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The European Citizen and Public Administration

Transparency and Responsibility in the Public Administration Institutions. The case of Romania

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Abstract: An important topic often found in the media, but ambiguously treated is "transparency". This article will present a blueprint for Romanian municipalities' Websites done through the transparency concept's filter. We will see that although the law imposes to municipalities to post specific items on the Internet, they either omit or post a minimum of information just to "follow" the rules, without giving any evidence of interest. Assuming that displaying online more information requested by the law will lead to an increased users' confidence in the system, we accessed the Website of each municipality in Romania (103) to search for the existence of financial data (budgets, financial indicators, assets etc.). In the end, we have presented a brief report on how the government responds to citizens' concerns. The results are not very satisfactory, but we consider that such analyses will create a competition between municipalities, in which citizens are the winners.

Keywords: government; municipality; electronic; transparency; responsibility

1. Introduction

This analysis aims to present a radiograph of the official Websites' status for all the municipalities in Romania and on how they respond to transparency needs (Baltac, 2011). It is understood that the existence of very well designed Web platform (from a technical point of view) does not imply that they're also used by citizens or the business part of the society (Porumbescu, 2015) – the reason for this is that the Web platform does not provide the information they need (MCIS[a]).

Taking into consideration the legislation regarding the concept of Transparency[3] (Chamber of Deputies[a]), we took a closer look on each of the Romanian municipality's official Website in order to present, in figures, how close they are to this by putting this concept into motion.

2. Background

An aspect of interest in assessing not only the current state of the e-Government in Romania, but also possible future developments in this regard is represented by Romanian citizens' level of satisfaction and their requirements for the public administration. From this perspective, our country holds a position

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[3] Law no. 52 of 21 January 2003 on decisional transparency in the public administration, published in the Official Monitor of Romania no. 70 of 3 February 2003.

below the European average, if we are to take into consideration the number of Internet users of only 54.1% compared to 73.5% which is the average of all European countries.

The World Bank reported, at the end of 2014 (World Bank), the evolution of the Internet users' number in Romania for the period between the years 2000 and 2014 (Fig. 1).

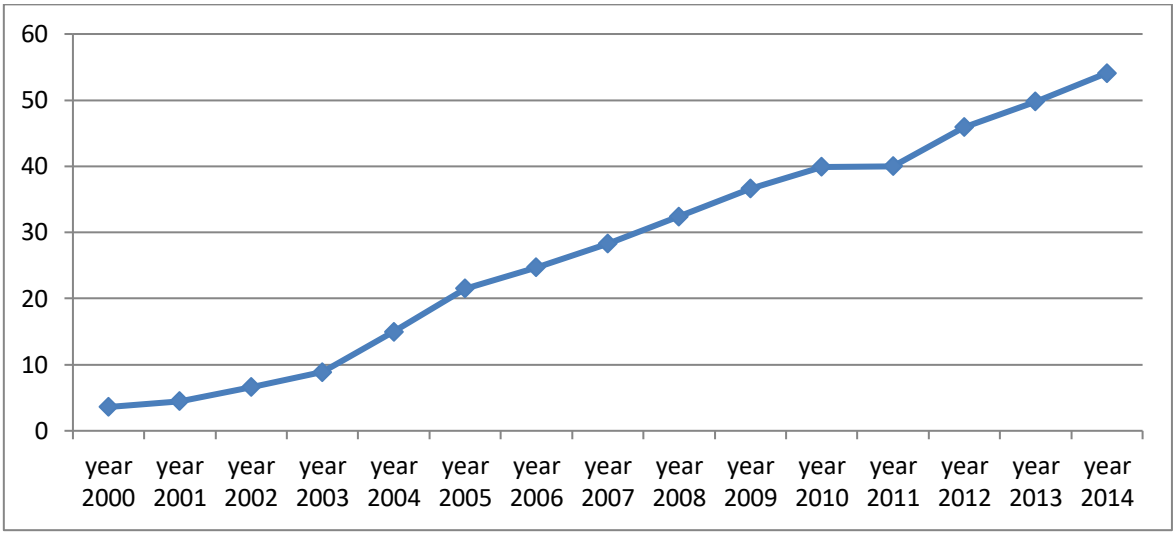

Figure 1. Evolution of the Internet users' number in Romania (2000-2014)

Source: Based on data collected from the World Bank's Website

We cannot say whether the results of the last years are due to a possible market saturation or some other circumstances that exist and may have slowed down this trend, but we certainly can see that the numbers have exploded in the period 2000-2014.

Looking at the population, however, Romania is in a bad position compared to other countries. In 2014, the country had about 54 Internet users/100 people, similar to Serbia and Bulgaria, while in Albania the ratio was of 60 Internet users/100 people. In this context, the more highly rated was Iceland, with 98 users per 100 inhabitants.

According to The National Institute of Statistics, in the whole country the share of households with Internet access is of 54.3% in urban areas and of only 17.8% in rural areas (the difference to 100% is due to business users) (National Institute of Statistics).

In this respect, the European Commission, through the study "User expectations of a life events approach for designing e-Government services" (Fig. 2), discusses the main reasons why people use the Internet to relate to the public administration (EU). We can thus see that the biggest increase occurred in completing and submitting electronic forms (29%), followed by sending regular e-mails to public administration bodies (22%). Instead, the use of Internet only to get information from the public administration was affected by a decline of 4% and the "just clicking" method had a growth of only 2%. We can understand from these numbers that those who use the Internet at home are expected to use the network to better relate with the public administration, and not just as a means of access to information.

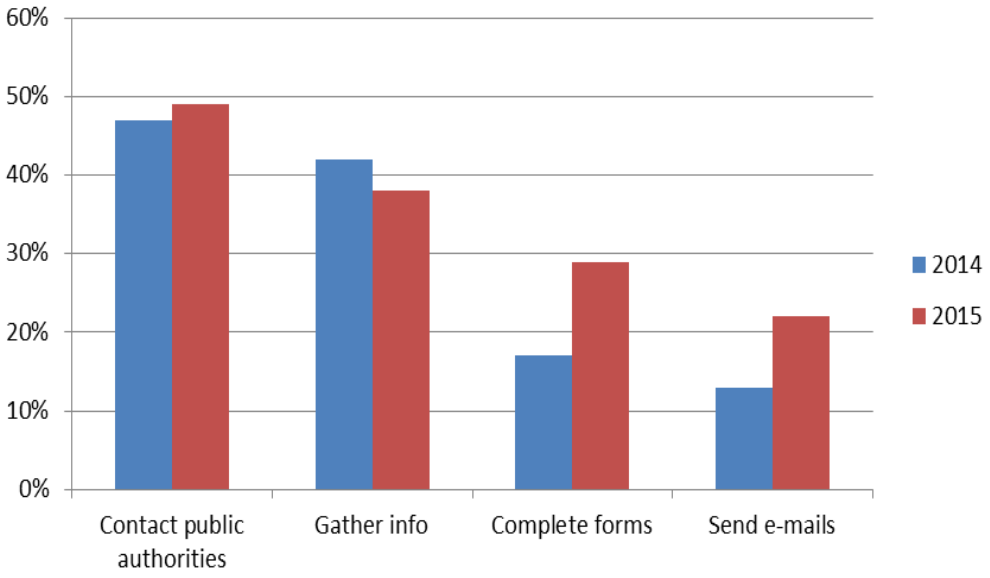

Figure 2. Percentage of individuals who use the Internet to get in touch with the public administration

Source: Personal elaboration based on data collected form the European Union's Website

Considering the "e-Romania" report prepared by the Ministry of Communications and Information Society, in which the index showed that countries are better prepared for e-Administration, Romania is not on the top positions, although it belongs to the group of countries with the highest percentage increase of Internet users and also an increase in the number of online services designed to support citizen participation (MCIS[b]).

3. Case Study: Romanian Municipalities' Radiography

In this section, we had the objective to verify how the municipalities of Romania, which represent the main focus of this research, meet citizens' demands and complaints. In this regard, we have analysed what king of information the municipalities give, via the Internet, to citizens and to the business sector. Specifically, we looked for the dissemination of financial and management information, and for data on the services provided and their quality. The present study was made in 2015 (Vrabie, 2015).

To determine the "responsibility" (Vrabie, 2013) of municipalities through the global network, we firstly investigated the presence on the Internet of Romanian municipalities. Only 96 have an active Web page – representing 93.20% of the total, and 7 municipalities do not have a Web page at all or their address is not active – representing 6.80% (the results are shown in Fig. 3).

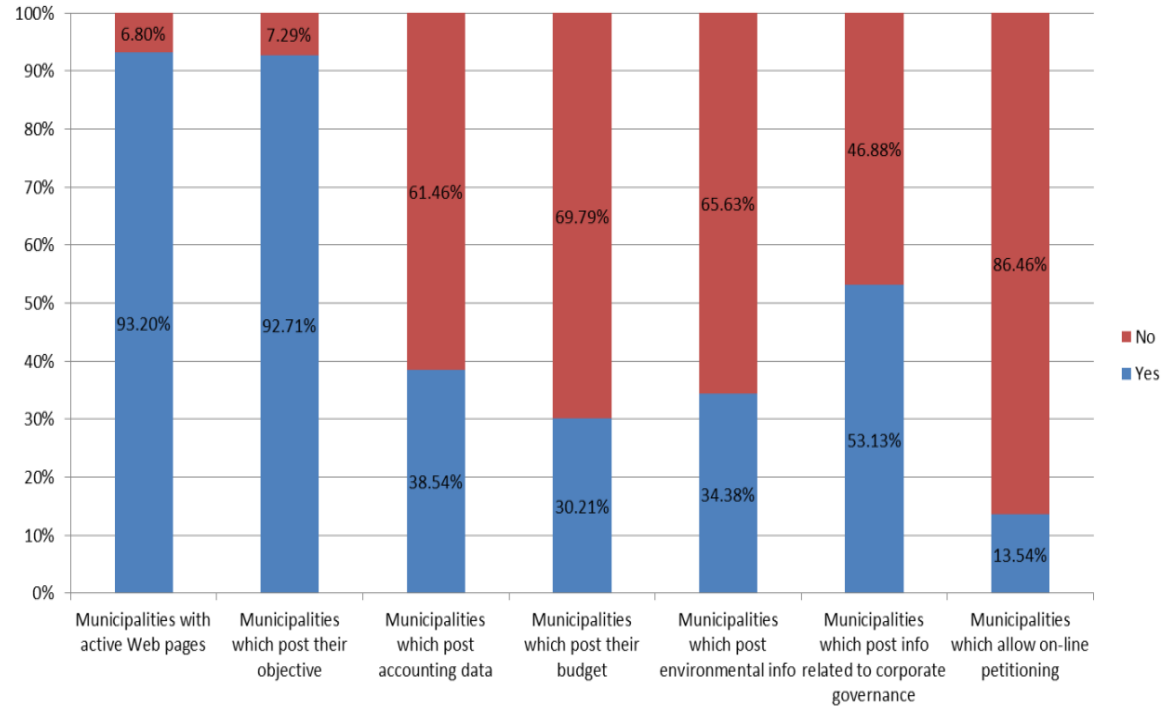

Figure 3. Romanian Municipalities' Radiography

Source: Based on data collected using the methodology described

Afterwards, we analyzed the aspects related to the dissemination of financial information and petitions in the 96 municipalities which have an active Web page.

3.1. Dissemination of Financial Information

Strategic Planning

Regarding the dissemination of strategic information (Fig. 3), from the 96 municipalities which have an active Web page, 89 municipalities (92.71%) do not expose long term objectives and only 7 municipalities show this type of information via the Internet. However, some of them display only strategic information taken from the mayor's election program.

Dissemination of financial accounting

Regarding the dissemination of information related to financial accounting (Fig. 3), 38.54% (37) municipalities analysed publish this type of information on the Internet, while 61.46% do not.

Budget information

For information on the budgets of previous years displayed on the Internet, 29 municipalities show their budgets and 67 do not provide such information. In Fig. 3 it can be seen that, for the first category mentioned, the percentage is of 30.21, while for the latter is 69.79.

Regarding the updated budget information, it must be pointed out that municipalities which provide information on the current budget are 21 in number, which means 21.88% of the total, while municipalities which do not provide updated budget information are in number of 75, meaning 78.13%.

Interim financial information

Regarding the dissemination of financial information via the Internet on specific economic periods, none of the Romanian municipalities provide intermediate financial accounting.

Information about financial indicators

Regarding the diffusion of financial indicators, the city of Sibiu is the only one to provide that sort of information on its Web page. We have found, on this municipality's official Website, budget indicators, savings and the city's financial picture. Unfortunately, those indicators do not refer to the current period, but only to the one in which the city was the European Capital of Culture (back in 2007).

Information about assets

A total of 94 municipalities do not provide information about assets – which means 97.92%, and only 2 municipalities (2.08%) show detailed information about this aspect.

Environmental information

Details about environmental information (Fig. 3) are provided on 33 Web pages out of 96 municipalities, this meaning 34.38%. In contrast, 63 municipalities do not provide information about the environment and/or sustainability.

Information about corporate governance

Regarding this aspect, 51 municipalities (53.31%) exposed, on their Web pages, information about corporate governance. Some municipalities just show who attended the meetings, while others, in addition, display full Courts' procedures and meetings which have taken place over several years. Instead, 45 municipalities (46.88%) do not display, on their official Web page, information of this kind (the results are shown in Fig. 3).

3.2. Commitment to Citizens – the Institution's Response

Regarding citizens' complaints (Fig. 3), from all of the municipalities' Web pages only 13 present such section. Consequently, municipalities which did not implement something on this aspect represent 86.46%.

4. Conclusions

In this paper, we have seen that our country is far from being in the top countries, in Europe or in the world, with the most developed e-government system. Romania has though reached peaks that exceed the average (Holzer, You & Manoharan, 2009), therefore our country's situation is promising. Things can obviously improve – the country can gain rating through the overgrowth of some sections (e.g. design, navigability), but this does not necessarily come to serve the citizens' needs.

The transparency level has been analysed for this article, which is an issue that connects administration and citizens. The analysis' content (based on the provisions of Law no. 544/2001[1] (MRDT) and 161/2003[2] (Chamber of Deputies[b]) shows that, in terms of transparency, municipalities seem to have a

[1] Law no. 544 of 12 October 2001 on access to public information, published in the Official Monitor of Romania no. 663 of 23 October 2001.

[2] Law no. 161 od 19 April 2003 on some measures for ensuring transparency in exercising public dignities, public functions and in business, prevention and punishment of corruption, published in the Official Monitor of Romania no. 279 of 21 April 2003.

good level, having an average score (on all 103 municipalities) equal to 3.01 (Vrabie, 2015). We might say that the situation is refreshingly, but if we investigate deeper, taking into account elements showing only direct interest of the city halls to publicly present information and also the manner in which the municipalities respond to citizens, we will see that no element exceeded 50% of affirmatively responses.

After searching for the administration's response, we began to point out that citizen's petitions are tools available to notify the administration about their dissatisfaction in some aspects of life. Although there is a Government Ordinance from 2002 regulating the resolution of complaints[1] (Bucharest Autonomous Transportation), only 13.54% of the country's municipalities have implemented, on their Websites, online methods to help citizens make such notifications. We can therefore understand that transparency is not a strength point of the Romanian municipalities.

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[1] Ordinance no. 27 of 30 January 2002 on the procedure for resolving complaints, published in the Official Monitor of Romania no. 84 of 1 February 2002.

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Structural Instruments Ex-Post Comparative Analysis in Transport Sector

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Abstract: Organizational performance is the result obtained with respect to the objectives, strategy and expectations of staff and depends on quality, quantity, cost and time. For the organization, in order to achieve its objectives, it must accomplish tasks on time, low cost and high quality. In the 2007-2013 financial framework, using structural funds, the projects have been implemented in all fields by helping member states to overcome the financial crisis, to rebuild their economies and to develop. Ex-post evaluation of the Cohesion Fund and the European Regional Development Fund has provided positive results beneficial for member states, both in terms of transport infrastructure, environment, labor and the support of small and medium enterprises. The aim of this paper is to present a comparative situation of 6 member states in transport sector. The objective of this article is to analyze the performance of these member states, through the 2007-2013 structural instruments. The concepts used are the performance of regional development and EU cohesion policy. This approach is based on scientific research and theoretical documentation. The main methods employed were the observation, the specialty literature and publications. The conclusion of this study is that the EU member states with a developed economy received less financial assistance than the other member states, some member states have had the ability to fully use the grants provided by the European Union, while other have not succeeded in this, which generated the request of the state budget. The case study can be used in university as a frame of reference in order to realize other comparative analysis.

Keywords: cohesion policy; performance; regional development

1. Introduction and Theoretical Framework

The objective of this paper is to present a comparative analysis between 6 EU member states and their performance, through the structural funds received from the European Commission in the 2007-2013 financial period.

Cohesion policy is one of the most important EU policies due to its objectives which contributes to reduce social inequalities between regions by supporting job creation, economic growth, improved living standards of the population.

Regional development concept aims to reduce inequalities between socio-economic regions by stimulating investments in both public and private sectors, economic activities necessary to improve the living standards of the inhabitants.

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Regional development policy requires close collaboration between the actors involved in this process in order to achieve the objectives of increasing the competitiveness of regions that become centers of economic development and ensuring access to public goods and services in the regions.

2. Performance of Regional Development

The term "performance" is a result or a remarkable success obtained in a certain area by a person, a team, a group, a machine. In the literature, some authors define the performance against the objectives of the enterprise, starting from the idea that the enterprise represent a group of persons with common activities oriented towards achieving goals.

Other authors consider that the performance represent the degree to which an organization, as a social system with some resources and means, achieve their goals, a state of competitiveness of the company, reached by a level of efficiency which ensures a sustainable market presence.

The performance can be seen from many points of view: technical performance of the organization (requires that available resources be used effectively and is measured by productivity), economic performance (the overall results of the company must be as good compared with the objectives set, competition and the situation in previous years), social performance (the adaptation to the needs of customers and their purchasing power by offering products and services reasonably priced) and managerial performance (represent the adaptation to the enterprise needs and cultural conditions).

A current perspective on the performance concept reflects its multifunctional nature: the execution of an action, an action carried out successfully, fulfillment of a requirement, promises or application; the claim to represent a character in a play, a public presentation or exhibition; linguistic behavior of an individual: word and the ability to speak a certain language.

Performance can be considered a great result obtained in management, economics, trade involving efficiency, effectiveness and competitiveness of companies and their behaviors associated with procedural and structural ideology of progress, the effort to always do better.

The performance of an enterprise can be analyzed through the financial statements that provide information about the profitability of the company, liquidity and solvency. The performance is the level that obtained the best results.

The factors that underline the company's performance are the resources needed for production (technical, energy, material, human and financial), work processes performed within the company, organizational structure and the beneficiaries.

In regional development, the performance represent the measure in which the structural instruments have been managed effectively and efficiently and can be assessed only ex-post, at the end of the programming period.

If in the programming periods 1994-1999 and 2000-2006, the cohesion policy has focused on reducing inequalities concerning GDP/capita and development of projects, in 2007-2013 financial period, its goal was to obtain results, objectives defined in each region and the increase of use EU funds.

Therefore, the EU member states have conducted 322 operational programs covering areas such as transport, environment, business support, culture, tourism, social infrastructure and urban development, European territorial cooperation, energy, research and development.

Evaluation is the process by which we can measure the performance of a program, project and when it ended, we can identify solutions to improve the results.

The purposes of the assessment are: analyze the results and impact of a program, the comparison of the results of a program with its costs by identifying potential improvements in implementation.

There are several types of assessment of a project, depending of:

- purpose: summative assessment (is achieved at the end of the project or at the completion of certain phases of the project in order to verify the extent and manner in which the objectives were fulfilled); formative assessment (aims to improve the design of a project or program by improving implementation);
- moment: ex-ante (before the implementation of the project in order to establish the selection criteria of the projects that are eligible to receive financial aid), interim (during the implementation of a project or program in order to identify the possible improvements) and ex-post (is achieved after the implementation phase of a program or project and aims to notify the achievement of goals by comparing them with the results achieved, this is in charge of the Member State or the European Commission);
- the position of the members of the Evaluation Committee: internal (is carried out by the institution's employees which implement the program or project and includes all information to ensure that the evaluation report is complete and explicit) and external (is made by the independent assessors, outside the institution, the disadvantages of such evaluations are possible pressures which may hamper the independence of appraisers as well as high costs).

Other types of assessment are:

- participatory evaluation: it is presented as a modern type of evaluation, as opposed to the traditional assessment, the assessor takes the same position with the people involved in the program;
- based on theory: provides categorized data about the implementation of similar programs by identification of the risks and key elements. It is used in particular in the case of the assessment of community where effects cannot be analyzed statistically. Some researchers argue that if you combine data on the results of a program with information on the process of implementation of the program, shall obtain information on the effects of the program and its impact.

In the impact analysis it can be measured the net effects of the intervention (net impact) and can be quantified the effects of the project on the medium and long term.

Medium and long-term impact can be anticipated before implementing such program or project but also during and after implementation. In the structural funds area, can be used two types of evaluation: ex-ante and ex-post.

Ex-ante evaluation is carried out under the supervision of the authority responsible for drawing up the programming documents and aims to "optimize the allocation of budgetary resources under operational programs and improve programming quality".

Through ex-ante evaluation, are identified regional disparities, gaps and development potential, in order to establish specific objectives and strategies for each development region, the procedures for implementation, monitoring, evaluation and financial management.

Ex-post evaluation is carried out after the implementation of a program on the basis of evaluation results already available, to provide information about the use of resources, the effectiveness and efficiency of assistance and its impact.

This evaluation is an essential tool for the development and reorganization of public policy because it allows highlighting aspects that contribute to the success or failure of projects or programs, achievements and results, including their sustainability.

Through structural instruments, in 2007-2013 programming period, 400.000 small and medium enterprises have received financial support and 121.400 new business.

European Regional Development Fund have supported small business to survive the financial crisis of 2007-2008, the innovation, adoption of advanced production technology and developing new products, leading to increased turnover and exports.

The financial support accorded to large enterprises through the ERDF was 6,1 billion euro representing 20% of the ERDF total allocation for business. Were implemented 6.000 projects, 3.700 large firms have received financial assistance, a half of ERDF funding for large companies going to Poland, Portugal and Germany.

3. The Situation by Country in 2007-2013 Financial Exercise

In the transport sector, the financial aid was made by two structural instruments, European Regional Development Fund and the Cohesion Fund in total value of 80,9 billion euro. For the first 12 EU Member States were allocated 55,6 billion euro, of which 37% represented investment in this area, allocations through two funds representing over 40% of capital expenditure in transport during the seven years of programming.

In the following, we shall analyze 6 EU member states: Poland, Italy, Romania, Hungary, Spain and France in order to highlight how did they funded transport projects through the Cohesion Fund and the European Regional Development Fund, related to the 2007-2013 financial framework, what vision they had and which are the results.

In Poland, in the financial exercise 2007-2013, was implemented the Operational Program for Infrastructure and Environment and has had as objective the modernization of TEN-T in terms of roads and railways. The cohesion policy has allocated 51,2 billion euro of which 25,7 billion was for investment in the transport sector.

The financial allocation was divided into 3 priority axes: TEN-T road and air, transport that doesn't affect the environment, transport safety and national transport network. To reach the targets, Poland conducted 16 operational programs. Of these, 10 operational programs have included investments in airports and only one in ports.

For transport network, at the end of 2014, through the structural instruments, Poland spent about 20,9 billion euro for 834 km of TEN-T new roads and 6.550 km of roads rehabilitated.

For the railway, this country has spent 6,1 billion euro. Railway infrastructure projects focused on improving the existing network and infrastructure modernization by increasing speed. At the end of 2013, the results were 71 km of TEN-T and 332 km rehabilitated.

In 2013, Poland had a network of 19,617 km railway with 198 km more than at the beginning of the programming period. If in 2003, 23% of the rail network was considered good, in 2012 the percentage

reached 43%. The rate of the trains that supports speeds of 120 km /h increased from 5% in 2003 to 23,5% in 2012. The objectives of these investments were improving competitiveness by reducing travel times between outlying areas and city centers and facilities for passengers. Investment through cohesion policy were made in urban public transport and airports, also.

Were funded urban transport projects for replacing existing lines of trolleybus, development and modernization of public transport in major cities such as Warsaw, Gdansk, Krakow, Lodz, expanding the metro network in the capital, expansion and modernization of tramways. The domestic and international airline flights have increased from 17 million passengers travel in 2007 to 23 million in 2013.

In Italy, in the programming period 2007-2013 were allocated 20,9 billion euro in the cohesion policy of which 4,2 billion, in transport sector. Cohesion policy in transport was focused on improving accessibility, intermodality, sustainability, quality and efficiency. Cohesion policy has supported national transport priorities especially in the southern regions. Implementation of cohesion policy was, however, hampered by legislative changes that have affected the financing of these operational programs.

Transport policy and investment in the logistics of national importance has been implemented by two major instruments: Plan for Transportation and Logistics and Strategic Infrastructure Program. European Regional Development Fund has been concentrated on the operational program for transport and mobility networks and 15 other operational programs. These objectives were promoting sustainable transport and removing bottlenecks in infrastructure. Also, national transport programs in Italy focused on large projects connected with strategic infrastructure and improve regional transport. Improving connections between Italy and the rest of Europe was made in the southern part of the country through the development of port infrastructure.

At the end of 2013, through the European Regional Development Fund and the Cohesion Fund, Italy had 61 km of new roads, 168 km rehabilitated. The total road network was about 26.587 km of which 6.726 km are highways. The strategic objective of cohesion policy for the road network has been raising the standard of road infrastructure, improving connectivity between main roads, urban centers and logistics and avoiding bottlenecks.

Regarding railways were built 31 km, 728 km were rehabilitated on TEN-T and outside TEN-T: 951 km. At the end of the programming period, the total rail network was 17.060 km which means an increase of 393 km compared to the beginning of the programming period. The projects in air transport have had aimed the support, development, increase airport capacity, improving efficiency of airports, providing connectivity between airports and high-speed train stations, providing the connection between public transport and airports. In 2013, Italy had 44 airports of which 32 had more than 150.000 passengers per year. The Structural Funds have, also, financed the important ports and their connections with the rest of the country in order to create necessary logistics platform in the Mediterranean Sea for international trade routes.

In Romania, during the 2007-2013, the financial allocation for the European cohesion policy was 15,3 billion euro of which 5,5 billion were earmarked for the transport sector. In our country, they were conducted two operational programs: Sectorial Operational Program Transport and Regional Operational Program. SOPT concentrated on infrastructure of national importance, giving greater importance to the development of TEN-T corridors while ROP implemented regional development projects connected with the needs of the population.

Transport and Infrastructure Strategic Plan was oriented towards economic efficiency, equity, security, integration and the environment. Policy principles were set out in the National Strategic Reference Framework. At the end of 2013 were rehabilitated 22 km of roads.

The General Transport Master Plan for the period 2014-2020 emphasizes the importance of continuing and completing motorways and modernization or rehabilitation of national roads whose works started in the exercise 2007-2013. These projects are phased, second phase will run during 2014-2020 financial period. Have been made investments in the highways, at the end of 2012, the total length was 550 km. Regional Operational Program, invested 1,2 billion euro for road sector of which 1,1 billion were allocated to regional and local roads.

At the end of 2013, through ROP were rehabilitated 877 km of county roads. Regional Operational Program has aimed to increase economic and social role of urban centers, increased accessibility between regions of the country especially with the neighboring connecting urban centers, increasing the quality of social infrastructure, optimization for tourism development effort.

Our country had 162 km of newly built roads of which 140 km are part of the TEN-T and 1.437 km of roads rehabilitated. Regarding railways, Romania has a railway network totaling 10.777 kilometers and in 2007-2013, the construction of new railway lines was not considered a priority. Bucharest Metro Line 5 received structural funds in value of 409 million euro, will have a length of 7,5 km and it is in execution.

Hungary, in 2007-2013, has received an allocation of 21,3 billion euro in EU cohesion policy of which 6,7 billion euro for transport. The objectives were: improving quality of life, reducing regional disparities, increasing transport safety, environmental protection, regional development and urban development.

By the end of 2014, the transport sector spent 6.2 billion euro. Thus, at the end of 2013, Hungary has built 443 km of roads of which 114 km on the TEN-T and modernized 2.237 km, the total road network being 31.692 km. Costs incurred in railways totaled 1,8 billion euro and financed 20 km new railway on TEN-T and 179 km railway modernized.

In 2013, the total rail network was 7.877 km. Transport absorption rate for 2007-2013 was high compared to other European Union member states, the country has managed to register a significant progress, in aligning with European transport policy by developing the TEN-T. It has invested in urban transport and the extension of the metro in Budapest.

The total funds allocated in Spain to cohesion policy amounted to 26,6 billion euro, of which 8,2 billion euro in transport sector for rail infrastructure, road, maritime, intermodal transport, aviation, urban and metropolitan research, development and innovation in transport. All this contributed to the country's economic development, increase social and territorial cohesion.

Through cohesion policy instruments, this country has had aimed to ensure access to urban public transport, the development of short shipping freight, interoperability gauge railway to the border with France, increasing market share of rail and road, providing effective connections between the big cities. Investment policy in the transport sector for the period 2007-2013 was planned long before, in 2005 and it is a part of the development strategy for the 2005-2020 period.

The Operational Program “Cohesion Fund - European Regional Development Fund” amounted to 8,2 billion euro for investment in transport in 2007-2013. At the end of 2014, Spain has spent the funds entirely for the construction of 279 km of roads of which 88 km on the TEN-T network, 1.681 km were

modernized. Thus, in Spain in 2013, the road network consisted of 29.811 km of which 14.701 km were the highways.

In France, in the programming period 2007-2013, the largest share of cohesion policy funds was invested in inter-urban transport, multi-modal urban and rail, to modernize population mobility.

The total allocation under cohesion policy was 8 billion euro of which 1,1 billion euro were intended to transport sector. By the end of 2013, were built 28 km of roads on TEN-T, were rehabilitated 446 km of which 57 km railway on TEN-T.

Due to decentralization, regional councils were the responsible investment authorities in cooperation with national authorities, in order to develop regional territorial transport plans. The 2010 Transport Plan focused more on investment in sustainable alternatives transport more than in road investments and aimed at a 20% reduction of toxic emissions by 2020, protecting the environment and participation in increasing energy efficiency by 20% in the EU.

The total road network was about 21.249 km of which 11.465 km are motorways. 210 million euro was allocated to the rehabilitation of 446 km of railway and 57 km on TEN-T network.

Through the financial instruments of the cohesion policy, France has invested in urban transport in small towns of the country, has improved the tram network in Clermont-Ferrand and the development capacity of Cherbourg port.

France has taken into account the development of transport in its outermost regions such as Guadeloupe, Martinique, Guyane, Saint-Martin, Reunion and Mayotte, the less developed regions than the rest of the country. In the period 2007-2013, were conducted in 27 operational programs of which 4 have been allocated for the development of the regions of Guadeloupe, Guyane, Martinique and Reunion. For the last of these, investments focused on urban transport. Implementation of the national policy of the French transport reflected the needs and priorities of the Member States of the European Union, developed according to the European transport policy.

4. Conclusions

The EU developed member states have benefited of financial allocations smaller than those least-developed countries. All of these states have had as objective to connect national networks of European transport corridors, the needs of the new member states have focused more on road transport network development and the alignment of national goals on those of the European Union. In the 2007-2013 financial exercise, through the ERDF and CF were implemented big projects in transport sector, helping Member States to develop their infrastructure in order to attract foreign investors and to increase the living standard of the citizens.

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About the Collective Dismissal of Employees - Practical Aspects

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Abstract: The employment relationship is a contractual one and as such must have all the basic elements of an enforceable contract to make it legally binding. In strict contractual terms, the offer is made by the employer and formally accepted by the employee. Once the acceptance has taken place, there is a legally binding agreement and an action will lie against the party who breaches that agreement, even though it may only just have come into existence. An employment contract, however, is unlike most other contracts. Although the parties will have negotiated the main terms, we shall see that a large number of terms will be implied into the agreement from all sorts of different sources and will not have been individually negotiated by the parties at all. This is what makes an employment contract so different from other contracts. We think this article is an important step in the disclosure of the problem erased by this two concepts.

Keywords: initiative; consultation; criteria; compensatory payment

According to art. 68 of the Labour Code, by "*collective dismissal* is understood the dismissal within a period of 30 calendar days, for one or several reasons not related to the person, of a number of:

- at least 10 employees, if the employer performing the dismissal has more than 20 and less than 100 employees;
- at least 10% of the employees, if the employer performing the dismissal has at least 100 employees, but less than 300 employees;
- at least 30employees, if the employer performing the dismissal has at least 300 employees.

When determining the actual number of employees collectively dismissed, according to para. (1), in the calculation are comprised also those employees whose employment contracts were terminated from the employer's initiative, for one or several reasons not related to the person of the employee, provided that there are at least 5 dismissals".

Hence, when an employer individually fires, within an interval of 30 days, at least 5 employees, this will be considered as a masked form of collective dismissal, and those employees will be taken into account when establishing the number of dismissed employees which make a dismissal to be qualified as collective.

In the spirit of Directive 98/59/EC, the Court of Justice of the European Union decided that the *concept of collective dismissal incorporates any termination of the employment contracts not due to the worker's will and, hence, without his/her consent*[2].

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[2] Decision of 12 October 2004, matter C-55/02, Comisia v. Portugal (published in OJEU C 300 of 14 December 2004).

We believe that the legal provisions of art. 68 of the Labour Code must be analyzed from the following perspective: number of dismissed employees, at least 10 employees, at least 10% of the employees, at least 30 employees may comprise:

- *only* dismissals not related to the employee's person (regulated by art. 68 para. (1) corroborated with art. 65 of the Labour Code);

- *by assimilation*, other forms of termination of the employment contract, from the employer's initiative, which are not based on art. 68 para. (1) corroborated with art. 65, but which are, still, assimilated to collective dismissals, if proof is given that they occurred due to the employer's initiative and refer to at least 5 persons; in this situation classify either the forms of individual employment contract termination *through the parties' agreement, but executed at the employer's request,* or the forms of *resignation caused by the pressure exerted by the employer* (for example, the blank signing of the resignation document upon the conclusion of the employment contract) (Ștefănescu, 2014). The Court of Justice of the European Union decided to assimilate to dismissals "the event which has the value of licensing, being constituted by an expression of the employer's will to terminate the employment contract"[1]. However, in practice, it is very difficult to prove the pressure exerted by the employers upon their employees, with a view to terminating the employment contract, even if the law allows for the use of all means of evidence.

The scope of the legal regulations in matter of collective dismissal suffered a series of changes, as follows:

- *on the one hand*, the provisions in the matter regarding the informing, consulting and the procedure of the collective dismissal no longer apply to employees working within public institutions and authorities; the collective dismissal procedure is no longer applicable, except to the private sector, which is in accordance with the provisions of Directive 98/59/EC;

- *on the other hand*, the same provisions in matter of collective dismissals no longer apply to individual employment contracts concluded for determined time, except for the cases where these dismissals occur before the date of expiry of the said contracts.

The information, consultation of employees and the procedure of collective dismissal – is established by art. 68-73 of the Labour Code. Thus, the employer aiming to perform a collective dismissal has, mainly, the following obligations:

- *on the one hand*, to initiate, in due time, in order to make it possible to reach an agreement (or at least a compromise), consultation with its trade union or, as the case may be, with the employees' representatives, with respect to at least the following aspects: methods and means of avoiding collective dismissals or of reducing the number of employees who will be affected by these measures, corroborated with the diminishing of the consequences of the dismissal, by means of enabling social measures aiming, among others, support for the re-qualification or professional reconversion of the dismissed employees (art. 69 para. (1) of the Labour Code);

- *on the other hand*, during the period of consultations, in order to allow the trade union or the employees' representatives, as the case may be, to formulate proposals, in a real manner and in due time, the employer has the obligation to supply all relevant information and to notify them, in writing, with respect to the following aspects: total number and categories of employees; the reasons determining the dismissal envisaged; number and categories of employees who will be affected by the dismissal; the criteria taken into consideration, according to the law and/or the collective employment contracts, in order to establish the priority order in dismissal; the measures considered in order to limit the number of dismissals; the

[1]Matter C-188/2003, application for prejudicial decision related to the interpretation of art. 1-4 of Directive 98/59/EC introduced by Arbeitsgerecht Berlin.

measures for diminishing the consequences, which are going to be given to the dismissed employees, according to the legal dispositions and/or the collective employment contracts; the date from which or the period in which the dismissals will occur; the term during which the trade union or, as the case may be, the employees' representatives can make proposals for the avoidance or diminishing of the number of dismissed employees (art. 69 para. (2) of the Labour Code).

According to art. 69 para. (3) of the Labour Code, the assessment of the individual performance objectives also plays a major role in the collective dismissal. Compared to the past – when the social criteria established through the collective employment contracts were in the front position for distinguishing between the employees affected or not by the collective dismissal –, at present priority is given to the criteria of value order, respectively the extent to which the performance objectives are achieved. Subsequently, if it is still necessary, the social criteria will also be considered (Țiclea, 2014).

The above obligations will be maintained regardless of whether the decision determining the collective dismissal is taken by the employer or by an enterprise having control over the employer. In addition, in the second case, the employer cannot oppose the fact that the enterprise which has control did not supply the necessary information in view of complying with the obligation to inform the trade union (art. 69 para. (5) of the Labour Code).

The employer must also communicate a copy of the notification to the territorial labour inspectorate and to the territorial workforce employment agency, on the same date when it communicated the same to its trade union or, as the case may be, to the employees' representatives (art. 70 of the Labour Code).

Subsequently, within a term of 10 calendar days from receiving the notification, the trade union or, as the case may be, the employees' representatives can propose to the employer measures in order to avoid or diminish the number of dismissed employees (art. 71 para. (1) of the Labour Code).

The employer has the obligation to reply, in writing and motivated, to the proposals formulated by the trade union or by the employees' representatives, as the case may be, within 5 days from receiving them (art. 71 para. (2) of the Labour Code).

In the situation when the employer will decide, in spite of consulting the trade union or the employees' representatives, to apply the measure of collective dismissal, it has the obligation to notify, in writing, the Territorial Labour Inspectorate and the territorial workforce employment agency, *with at least 30 calendar days before issuing the dismissal decisions*. The notification must comprise: all relevant information regarding the intention of collective dismissal, the results of the consultations with the trade unions or with the employees' representatives (recorded in the minutes), especially the dismissal reasons, the total number of employees and, respectively, the number of those affected by the dismissal, the date from which or the period within which the dismissals will occur (art. 72 para. (2) of the Labour Code). On the same date, *a copy of this notification must be also communicated to the trade union or to the employee's representatives* (art. 72 para. (3) of the Labour Code).

The trade union or the employees' representatives can send their points of view to the territorial labour inspectorate.

Upon the motivated request of either party, the employeror the trade union, approved by the territorial workforce employment agency, the inspectorate may order the reduction of the period of 30 calendar days set for notification prior to the date of issuing the dismissal decision. In the same way, at the motivated request of either party, the labour inspectorate, after consulting the territorial workforce employment agency may order, on the contrary, the postponement of the moment of issuing the collective dismissal decisions with maximum 10 calendar days, in case the aspects related to the collective dismissal cannot be settled until the

date established through the dismissal notification, transmitted by the employer, as being the date of issuing the dismissal decisions (art. 73 para. (2) of the Labour Code). The Territorial Labour Inspectorate has the obligation to inform, in writing, within 3 working days, the employer and its trade union or the employees' representatives, as the case may be, with respect to postponing the moment of issuing the dismissal decision, as well as of the reasons that were at the basis of taking this decision (art. 73 para. (3).

Throughout this entire period established in art. 72 para. (1), of 30 calendar days, the *territorial workforce employment agency must search for solutions to the problems raised by the foreseen collective dismissals and communicate them in due time with the employer and its trade union or the employees' representatives*(art. 73 para. (1) of the Labour Code).

According to art. 74 of the Labour Code, in case that the employer who ordered collective dismissals will hire, within 45 calendar days from the dismissal, will have to give *priority at employment* to the employees collectively dismissed before, for the re-established positions, without subjecting them to any exam, competition or trial period. If, within 45 days, the activities whose cease has led to the collective dismissals will be resumed, the employer, according to art. 74 para. (2), will send a written communication in this sense to the employees who had been dismissed from the positions whose activity is resumed in the same condition of professional competence. It is noted that, on the one hand, it is not obligatory that all prior professional activities are resumed, but only a part of the activities can be resumed, which require the work of only a part of the employees dismissed before (only the latter will receive notifications), and, on the other hand, the activities resumed must presuppose the same conditions of professional competence, in the contrary case, the employer having no obligation to send notifications to the employees dismissed before from their positions. The efficiency of applying this method imposes that a written notification is sent to each employee, concomitantly with information measures at the employer's headquarters and/or publication in mass-media (Ștefănescu, 2014).

The employees have available a term of maximum 5 calendar days from the date of the notice communicated by the employer, to manifest in writing their consent regarding the job offered. If the employees who have the right to be rehired do not manifest their consent, in written form, or they refuse the job offered, the employer will be able to make new hiring on the positions remained vacant. Any employment on the position of the hired person, before the person in question expressed his/her viewpoint, within the term set by the law, is sanctioned with the nullity of the respective employment.

After the collective dismissal, the employees are entitled to certain *compensatory payments*, according to Government Expedite Ordinance no. 98/1999 regarding the social protection of persons whose individual employment contracts will be terminated as a result of collective dismissals[1].

In fact, the compensatory payments represent an amount of money whose monthly value is equal to the average salary per entity, achieved by the person in question in the month prior to his/her dismissal (according to art. 28 of Government Expedite Ordinance no. 98/1999).

The compensatory payments are usually provided for from the salary fund and present the following characteristics:

- the right to compensatory payment emerges on the date of communicating the written decision of collective dismissal and is given to each dismissed employee, only once for the dismissals made within the same entity;
- the amounts of money are paid in equal monthly installments, only if the former employee does not start another job, hence, if he/she became unemployed;

[1] Published in the Official Gazette no. 303 of 29 June 1999, as subsequently modified and completed.

- the compensatory payments can also be cumulated with other advantages and rights established in the collective employment contracts;
- in all cases, the employees dismissed through collective dismissals will benefit of the unemployment aid (established on the date of dismissal, but suspended during the period of paying the compensatory payments and put into payment in the first month after ceasing the compensatory payments).

In case the employer, who took the measure of the dismissal, establishes, following a notification, or out of its own initiative, the lack of grounds or the unlawfulness of the measure taken, it usually can revisit the measure, revoke it through unilateral act, symmetrical to the one it abolishes (Ţop, 2015). Revocation is possible because the act of dismissing an employee represents an individual act without jurisdictional character.

The revocation act must fulfill the following cumulative requirements:

- must come from the same body which decided the dismissal;
- must have written form;
- must operate for reasons of unlawfulness and/or lack of grounds (Athanasiu & Dima, 2005).

The revocation of the employer's decision leads, in case there is a labour litigation pending before the court, regarding the solving of the contestation against the measure of the termination of the individual employment contract, to the cease of the trial, the contestation going to be rejected as having become without object. Hence, the employment relationship between the parties will be resumed as if it had never been interrupted[1].

According to art. 78 of the Labour Code, "the dismissal ordered in violation of the procedure established by law falls under absolute nullity".

In all cases, the nullity is established by the Tribunal or the Court of Appeal, at the request of the person in question.

According to art. 77 of the Labour Code, the rule is established that "in case of labour conflict, the employer cannot invoke before the court other reasons of law or of fact than those mentioned in the dismissal decision". The absence from the dismissal decision of essential elements established by art. 76 of the Labour Code, such as: *reasons which determined the dismissal, the term of prior notice, the criteria for setting the priority order in case of collective dismissal, the list of all jobs available within the entity and the term within which the employees are going to opt to occupy a vacant position* – cannot be fulfilled by acts subsequent or simultaneous with the issuing of the decision, not through defense before the court of law by the employer.

It must be noted that through Decision no. 8/2014[2], the High Court of Cassation and Justice admitted the recourses in the interest of the law formulated by the attorney general of the Prosecutor's office attached to the High Court of Cassation and Justice and by the management College of Constanţa Court of Appeal, considering that: "in interpreting and applying the dispositions of art. 78 of the Labour Code, with reference to art. 75 para. (1) of the same Code, not granting the prior notice with the minimum duration established by art. 75 para. (1) of the Labour Code, respectively with the duration comprised in the collective or individual employment contracts, if the latter is more favorable to the employee, brings forth

[1] C. Ap. Braşov, work litigations and social security section, Dec. no. 201/M/2008.
[2] Published in the Official Gazette no. 138 of 24 February 2015.

the absolute nullity of the dismissal measure and of the dismissal decision.

In interpreting and applying the dispositions of art. 76 letter b) of the Labour Code, related to the dispositions of art. 78 of the same code, the absence from the dismissal decision of the mention regarding the duration of the prior notice given to the employee is not sanctioned with the nullity of the dismissal decision and measures, when the employer proves that he gave the employee the prior notice of the minimum duration indicated in art. 75 para. (1) of the Labour Code or of the duration indicated in the collective or individual employment contracts, when the latter is more favorable to the employee".

In conclusion, if the prior notice is given to the employee, in fact, the manner chosen by the employer to communicate it to the employee is of no relevance, the nullity of the dismissal decision in case of not communicating in writing the prior notice term being not used.

Therefore, according to art. 80 para. (1) of the Labour Code, in case of establishing the lack of grounds and/or the unlawfulness of the dismissal act, the court will order the employer *to pay a compensation equal to the indexed, increased and reupdated salaries and with the other rights the employee would have benefitted of* if he/she would not have been fired. This situation must be corroborated with the provisions of art. 38 of the Labour Code, according to which the employees cannot waiver the rights awarded to them by law.

In case the indexations and/or increases do not cover the full rate of inflation, the equivalent value of the salary rights will be updated at the level of the inflation. In the calculation of the compensation the equivalent value of the meal tickets is included.

The duration of time for which compensations are granted differs with respect to the following situations:

- if the employee requests, through the petition to call to court, that the parties be reset to their prior situation, hence the rehiring, the compensations will be granted from the date of the unlawful dismissal and subsequent to the rendering of the irrevocable court decision, until the actual enforcement of the decision;

- if the employee requests only the payment of compensations and not the resetting in the previous situation, respectively rehiring, through the irrevocable court decision, favorable to the employee, his/her employment contract will be rightfully terminated and the former employee will be entitled to receive the compensations calculated from the date of dismissal and until the moment of the recourse court's decision.

We believe that, as indicated in the specialty legal literature (Țiclea, 2014; Ștefănescu, 2014), in the case regulated by art. 80 para. (1) of the Labour Code, *moral compensations* may also be granted (on the grounds of art. 253 para. (1) of the Labour Code).

Probably the most important consequence of annulling the dismissal decision and of resetting the parties in the prior situation consists in the rehiring of the employee.

Reintegration (rehiring) presupposes the resuming of the function held previously, in the same position or a similar position, on the grounds of the old employment contract, as well as the passing of work seniority as though the contract had never been interrupted.

According to art. 274 of the Labour Code, "the decisions rendered in the first court are final and executory", means that from the date of rendering such as decision, the matter of rehiring can be raised. In practice, relevant is not the date of rendering the court order, but the date of writing and communicating the court order, which will be requested by the employer in order to proceed with the rehiring. The law does not establish a period during which the employee must request, either directly or through the officer of the court, the resuming of the activity.

According to art. 262 of the Labour Code, "not executing a final court order regarding the rehiring of an employee constitutes a criminal offence", but the non-existence of a legal term during which this obligation must be fulfilled makes this text of law difficult to apply (Popescu, 2008). Hence, art. 6 of the Convention refers to the observance of a *reasonable term*, which differs from case to case, for the enforcement of a final (and irrevocable) court order.

We consider that in case of rehiring an employee who was dismissed unlawfully or without grounds, no decision of the employer is necessary in order to reset the employee to the position held previously, because in this sense the authority of judged matter of the court order operates in this case.

In reality, in very many cases, the employers refuse or postpone the enforcement of the court order regarding the petition count referring to rehiring to the same position, on the grounds that the position was canceled (it does not exist anymore). For this reason, the European Court of Human Rights was notified in many cases[1], and decided against Romania, deciding that the canceling of the position does not remove the obligation to rehire the person, by creating *an equivalent or similar position* to the position held before. By *equivalent or similar position* must be understood a position comprising:

- the same professional qualification;
- similar work duties and responsibilities;
- salary at least equal to the one had before.

In the view of the European Court of Human Rights, the *plaintiff' rehiring to an equivalent position to the one held before his/her dismissal, the payment of the amounts ordered through the court order of reinstatement, reupdated depending on the inflation, as well as the payment of compensations for the material and moral damages suffered due to not enforcing the respective decision, would put the plaintiff, to the highest extent possible, in a situation equivalent to the one in which he/she would have been if the requirements of art. 6 para. (1) of the Convention, regarding the right to a fair trial, would not have been violated* (matter *Ştefănescu*, point 37 of the Decision of 11 October 2007).

In all cases, the Court reminded that the enforcement of a decision to rehire must be considered as being an integral part of the trial, in the sense of art. 6 of the Convention, such as the *right to have access to justice, would be illusory if the domestic legal order of a state would allow that a final and mandatory court order would remain not enforced, to the detriment of a party.* That is why "the state, as depositary of the public force, is called to manifest diligent behavior and assist the creditor in executing the decision favorable to him/her" (matter *Strungariu*, Decision of 29 September 2005).

The employer cannot oppose the execution of the court order regarding the rehiring by invoking the fact that throughout the litigation regarding the dismissal the employee took a job with another employer. The existence of another individual employment contract for the same period cannot stop the enforcement of a final court order because the right to work established in art. 3 of the Labour Code, which must be corroborated cu art. 35 of the Labour Code regarding the accumulation of positions, would be restricted.

Our domestic legislation also regulates a series of special measures, as follows:

- according to art. 17 para. (1) of Law no. 76/2002 regarding the system of unemployment security and the stimulation of employment, the persons in a situation where the rehiring ordered "through final court order

[1] See: matter Ghibuşi (Decision of 23 June 2006, published in the Official Gazette no. 700 of 16 August 2006); matter Strungariu (Decision of 29 September 2005, published in the Official Gazette no. 415 of 3 June 2008); matter Ştefănescu (Decision of 29 September 2005, published in the Official Gazette no. 617 of 22 August 2008); matter Cone (Decision of 24 June 2008, published in the ECHR Bulletin no. 8/2008, pp. 62-68); matter Ocneanu (Decision of 29 June 2008, in ECHR Bulletin no. 9-10/2008, pp. 66-71); matter Teodorescu (Decision of 29 July 2008, published in the Official Gazette no. 386 of 9 June 2009); matter Colceru (Decision of 28 July 2009, published in the Official Gazette no. 66 of 29 January 2010).

is no longer possible within the entities where they had worked before, due to the final cease of activity, or within the entities which took over their patrimony" are considered unemployed persons are have the right to unemployment aid;

- according to art. 43 para. (2) of Law no. 202/2002 regarding the equal opportunities and equal treatment between men and women[1], it is regulated that "if the rehiring is no longer possible within the entity or the workplace of the person for whom the court of law decided that the work relations or conditions had been modified unilaterally and unjustified by the employer, the employer will pay the employee a compensation equal to the real damage suffered by the employee".

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[1] Republished in the Official Gazette no. 150 of 1 March 2007.