learning system is not new, Frederick W. Taylor tried to transfer learning to workers by his scientific management methods to increase productivity. However, organizational learning usually attributed to Chris Argyris and his colleagues work (1978) (single-loop and double-loop learning) and become popular with Peter Senge's study (adaptive and generative learning). Peter Senge described learning organization in his book "Fifth Discipline" (Senge, 1990) as "where people continually expand their capacity to create the results they truly desire, where new and expansive patterns of thinking are nurtured, where collective aspiration is set free, and where people are continually learning how to learn together". Organizational culture is taken as a major characteristic that built up learning organizations (Luthans, 2001). The importance of learning in an organization is mostly depend on how much value is given to it, in organizational culture, to what degree it is supported by cultural norms or to what degree it is operationalized by procedures or systems (eg. reward system, performance evaluation). Organizational culture which takes learning crucial for survival set mechanisms like teamwork, empowerment that depends on employees. Learning organizations are characterized by human-oriented cultural values (Luthans, 2001:113); new ideas are important and rewarded, mistakes are viewed as learning opportunities, all employees benefit from learning and everyone can be a source of useful ideas. Organizational learning is an endless process so we can not talk about organizations that fully learned. As a result of this, learning climates that support continuous development are taken in concern to make a comparative study with organizational citizenship behaviors.

## ORGANIZATIONAL LEARNING CLIMATES

Schneider et al. (1994:18) distinguish climate as *“the atmosphere that employees perceive is created in their organizations by practices, procedures and rewards”* from culture *“the broader pattern of an organization’s mores, values and beliefs”*. Honey and Mumford (1996:95-96) describe learning climate as the behaviours and practices involved in continuous development are actively encouraged and managers take a key role to develop learning climate.

Organizational climate is refers to employees’ perception of work environment, not simply the value-based perceptions (likes or dislikes) but the way that how employee describes the workplace (Altman, 2000). For a clear cut understanding of organizational climate, it is necessary to identify the types of work environment that set the surrounding for employees’ perception of climate. Recent research has identified over 460 areas but to make a comparable study, the five general category in Altman’s (2000) study is taken in this study. These are:

- Job characteristics focus on the requirements of a person's job. For example, autonomy of an employee, the amount of challenge of work, the level of importance a person feels about the contribution of his or her job to the overall success of the company.
- Role characteristics focus on the role a person plays within a department or organization. For example, role ambiguity and role conflict.
- Organizational characteristics focus on the qualities or traits associated with the organization. For example, innovativeness of a company, fairness of company's policies and procedures.
- Leader characteristics focus on the qualities associated with a company's managers and leaders. For example, supportiveness of managers to facilitate employees’ work, effectiveness of managers in setting and emphasizing employee goals, and trust to the manager.
- Work group characteristics focus on the relationship within workgroups, departments, or teams. For example, the importance of teamwork, the cooperation of employees within a workgroup, or the willingness of a team to accept and integrate a new team member.

The characteristics of learning climates can briefly summarized as (Senge, 1990, Cunnigham & Iles, 2002, Luthans 2001):

- Common purpose,
- Empowered employees
- Openness to new ideas
- Supportive leadership
- Promoting dialogue and enquiry
- Effective feedback
- Organizational support systems
- Perception of fairness

## ORGANIZATIONAL CITIZENSHIP BEHAVIOUR

The challenge of global competition highlights the importance of the concepts such as innovation, flexibility responsive to ever-lasting change. Organizations seek new areas for sustainable competitive advantage. Human resources are the most crucial factor to create advantage that can not be easily duplicated by rivals and specific for each organization. Work behaviours like organizational citizenship behaviours are receiving more attention as they contribute to effective functioning of organization.

Organizational citizenship behaviours are the kind that are beyond the traditional measures of job performance and can be conceptualized as positive organizationally relevant behaviours of individual organization members (Van Dyne et al., 1994). Organ (1988:4) defined organizational citizenship behaviour as *“individual behaviour that is discretionary, nor directly or explicitly recognized by the formal reward system, and in aggregate promotes the effective functioning of the organization. By discretionary, we mean that the behaviour is not enforceable requirement of the role or the job description, that is, the clearly specifiable terms of the person’s employment contract with the organization; the behaviour is rather a matter of personal choice, such that its omission is nor generally understood as punishable.”*

Podsakoff et al. (2000) made a literature review of organizational citizenship behaviour and indicated almost potentially 30 different forms of citizenship behaviour have been identified. They classified citizenship behaviours into seven common themes to deal with conceptual overlaps between dimensions. The seven dimensions of organizational citizenship behaviour categorized by Podsakoff et al (2000:516- 526) are:

- Helping behaviour involves voluntarily helping others with, or preventing the occurrence of, work-related problems (p.516)
- Sportsmanship defined as “a willingness to tolerate the inevitable inconveniences and impositions of work without complaining” (Organ 1990b:96)
- Organizational loyalty involves promoting the organization to outsiders, protecting and defending it against external threats, and remaining committed to it even under adverse conditions (p.517).
- Organizational compliance internalization and acceptance of the rules, regulations and procedures which results in a scrupulous adherence to them, even when no one observes or monitors compliance (p.517)
- Individual initiative is voluntary acts of creativity and innovation designed to improve one’s task or the organization’s performance persisting with extra enthusiasm and effort to accomplish one’s job (p.524)
- Civic virtue is willingness to participate actively in governance of organization (p. 525).
- Self development includes voluntary behaviours employees engage into improve their knowledge, skills and abilities (p. 525)

## **THE ANTECEDENTS OF ORGANIZATIONAL CITIZENSHIP BEHAVIOR**

Organizational citizenship behaviours are voluntary acts in their nature, these behaviours are a matter of personnel choice (Organ, 1988), so most research focused on the individual characteristics of OCB. But as individuals are a part of a group, department or a company we can not think the behaviours without the context they are come out. Podsakoff et al (2000) identified the contextual factors as task characteristics, organizational characteristics and leadership characteristics.

The antecedents of OCB (Podsakoff et al., 2000:526-533):

- Employee characteristics: Employee satisfactions, organizational commitment, perception of fairness are viewed as general moral factors (Organ and Ryan, 1995) that appeared to be important determinants of citizenship behaviors. Role perceptions are also found to have significant relationship with citizenship behaviors. Role ambiguity and role conflict are known to be related to employee satisfaction and satisfaction related to citizenship behavior.
- Task characteristics: task feedback and intrinsically satisfying tasks were positively related, while task routinization was negatively related to citizenship behaviors.
- Organizational characteristics: Group cohesiveness and perceived organizational support was found to be significantly related to citizenship behaviors.
- Leadership characteristics: leadership has a key role as an antecedent of OCB. Supportive and transformational leadership behaviors, leader-member exchange theory had significant and consistent positive relationship with OCBs.

## **ORGANIZATIONAL LEARNING CLIMATES AND ORGANIZATIONAL CITIZENSHIP BEHAVIOUR RELATIONSHIP**

In this ever-lasting change, organizations have to be more adaptive and competitive actors in their businesses that organizational survival mostly depends on organization's capability of external adaptation and internal integration of organization. Organizations will necessarily become more dependent on individuals who are willing to contribute to successful change, regardless of their job requirements (Somech & Drach-Zahavy, 2004). Organizational learning as a relative property of organizations denotes the extent to which use data to guide behavior as to promote the adaptation (Edmondson & Moingeon, 1998:9) through internal integration of organization. Organizational culture is an integration tool of shared values, beliefs that shape how organization members feel, think and behave (Schein, 1990). These norms, beliefs and values that make up culture most probably serve to provide opportunities for organizational citizenship behavior (Somech & Drach-Zahavy, 2004:283). Organizational learning values that are embedded in organizational culture foster OCBs.

As Senge (1993) demonstrated, organizational learning fosters a sense of commonality of purpose and strategic thinking and develops organizational

system approach. Individual's readiness to help a colleague or corporate with other coworkers might develop team identity. This creates an environment that enhances one's tendency to show OCBs.

Table-1 shows organizational learning characteristics and the antecedents of OCB that are classified according to the work environment categories to see the similarities between them.

**Table- 1:** Organizational learning climate and organizational citizenship behavior relationship

Work environment categories (Altman, 2000)	Organizational climate characteristics (Senge, 1990; Luthans, 2001; Cunnigham&Iles, 2002)	The antecedents of OCB (Podsakoff et al., 2000)
Task characteristics	- The contribution of job to the company - Empowerment, autonomy - Challenging job	- Task feedback (+) - Intrinsically satisfying task(+) - Task routinization (-)
Role characteristics	- Role ambiguity - Role conflict	- Role ambiguity (-) - Role conflict (-)
Organizational characteristics	- Organizational support systems - Perceived fairness	- Perceived organizational support (+)
Leadership characteristics	- Supportive leadership	- Supportive leadership behavior(+) - Transformational leadership behavior (+) -Leader-member exchange behaviour (+)
Work group characteristics	- Importance of teamwork	- cooperation and coordination in teamwork(+)

The (+) and (-) signs are used to show the effects of antecedents in revealing OCBs. For example task feedback and intrinsically satisfying tasks are significant determinants of OCB, increases OCBs and task routinization is negatively related to OCB (Podsakoff et al., 2000). As shown in Table-1, organizational learning climate characteristics are mostly similar with the antecedents of OCB that enhances the OCBs. According to this comparison, organizational learning climate characteristics can be thought as hygiene factors that are associated with the surrounding or peripheral aspects of the job (Luthans, 2001:263). Perceived organizational learning climate as job content not properly determines the appearance of OCBs but if there is a perceived learning climate that will enhance OCBs.

## REFERENCE

- [1] Altmann,R.(2000). "Forecasting your organizational climate", *Journal of Property Management*. 65/4. pp.62-67
- [2] Argyris, C., Schon, D. (1978). *Organizational Learning*, Addison-Wesley, Reading, Mass.
- [3] Baldwin, T.T., Danielson, C., Wiggenhorn, W. (1997). "The evolution of learning strategies in organizations: From employee development to business redefinition", *Academy of Management Executive*, 11:4, p.47-58.

- [4] Cunnigham P.; Iles P. (2002). "Managing learning climates in a financial services organization". *Journal of Management Development*. V.21. 5/6. p.477-492
- [5] Daft, R.L., Weick, K.E. (1984). "Toward a model of organizations as interpretations systems", *Academy of Management Review*, 9:2, p.284-291.
- [6] Edmonson, A., Moingeon, B.(1998). "From organizational learning to learning organization", *Management Learning*, 29, 5-20.
- [7] Garvin, David A. (1993). "Building a learning organization", *Harvard Business Review*, July-August, pp.78-91.
- [8] Luthans,F. (2001). *Organizational behaviour*. New York: McGraw-Hill.
- [9] Organ,D.W. (1988). *Organizational citizenship behavior: The good soldier syndrome*. Lenxington, MA: Lexington Books.
- [10] Organ, D.W (1990). "The motivational basis of organizational citizenship behavior. In B.M. Staw & L.L. Cummings (Eds.). *Research in organizational behavior*. (V.12, p.43-72). Greenwich CT:JAI press.
- [11] Organ, D.W., Ryan, K. (1995). "A meta-analytic review of attitudinal and dispositional predictors of organizational citizenship behavior", *Personnel Psychology*, 48, p.775-802.
- [12] Podsakoff, M., Scott, B.M., Paine,J.B., Bachrach,D.G.(2000). "Organizational Citizenship Behaviour: Acritical Reviewof The Theoretical And Emprical Literature And Suggestions For Future Research", *Journal of Management*. 26/3. p.513-563
- [13] Schein, E.H. (1990). "Organizational culture", *American Psychologist*, 45, p.109-119.
- [14] Schneider, B., Grunnarson, S.K., Niles-Jolly, K. (1994). "Creating the climate and culture of success". *Organizational Dynamics*, Vol.23:1, pp.17-29.
- [15] Senge, Peter (1990). *The Fifth Discipline*. New York: Doubleday
- [16] Senge, P. (1993). "Transforming the practice of management", *Human Resources Development Quarterly*, 4, p.5-32.
- [17] Somech, A., Drach-Zahavy,A. (2004). "Exploring Organizational Citizenship Behaviour From An Organizational Perspective: The Relationship Between Organizational Learning And Organizational Citizenship Behaviour", *Journal of Occupational And Organizational Psychology*, 77,p.281-298
- [18] Van Dyne, L.; Graham, J.W.; Deienesch, R.M. (1994). "Organzational Citizenship Behaviour: Construct Redefinition, Measurement And Validation". *Academy of Management Journal*. Aug 1994. 37,4. pp.765-802.